

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: §§ 6072, 6072-A, 6072-B, 6072-C
Chapter number/title: Ch. 2, Aquaculture Regulations
Filing number: 2023-124
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this proposed rule is to help improve processing efficiencies for LPA and lease applications, provide greater clarity across regulation for stakeholders and enforcement, and ensure that the experimental lease application fee structure is consistent with other application fees across the Aquaculture Division. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health.

Basis statement:

This rule increases the application fee for experimental leases from \$100 to \$750 and clarifies that this fee would also apply to experimental leases eligible for renewal. The rule also specifies that an experimental application, like a standard, must be one contiguous tract unless it meets exceptions already specified in rule. It requires that Limited Purpose Aquaculture (LPA) renewal applications be received by November 30 each year and removes the provision allowing for mid-term LPA amendments. The rule also specifies that stock for LPA sites must come from the wild, hatchery, or same health zone. Any person who applies for an LPA for seed in an area classified by DMR as prohibited, restricted, or conditionally restricted needs to hold a lease or own a company that holds a lease. The rule removes existing requirements to mark proposed lease areas in advance of public hearings. The rule also provides for contaminant reduction or other special studies, including fees, that may be necessary to ensure the safety of product for human consumption. The rule also makes several updates to existing sections for improved clarity, consistent with statutory changes, and enforcement.

In consideration of one comment, the Department removed, as a matter of clarification, the term ‘nursery’ and ‘nurseries’ from section 2.90(2)(B).

Fiscal impact of rule:

Enforcement of the proposed rule will not require additional activity in this agency. This proposal would increase the fee to apply for an experimental lease. New applicants would be subject to the higher fee, but it would not impact persons or businesses that currently hold an experimental lease or previously submitted a proposal that is at any stage of review. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health. Holders of aquaculture sites in those areas or otherwise required to conduct such studies would incur a fee for sample processing. In certain cases, a 60-day closure could be implemented in lieu of study fees.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (8) East Moosabec Reach LAA, (9) Upper Chandler Bay and (10) Upper Narraguagus Bay
Filing number: 2023-005
Effective date: 1/8/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for East Moosabec Reach LAA, Upper Chandler Bay and Upper Narraguagus Bay, all in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure necessary of reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) East Moosabec Reach LAA; (9) Upper Chandler Bay, and (10) Upper Narraguagus Bay.

Additionally, there is an administrative update to the closure text in Western Casco Bay Closure in 11.09 for clarity.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (10) Narraguagus/Pigeon Hill Rotational Area; (11) Cobscook, Whiting and Denny's Bays; and (12) Lower Blue Hill Bay/Jericho Bay Rotational Area
Filing number: 2023-025
Effective date: 1/19/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in the Narraguagus/Pigeon Hill and Lower Blue Hill/Jericho Bays Rotational Areas (Zone 2) and Cobscook, Whiting and Denny's Bays in Zone 3. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 Scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (10) Narraguagus/Pigeon Hill Rotational Area; (11) Cobscook, Whiting & Denny's Bays; (12) Lower Blue Hill Bay/Jericho Bay Rotational Area

Narraguagus & Pigeon Bay Rotational Area

A partial closure of upper Narraguagus Bay was implemented January 8, 2023. Less than 5 vessels had continued to harvest south of the closure line with moderate success during the month of January. Currently, no vessels are active in the area due to low harvest opportunity and no additional effort should occur for the remainder of the season.

The 2022 spring scallop survey observed moderate levels of scallop biomass, with several stations highlighting hotspots of legal sized scallop resource intermixed with seed and sublegal scallops while a few nearby stations had zero scallops. Comparatively, there were more scallops observed overall during the most recent survey than in 2019.

Cobscook Bay, including Whiting & Denny's Bay

DMR pre-season scallop survey for Cobscook Bay occurred November 18-20, 2022. Overall, the survey reported a robust presence of sublegal and legal scallops. Comparison with the DMR pre-season scallop survey completed November 2021 indicated a moderate decrease in relative legal scallop density from 14.3 g/m² observed during the November 2021 survey to approximately 12.4 g/m² observed November 2022 (Figure 3). What was observed in November 2022 is similar to the pre-season abundance of legal scallops observed in November 2022.

Lower Blue Hill and Jericho Bay Rotational Area

This area opened for drag harvest only on December 5, 2023 and between 12 to 16 vessels were active in the area during the month of December with a peak of 31 vessels. Catch rates

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were not as strong as previous years, even though legal scallop density was observed to be higher this season based on the April 2022 survey (Figure 6).

Additional observations from the spring survey did not indicate any significant abundance of seed or sublegal presence of scallops (Figure 7). This area was open for the full 70 days during the 2019-2020 season with a peak of 40 boats harvesting, however, it would be imperative to ensure some level of legal standing stock remain in the area to encourage recruitment and recovery for future seasons. During the last few weeks of January, less than 5 harvesters have been active in the area and recently have left to seek more efficient harvesting in other areas.

This closure is necessary to prohibit the reduction of the remaining legal broodstock scallop resource to allow for the maximum potential of recovery in this area for future seasons.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. §6171, §6722
Chapter number/title: Ch. 11, Scallops: 2023-2024 Season
Filing number: 2023-222
Effective date: 11/5/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Scallop regulations must be updated for each new season to adjust the schedules and closure lines based on data from the previous season.

Basis statement:

This rulemaking establishes the 2023-2024 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 11, 2023 and the last day of the season is March 21, 2024. For Zone 1, a 60-day season for divers starts on December 5, 2023 and the last day of the season is April 27, 2024. For Zone 2, a 70-day season for draggers starts on December 1, 2023 and the last day of the season is March 27, 2024. For Zone 2, a 70-day season for divers starts on November 16, 2023 and the last day of the season is April 20, 2024. For Zone 3, a 50-day season for draggers begins on December 4, 2023 and the last day of the season is March 28, 2024. For Zone 3, a 50-day season for divers begins on December 7, 2023 and the last day of the season is March 30, 2024.

DMR is re-establishing limited access status for the Sheepscot and Damariscotta Rivers. DMR is maintaining existing Limited Access Areas: W. Casco Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops are maintained: Lower Muscle Ridge, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge. Western Penobscot Bay is open for harvest based on Zone 1 harvest days.

Harvesting of scallops by hand (diving) is restricted to Rotation C (Third) only for the 2023-2024 season. Harvesting for scallops by dredge gear is restricted to Rotation A (First) only for the 2023-2024 season. Rotation B is closed to all harvest. A new juvenile conservation closure, Green Island/The Brothers, in the Englishmen's/Kennebec River Rotational Area in Zone 2 is established for the 2023-2024 season. This rulemaking also splits the Lower Penobscot Rotational Area, creating an annual open harvest based on Zone 2 calendars for state waters that surround Matinicus and outer islands in Zone 2. Lastly, this rulemaking allows scallop harvest to begin starting ½ hour before Augusta sunrise.

A correction was made to the text of the rule to include December 25, 2023 as a closed day in the Zone 2 season for draggers, to match the closure of that day in the Zone 2 calendar for draggers.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area, (9) Harrington River in Addison Rotational Area
Filing number: 2023-252
Effective date: 12/24/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures of the Harrington River in Addison RA and Roque Island Harbor and Little Kennebec Bay portion of the Englishman's Bay RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 Scallop surveys that are essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 25, Lobster and Crag Regulations
Filing number: 2023-125
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule corrects a reference point by providing the coordinate for the Hue and Cry buoy in its original location.

Basis statement:

This rule-making makes a technical correction that removes a USCG buoy as a boundary marker due to this buoy moving locations. The coordinates of its former location remain as a boundary marker for the purpose of this regulation.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 25, Lobster and Crag Regulations, 25.98 Electronic Tracking Requirements for Federally Permitted Lobster and Jonah Crab License Holders
Filing number: 2023-223
Effective date: 11/5/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is proposed to ensure compliance with Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation would require all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have electronic tracking devices. This requirement extends to all federally-permitted license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod.

Basis statement:

This rule-making incorporates the requirements in Addendum XXIX (American Lobster) and Addendum IV (Jonah crab) that were approved by the Atlantic States Marine Fisheries Commission (ASMFC) in March 2022. Specifically, for compliance with the Interstate Fisheries Management Plans, this regulation requires all federally-permitted lobster and Jonah crab license holders with commercial trap gear area permits to have approved electronic tracking devices. This requirement applies to all federally-permitted lobster and crab license holders with commercial trap gear for Lobster Conservation Management Areas (LCMAs) 1, 2, 3, 4, 5, and the Outer Cape Cod. The regulation identifies the specific requirements, as well as prohibitions and exemptions to the requirement. The regulation was amended from the original proposal in the following ways:

- It was amended in response to a comment requesting greater clarity regarding the ability of a federally permitted license holder to proceed with a fishing trip in the event of a device failure, and that this will not result in a violation;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to include a person who is eligible to purchase a commercial license, so that an individual who has not yet purchased their license for the year remains subject to the requirements;
- The definition of a “federally permitted lobster and crab fishing license holder” was amended to specify a commercial license, so that individuals with a federal permit but only a noncommercial lobster license would not be subject to the requirement to have an electronic tracking device.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6749
Chapter number/title: Ch. 26, Sea Urchin 2023-24 Season
Filing number: 2023-126
Effective date: 8/20/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation would establish open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2023-2024 season. For Zone 1, seasons are proposed for divers, trappers, rakers and draggers in 2023-2024, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2022-2023 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2022-2023 season. For Zone 2, 40-day seasons are proposed for divers, trappers, rakers and draggers in 2023-2024, from which harvesters may only fish up to 30 days of their choosing. This proposal has the same number of fishing days and opportunity days as the 2022-2023 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2023-2024. For Zone 2, the daily tote limit is six (6), the same as in the 2022-2023 season.

Basis statement:

This regulation establishes open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2023-2024 season. For Zone 1, a season is established for divers, trappers, rakers and draggers from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2022-2023 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2022-2023 season. For Zone 2, 40-day seasons are established for divers, trappers, rakers and draggers, from which harvesters may only fish up to 30 days of their choosing, the same number of fishing days and opportunity days as the 2022-2023 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers, trappers, rakers and draggers in 2023-2024. For Zone 2, the daily tote limit is six (6), the same as in the 2022-2023 season.

Based on summary of comments, modifications were made to the Zone 2 Late Drag season to better balance the harvest practices between west and east within that zone:

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS § 6505-A
Chapter number/title: Ch. 32, Elver Quota System for the 2023 Season
Filing number: 2023-045
Effective date: 3/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Each year, the method of calculating annual elver quota must be specified for the upcoming season.

Basis statement:

This rule establishes the elver quota allocations for the 2023 season for individuals licenses under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2022 season. For individuals licensed under §6505-A, 2023 allocations for individuals will be the same as their 2022 allocations, plus any quota associated with licenses not renewed in 2022, or licenses suspended for the duration of the 2023 season, which will be distributed evenly to all existing license holders. DMR did not make any changes to the proposed rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS § 6171
Chapter number/title: Ch. 34, Groundfish: Maximized Retention Monitoring
Filing number: 2023-046
Effective date: 3/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this proposed rule is to allow for the operation of the federal electronic monitoring maximized retention model in state waters, primarily by exempting participating vessels from the minimum size restrictions for allocated groundfish species. This change will align state and federal regulations, and eliminate the need for the Department of Marine Resources to issue Special Licenses to vessels participating in the electronic monitoring maximized retention model.

Basis statement:

This rule incorporates into state regulation the electronic monitoring maximized retention model, which is a monitoring tool approved by the NOAA to achieve sector monitoring coverage in the federal groundfish fishery. The rule defines “electronic monitoring maximized retention model” and “allocated groundfish species”. It adds an exemption from the minimum sizes for allocated groundfish species to vessels participating in the maximized retention model, subject to constraints specified in the rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. 6171(3)(C)
Chapter number/title: Ch. 34, Groundfish: 34.06 Emergency Rulemaking to Adjust Recreational Measures for Cod and Haddock
Filing number: 2023-131
Effective date: 8/18/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rulemaking is intended to ensure consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also maintains compliance with the federal fishery management plan for northeast groundfish.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock in accordance with recent changes enacted by NOAA Fisheries. Cod and haddock are regulated under the Northeast Multispecies Fishery Management Plan at the New England Fishery Management Council (Council). The Council recommends recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of management measures so that catch stays below the respective sub-ACLs. NOAA Fisheries considers these Council recommendations but is ultimately charged with issuing a final rule to implement recreational measures. As a part of the Council's work to set recreational sub-ACLs, the Council voted to maintain the Gulf of Maine cod sub-ACL from 2022 to 2023. Stock assessment results for Gulf of Maine haddock were not favorable and indicated a significant reduction in catch was needed to prevent overfishing. As a result, the Council recommended an 83% reduction in the recreational sub-ACL for haddock from 2022 to 2023.

On August 14, NOAA Fisheries issued a final rule to set recreational measures for Gulf of Maine cod and haddock for the 2023 fishing year. For cod, the rule maintains the bag and size limit but modifies the fishing season so that cod can be possessed from September 1 through October 31. For haddock, the NOAA Fisheries final rule maintains a closure in the month of March but deviates from the Council recommendation by establishing separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. NOAA's rationale for the mode-split is that it restrains recreational catch of haddock to the significantly lower sub-ACL while acknowledging the differing needs of the sectors. Specifically, during Council discussions members of the party/charter industry expressed that a higher bag limit is integral to attracting clients and booking trips; a higher minimum size limit is needed to offset a higher bag limit. NOAA Fisheries expressed concern that increasing the minimum size limit may increase dead discards. As a result, NOAA Fisheries maintained the 17-inch minimum size limit for private anglers and implemented a greater reduction in the bag limit. In response to this federal rulemaking, ME DMR is implementing separate haddock bag and size limits for the recreational sectors to ensure consistency between recreational measures in state and federal waters.

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Importantly, this action ensures compliance with the federal fishery management plan. It expands recreational fishing opportunities for Gulf of Maine cod in the fall, which should provide benefit to Maine anglers. It also places greater constraints on recreational fishing for haddock to maintain catch under the lower sub-ACL. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS § 6171
Chapter number/title: Ch. 34, Groundfish: Recreational Measures for Cod, Haddock and Halibut Clean-up
Filing number: 2023-224
Effective date: 11/5/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to maintain consistent recreational fishing measures between state and federal waters for Gulf of Maine cod and haddock. This rule also proposes to replace outdated language regarding the halibut endorsement on the commercial fishing license with reference to the new commercial halibut license.

Basis statement:

On August 18, 2023, DMR adopted an emergency rule to align state recreational fishing regulations for Gulf of Maine cod and haddock with those adopted by NOAA Fisheries in federal waters. DMR is now adopting these regulations as part of its regular rules. Consistent with the existing emergency rule, this regulation maintains the existing size and bag limit for cod but modifies the season so that cod can be possessed from September 1 through October 31. For haddock, the rulemaking maintains a closure in the month of March and establishes separate bag and size limits for the party/charter and private recreational fishing sectors. For party and charter boats, the rule reduces the bag limit from 20 fish to 15 fish per day and increases the minimum size limit from 17-inches to 18-inches. For private anglers, the rule reduces the bag limit from 20 fish to 10 fish per day but maintains the existing minimum size limit of 17-inches. This rule also replaces reference to the previously used halibut endorsement on the commercial fishing license with language regarding the new commercial halibut license.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS § 6171
Chapter number/title: Ch. 36, Atlantic Herring: 2023 Administrative Update
Filing number: 2023-047
Effective date: 3/18/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed regulation amends language clarifying the seasonal structure of the Management Area 1A herring fishery. Additionally, section 36.01(B)(3) clarified the reporting timeframe as described in Chapter 8 Landings, section 8.20(R).

Basis statement:

This regulation amends language clarifying the seasonal structure of the Management Area 1A herring fishery. Additionally, section 36.01(B)(3) clarified the reporting timeframe as described in Chapter 8 Landings, section 8.20(R). No changes were made to the proposed rule.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. § 6171(3)(C)
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2023-078
Effective date: 5/31/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Days Out Commissioners have set zero landing days for June 1 through July 16, 2023 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 16, 2023 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 320,000 pounds (or 8 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring.

Basis statement:

The Days Out Commissioners have set zero landing days for June 1 through July 16, 2023 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 16, 2023 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 320,000 pounds (or 8 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. All herring harvesters are required to report electronically same day as landing through an agency approved electronic method (i.e. LEEDS or VESL app) or through a Federal electronic reporting method. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. § 6171(3)(C)
Chapter number/title: Ch. 36, 2023 Season 2 Open
Filing number: 2023-188
Effective date: 9/30/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2023 for Season 2 (Trimester 3; October 1-December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Tuesday, October 10 at 12:01 a.m. through Wednesday, October 11 at 11 :59 p.m. followed by zero landing days through to Saturday, November 4. Four landing days have been designated starting Sunday, November 5 at 6:00 p.m. through Thursdays at 5:59 p.m., weekly. The fishery will only move to four landing days, starting on November 5, 2023 if there is remaining Season 2 quota available at that time. Quota availability will depend on how much is landed during the prior two designated landing days of October 10-11 and if the 1,000 mt reallocations from the Canadian weir fishery to the Area 1A sub-ACL occurs. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area LA sub-ACL that could deplete the supply of Atlantic herring.

Basis statement:

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2023 for Season 2 (Trimester 3; October 1 - December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Tuesday, October 10 at 12:01 a.m. through Wednesday, October 11 at 11:59 p.m. followed by zero landing days through to Saturday, November 4. Four landing days have been designated starting Sunday, November 5 at 6:00 p.m. through Thursdays at 5:59 p.m., weekly.

The Eastern Maine spawning closure remains in effect until October 8, 2023. The Western Maine and Massachusetts/New Hampshire spawning closure remains in effect until November 3, 2023.

The fishery will only move to four landing days, starting on November 5, 2023 if there is remaining Season 2 quota available at that time. Quota availability will depend on how much is landed during the prior two designated landing days of October 10-11 and if the 1,000 mt reallocations from the Canadian weir fishery to the Area LA sub-ACL occurs.

The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic heiring resource and to reduce the risk of an overage in the Area IA sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. § 6171; § 6502-C
Chapter number/title: Ch. 41, Atlantic Menhaden: 2023 Season
Filing number: 2023-0071
Effective date: 5/17/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rulemaking specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1st, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears are proposed to begin commercial menhaden harvesting on the third Monday of June, annually. This rulemaking proposes daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small Scale Fishery as well as the Noncommercial menhaden fishery. The proposed rule-making also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

Basis statement:

This rule specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1st, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears begin commercial menhaden harvesting on the third Monday of June, annually. This rule established daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small-Scale Fishery as well as the Noncommercial menhaden fishery. The rule also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

Based on public comment regarding the authority to slow the rate at which the quota is taken, the rule was amended to clarify that the Commissioner may implement such a prohibition whenever it is determined warranted by the rate of catch (i.e. more than once during the state allocation fishery if needed).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. 6171(3)(C)
Chapter number/title: Ch. 42, Striped Bass. 42.01, Emergency Rulemaking to Adjust Striped Bass Slot Limit
Filing number: 2023-076
Effective date: 5/18/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This action is intended to manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the striped bass slot limit to come into compliance with recent action taken at the Atlantic States Marine Fisheries Commission (ASMFC). Striped bass are managed by the Atlantic Striped Bass Management Board (Board) at ASMFC. At its May 2 meeting, the Board voted to approve an emergency action to implement a 31-inch maximum size limit in the recreational striped bass fishery where a higher, or no, maximum size limit currently exists. Given Maine's existing slot limit is 28-inches to less than 35-inches, Maine must amend its regulations to come into compliance with this emergency action.

At its May 2 meeting, the Striped Bass Board reviewed 2022 catch information which showed a significant increase in recreational harvest as the 2015 year-class moved into the existing slot limit. As a result of this higher level of fishing mortality, updated projections showed significant declines in the stock's probability of rebuilding by 2029, dropping from 97% under the lower 2021 fishing mortality rate to less than 15% if the higher 2022 fishing mortality rate continues each year. Based on this information and the potential for high recreational harvest again in 2023, the Board took emergency action for the 2023 fishing year to implement a 31-inch maximum size limit in the recreational fishery where a higher (or no) maximize size limit currently exists. This action is intended to provide greater protection to the 2015 year-class as it moves through the ocean recreational fishery and support a higher probability of rebuilding by 2029.

Importantly, this action ensures compliance with the ASMFC fishery management plan for striped bass. It also provides greater protection to the striped bass stock which is overfished and in a 10-year rebuilding plan. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the slot limit for striped bass to be 28-inches to 31-inches, inclusive, with 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 42, Changes to Striped Bass Slot Limit
Filing number: 2023-127
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposal is intended to manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

On May 18, 2023, DMR adopted an emergency rule to come into compliance with the Atlantic Striped Bass Fishery Management Plan at the Atlantic States Marine Fisheries Commission (ASMFC). DMR is adopting the change to the striped bass slot limit as part of its regular rules. This rule implements a 31-inch maximum size limit in the striped bass recreational fishery. As a result, it is unlawful to take or possess striped bass unless they are between 28-inches and 31-inches, inclusive. This action ensures continued compliance with the ASMFC fishery management plan.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 M.R.S. 6171(3)(A)
Chapter number/title: Ch. 55, Gear Restrictions; 55.99 Emergency Rulemaking Fishing in the Saco River
Filing number: 2023-084
Effective date: 6/10/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This action is intended to prevent unusual damage to the striped bass resource that will damage the likelihood of rebuilding, and manage the striped bass fishery in compliance with the fishery management plan at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify an area of the Saco River closed to fishing in order to protect the striped bass resource. Recently there has been a dramatic increase in recreational catch and release mortality on the Saco River below the Cataract Dam. Anglers are reporting large numbers of dead striped bass below this area and DMR has concluded that this is directly linked to targeting fish in a confined area with no way to properly release fish without causing a high discard mortality. This area must be closed to all fishing in order to effectively protect the striped bass resource.

Striped bass are managed by the Atlantic Striped Bass Management Board (Board) at ASMFC. At its May 2 meeting, the Striped Bass Board reviewed 2022 catch information which showed a significant increase in recreational harvest as the 2015 year-class moved into the existing slot limit. As a result of this higher level of fishing mortality, updated projections showed significant declines in the stock's probability of rebuilding by 2029, dropping from 97% under the lower 2021 fishing mortality rate to less than 15% if the higher 2022 fishing mortality rate continues each year. Based on this information and the potential for high recreational harvest again in 2023, the Board took emergency action for the 2023 fishing year to implement a 31-inch maximum size limit in the recreational fishery where a higher (or no) maximize size limit currently exists. This action was intended to provide greater protection to the 2015 year-class as it moves through the ocean recreational fishery and support a higher probability of rebuilding by 2029.

This emergency rule is part of the larger regulatory framework to ensure this stock rebuilds, and this action is necessary to prevent unusual damage to the striped bass resource. For these reasons, the Commissioner hereby adopts an emergency action to modify Maine's Gear Restriction Regulation, Chapter 55.99 to close the waters of the Saco River upstream of the Route 9/Main Street bridge between Factory Island, Saco and Mechanics Park, Biddeford, to the head of tide, as authorized by 12 M.R.S. §6171(3)(A).

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 55, Fishing in the Saco River
Filing number: 2023-128
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposal expands an existing closure to fishing in order to prevent catch and release mortality in an area where it is not possible to properly release fish.

Basis statement:

On June 10, 2023, DMR adopted an emergency rule to expand an existing area on the Saco River closed to fishing. DMR is adopting this same rule as regular rule-making. Consistent with the emergency rule, this rule modifies Maine's Gear Restriction Regulation, Chapter 55.99 to close the waters of the Saco River upstream of the Route 9/Main Street bridge between Factory Island, Saco and Mechanics Park, Biddeford, to the head of tide. This is necessary to prevent high levels of catch and release mortality observed this season and which negatively impacts the striped bass resource.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2023 to December 31, 2023
Prepared by the Secretary of State pursuant to 5 MRS §8053(5)

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS 6171
Chapter number/title: Ch. 75, Protected Resources
Filing number: 2023-129
Effective date: 8/13/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This proposed rule-making makes a technical correction that removes three USCG buoys as boundary markers due to these buoys either being “de-established” or moving locations. The coordinates of their former locations will remain as boundary markers for the purpose of the State of Maine Exemption Line regulation.

Basis statement:

This rule-making makes a technical correction that removes three USCG buoys as boundary markers due to these buoys either being “de-established” or moving locations. The coordinates of their former locations remain as boundary markers for the purpose of the State of Maine Exemption Line regulation.

Fiscal impact of rule:

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.