

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (*Ice fishing season extension*)
Filing number: 2017-055
Effective date: 4/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency rule will extend the ice fishing season on bodies of water in the North Region that would have closed on March 31, 2017 to remain open April 1 – April 16, 2017 so that anglers will be able to continue to fish those bodies of water. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season will enhance fishing opportunities for anglers.

Basis statement:

The Commissioner of Inland Fisheries and Wildlife, in accordance with an emergency Resolve passed by the 128th Legislature (Ch. 2 Resolves), has amended the *Open Water and Ice Fishing Regulations* to allow bodies of water that are currently open to ice fishing in the North Region to continue to be open April 1 through April 16, 2017.

All rules and regulations for those waters that are already open to ice fishing in the North Region will remain in effect. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season is necessary to enhance fishing opportunities for anglers in that region.

Currently, waters in the south zone are open year round to both ice fishing and open water season unless closed by special rule. This provides those in the south with fishing opportunity no matter if there is an early or delayed spring. Extending the ice fishing season in Northern Maine provides similar opportunity for areas that would normally be free and clear of ice for open water fishing but are still ice covered. This will allow waters that are currently open to ice fishing to be ice fished while still protected under current regulations.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 12808-A, 12804
Chapter number/title: Ch. 8, Endangered Species: 8.06, Protection Guidelines and Broad Activity Exemptions for Bats
Filing number: 2017-057
Effective date: 4/8/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The little brown bat, northern long-eared bat, and eastern small-footed bat were added to the Maine Endangered and Threatened Species list in 2015 due to widespread population declines as a result of White-Nose Syndrome. The *Maine Endangered Species Act* (MESA) prohibits the 'taking' of a Threatened or Endangered Species, except as specifically authorized through an Incidental Take Plan or a Broad Activity Exemption (12 MRS §12808-A(4)). Because these bats are widely distributed and their presence is hard to detect, questions have arisen for ongoing activities that could potentially result in the "take" of listed bats. These activities include 1) routine tree removals, 2) disturbance of winter hibernacula, 3) removal and exclusion of bats from buildings, and 4) mortality of bats at wind energy facilities. The rule establishes protection guidelines to minimize the take of listed bat species, and to provide an exemption for certain activities that may result in the occasional take of listed bats.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 4, Hunting and Trapping: 4.02, Migratory Bird Hunting
Filing number: 2017-065
Effective date: 5/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the *Federal Migratory Bird Treaty Act* which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. This rule will protect migratory game birds from over-harvest by setting these limitations. Adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies.

Basis statement:

These rules are adopted for the purpose of implementing the Federal Migratory Bird Treaty Act, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's proposal contained three items of interest that differed from the previous year. The Department was proposing to have a split season in the North Zone, an increase in the black duck harvest from 1 to 2, and a decrease in the pintail harvest from 2 to 1. The proposal for a split in the North Zone was to potentially allow for later duck hunting opportunity for waterfowlers at the southern end of the zone. The season was proposed to run from September 27 to November 25, close for 8 days, and then December 8 – December 16. This was in response to input from waterfowlers over the last few years that late season migrant ducks were arriving after the traditional north zone closure in central Maine.

A public hearing was held on March 13, 2017 with 24 citizens in attendance, including members of the Waterfowl Advisory Council. The Department presented the proposal and discussed the season frameworks and bag and possession limits. Testimony was overall in favor of the increase to a 2 black duck limit, and the majority of those testifying were not in favor of the split season in the North Zone stating some may actually lose hunting opportunity because of lakes and ponds being frozen during the second season.

The Department also received 9 written comments. Comments were acknowledged and forwarded to appropriate Department staff as well as the Commissioner's Advisory Council. Seven comments were opposed to the split season in the North Zone and recommended keeping a straight season similar to prior years. A comment from the Maine Guides Association requested an opening day of November 9th for the sea duck hunting season, and a comment was also received requesting a later starting time for hunting in the Coastal Zone.

After reviewing the comments and discussion with staff, the Commissioner amended the original proposal and removed the split season in the North Zone to a straight season of September 25 through December 2, 2017. The 2 black duck limit remained as well as the reduction in pintail harvest to 1.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11552
Chapter number/title: Ch. 4, Hunting and Trapping: 4.05, Moose Hunting Season
Filing number: 2017-066
Effective date: 5/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Moose permit areas are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. Moose permit recommendations are based on removal rates of bull and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature bulls for viewing by the general public.

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2017 season. The Department advertised a proposal on March 1, 2017 with a recommended total of 2,080 permits be issued in order to meet moose harvest objectives. This was a decrease of 60 permits from 2016 with the reductions occurring in WMDs 23, 25 and 26. These were referred to as the “southern” Maine moose hunting districts and were not highly sought after. Moose/deer hunter conflicts were basically a non-issue in these areas and the purpose of the hunt there had been to reduce moose/vehicle collisions. Permit numbers in remaining WMDs with moose hunting seasons remain unchanged from 2016.

A public hearing was held in Augusta on March 20, 2017 with 2 citizens in attendance. The one person that offered testimony applauded the Department for trying to strike a balance between moose watchers and those that wanted to harvest moose.

During the comment period the Department received 6 written comments from the public. Comments were acknowledged and forwarded to the Commissioners Advisory Council and Department staff for consideration. In summary, 4 comments were received stating moose permit numbers should be reduced but did not indicate any specific WMD; 1 comment requesting a reduction in the permit numbers for WMD 8; 1 comment requesting no antlerless permits for WMD 4.

After review of public comments and discussion with staff the Commissioner recommended no changes to the original proposal. The Commissioner’s Advisory Council met on April 21, 2017 and of the 8 members present voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §13051
Chapter number/title: Ch. 13, Watercraft Rules: 13.07, Rules of Operation for Watercraft on Internal Waters
Filing number: 2017-067
Effective date: 5/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The rule establishes rules of operation (rules of the road) for watercraft on Maine internal waters. Having standards of conduct within rule will assist the public in understanding how to safely operate a boat and enable prosecution for cases where death or serious bodily injury occurs as a result of a person's failure to navigate inland waters using a reasonable and prudent manner. In some of our boating accidents where there had been negligence of one party or the other, during the prosecution phase, it had been raised to the Warden Service who had the right of way and what should they have done differently in the operation of their boat. For watercraft, there were federal navigation rules but we did not have set rules in Maine on how you should appropriately operate watercraft. The rules will provide necessary direction for Warden Service and prosecutors to address operating to endanger.

No public hearing was held on the proposal and no comments were received during the comment period. The Commissioner brought the original proposal forward to the Advisory Council for adoption at their meeting held on April 21, 2017 and the 8 members present voted unanimously in favor to adopt the rule as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11701
Chapter number/title: Ch. 4, Hunting and Trapping: 4.06(2), Wild Turkey (Fall Season)
Filing number: 2017-092
Effective date: 7/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

This rule is in response to input over the last few years from both Department employees observing turkeys in the field and from wild turkey hunters in WMD 27 to consider opening the district to a fall wild turkey hunt. Biologists evaluated the status of the wild turkey population using the trend of the spring wild turkey season harvest, documented turkey production and observations of wild turkeys in WMD 27. Over the last three years the spring harvest has been relatively stable. August brood survey data has shown steady reproduction over that same three year period and general observations by staff biologists and wardens support a stable population. This information supports opening WMD 27 to a fall season with a one bird limit. Opening the season to a one bird harvest is the conservative approach to allow for assessment prior to opening this district in the future to a two bird season.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11152, 11401
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons
Filing number: 2017-127
Effective date: 8/23/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish antlerless deer permit allocations for each of the 29 Wildlife Management Districts (WMDs) for the 2017 deer hunting season. Any-deer permits are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. The winter of 2016-17 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer.

Basis statement:

The Department allocates any-deer permits by Wildlife Management Districts (WMDs) to limit the number of antlerless deer taken by hunters in each WMD. Allocations vary across the state, reflecting the different quality of deer habitat and potential to support and grow deer populations in each WMD.

Any-deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities according to the publicly derived goals in the deer management system. The winter of 2016-2017 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer. A recommended total of 66,050 permits was proposed to achieve a doe harvest of approximately 6,964 deer; an increase of 45% in permits that were issued in 2016 (45,625).

The Department held a public hearing on June 21, 2017 and there were four (4) members of the public in attendance. Testimony given at the hearing focused mostly on permit recommendations in WMDs 7 and 27 and that the proposed allocations were too high in those areas. They hunted in those areas and felt the deer population was low based on their observations.

The Department received 10 written comments which were acknowledged and forwarded to the Commissioner's Advisory Council members and Department staff. One comment was received generally in favor of the proposed permit allocations; 3 comments were opposed to permit numbers in various WMDs; 4 comments were opposed to allocations for WMD 27; 1 comment was received in support of permit allocations in WMD 27; additional comments were received from an attendee at the public hearing regarding WMD 27. Comments that were received opposing permit numbers in WMD 27 stated they were not seeing deer and felt the population was too low to sustain harvesting of does. Some felt the district should be managed on a town level to address areas having issues with deer, not issue permits for the entire district.

Fiscal impact of rule:

No fiscal impact anticipated.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11402
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons (Open and Closed Seasons – City of Eastport)
Filing number: 2017-153
Effective date: 9/27/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The City of Eastport has requested that the Maine Department of Inland Fisheries and Wildlife (MDIFW) authorize for a second year a Special Hunt to target the removal of antlerless deer. Deer-human conflicts, including residential property damage and vehicle accidents, have been steadily increasing in Eastport for the past decade. A no-discharge of firearms ordinance within the city, coupled with restrictions on archery hunting and posted private property have likely contributed to an increase in deer numbers over time. Eastport has also been subject to bucks-only hunting for the past 11 years due to Wildlife Management District boundary changes in 2005 when Eastport became part of WMD 27. A one year special hunt was granted to Eastport for 2016 which allowed the issuance of 30 permits with one deer tag per permit holder. The conservative approach in terms of numbers of permits and limit of one tag per permit holder was to demonstrate to Eastport residents that a special hunt could be coordinated with MDIFW and successfully conducted with low incidents of complaints and violations, which was realized. The second year plan increases doe removals per permit holder while maintaining certain aspects of the hunt plan that worked effectively, given the limitations of hunting in Eastport.

To encourage landowners to make their property available to the hunt, where appropriate, qualified Eastport residents will be favored in a drawing of permittees, and there will again be a minimum 10% allocation for non-Eastport residents. The same amount of permits that were issued in 2016 (30) is being issued again this year, but to maximize the potential for doe removals, the overall number of deer tags has been significantly increased to 90 for the hunt. Each permit holder will receive one deer tag with their permit. If they are successful, they would again be required to register their deer at a designated registration station. The successful permit holder would then be allowed to present the registration form to a City official and obtain another deer tag to continue hunting if desired. This will maximize opportunity for successful hunters. To facilitate participation by permit holders, the special hunt will again occur for a period of two continuous weeks, November 27 - December 9, 2017. As in 2016, the City of Eastport will be largely responsible for administering the special hunt including conducting the lottery to select qualified applicants, approving specific hunting locations, and enforcing compliance with City ordinances.

WMD 27 was also allocated 50 permits as part of the 2017 annual deer permit lottery which will make Eastport accessible to the taking of does by archery and youth day deer hunters for the first time in 11 years. This, in addition to the continuation of the special hunt will help Eastport achieve desired population goals. Eastport residents will continue to be surveyed by the Department and Eastport Deer Reduction Committee for satisfaction ratings.

Fiscal impact of rule:
No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 4, Hunting and Trapping: 4.01, Upland Game and Furbearing Animals (Beaver Trapping)
Filing number: 2017-155
Effective date: 10/2/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish beaver trapping season dates and individual township openings and closings for the beaver trapping season.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in trapper participation, and biological data collection. The Department's proposal was to adjust dates for beaver trapping season to reflect the 2017 calendar, and also included areas that would be open and closed to beaver trapping based on landowner requests.

A public hearing was held on the proposal on August 29, 2017 in Augusta with 5 members of the public in attendance. There were also 22 written comments received on the proposal. Some individuals sent written comments and spoke at the public hearing. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff for consideration.

Overall, the comments received both in writing and at the public hearing were not directed at the Department's proposal, but in opposition to trapping methods and trapping in general and also stated the benefits of beaver and that they should not be removed or considered "nuisance" animals. One comment was received in favor of the proposal and one neither for nor against that simply pointed out the benefits of having beaver on the landscape.

Fiscal impact of rule:

No fiscal impact anticipated.

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Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2017-160, 161
Effective date: 1/1/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is designed to provide for the effective conservation of game fish throughout the state, and provide for a variety of fishing opportunities. The rules set specific season dates, bag limits, length limits, taking restrictions and other special regulations designed to accomplish fisheries management objectives.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2018 ice fishing and open water seasons and made additions to the State Heritage Fish Waters list. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits, including economic, are retained.

These rules continue the second phase of fishing regulations reform. In 2016 the Department focused on the structure, organization and presentation of the laws and in 2017 the focus was more on removal of unnecessary regulations and looking for opportunities for simplification where we could do so without adversely impacting our natural resources. The two year simplification process will improve the clarity and overall use of our fishing regulations. The proposed changes were advertised with 5 public hearings held in Presque Isle, Millinocket, Ellsworth, Farmington and Brunswick. The Department also received 24 comments in writing both for and against various proposals.

In summary, the packet of 229 proposals contained sections that dealt with "housekeeping" issues which would constitute a change in language in the regulation which didn't affect use opportunity. Another section dealt with statewide proposals, water specific proposals were advanced by the regional biologists and 17 waters were nominated for the Heritage Fish Waters list. Attendance at the 5 public hearings was light; there were no members of the public who attended the hearing in Brunswick. Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff. As addressed in the summary sheet, several bodies of water received written comments.

The Department did put forth four amendments to original proposals based on public comment and review for the following bodies of water: Unnamed Ponds in Comstock Twp.; Black River (Big) in T14 R16 WELS to T15 R13 WELS; Saint John River in Aroostook County and Basin Pond, Upper and Lower in Mt. Katahdin Twp.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12152
Chapter number/title: Ch. 6, Educational and Scientific Collection Permit Rules:
6.01, Scope of Rules; **6.02**, Permit Required
Filing number: 2017-195
Effective date: 12/16/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule change is required in order to reflect statutory changes that were made to 12 MRS §12152 during the 1st session of the 127th Legislature (2017). The section of statute that referred to the educational and scientific collection permit was moved from repealed §12704 so the statutory reference needed to be updated. Additionally, the reference to “wild animals and wild birds” within statute was changed to “wildlife” to include reptile, amphibians and some invertebrates in addition to wild animals and wild birds and clarifies the use of native species for educational and scientific purposes.

Fiscal impact of rule:

No fiscal impact anticipated.