

**Analysis of Laws, Regulations and Policies Pertaining to the
Processing, Possession and Sale of Processed Frozen
Lobster Parts**

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

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MarineFisheries
Commonwealth of Massachusetts



Massachusetts Department of Fish and Game

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Section 1 - Executive Summary

This report was prepared in response to the 2012 Mass. Acts ch. 238 § 93, an act that required the Massachusetts Division of Marine Fisheries investigate the Commonwealth's laws pertaining to the processing, possession and sale of frozen lobster parts, and then submit a written report to the Legislature on these findings no later than December 31, 2012. In this report we, the Division of Marine Fisheries, examined the laws, regulations and policies governing lobster processing across jurisdictions, how growth in lobster landings has impacted lobster processing and market distribution, and how the modernization of processing laws has shaped the industry. We also evaluated potential impacts from allowing the in-state sale of lobster parts, and have provided recommendations for pathways forward.

Over the past 30 years, and more so in the past decade, the global lobster market has moved away from whole live lobsters and towards processed lobster products. Shell-on lobster parts have become increasingly popular and favored by consumers, retailers, and chefs. This increase in popularity is a product of both a surplus of lobster, as well as consumer preferences. However, the Commonwealth of Massachusetts, like some other Atlantic coastal states, has been slow to sufficiently amend its lobster processing laws to address changing market trends.

An important change to the state's lobster processing and minimum size statute (Mass. Gen. L. ch. 130 § 44) occurred in 1997. This amendment addressed the growing domestic and international market for shell-on lobster tails and authorized the Massachusetts Division of Marine Fisheries to permit wholesale dealers, approved by the Massachusetts Department of Public Health, to process lobsters into frozen shell-on lobster tails for distribution outside the Commonwealth, but the amended statute stopped short of authorizing the in-state sale of processed lobster tails.

Many sectors of the Massachusetts seafood industry are negatively affected by the current status of Mass. Gen. L. ch. 130 § 44 and are advocating amending the statute to allow the sale of processed lobster products inside the Commonwealth. Throughout the US, large restaurant chains, like the Outback Steakhouse and Red Lobster, offer shell-on American lobster tail dinners. To conform to state law, their Massachusetts establishments instead offer an amended menu featuring spiny lobster tails sourced from distant regions, such as the Gulf of Mexico, South Africa and Australia. Moreover, regional and national grocery store chains (e.g., Whole Foods and Hannafords), must actively work to ensure that their Massachusetts stores do not carry shell-on lobster parts while most of their other locations do.

This report identifies various potential benefits to industry if the state's statute is modernized. These benefits include reduced overhead of selling lobster parts versus live lobster, accommodation of consumer attitudes that do not favor handling and cooking live lobster, and possible ex-vessel price (i.e., price paid to fishermen) stabilization. As a result of these benefits, jobs and value will be added to the state's economy.

The Division of Marine Fisheries strongly recommends amending Mass. Gen. L. ch. 130 § 44 to authorize the in-state sale and possession of shell-on lobster parts, provided all processed lobster product be sufficiently labeled with product and processor information to ensure compliance and traceability. The Office of Environmental Law Enforcement conducts nearly all of its compliance inspections between point of harvest and point of first sale. If the statute maintains a prohibition on the possession of mutilated

lobsters prior to sale to a wholesale dealer then there is sufficient opportunity for law enforcement officers to ensure the lobsters being landed in Massachusetts conform to minimum carapace size standards. As processed meat and seafood products are subject to contamination, it is necessary for the Massachusetts Department of Public Health to continue to inspect facilities that process lobster. In addition, all processed product should be labeled with product type, processor identification information, and processing date. Labeling creates a chain of custody that aides public health officials in the case of recall and improves compliance with conservation regulations through traceability.

Section 2 - Introduction

In recent years, the Massachusetts Division of Marine Fisheries (*Marine Fisheries*), within the Department of Fish and Game, has had numerous discussions with stakeholders and other state and federal government officials regarding Mass. Gen. L. ch. 130 § 44 (Appendix 1), the state's American lobster (lobster) processing and minimum size law. Industry stakeholders included members of the commercial lobster industry and the Massachusetts Lobstermen's Association; seafood processors, distributors, and dealers including the Boston Lobster Company (the only seafood dealer authorized to process lobster into shell-on tails in Massachusetts); and restaurant establishments such as Legal Seafood and Outback Steakhouse, as well as the Massachusetts Restaurant Association. We also spoke with interested state Legislators; officials from Massachusetts Department of Public Health (MDPH) and the Massachusetts Office of Environmental Law Enforcement; and officials from federal and state fishery management agencies.

Of specific concern expressed by the seafood industry is the prohibition on the in-state possession and sale of frozen shell-on lobster parts. The seafood industry representatives believe that the current state law is antiquated and is preventing legal commerce in emerging markets for shell-on lobster products. Advocates for statutory reform claim that by modernizing the law, all sectors of the state's seafood industry will see economic benefits through access to value-added and in-state consumer markets.

2012 Mass. Acts ch. 238 § 93 (Appendix 2), passed in August 2012, required *Marine Fisheries* investigate the Commonwealth's laws pertaining to the processing, possession, and sale of frozen lobster parts and submit a written report to the Legislature on these findings. This resulting report reviews the general management of the lobster resource, the evolution of the consumer market for processed lobster and lobster processing management, the commercial lobster fishery, and other industries affected by lobster processing rules. In its conclusion, *Marine Fisheries* recommends amending the statute to accommodate the sale of shell-on lobster parts in Massachusetts (Appendix 3).

Section 3 - Lobster Processing Laws: Across Jurisdictions

The harvest and sale of lobster is regulated by both the state and federal government. Principal management is conducted under the auspices of the Atlantic States Marine Fisheries Commission (Commission) Interstate Fisheries Management Program (ISFMP). The Commission develops interstate management plans for the species throughout its range, and the participating coastal state fishery agencies and the National Marine Fisheries Service (NMFS) work cooperatively with the Commission to uphold their plans by regulating the lobster fisheries in their jurisdictions.

In addition, there are some longstanding federal laws and regulations that support Commission management plans as well as those filed under the federal Magnuson-Stevens Fishery Conservation and Management Act. In 1989, the so-call "Mitchell Act" allowed NMFS to institute a national minimum size

(carapace length¹) for lobster throughout the US. Subsequent federal regulations at 50 CFR 697 established this minimum size as 3.25 inches.² To ensure compliance with this minimum size, the mutilation of any live lobster prior to the initial sale to a seafood dealer was prohibited.

An important milestone decision affecting international lobster trade occurred in 1990. A ruling by the panel representing the US-Canada Fair Trade Agreement (FTA) - now known as the North American Fair Trade Agreement – upheld the national minimum size for lobster, but limited the enforcement to live lobsters only. Consequently, Canadian imports of undersized (whole) cooked lobster or processed lobster parts were established as legal.³

Although the Commission is the primary agency responsible for lobster management, the plan does not establish uniform standards on the commerce of lobster parts. The management plan only prohibits *fishermen* from possessing lobster meats, detached tails or claws, or any other part that has been separated from the lobster. Massachusetts and other states have various rules and regulations regarding the processing of lobster or possession of lobster parts that differ from federal rules and, in some instances, enact more stringent standards (Appendix 4).

In Massachusetts, Mass. Gen. L. ch. 130 § 44 is the law governing the possession and sale of processed lobster. At present, it establishes that any person may not have a lobster smaller than 3.25” carapace length and this rule applies to any lobster – alive or dead, cooked or uncooked – and prohibits the mutilation of lobster in any manner that would affect carapace measurement. It provides an exception to the mutilation ban for wholesale seafood dealers⁴ who are jointly authorized by *Marine Fisheries* and MDPH to process only frozen shell-on lobster tails for sale outside the Commonwealth in accordance with state regulations (322 CMR 6.32 – Appendix 5 and 105 CMR 533 – Appendix 6). As a result, lobster may be processed into frozen shell-on tails in Massachusetts, but this product cannot be sold to Massachusetts seafood dealers, food establishments, and consumers.

The state’s rules governing processed lobster have evolved over the past half century to address conservation, public health, and economic issues.

- In 1950, Mass. Gen. L. ch. 130 § 44 was passed and prohibited the possession of mutilated lobsters. This addressed conservation concerns associated with fishermen and seafood dealers

¹ Carapace length is defined as the straight line measurement from the rear of the eye socket parallel to the centerline of the carapace to the posterior edge of the carapace. The carapace is the unsegmented body shell of the lobster.

² National Marine Fisheries Service, “Size, Harvesting and Landing Requirements,” 50 CFR 697.20(c), (2012).

³ Bernard Norwood, et. al., Final Report of the Panel: Lobsters From Canada (USA 89-1807-01), 1990, US-Canadian Fair Trade Agreement Panel, <<http://registry.nafta-sec-alena.org/cmdocuments/967c1539-fc36-482d-babf-8337d461b038.pdf>>.

⁴ Wholesale dealer is defined as a permit holder who is authorized for the wholesale possession, distribution, processing, sale or resale of raw fish and shellfish. Said permit includes authorization for the retail sale and retail resale of fish and shellfish from a fixed location approved in writing by the Massachusetts Department of Public Health.

breaking the tails from sub-legal sized lobsters and safeguarded consumers against foodborne illnesses, such as *Listeria*⁵ infection.

- In 1989, *Marine Fisheries*' legal counsel issued an opinion on the importation of non-conforming (below our minimum size limit) lobster from Canada. The result was the development of a set of conditions to allow non-conforming lobster and lobster product to be stored at facilities inside Massachusetts for the eventual distribution outside of the state. This allowed the state to accommodate trade with Canada and thereby comply with the FTA Panel ruling. These conditions were further codified in *Marine Fisheries*' Policy Regarding the Interstate Shipment of Non-Conforming Lobster Products (Appendix 7).
- Lastly, in 1997, Mass. Gen. L. ch. 130 § 44 was amended to address the growing domestic and international market for shell-on lobster tails. This amended statute authorized *Marine Fisheries* to permit wholesale dealers, approved by MDPH, to process lobsters into frozen shell-on lobster tails for distribution outside the Commonwealth. However, it did not authorize the in-state sale of processed lobster tails. At the time, continuing the prohibition on in-state sale of processed tails was supported by the Massachusetts Lobstermen's Association due to their concerns about the potential negative impacts of processed lobster product on the traditional whole live lobster market.

Over the past five years, numerous seafood industry members operating in Massachusetts – including distributors, seafood dealers, restaurants, and the Massachusetts Lobstermen's Association – have contacted *Marine Fisheries* advocating amending Mass. Gen. L. ch. 130 § 44 to authorize the in-state possession and sale of shell-on lobster parts (Appendix 8). There is a growing sentiment in the food service and seafood industry that this law is antiquated, unduly constraining market access and creating unnecessary compliance measures. Moreover, it has been suggested that if this law was to be amended to authorize the in-state sale of shell-on lobster parts, jobs and value would be added to the state's economy.

More information regarding the federal and state management of lobster can be found in Appendix 9.

Section 4 -Growth in Lobster Landings Coincides with Increased Processing of Lobsters

Over the past 30 years the lobster market has moved away from whole live lobsters and towards processed lobster products, particularly shell-on lobster parts. Today, a simple internet search will yield various recipes for and distributors of these products. There is no doubt that they have become

⁵ "Listeria", Center for Disease Control and Prevention, 2012, <<http://www.cdc.gov/listeria/>>.

Listeria is a genus of bacterium. *Listeria monocytogenes* is the most prevalent human pathogen. Humans become infected (listeriosis) through the consumption of food processed in an unsanitary environment. Basic symptoms include fever, muscle aches, nausea and diarrhea. Listeriosis may also spread to the nervous system producing headaches and affecting alertness and balance. Individuals with weakened immune systems (e.g., pregnant women, children, the elderly and the sick) have a higher risk of infection.

increasingly popular and favored by consumers, retailers, and chefs. The increase in the popularity is a product of both a surplus of lobster, as well as consumer preferences.

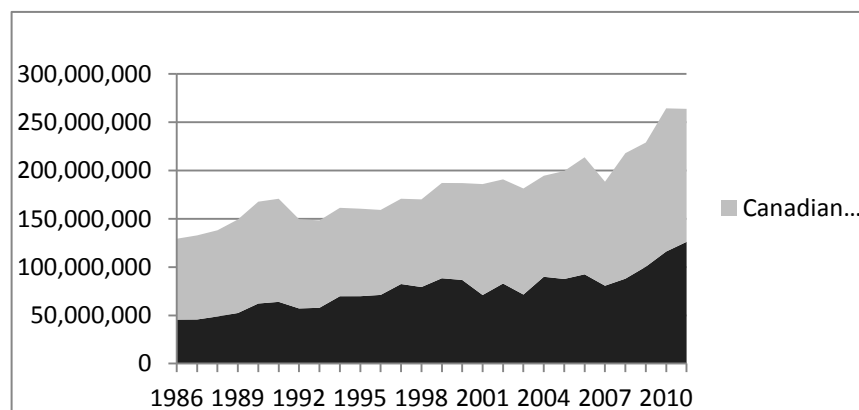
Lobster is one of the most valuable marine species in the northwest Atlantic. Since 2007, US and Canadian fishermen have landed a combined average of 233 million pounds of lobster per year (Appendix 10 - Table 1). Canada is the larger harvester and is responsible for 56% of the annual lobster harvest; the US lands the remaining 44%. Of the US lobster harvest, Maine lands about 80%, Massachusetts lands about 12%, and the other Atlantic coastal states land the remaining 8% (Appendix 10 - Table 2). According to NMFS, this resource contributes more than \$350 million annually to American fishermen.⁶

While Massachusetts is only responsible for a small portion of the US (12%) and international (5%) lobster harvest, the lobster resource is still the single most valuable marine species caught in Massachusetts' waters (0-3 miles from shore) and the second most valuable commercial fishery to the Commonwealth (Appendix 10 - Table 3). From 2007-2011, lobster landings generated between \$42-54 million in annual fishing income for the state's commercial lobster fishermen and 2011 Massachusetts lobster fishermen landed nearly 14 million pounds of lobster in 63 Massachusetts ports for a total ex-vessel value of \$54,858,962 (Appendix 10 - Table 4).⁷

Lobster's contribution to the US and Canadian fishing economies has grown over the past few decades, with US and Canadian lobster landings having more than doubled in the past 25 years - increasing from 129 million pounds in 1986 to 264 million pounds in 2011 (Figure 1). The rate by which landings have

increased has spiked in the past five-years. Since 2007, US lobster landings have increased by 36% and Canadian landings have increased by 22%. During the same period Massachusetts commercial lobster landings have increased by 26%, despite the environmental related decline of the Southern New England lobster stock affecting catches in south coast Massachusetts ports (Appendix 10 – Table 5).

Figure 1. US and Canadian Lobster Landings (LBS) 1986- 2011



Source: The National Marine Fisheries Service Fisheries Statistics Division and The Canadian Department of Fisheries and Oceans

⁶ National Marine Fisheries Service Office of Science and Technology, "Annual Commercial Landing Statistics," 2012, National Marine Fisheries Service < <http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index>>.

⁷ According to the Standard Atlantic Fisheries Information System (SAFIS) about 1,000 commercial lobster permit holders have reported selling lobster during any calendar year between 2007 and 2011.

This growth is expected to continue in the future with improving lobster abundance in the Gulf of Maine and Canada. In the US, the 2009 lobster stock assessment indicated that the Gulf of Maine lobster stock, which produces about 86% of the annual US lobster harvest, was seeing record high abundance and recruitment.⁸ Additionally, Gulf of Maine juvenile lobster studies conducted by the states of Maine, New Hampshire and Massachusetts demonstrate increases in young-of-the-year settlement beginning in 2009.⁹ With an abundant and healthy lobster stock, landings will continue to rise in the coming years.

While this long term increase in supply is the dominant issue at hand, there is also a seasonal component to the lobster surplus. One of Canada's primary lobster management tools are temporal-spatial fishing closures (Appendix 11). The result of these closures is that some of Canada's most productive lobster harvesting regions, such as the Gulf of Saint Lawrence, open only during the spring and early summer. A surge in harvest from these productive areas can create a temporary global surplus and flood markets. New England's commercial lobster fishery occurs primarily during the summer and fall. It is during this period that previously sub-legal lobsters shed their shells and achieve minimum size and larger lobsters migrate back inshore where fishing effort is concentrated. The consequence is that by the time the US lobster fishery becomes active there may already be a surplus of Canadian lobster available to the global market and the ex-vessel value is deflated.

This global market surplus has had dramatic effects on price, particularly during the fall months when the New England tourist market wanes, but also how this commodity is marketed. Twenty-five years ago the lobster market primarily sold whole live lobsters. As of 2004, the Lobster Institute - a leading international cooperative research institute dedicated to lobster conservation, management and marketing - reported that more than 75% of the US and Canadian lobster harvest was being processed annually, with most of this processing occurring in Canada.¹⁰ The primary reason for this shift in marketing strategy is that global seafood markets are incapable of handling the elevated quantity of live product. The surplus of lobster has produced the need to process lobsters to ensure they reach consumer markets - processed lobsters can be stored and distributed more readily and less expensively than live product. Moreover, value-added products allow seafood dealers to manage supply and thereby stabilize pricing.

Canada has a distinct advantage in the processed lobster market. Beginning in the late 1980s, when the lobster supply began to increase, the Canadian government and in particular the province of New Brunswick began to invest heavily in lobster processing infrastructure. As a result, Canada holds 90% of the world's lobster processing capacity.¹¹ Moreover, as 75% of all lobsters are processed, a substantial quantity of lobster caught and landed by New England fishermen are being shipped for processing in

⁸ Atlantic States Marine Fisheries Commission, "American Lobster Stock Assessment – Stock Assessment Report 09-01, 2009," Atlantic States Marine Fisheries Commission, <<http://www.asmfc.org/>>.

⁹ Toni Kerns, et. al., "Draft 2012 Review of the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster – 2011 Fishing Year," Atlantic States Marine Fisheries Commission, 2012, p. 11-13.

¹⁰ The Lobster Institute, "Economic Brochure and Report," 2004, The Lobster Institute, <<http://www.lobsterinstitute.org/media/economic%20brochure.pdf>>

¹¹ The Lobster Institute, 2004.

Canada, and then imported back into the United States where the goods are labeled as product of Canada pursuant to federal Country of Origin Labeling regulations.¹²

Changes in consumer and market preferences are the other factor critical to understanding this market evolution. The distribution and sale of lobster parts is more economical and efficient than the distribution of whole live lobsters. To ship a whole live lobster, the lobster must be kept alive until prepared for consumption by the end user. This requires investment in transportation and storage infrastructure to maintain live lobsters by distributors, retailers and food establishments. Moreover, a certain level of mortality is inherent and that cost is assumed at some point in the supply chain. These issues are essentially eliminated in the processed lobster market. Processed lobsters are frozen and distributed through well established food distribution chains, similar to other food products. This allows lobster products to conveniently reach non-traditional domestic and international markets, including the cruise ship industry. These are places it would otherwise be cost prohibitive to distribute whole live lobster. Consequently this product has become popular among seafood distributors and retailers.

Processed lobster products have also become popular in restaurants. In 2010, the United States Department of Agriculture (USDA) reported that in the US frozen lobster tails are primarily used in the food service industry and that lobster tails are among the most popular menu items at large chains like the Outback Steakhouse. This is a vital market as the USDA indicates that 80% of US seafood consumption occurs in restaurants.¹³

The retail consumer market has potential for substantial market growth. According to the USDA, US consumers prefer foods that are easy to prepare and eat, healthy and sustainable.¹⁴ Lobster meets this description of healthy and sustainable and could be in high demand, competing with beef, pork, chicken and finfish, if not for certain attitudes and preferences associated with purchasing and preparing whole live lobsters. A 2005 report on a survey conducted for the Maine Lobster Promotion Council found that more than half of the consumers surveyed believed that lobster was a meal best suited for a special occasion and eaten in a restaurant.¹⁵ Moreover, nearly half of these consumers did not know how to prepare a whole live lobster and 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.

If there was increased access to a supply of shell-on lobster parts, retail demand should increase for these products and marketability of lobster could change dramatically. The same 2005 Maine Lobster Promotion Council report found that two-thirds of the individuals surveyed would cook lobster at home more often if processed lobster parts were available or if the meat was more easily removed from the

¹² The US Food and Drug Administration, "Country of Origin Labeling for Fish and Shellfish," 2012, 7 CFR 60.

¹³ The US Department of Agriculture, "Technical Assistance: Lobster Market Overview," 2010, The US Department of Agriculture, <<http://tastrain.cffm.umn.edu/publications/LobsterMrktOverview.pdf>>.

¹⁴ USDA, 2010.

¹⁵ Curtis Mildner, et. al., "Research Report: Maine Lobster Promotion Council National Consumer Lobster Survey," 2005, Maine Lobster Promotion Council, 6-10.

shell.¹⁶ Shell-on parts also conform more closely to the aforementioned US consumer preference at restaurants. Shell-on products are convenient to prepare and are cooked similarly to other proteins (e.g., grilling and baking) and are not labor intensive to eat - shells can be cut with kitchen shears prior to cooking making it easier to remove the meat. Increasing market supply and consumer accessibility is critical to growing the retail market and better utilizing the lobster surplus. Even in Canada, where lobster processing dwarfs the US, the Canadian Lobster Council is continuously researching and working towards developing new markets and products that will improve sales and commercial accessibility.¹⁷

Section 5 - Modernization of Processing Laws

Maine's Accomplishments

In response to change in supply and market preferences, Atlantic coastal states have begun the process of modernizing their mutilated lobster and lobster processing laws. The most important modernization came in 2009 when the state of Maine, the largest US lobster harvester, amended its lobster processing laws and regulations.

In 2008, Maine Governor John E. Baldacci issued Executive Order 19 FY 08/09 (Appendix 12) and established the Governor's Task Force on the Economic Sustainability of Maine's Lobster Industry. The primary duty of this task force was to improve the state's lobster fishery. The task force identified the need to expand the state's lobster processing infrastructure and value-added markets. In 2009, the task force hired the Massachusetts based Mosley Group and published a strategic plan. The strategic plan stated that by precluding seafood producers from processing lobster and selling shell-on lobster parts in Maine, the state was limiting market access and damaging all sectors of the seafood industry.¹⁸ On the advice of the Task Force, the Maine Legislature amended its laws and Maine's marine fisheries agency, the Department of Marine Resources, amended its regulations. Maine now authorizes the in-state production of various value-added shell-on lobster parts (i.e., tails, legs, claws and carapace) and the distribution of these products throughout Maine's retail, wholesale, and food service markets. As a result, the state is now home to about 10 processing facilities and this increase in lobster processing capacity has produced jobs and added value to Maine's seafood economy.

Consequences of Current Parts Prohibition in Massachusetts

Despite amending our laws more than 10 years earlier, Massachusetts has not seen similar increases in its lobster processing capacity. The state is home to only one full-time lobster processing facility. This lack of industry modernization is largely attributable to the prohibitions at Mass. Gen. L. ch. 130 § 44. As Massachusetts processors cannot sell their product into local markets and exploit local demand, they are

¹⁶ Mildner, et al., 2005.

¹⁷ Gardner Pinfold, et. al., "Long Term Value Strategy for the Canadian Lobster Industry," Lobster Council of Canada, 2012, p. VIII.

¹⁸ The Mosley Group, "Maine Lobster Industry Strategic Plan," 2009, The Mosley Group
<http://www.penobscoteast.org/documents/MElobsterTFReport2009_000.pdf>.

instead entirely dependent on other domestic and international markets that are dominated by processed lobster products from Maine and Canada.

Within Massachusetts, the impacts of Mass. Gen. L. ch. 130 § 44 go beyond deterring the development of lobster processing infrastructure. Many other sectors of the seafood industry are affected. Massachusetts is home to New England's largest seafood distribution industry with an estimated 14,000 food service establishments,¹⁹ and 800 retail (e.g., fish markets and grocery stores) and 400 wholesale (e.g., distributors and exporters) seafood dealers.²⁰ These sectors of industry are negatively affected by this law. Large restaurant chains like the Outback Steakhouse and Red Lobster offer shell-on American lobster tail dinners throughout the US. To conform to state law, their Massachusetts establishments instead offer an amended menu featuring spiny lobster tails sourced from the Gulf of Mexico, South Africa or Australia. Comparably, regional and national grocery store chains (e.g., Whole Foods and Hannafords), must actively work to ensure that their Massachusetts stores do not carry shell-on lobster parts while most of their other stores do.

Finally there are a growing number of internet-based seafood distributors (e.g., www.lobsteranywhere.com) in the U.S and Canada that direct-ship frozen, processed lobster products to domiciles and businesses. These direct shipments, via US Postal Service or commercial shipping companies, are beyond the routine oversight of Massachusetts Environmental Police.

Section 6 - Benefits of Authorizing In-State Sale of Processed Lobster

Modernizing this statute to authorize the in-state possession and sale of lobster parts will make Massachusetts a more favorable place to do business and will allow the Massachusetts economy to realize a minimum of three substantial benefits.

- By allowing retail dealers and food establishments to capitalize on evolving consumer trends, they will be able to increase revenues based on the sale of this product. The importance of providing retail dealers and food establishments access to this market is highlighted by two factors. The USDA reports that 80% of US seafood consumption occurs at food service establishments²¹ and a Maine Lobster Promotion Council study demonstrates that 74% of US consumers prefer to eat lobster in a restaurant.²² Additionally, many Massachusetts retail dealers choose not to sell lobster, or only sell canned pre-cooked lobster meat because the keeping of live lobsters is often cost prohibitive. The acquisition and operation of a live-lobster tank can cost thousands of dollars per year and whole live-lobster sales are often insufficient to cover these costs. Enabling retail dealers and food establishments to provide these value-added products will

¹⁹ Steven Clark, Massachusetts Restaurant Association, Personal Communication, 2012.

²⁰ Massachusetts Division of Marine Fisheries, Seafood Dealer Permits, 2012.

²¹ USDA, 2010.

²² Mildner, et al., 2005.

increase the volume of lobster being distributed in the Commonwealth, which will benefit all sectors of the state's seafood distribution industry.

- Increased local demand for shell-on lobster parts should encourage more Massachusetts seafood processors to become involved in lobster processing. There is a distinct advantage of being in close proximity to harvesters and to the city of Boston - a global seafood distribution hub that exported over \$150M worth of seafood in 2011, including nearly \$50M worth of lobster.²³ With a local consumer market and a reduced burden of compliance, an increasing number of wholesale seafood dealers may choose to diversify their business practices and become lobster processors. This would generate revenues and jobs within Massachusetts and allow the state to potentially compete with Canada and Maine for the production and distribution of shell-on lobster parts.
- Lastly, increases in demand and local lobster processing activity may improve the ex-vessel value paid to the Commonwealth's fishermen. The effects of supply and demand on ex-vessel value are evidenced in historic pricing trends and with anticipated increases in catch in the Gulf of Maine, expanding value-added markets is critical. Not only will increased demand likely lead to higher ex-vessel values, but the proximity of potential processors to both the resource and the distribution center will limit transportation costs and may allow for local processors to increase the price paid to lobstermen for their harvest.

Legalizing the possession and sale of lobster parts could be accomplished without risk of encouraging non-compliance with conservation management (specifically, breaking tails from undersized lobsters by harvesters or dealers). State and federal laws already prohibit the breaking of lobsters at sea and compliance with the ban on mutilation and lobster minimum size is considered high by state enforcement officials. Moreover, existing regulations mandate only whole live lobsters be processed. Authorizing the in-state possession and sale of this processed product would not alter the present enforcement strategy and is expected to have a negligible effect on conservation.

With any processed food product there are also concerns about public health risks – in this case *Listeria*. After conferring with the MDPH there is a consensus that sufficient management exists to adequately address public health. To process lobsters, wholesale dealers are required to be inspected by MDPH, pursuant to at Mass. Gen. L. ch. 94 § 77G (Appendix 13), 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 description of the product including 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 also works to ensure that all shell-on lobster products available in commerce were processed by an authorized processor, thereby promoting compliance.

²³ National Marine Fisheries Service Office of Science and Technology, "Annual Summary of Imports and Exports," 2012, National Marine Fisheries Service, < <http://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/index>>.

Section 7 - Recommendation

Following this review of Mass. Gen. L. ch. 130 § 44, *Marine Fisheries* is recommending that the third paragraph of this statute be amended to allow the in-state sale of frozen shell-on lobster parts. This statutory amendment would add value and jobs to the state's economy by providing businesses inside the Commonwealth with increased market access to high demand lobster food products. This change will also potentially help improve and stabilize the price-per-pound paid to the state's lobster fishermen.

Marine Fisheries does not expect that the recommended amendments to the statute will undermine lobster conservation or compliance with the state's lobster conservation laws and regulations. The Office of Law Enforcement principally conducts lobster inspections at sea and upon landing up to the first sale. Provided that Mass. Gen. L. ch. 130 § 44 retains the general prohibition on the possession and landing of lobsters less than 3.25 inches and includes a prohibition on the possession of mutilated lobsters prior to processing by an authorized land-based lobster processor, there should be sufficient opportunity to ensure compliance with carapace size standards.

Additionally, *Marine Fisheries* recommends maintaining the labeling standards for processed lobster product promulgated at 322 CMR 6.32(c) – (e). These labeling standards are similar to those required of Canadian products under the Country of Origin Labeling Laws and Maine products under Maine state regulations. These standards ensure that the public is aware of the product they are buying, that all frozen shell-on lobster product originated from an authorized processor and that this product can be traced back to the processor if there is a public health risk.

Lastly, with the consent of MDPH, *Marine Fisheries* also recommends amending the language in the 3rd paragraph that requires processors obtain U.S.D.C. Type 1 Certification. U.S.D.C. Type 1 certification is obsolete. At the federal level, the U.S.D.C. Type 1 Certification has been replaced by Hazard Analysis and Critical Control Points (HAACP) and its implementing regulations at 21 CFR 123. At the state level, lobster processing is subject to DPH certification pursuant to Mass. Gen. L. ch. 94 § 77G.

Section 8. Works Cited

- “American Lobster Stock Assessment – Stock Assessment Report 09-01.” *The Atlantic States Marine Fisheries Commission*. The Atlantic States Marine Fisheries Commission. 2009.
- “Annual Commercial Landing Statistics.” *National Marine Fisheries Service Office of Science and Technology*. The National Marine Fisheries Service. 2012. <<http://www.st.nmfs.noaa.gov/commercial-fisheries/commercial-landings/annual-landings/index>>.
- “Annual Summary of Imports and Exports.” *National Marine Fisheries Service Office of Science and Technology*. The National Marine Fisheries Service. 2012. <<http://www.st.nmfs.noaa.gov/commercial-fisheries/foreign-trade/index>>.
- Clark, Steven. Personal Interview. Massachusetts Restaurant Association. 2012.
- “Country of Origin Labeling for Fish and Shellfish.” 7 CFR 60. The US Food and Drug Administration. 2012.
- “Economic Brochure and Report.” *The Lobster Institute*. The Lobster Institute. 2004. <<http://www.lobsterinstitute.org/media/economic%20brochure.pdf>>.
- Kearns, Toni, et. al.. “Draft Review of the Atlantic States Marine Fisheries Commissions Fishery Management Plan for American Lobster – 2011 Fishing Year.” The Atlantic States Marine Fisheries Commission. 2012.
- “Listeria.” *The Center for Disease Control and Prevention*. The Center for Disease Control and Prevention. 2012. <http://www.cdc.gov/listeria/>.
- “Maine Lobster Industry Strategic Plan.” *The Mosley Group*. The Mosley Group. 2009.
- Midner, Curtis, et. al.. “Research Report: Maine Lobster Promotion Council National Consumer Lobster Survey.” Maine Lobster Promotion Council. 2005.
- Norwood, Bernard, et. al.. “Final Report of the Panel: Lobsters from Canada (USA 89-1807-01). US-Canadian Fair Trade Agreement Panel. 1990.
- Pinfold, Gardner, et. al.. “Long Term Value Strategy for the Canadian Lobster Industry.” The Lobster Council of Canada. 2012.
- “Prohibited Acts” Magnusson Stevens Act. 16 U.S.C. § 1857. 2007.
- “Size Harvesting and Landing Requirements.” Atlantic Coastal Cooperative Fisheries Management. 50 CFR 697.20. The National Marine Fisheries Service. 2012.
- “State Implementation of Coastal Fishery Management Plans.” Atlantic Coastal Fisheries Cooperative Management Act. 16 U.S.C. § 1504. 2012.
- “Technical Assistance: Lobster Market Overview.” *The US Department of Agriculture*. The US Department of Agriculture. 2010. <<http://taatrain.cffm.umn.edu/publications/LobsterMrktOverview.pdf>>.

Section 9: Appendices

Appendix 1 – Mass. Gen. L. ch. 130 § 44 (existing statute) - 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 one 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, permit the possession and on-shore processing of shell-on frozen lobster tails by wholesale dealers; provided, further, that possession of lobster tails at sea, or at any location where processing is not being conducted, shall be prohibited and shall be subject to the penalties provided in the first paragraph; and provided, further, that said processing shall be conducted only by wholesale dealers who have been issued a special permit by the director and whose facilities are certified as U.S.D.C. Type I or the equivalent thereof. This section shall not apply to common carriers having lobster in possession for the purpose of transportation.

Appendix 2 – 2012 Mass Acts 238 § 93

The division of marine fisheries shall make an investigation and study into the commonwealth's laws and policies regarding the processing, possession and sale of frozen lobster parts including, but not limited to, section 44 of chapter 130 of the General Laws.

The investigation and study shall include, but not be limited to: (1) the on-shore processing of live lobsters of legal length into a food product of frozen lobster parts; (2) the possession and sale of such processed food by wholesale dealers; (3) the licensing of wholesale dealers by the department of public health under section 77G of chapter 94; (4) the labeling requirements for packaged frozen lobster parts under applicable federal and state law; and (5) the impacts of permitting frozen lobster parts that have been processed as a food product to be possessed, sold, or offered for sale by wholesale dealers, retail dealers, and consumers.

The division shall report to the general court the results of its study, together with drafts of legislation necessary to carry such recommendations into effect, by filing the report with the clerks of the senate and house of representatives not later than before December 31, 2012.

Appendix 3 - Mass. Gen. L. ch. 130 § 44 - Statutory Amendments Recommended by the Division of Marine Fisheries

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 one 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, permit the possession and on-shore processing of shell-on frozen lobster tails by wholesale dealers; provided, further, that possession of lobster tails at sea, or at any location where processing is not being conducted, shall be prohibited and shall be subject to the penalties provided in the first paragraph; and provided, further, that said processing shall be conducted only by wholesale dealers who have been issued a special permit by the director and whose facilities are certified as U.S.D.C. Type I or the equivalent thereof. This section shall not apply to common carriers having lobster in possession for the purpose of transportation.~~

The bringing ashore any mutilated lobster in a manner that affects its carapace measurement as aforesaid shall be prima facie evidence in all prosecutions that the lobster was or is less than the required length; provided, the director, with the approval of the marine fisheries advisory commission, shall promulgate rules and regulations to allow the on-shore processing of live lobsters of legal length into a food product of frozen lobster parts and the possession and sale of such processed food product by wholesale dealers; provided further, the processing of lobsters into parts at sea shall be prohibited and shall be subject to the penalties provided in the first paragraph; provided further, that said processing shall be conducted only by wholesale dealers that are licensed by the department of public health under section 77G of chapter 94; provided further, the packaging of processed frozen lobster parts as a food product shall bear a label in accordance with applicable federal and state laws and regulations; provided further, frozen lobster parts that have been processed as a food product may be possessed, sold or offered for sale by any wholesale dealer,

and any retail dealer including without limitation, restaurants and retail food establishments; and such food product may be possessed by a consumer. This section shall not apply to common carriers possessing lobster or lobster food products, for the purpose of transportation.

Appendix 4 - Laws and Regulations Pertaining to Lobster Processing and Possession of Lobster Parts: Maine to North Carolina

State	Is Processing Legal?	Is the In-State Sale of Lobster Parts Legal?	Details on Authorizations and Prohibitions	Citation
Maine	Yes.	Yes.	Licensed lobster processors are authorized to process legal sized lobsters into shell-on lobster products. The in-state sale of this product is allowed.	12 M.R.A. 6431 12 M.R.A. 6851-B 13 188 CMR 6
New Hampshire	Yes.	No.	Licensed wholesale dealers are authorized to process legal sized lobsters into frozen lobster tails. This product is to be distributed only to entities outside of New Hampshire. Hotels, restaurants and individuals may possess lobster parts.	R.S.A. 211:30 R.S.A. 211:38-A N.H. Admin. Rules Fis. 602.12, 609.03 and 610.02.
Massachusetts	Yes.	No.	Licensed wholesale dealers are authorized to process legal sized lobsters into frozen lobster tails. This product is to be distributed only to entities outside of Massachusetts.	Mass. Gen. L. ch. 130 § 44 322 CMR 6.32
Rhode Island	Yes.	No.	Licensed lobster processor/dealers are authorized to process legal sized lobsters into frozen lobster parts (e.g., tails, claws, ect). For tails, the dorsal midline length of the sixth abdominal segment must be at least 1 1/16 inch. This product is to be distributed only to entities outside of Rhode Island.	R.I. Gen Law 20-07-14 Code R.I. R. 15.19
Connecticut	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect) is allowed. It is unlawful to land lobsters mutilated in any manner affecting carapace measurement.	Conn. Gen. Statute 26-157a
New York	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect.) is allowed. It is unlawful to land lobsters mutilated in any	6 N.Y.C.R.R. 44.6 N.Y. U.C.C. Law § 13-

			manner that affects determining minimum size. It is unlawful for a licensed lobsterman to possess a lobster that has been mutilated so as to affect determining its minimum size.	0329
New Jersey	Yes.	Yes.	The possession and sale of lobster parts is authorized. For tails the sixth abdominal segment when measured along its dorsal center line with the tail flexed is greater than 1 1/16 inch. It is unlawful to land lobsters mutilated in any manner that affects determining minimum size.	N.J.A.C. 7:25 – 14.13
Delaware	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect.) is allowed. It is unlawful to bring on shore any lobster that has been dismembered, detached tails or claws or picked lobster meat.	7 Del. C. § 2502
Maryland	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect.) is allowed. It is unlawful to land lobsters that have had any meat, body appendages or tails removed.	COMAR 08.02.08.10
Virginia	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect.) is allowed. It is unlawful for a fisherman to possess or land picked lobster meat or any parts that have been separated from a whole lobster.	4 VAC 20-110-20 4 VAC 20-110-50
North Carolina	Yes.	Yes.	The possession and sale of lobster parts (e.g., tails, claws, ect.) is allowed. Harvesters may not possess meats, detached meats, detached tails or claws or any other part of lobster that has been separated from the lobster is prohibited. This prohibition applies only to commercial fishermen.	15A NCAC 03L.0301

Appendix 5 – 322 CMR 6.32 Frozen Shell-On Lobster Parts

322 CMR 6.32 Frozen Shell-on Lobster Parts

- (1) Definitions. For purposes of 322 CMR 6.32 the following words shall have the following meanings:
 - a. Carapace means the upper body of a lobster excluding the tail and claws.
 - b. Mutilated means a lobster that has been altered in any way that affects its measurement.
- (2) Processing Requirements. The processing and possession by wholesale dealers of frozen shell-on lobster parts is permitted only for distribution outside Massachusetts pursuant to M.G.L. c. 130, § 44 and c.94, § 77G and subject to the following restrictions:
 - a. To conduct frozen shell-on lobster part processing:
 1. The processor shall be in possession of or obtain a wholesale dealer permit;
 2. The Department of Public Health (DPH) shall inspect and approve in writing frozen shell-on lobster part processing;
 3. Upon receipt of DPH approval, the Director shall endorse the Wholesale Dealer Permit to include frozen shell-on lobster part processing.
 - b. All lobsters at the approved facility shall meet the minimum size requirement established by M.G.L. c. 130 § 44.
 - c. All processing, freezing, packaging and labeling shall take place within the approved facility at the address appearing on the permit.
 - d. All packages of frozen lobster parts shall be labeled with a description of the product and the license number and address of the facility where they are processed and the date they are processed.
 - e. Packaged and labeled frozen product may be stored on the premises or off-site at a facility approved by the Department of Public Health, pending sale outside the Commonwealth, provided that accurate records of inventory and disposition are kept and made available for inspection by Environmental Police Officers and Division of Food and Drug Inspectors.
- (3) Prohibitions.
 - a. It shall be unlawful for any person or business to process frozen shell-on lobster parts in Massachusetts for distribution outside the Commonwealth unless the Division has endorsed frozen shell-on lobster part processing as an approved activity on the wholesale dealer permit.
 - b. It shall be unlawful for any person to offer shell-on lobster tails or other shell-on body parts of a mutilated lobster for sale within the Commonwealth.
 - c. It shall be a violation of 322 CMR 6.32 to:

1. Utilize any lobster for frozen shell-on lobster part processing, unless said lobster, before processing, meet the minimum legal size requirements established in M.G.L. c. 130, § 44, and;
 2. To possess any lobster below the minimum size in the process area or freezers or at any location associated with the facility listed on the permit.
- d. It shall be a violation of 322 CMR 6.32 to freeze or offer for sale any shell-on parts of a lobster other than the tail and carapace.
 - e. Use of other than live lobster for frozen shell-on lobster part processing is prohibited.

Appendix 6 – 105 CMR 533.007(G) Supplemental Fish and Fish Products Regulations for Frozen Shell-On Lobster Tails

G) Frozen Shell-on Lobster Tails

1. A wholesale seafood operation must be approved in writing and endorsed by the Department and the Division of Marine Fisheries, respectively, prior to conducting a frozen, shell-on lobster tail activity.
2. The use of dead lobsters for this activity is strictly prohibited.
3. The wholesale seafood operation shall only use live lobsters slaughtered specifically for this activity.
4. Following separation of tails for freezing, the remaining portions of each lobster shall be processed by cooking within 30 minutes, or they must be discarded.

Appendix 7 - Division of Marine Fisheries Policy Regarding Interstate Shipment of Non-Conforming Lobster Products: No: PPG-01.



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.

Date Issued: 02/12/04

Appendix 8 - Letters of Support to Amend Mass. Gen. L. ch. 130 § 44



Massachusetts Restaurant Association
 333 Turnpike Road - Suite 102, Southborough, MA 01772-1775
 TEL (508) 303-9905 • 1-800-852-3042 (MA Only WATS) • FAX (508) 303-9985
 WEB SITE: www.marestaurantassoc.org DINING GUIDE: www.Diningma.org

November 30, 2012

Mr. Paul Diodati
 Director MADMF
 251 Causeway Street
 Suite 400
 Boston, MA 02114

Dear Mr. Diodati,

Please allow this correspondence to serve as support for legalizing in-state possession of in-shell lobster products. The Massachusetts Restaurant Association has approximately 1750 members that own and operate over 5,000 locations throughout the Commonwealth. We have heard from our restaurant members, prominent chefs, the Massachusetts Lobsterman Association and regional food supply companies from around the Commonwealth advocating a change in this prohibition.

Massachusetts restaurant owners take pride in their ability to offer a wide variety of locally caught fish. The seafood industry is a vital cog to the Massachusetts restaurant industry. Further, the desire for Massachusetts' seafood brings thousands of tourists to the Commonwealth each year. Lobster is one of our greatest natural resources.

A legislative change will allow for locally caught lobster in-shell products to be processed in Massachusetts. This will result in increased job and tax revenue for the Commonwealth. Massachusetts is one of only a few states that currently does not allow for in-shell sale and/or possession. As the second largest producer of lobster in the United States, it makes economic and competitive sense to update this antiquated law.

Recently, the Legislature created a commission to study the marketing of locally caught seafood. The MRA is proud to serve on this commission. The commission is tasked with enhancing and stabilizing the economic environment for the commercial fishing industry for locally caught seafood.

At a time when more and more consumers are seeking locally caught, harvested and produced food, we should not be limiting or outsourcing a product that meets that demand.

Thank you for your consideration in this matter. Please do not hesitate to contact the Massachusetts Restaurant Association if we can be of further assistance

Sincerely,

Peter G. Christie, CAE
 President & CEO



Massachusetts Lobstermen's Association, Inc.

8 Otis Place ~ Scituate, MA 02066

Bus. (781) 545-6984 Fax. (781) 545-7837

November 19, 2012

Director Paul Diodati
Division of Marine Fisheries
251 Causeway Street, Suite 400
Boston, MA 02114

Dear Paul,

As Executive director of the Massachusetts Lobstermen's Association (MLA), an organization of over 1300 members, we want to firmly support amending M.G.L.C. 130 s44 to allow the in-state sale and possession of in-shell lobster parts products. We believe that by allowing the in-state sale of this product we can increase local demand and production and thereby improve the price per pound paid to our Massachusetts commercial lobstermen. This will also improve the marketability of lobster inside the Commonwealth.

Massachusetts, as you may know, is the second largest producer of the American lobster in the US behind only Maine. Our fishermen, dealers and shoreside support industries are important to the Commonwealth's economy. The industry here in the Commonwealth can be supported by our legislators if the legislation can be passed that would simply allow the sale in this state of lobster processed products. It is already legal in most other states.

If this is passed, it would among other things, provide competition to the Canadian processors who currently come to Massachusetts to buy our locally caught lobster and take them back to Canada for processing. Currently also, when they do come down, the price they offer is low and this drives the local boat price down. If Massachusetts lobster dealers can buy, process and sell in this state our product, it will provide jobs in this state and make the Canadian processors compete. The passage of this legislation would help the Massachusetts lobster industry.

We firmly support the passage of this measure and encourage the legislature to act, and soon, to adopt the requested change to the law.

We are available to discuss this further if there are any questions on this matter.

Respectfully yours,

William A. Adler
Executive Director, MLA



To Whom It May Concern,

I am writing this letter in regards to the current laws prohibiting the sales of lobster tails in Massachusetts. As one of the largest broadline food distributors in New England, Agar Supply / Reinhart Boston, has always adhered to the current laws prohibiting sales of lobster tails in states that do not allow them. There are many distributors that routinely sell these items both putting themselves and our restaurants at risk of steep penalties.

We feel that although these laws were set in place for the right reasons years ago, they must be changed due to the recent changes in fishery management practices and the success of rebuilding stocks. The lobster fishery is in great health due to a number of changes in fishing practices such as returning egg bearing females, v notching tails to identify females, releasing large lobsters to promote breeding and changing minimum legal sizes. New England has been the leader in fisheries management in this area and many different parts of the world could learn a lot about what we have done specifically on lobster and scallops.

If these laws were changed it would benefit many including restaurant owners, employees, patrons, suppliers, fishermen, distributors and town and state tax dollars. New England lobsters are typically sent to Canada to be processed into cooked meat and raw shell on tails to be distributed back to the US and the world. Many jobs could be created in Massachusetts if we were able to process our own lobsters. Maine has already made progress in this area and will continue to do so in the upcoming years.

Massachusetts restaurants should be able to promote one of our greatest natural resources for the benefit of all to enjoy. Lobsters are one of the few remaining seafood items that are almost impossible to reproduce in an aquaculture / farm environment and will and always should command a premium as one of the best available delicacies available on any menu.

Please contact me anytime in regard to this issue. I sincerely feel with continuing to harvest this natural resource in the proper way, the changing of these laws will not negatively impact the lobster fishery in Massachusetts or New England.

Respectfully,

James Leduc

AGAR Supply

Seafood Category Manager

508-455-7235

WWW.agarsupply.com

Myles Standish Industrial Park

225 John Hancock Road

Taunton, MA 02780

800-699-6040



Hello Mr. Christie,

My name is James Leduc and I work in the purchasing department at AGAR Supply. I was speaking with Karen Bressler today about the unfortunate law that prohibits the sale of lobster tails in Massachusetts and I was hoping you may be able to help change this.

This law had good intentions when first enacted but has since become somewhat of an old blue law due the current restrictions in place protecting the lobster fishery which is now in great health.

The Law was first put in place to stop fisherman from taking the tails off undersized lobsters and throwing the rest of the lobster back in the water. To gauge the legal size of a lobster, you must measure the distance from the eye socket to the back of the carapace. Without this part of the lobster, it became impossible to insure the tail was from a legal lobster.

Massachusetts is one of the few states that does not allow the sale of the raw lobster tail in shell to be sold separately.

I understand there has been a bill to try and get this pushed through but it is not making much progress. The convenience for chefs to be able to offer these lobster products to Massachusetts restaurant customers will help both our fisherman and industry bring one of our best local products to market year round at more affordable prices.

I have attached the law as it is written now. Please contact me with any questions you may have.

Thank you,

James Leduc

AGAR Supply

Seafood Category Manager

508-455-7235

WWW.agarsupply.com

Myles Standish Industrial Park

225 John Hancock Road

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800-699-6040



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November 29, 2012

Paul Diodati
Director MADMF
251 Causeway Street
Suite 400
Boston, MA 02114

Paul,

We have asked that the law MGL 130 s. 44 "The Lobster Parts Law" be amended to allow the sale of tails in Massachusetts. This would help our small business, we have customers in MA who are ready to buy but need the law amended. In this economy we need to open up the local domestic market is MA.

The law was intended to protect the resource; simple amendment that lobster parts can not be brought a shore from fishing vessels is a better to ensure conservation and still allow the sale of lobster products in shell raw or any other way chef want them.

We have been asking for years for this change and it is now crucial that we get this changed, it will make a big difference to the industry participants.

If you have any questions please feel free to call me anytime.

Sincerely,

Jim DePiano
President

EXCLUSIVE AGENT:

NORTHEAST CONSULTING & MARKETING, INC
352 PARK STREET, #205, NORTH READING, MA 01864
Phone: (978) 664-8500 Fax: (978) 664-0011



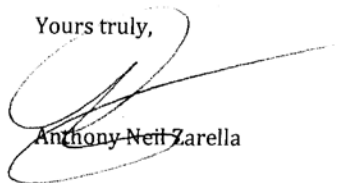
Nov 27, 2012

Boston Lobster Company supports allowing the sale of shell on frozen lobster parts in Massachusetts. We believe it would be good for the industry as well as the consumer and the commercial sector.

Most states allow the sale of shell on parts and in those states the restaurant chains and retail stores have an unfair advantage over MA.

This will benefit the lobster industry by increasing demand for product.

Yours truly,

A handwritten signature in black ink, appearing to read "Anthony Neil Zarella". The signature is fluid and cursive, with a large loop at the end. Below the signature, the name "Anthony Neil Zarella" is printed in a small, sans-serif font.

345 West 1st Street, Boston, MA 02127

www.BostonLobsterCompany.com

(617) 464-1500 FAX: (617) 464-1131

Appendix 9 - Summary of US Management of American Lobster

The American lobster (*Homarus americanus*) is indigenous to the northwestern Atlantic coast. The species' range is from Labrador Island south through North Carolina, but it is most abundant in the waters of Gulf of Maine and Atlantic and Maritime Canada. Within the US, the American lobster resource is comprised of three unique lobster stocks: Gulf of Maine (Canadian Border – Cape Cod), George's Banks (Offshore) and Southern New England (Cape Cod – North Carolina). According to the 2009 American Lobster Stock Assessment, the Gulf of Maine lobster stock is responsible for about 86% of the annual US commercial harvest, the Southern New England lobster stock accounts for about 9% of the annual US commercial harvest and the Georges Banks lobster stock accounts for about 5% of the annual US commercial harvest.²⁴

In the US, lobster is managed at the federal, interstate and state levels. The principal national conservation standard is a 3.25 inch minimum carapace length. This standard was enacted through 1989's "Mitchell Act"²⁵ - an amendment to the federal Magnuson-Stevens Fishery Management Act (MSA) – and its subsequent regulations at 50 CFR 697. This law and its regulations prohibit the shipment, sale or purchase in interstate or foreign commerce of any whole live lobster that is less than the 3.25 inch carapace length. Additionally to ensure minimum carapace length compliance, the mutilation of lobster prior to first possession by a seafood dealer is prohibited.²⁶

The primary body responsible for the conservation and management of American lobster is the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC was founded by the 15 Atlantic coastal states in 1942 and chartered by the US Congress in 1950. It serves to coordinate the conservation and management of Atlantic coastal near-shore marine fishery resources. The ASMFC accomplishes this task through the development of Fishery Management Plans (FMPs). For lobster, the Management Board which drafts and develops the FMPs includes representatives from all states between Maine and North Carolina, excluding Pennsylvania.

Figure 1: Lobster Management Areas



Source: National Marine Fisheries Service

²⁴ ASMFC, 2009.

²⁵ "Prohibited Acts," Magnusson Stevens Act, 16 U.S.C. § 1857(1)(J), 2007.

²⁶ 50 CFR 697.20(c), 2012.

These coastal states, as implementation partners, are required by federal law to promulgate regulations that uphold the measures approved in the Plan.²⁷ The Interstate Management Plan for American Lobster (Plan) divides the geographic range of the species into seven distinct Lobster Management Areas (LMAs) (Figure 1) and then prescribes conservation management measures that apply either to a specific LMA or throughout a range of LMAs.

LMA-specific minimum and maximum carapace size limits are one of the most critical conservation standards enacted through the Plan (Table 1). The purpose of these size standards is to protect spawning stock biomass by prohibiting the harvest of juvenile lobsters, as well as the harvest of the larger lobsters that have the highest fecundity (reproductive potential). Various carapace size standards exist across LMAs because the effects of water temperature on growth and maturity. While all the minimum size standards are at least as restrictive as the national standard (i.e., 3.25 inches or larger), these LMA-specific carapace size standards are tailored to balance the needs of the resource and the commercial fisheries. Canada has its own conservation management system that allows for the harvest of lobsters that do not conform to U.S. minimum carapace size laws and regulations.

Lobsters landed in Massachusetts are generally harvested from one of the four different LMAs adjacent to the state and its territorial waters: LMA1, LMA2, LMA3 and LMA Outer Cape Cod (OCC). Consequently, the state's commercial lobster fishery is subject to a number of LMA specific carapace length limits that differ depending on where the lobster was harvested. These various limits are promulgated as regulations at 322 CMR 6.01 (Table 2). To ensure compliance, commercial fishermen are either required to fish only one LMA, or are authorized to fish multiple LMAs but required to abide by the most restrictive conservation rules thereof.

The diversity of carapace length standards in Massachusetts makes it critical that conservation enforcement is accomplished between harvest and first sale. Once a lobster is landed and sold to a primary buyer²⁸ it becomes intermingled with lobsters from various LMAs. At this point, the federal standard is the principal carapace length enforcement tool because it becomes burdensome to determine harvest origin and thereby enforce the LMA specific carapace length rules.

²⁷"State Implementation of Coastal Fishery Management Plans," Atlantic Coastal Fisheries Cooperative Management Act," 16 U.S.C. § 1504, 2012.

²⁸ Massachusetts Division of Marine Fisheries, "Primary Buyer," 322 CMR 7.06.

322 CMR 7.06 defines a primary purchase as the first commercial transaction by sale, barter or exchange of any fish or shellfish after harvest. A primary buyer is any seafood dealer that is authorized by the Division of Marine Fisheries to make a primary purchase.

Table 1. Lobster Carapace Size Standards in the United States

Lobster Management Area (LMA)	Minimum Carapace Size (inches)	Maximum Carapace Size (inches)
Federal Standard	3.25	6.75
LMA 1	3.25	5
LMA 2	3.375	5.25
LMA 3	3.5	6.75
LMA 4	3.375	5.25
LMA 5	3.375	5.25
LMA 6	3.375	5.25
LMA Outer Cape Cod	3.375	6.75 (federal permit holders only)

**Source: Atlantic States Marine Fisheries Commission
American Lobster Management Plan**

Appendix 10 - American Lobster Landing Statistics

Table 1. 2007 – 2011 Annual US and Canadian Lobster Landings

Year	US Lobster Landings (lbs)	CA Lobster Landings (lbs)
2007	80,842,259	107,739,907
2008	88,105,794	130,037,461
2009	100,506,646	128,622,098
2010	116,248,149	148,320,396
2011	126,264,255	137,731,118

Source: The National Marine Fisheries Service Fisheries Statistics Division and The Canadian Department of Fisheries and Oceans

Table 2. 2007-2011 State-by-State US Lobster Landings (lbs)

Year	ME	NH	MA	RI	CT	NY	NJ	DE	MD	VA	NC
2007	63,959,191	2,468,811	10,143,301	2,293,494	568,696	716,300	680,392	5,946	6,128	-	-
2008	69,863,132	2,567,031	10,597,614	2,771,968	426,292	1,210,436	632,545	4,347	32,429	-	-
2009	81,175,847	2,985,166	11,781,490	2,831,742	224,861	1,047,276	179,740	6,064	30,988	21,472	-
2010	95,506,383	3,658,894	12,786,448	2,922,823	396,391	307,194	641,556	108	30,005	16,347	-
2011	104,693,316	3,917,461	13,717,192	2,752,505	159,493	344,233	627,077	10	40,090	12,878	-

Source: National Marine Fisheries Service Fisheries Statistics Division.

Table 3. Top 5 Most Valuable Marine Fisheries Species in Massachusetts (2007-2011)

Species	2007	2008	2009	2010	2011
Sea Scallop	\$218,291,723	\$189,893,171	\$197,295,682	\$252,290,172	\$330,921,154
American Lobster	\$51,254,792	\$45,423,225	\$42,725,044	\$50,367,166	\$54,858,962
Atlantic Cod	\$21,832,917	\$24,169,574	\$20,422,109	\$23,999,317	\$27,580,595
Haddock	\$10,200,469	\$14,526,268	\$13,261,844	\$21,210,502	\$15,812,585
Monkfish	\$14,380,678	\$14,035,716	\$9,902,360	\$9,921,759	\$13,434,323

Source: National Marine Fisheries Service Fisheries Statistics Division

Table 4. Massachusetts Lobster Landings and Ex-Vessel Value By Port

Port	Pounds	Value	Port	Pounds	Value	Port	Pounds	Value
Gloucester	3,110,574	\$11,719,667	Newburyport	158,603	\$527,784	Bass River	*	*
New Bedford	1,278,760	\$5,734,059	Fairhaven	106,457	\$458,809	Bourne	*	*
Chatham	661,801	\$3,051,189	Swampscott	114,558	\$419,432	Danvers	*	*
Plymouth	806,608	\$2,851,336	Harwich Port	83,605	\$417,534	Dartmouth	*	*
Beverly	776,623	\$2,824,478	Chilmark	70,194	\$380,320	Edgartown	*	*
Provincetown	608,761	\$2,584,467	Dennis	77,287	\$354,393	Hyannis	*	*
Boston	662,567	\$2,521,523	Wellfleet	62,134	\$303,901	Hyannisport	*	*
Sandwich	541,495	\$2,390,520	Winthrop	54,647	\$205,688	Kingston	*	*
Marshfield	541,475	\$2,009,261	Fall River	31,221	\$164,764	Lynn	*	*
Scituate	435,274	\$1,690,990	Duxbury	34,868	\$126,590	Marion	*	*
Cohasset	421,861	\$1,628,839	Salem	17,914	\$68,301	Mashpee	*	*
Hull	362,677	\$1,360,645	Nantucket	10,621	\$59,914	Nauset	*	*
Nahant	314,707	\$1,118,524	Ipswich	13,589	\$48,057	Newbury	*	*
Marblehead	308,891	\$1,094,348	Eastham	5,680	\$31,957	Revere	*	*
Saugus	309,108	\$1,070,918	Menemsha	4,443	\$29,904	Tisbury	*	*
Orleans	207,271	\$1,047,048	Quincy	7,528	\$29,332	Truro	*	*
Hingham	251,629	\$937,368	Essex	5,628	\$23,563	Wareham	*	*
Rockport	187,417	\$748,047	Acushnet	*	*	West Tisbury	*	*
Manchester	159,654	\$568,146	Barnstable	*	*	Woods Hole	*	*

Source: Standard Atlantic Fisheries Information System (SAFIS) Dealer Reports

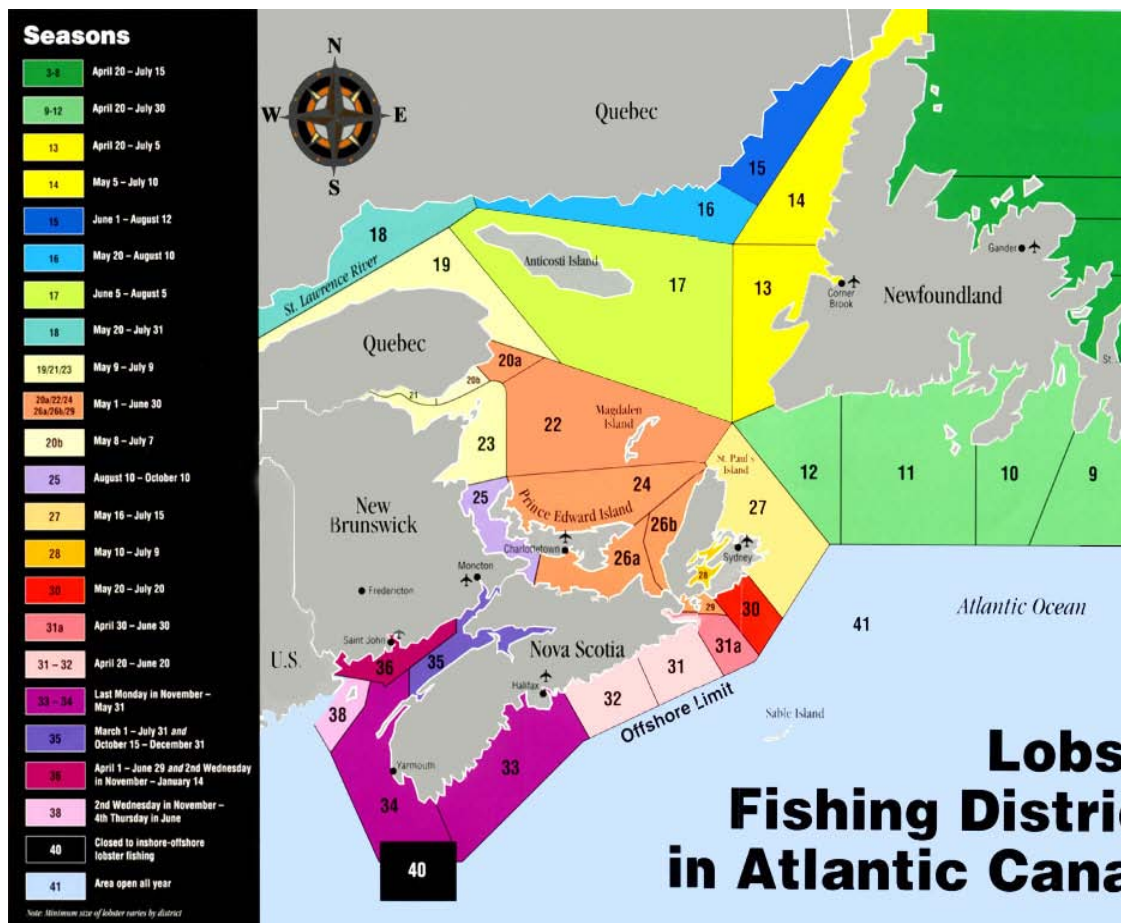
* Reports are confidential pursuant to M.G. L. c. 130 s. 21

Table 5. Increases in US and Canadian Lobster Landings (2007-2011)

Year	US Landings (lbs)	Percent Annual Increase	Canadian Landings (lbs)	Percent Annual Increase
2007	80,842,259	-	107,739,907	-
2008	88,105,794	8%	130,037,461	17%
2009	100,506,646	12%	128,622,098	-1%
2010	116,248,149	14%	148,320,396	13%
2011	126,264,255	8%	137,731,118	-8%
Total Percent Increase	-	36%	-	22%

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

Appendix 11 - Canadian Lobster Fishing Districts and Seasons



Source: Province of Nova Scotia Fisheries and Aquaculture

Appendix 12 – State of Maine Executive Order 19 FY 08/09



AN ORDER TO CREATE THE GOVERNOR'S TASK FORCE ON THE ECONOMIC SUSTAINABILITY OF MAINE'S LOBSTER INDUSTRY

WHEREAS, lobstering is an industry with long-standing cultural and economic importance to the state of Maine; and

WHEREAS, lobstering is the cornerstone of the economies of Maine's coastal communities; and

WHEREAS, the recent global economic crisis has illustrated that Maine's lobster industry is vulnerable and that traditional ways of doing business may no longer be sufficient; and

WHEREAS, Maine's Department of Marine Resources is charged with conserving and developing the fisheries of the state of Maine;

NOW, THEREFORE, I, John E. Baldacci, Governor of the State of Maine, do hereby establish the Governor's Task Force on the Economic Sustainability of Maine's Lobster Industry (hereinafter "Task Force").

Purpose and Duties

The purpose and duties of the Task Force shall be to develop a comprehensive strategic plan for improved marketing of Maine lobster in order to ensure the economic prosperity and long-term sustainability of the Maine lobster industry. This will include, but not be limited to:

- Identifying opportunities for expanding and diversifying both live and processed markets for Maine lobster;
- Identifying necessary improvements and expansions of the infrastructure in Maine, including processing capacity and state-of-the-art technology that maximizes the quality of lobster landed in Maine, and provides flexibility of product movement;
- Identifying opportunities for increasing the range of value added lobster products;

- Identifying possible changes to the structure of the lobster industry in terms of volume, quantity and timing of product landed;
- Identifying Best Management Practices for industry members (harvesters and dealers) to increase product quality and profitability;
- Identifying methodologies of protecting and promoting the Maine lobster brand in the global marketplace, including analysis of the value of Marine Stewardship Council certification, product substitution and food safety; and
- Identifying alternative business models.

The Task Force shall work with an independent contractor with expertise in the food industry, specifically in national and international markets and in market strategy, design, operations and implementation and technology development. The contractor shall develop a process through which members of the industry can provide information that can be used in the development of the contractor's recommendations.

Following the completion of this research, the contractor shall provide the Task Force with preliminary recommendations for their review. The Task Force shall consult with the lobster industry in its review of the preliminary recommendations. The comments of the Task Force will be used by the contractor to inform the development of a comprehensive plan for a marketing strategy for Maine lobster. The marketing strategy will present a blueprint for implementation, including timeframes, cost associated with various activities and expected outcomes.

Membership

The Governor shall appoint no more than eight (8) members to the Task Force. One member shall be the Commissioner of the Department of Marine Resources, or his designee; one member shall be the Commissioner of the Department of Economic and Community Development, or his designee; and one member shall be the Executive Director of the Maine Lobster Promotion Council or his designee. The remaining appointments shall include diverse members who represent the interests of the lobster industry, or have expertise in business operations, finance, community development, international trade, and/or marketing.

The Governor shall appoint the Chair of the Task Force from among the members. The Chair will schedule, set the agenda for, and preside at Task Force meetings.

Staff

Staff support to the Task Force will be provided by the Department of Marine Resources. The members of the Task Force shall serve without compensation.

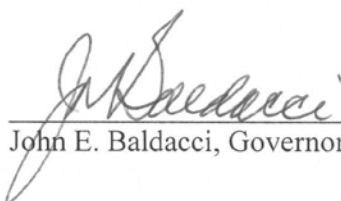
Resources

Pursuant to 12 MRSA §6465, the Commissioner of Marine Resources may authorize expenditures from the Lobster Research, Education, and Development Fund to carry out the work of the Task Force.

Report

The Task Force shall submit its recommendations to the Governor no later than April 15, 2009, after which the Task Force will dissolve.

Effective date of this Executive Order is October 24, 2008.



John E. Baldacci, Governor

Appendix 13 – Mass. Gen. L. ch. 94 § 77G – Use of Dead Lobsters for Food Purposes; Rapid Freezing of Lobster

Section 77G. Whoever cooks, buys, sells, offers or exposes for sale, gives away, or knowingly delivers, transports, ships, or receives for food purposes any lobster, or similar species of crustacea, or any part thereof, which is uncooked and dead, or which was cooked after it was dead, shall be punished by a fine of not less than two hundred and fifty nor more than five hundred dollars, or by imprisonment for not less than ten nor more than sixty days, or both; provided, however, that it shall not be a violation of this section to cook, buy, sell, offer or expose for sale, give away or knowingly deliver, transport, ship or receive any lobster processed for food by a rapid freezing method, by a person who has been licensed or certified under this section, as hereinafter provided.

The department of public health may license any person to process within the commonwealth live lobsters in the shell of legal length for food by a rapid freezing method approved by it. The department shall from time to time adopt rules and regulations governing the processing of such lobsters and the sanitary conditions required for the establishment of a person licensed hereunder.

The department may certify any person engaged in processing outside the commonwealth live lobsters in the shell of legal length for food by a rapid freezing method; provided, that the board of health, or an officer or body having similar powers of the municipality, or other governmental unit wherein such lobster was so processed, certifies to the satisfaction of the department that such lobster was alive when processed and was processed under sanitary and healthful conditions.

Each container of lobsters processed by a rapid freezing method shall bear a plainly marked label, which shall include the license number or name of the packer, and the date of the processing of said lobsters.