

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: **Ch. 11**, Scallops: Targeted Scallop Conservation Closures (Hussey Sound, Roque Island Harbor (Sand Bay)); Open and Closed Scallop Fishing Days (Zone 2 State Waters Season)
Filing number: 2018-002
Effective date: 1/1/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Hussey Sound as well as in Rogue Island Harbor (Sand Bay) of the Lower Kennebec/Englishman Bay Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Hussey Sound and Rogue Island Harbor (Sand Bay) areas.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Hussey Sound in Casco Bay (Zone 1) and Rogue Island Harbor (Sand Bay) in Little Kennebec/ Englishman Bay Rotational Area (Zone 2). The rule also permits harvesting in the territorial waters around Machias Seal Island on any day that is open for Zone 2 draggers and divers. As targeted closures are implemented, the opportunity around Machias Seal Island may relieve fishing pressure on other inshore areas.

Hussey Sound

Monitoring of fishing effort and resulting resource removals from known fishing areas was completed through one-on-one interviews with scallop harvesters in the area and ongoing observations by Marine Patrol officers through routine boardings and site visits.

An estimated 6-8 boats have been steadily working within the Hussey Sound area and Marine Patrol reports the majority of boats in the first two weeks of the fishery were reaching their daily harvest limit by noon. However, as the fishery progressed, the length of time to reach a daily limit was increasing to late afternoon. In addition, there have been a lot of empty shells coming up in the drags, resulting in a reduced amount of bushels of commercial grade product per tow.

Through phone interviews with participating industry members, there has been consensus that the area has been a primary focus of harvesting with upwards of 10 boats observed some days. The input from industry has indicated that effort has greatly increased to attain the daily limit and there is little legal product remaining in the area.

Based on this information, it is necessary to protect the remaining legal scallop resource as broodstock for subsequent fishing years.

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Rogue Island Harbor (Sand Bay)

Marine Patrol observed 52 boats harvesting the Rogue Island Harbor/Sand Bay area on opening day of the 2017-18 scallop fishing season. Effort remained strong for the first 5-day fishing week, with desirable average meat counts.

Continued reports from Marine Patrol indicated that the fishing fleet began to disperse during the second and third weeks of December, while a few boats remained in the area. Those harvesters that remained required greater effort (time) to reach their daily limit and have been persistent in harvesting this area.

Comments from participating harvesters in the area detailed the abundance of legal product in the rotational area, however, not to the extent of the 2014-15 fishery season. Additionally, there has been consensus from several participating harvesters in the area that the remaining resource is no longer able to be efficiently harvested without causing damage to the remaining resource and the habitat.

During the spring and pre-season science survey, observations of seed or sublegal product was low, especially in the Sand Bay area. While there was higher than expected growth of the sublegal product observed during the spring survey to legal size, it is necessary to ensure a healthy amount of broodstock remains within good habitat to ensure the longevity and sustainability of scallops within this area.

The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Hussey Sound and Rogue Island Harbor (Sand Bay) areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures
(Casco Passage within Swan's Island Rotational Area, Johnson Bay & Eastport Breakwater (Cobscook Bay))
Filing number: 2018-014
Effective date: 1/21/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Johnson Bay, inside Cobscook Bay area and Casco Passage of the Swan's Island Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Johnson Bay and Casco Passage areas.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Passage in Swan's Island Rotational Area (Zone 2) and Johnson Bay and Eastport Breakwater within Cobscook Bay (Zone 3).

Casco Passage within Swan's Island Rotational Area

At the opening of the scallop season, on December 5, 2017, 15 active scallop drag vessels were observed harvesting within the Casco Passage area by Marine Patrol. The number of total vessels harvesting within this area was reported to have reached upwards of 30 vessels as determined by individual harvester interviews during the first 5-day week of the season. Meats were large in this area, with a meat count ranging from 10 to 14 scallops per pound. Daily harvest limits were reached as quickly as four 20 minute tows but increased to twelve tows during the end of the first five days of harvesting.

By the third week of scallop season, updated reports by industry and marine patrol indicated most vessels had moved on to other more productive areas, as weather permitted.

However, recent information indicated that on poor weather days, 1-3 boats still harvest within Casco Passage but have been unable to reach their daily limit in the area. At best, they were able to harvest 8 gallons of the available 15 gallon daily limit.

Data from the spring scallop survey conducted by DMR science staff indicated presence of seed stock within the Casco Passage area. Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat, and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Johnson Bay & Eastport Breakwater (Cobscook Bay)

At the opening of the scallop season, on December 4, 2017, 75-85 active scallop drag vessels were observed harvesting within Cobscook Bay (Zone 3) with most effort taking place in the lower area of Johnson Bay and along Eastport shore. Initial reports of harvest rates indicated vessels were reaching their daily limit by noon, with landings being comprised of

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medium sized (15-20 count per pound) scallops. It was noted that this size range was smaller than usual during the beginning the season for Johnson Bay.

By the third week of the scallop season, Marine Patrol were observing lower catch rates and vessels were taking longer to reach their daily limit. This was considered atypical for this area so early in the season. Vessels were working more into the late afternoon to reach daily limit of 10 gallons.

ME DMR science staff completed a 68 station survey of Cobscook between January 11-14, 2018 which focused on 12 stations within Johnson Bay and 4 stations around Eastport Breakwater. Results from this in-season survey indicated a stark decrease in harvestable biomass for both these areas (Table 1). Harvestable biomass in Johnson Bay dropped from 8.06 g/m² observed during the fall survey to 2.74 g/m². Eastport Breakwater had a harvestable biomass of 9.17 g/m² prior to the season opening and it is now observed at 1.97 g/m². These data points far exceed the 30% target removal threshold.

During pre-season science survey, observations of seed or sublegal product was present around Treat Island in Johnson Bay. Available legal product has been extracted from this area and it is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Casco Passage and Johnson Bay & Eastport Breakwater areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures (Machias and Sand Bays within Lower Englishman Bay Rotational Area; Whiting, Denny's and Cobscook Bays)
Filing number: 2018-020
Effective date: 2/4/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement the expansion of targeted conservation closures within the Englishman Bay Rotational Area to include Sand Bay over to Machias Bay within the inner portion of the Englishmen Bay and a closure of Cobscook Bay including Whiting & Denny's Bay Limited Access Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the inner portion of the Englishman Bay as well as Cobscook Bay including Whiting & Denny's Bay.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Sand Bay and Machias Bay within the Lower Englishman's Bay Rotational Area (Zone 2) and Cobscook Bay including the Whiting & Denny's Bay Limited Access Area (Zone 3).

Machias & Sand Bay within Lower Englishman Bay Rotational Area

This is an expansion of an existing targeted closure within the Little Kennebec/Englishman Bay Rotational Area. The initial closure targeted Roque Island Harbor (Sand Bay) which had received the most amount of effort at the beginning of the season; and, considered to be premier grounds for legal scallops. Prior to the closure, there was some mobility of the fleet spreading to other shoal areas along the inside shores of The Brothers Island and Libby Island. Upwards of 25 boats continued to harvest within the area during the 2nd week of December. This effort was maintained throughout December, with weather being a limiting factor.

By the third week of January, harvest rates were slowing down, and the remaining boats, estimated at 15 total by Marine Patrol, were exploring areas further offshore from the other side of the lower islands within the rotational area. Scallop product has been readily available, but the meat counts smaller in deeper waters.

Data from the pre-season scallop survey conducted by DMR science staff on December 1, 2017 indicated high levels of harvestable resource. However, a follow up survey, conducted on January 19, 2018 indicate harvestable biomass has been depleted at areas surveyed. There were also observations of additional seed stock present northeast of Libby Island at two survey stations.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect

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the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Cobscook Bay

This is an expansion of an existing targeted closure within Cobscook Bay. At the opening of the scallop season, on December 4, 2017, 75-85 active scallop drag vessels were observed harvesting within Cobscook Bay (Zone 3) with most effort taking place in the lower area of Johnson Bay and along Eastport shore. During the last two weeks, observed vessels as counted by marine patrol ranged from 100 to 110 boats harvesting daily.

Two follow-up in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on January 11-14, 2018 and second survey on January 27-28, 2018. Results from the first survey promulgated an emergency action for the Johnson Bay and Eastport Breakwater areas due to removals exceeding target levels. This closure was effective January 21, 2018.

The most recent survey indicates the removal target has been exceeded in Whiting/Denny's Bay with a 45% decrease in harvestable biomass (from 6.29 g/m² to 3.44 g/m²). Additionally, 31 stations were sampled in the East and South Bays and the removal rate was calculated at 27% (4.19 g/m² to 3.06 g/m²). These two areas outside of Whiting/Denny's Bay experienced three additional days of harvest post-survey with 100-110 active vessels removing an estimated 9,900 lbs from the area. While this small portion of Cobscook Bay has not exceeded its target, it would still require a closure; the survey observed over two thirds of the sampling stations have seed and sublegal presence of resource, and the area cannot sustain the additional impact of 100 plus boats harvesting. These center bays have high proportions of both seed and sublegal product that would incur damage if harvest continued.

Qualitative information from both marine patrol and active harvesters in the area concur that rate of catch has decreased, and vessels are now expanding their search into areas not normally fished. General anecdotes from harvesters suggest that last season was extended too long and had possible negative impact to the size and quantity of scallops available for this 2017-18 season. Their collective insight indicated a closure would result in positive benefits next year rather than prolong harm.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the inside portion of Englishman Bay area will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both Sand Bay and Machias Bays within the Little Kennebec/Englishman Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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)
Chapter number/title: **Ch. 11**, Scallops: Targeted Scallop Conservation Closures (Harrington & Pleasant Rivers within Addison Rotational Area, Upper Frenchman Bay Rotational Area)
Filing number: **2018-023**
Effective date: 2/18/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the Harrington and Pleasant Rivers, Addison Rotational Area and the upper portion of Frenchman Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the Harrington and Pleasant Rivers and the upper portion of Frenchman Bay.

Basis statement:

Justification

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Harrington & Pleasant Rivers within Addison Rotational Area (Zone 2) and Upper Frenchman Bay Rotational Area (Zone 2).

Harrington & Pleasant Rivers within Addison Rotational Area

This area has been open to harvest for 46 days. Effort in both the Harrington and Pleasant Rivers was most notable during the month of December with upwards of ten vessels harvesting in the area. Boats were actively avoiding the seed spots and began spreading out in this rotational area by the third week of December and as weather allowed, harvesters would tow further outside of the Bay. By January, less than 5 boats were harvesting in the lower port of this Rotational Area. Several industry reports confirmed the already suspected levels of seed scallops observed during the DMR Spring Scallop survey.

During the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017 and highlighted the abundance of seed scallop resources observed in the Harrington River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. This was exactly how effort was observed in this area by Marine Patrol at the beginning of the season. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

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Upper Frenchman Bay Rotational Area

This area has been open to harvest for 46 days. Effort in both the Skillings River and adjacent areas was most notable during the month of December and into January with upwards of five vessels harvesting in the area with the primary focus on the Skillings River. Boats that did harvest in the Skillings River also found seed as predicted by the DMR Spring Scallop survey and actively avoided seed spots until spreading out in this rotational area. Resource was patchily distributed in the area with average to high meat counts being reported by industry.

As mentioned above, during the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017; and highlighted the abundance of seed scallop resources observed in the Skillings River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. Harvest in this area lasted into the middle of January, as bad weather made it difficult to access other areas. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the upper portions of both Addison and Frenchman Bay will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both Harrington and Pleasant Rivers within the Addison Rotational Area and upper Frenchman Bay which includes the Skillings River and Taunton Bay. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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)
Chapter number/title: **Ch. 11**, Scallops: Targeted Scallop Conservation Closures
(St. Croix River, Addison Rotational Area, Fox Islands Thorofare within East Vinalhaven Rotational Area)
Filing number: **2018-034**
Effective date: 3/4/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the St. Croix River, Addison Rotational Area and the Fox Islands Thorofare within the E. Vinalhaven Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the St. Croix River, Addison and Fox Island Thorofare.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Fox Islands Thorofare in E. Vinalhaven Rotational area (Zone 2); Addison Rotational Area (Zone 2); and, St. Croix River (Zone 3).

St. Croix River

This area has been open to harvest for 43 days, within Zone 3, but the primary focus of effort has been in the most recent 12 days of the calendar after Cobscook Bay closed. Beginning February 4, 2018, upwards of 40 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed large meat counts and moderate densities of scallops over variable depth ranges. In the previous season, this area was targeted for 8 days after Cobscook closed. Observations this year indicated harvest rates were not as great as the year prior, but meat size of harvested product meant less animals were needed to reach the daily limit. Initially, daily limits were being reached between 9 and 10, with tide cycles impacting harvesting behavior. In the last 2 open weeks, individual harvesters were taking longer to reach limits, if at all. There were reports of seed near St. Croix Island, as well. So, based on lower catch per unit effort as conveyed by both harvesters in the area and Marine Patrol, and potential for sublegal growth for the following season, it was recommended to close the fishery to reduce repeated effort.

Addison Rotational Area

This area has been open to harvest for 54 days. A partial closure of this area affecting both the Harrington and Pleasant Rivers including Pleasant Bay was implemented on February 18, 2018 due to reports of seed scallops in the rivers, along with both harvester and marine patrol reports observing new effort in areas that were already harvested in the early part of the season. Now that effort has shifted to the outer islands, catch rates remain low. Additional reports by harvesters in the area as well as Marine Patrol indicate that it is no longer possible to reach daily limits within this rotational area. Additionally, separate from the DMR Science Survey, harvesters indicate there are sublegal scallop resources in deeper water around Big Nash Island.

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Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years.

Fox Islands Thorofare within E. Vinalhaven Rotational Area

This area has been open to harvest for 54 days. During the opening of the scallop season, an estimated 30 boats were harvesting in the upper portion of the zone, and focusing on the large meat counts found within the Fox Islands Thorofare area. Effort wavered between 10 to 20 boats during the latter half of December and into January. Also, due to poor weather throughout the season, this area maintained effort sporadically, as a sheltered area to harvest throughout the months of December and January. By the second week of January, harvesters were indicating it took longer to reach daily limits. Both harvesters and marine patrol observations indicate minimal effort by approximately 5 vessel during the month of February on poor weather days.

DMR science staff has completed three surveys in the area, covering the same 22 stations each time. Overall biomass has decreased slightly in the area; however, results indicate that the 5 stations associated with the Fox Islands Thorofare have seed and sublegal scallop resources in greater proportion than harvestable biomass. Direct observations from both industry participants in the area as well as marine patrol also confirm the presence of sublegal resources, with the station near Goose Rocks having the highest concentrations.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the St. Croix River, the Addison Rotational Area and Fox Islands Thorofare within E. Vinalhaven Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6072-C
Chapter number/title: Ch. 2, Aquaculture Lease Regulations: 2.90, Limited-purpose Aquaculture (LPA) License; 2.95, Water Quality Classifications and Shellfish Aquaculture
Filing number: 2018-039
Effective date: 3/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking adopts a number of changes to the Limited Purpose Aquaculture License (LPA). These changes are intended to reduce risks to public health, implement statutory changes, and improve the overall administration of the LPA program.

Basis statement:

This rulemaking implements a number of changes to the Limited Purpose Aquaculture License (LPA). It deletes a number of references to other chapters of regulation to reduce redundancy. It includes several changes to reduce risk to public health, including prohibiting siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas, with certain exceptions. It prohibits siting of marine algae or shellfish seed LPAs within the 300:1 dilution zone around wastewater treatment outfalls and prohibits the use of MOU or biotoxin monitoring protocols for LPAs. It limits the dimensions of LPAs to no longer than 1x400 ft., square or rectangular. It requires LPA license holders to complete an educational program prior to renewal of their license in 2019 and future years. It amends gear marking requirements, so that each individual piece no longer needs to be marked and requires buoys to be marked with the LPA identification number. It limits an individual to being listed on no more than eight additional LPAs other than their own. The rule also clarifies numerous provisions including allowable amendments mid-year, notice to municipalities, site identification on the application, and who must sign the application.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- **Dimensions:** As originally proposed, the rule would have limited the dimensions of LPAs to no longer than 4x100 feet, square or rectangular. The Department concurs with the comments received that this change would negatively impact many existing operations, and inhibit the use of LPAs for scallop and seaweed aquaculture. However, the Department does feel that it is necessary to create some parameters for the allowable dimensions of LPAs. Rather than create dimensions that are species specific, the final rule limits dimensions for any LPA to 1'x400'.
- **Assistants:** The proposed rule would have limited an individual to being listed on no more than four LPAs as an assistant. Several comments were received that indicated existing operations rely on being able to be listed on more than four LPAs as assistants and that limiting it to that number would have negative impacts on the operation. In consideration of those comments, the Department has amended the rule to allow an individual to be listed as an assistant on up to eight other LPAs. Individuals who are currently listed on more than eight other LPAs will be allowed to continue to be listed on those same LPAs until 2021.

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- **Riparian Landowner Density:** Based on a comment that requested further clarification, the final rule specifies that the riparian landowner density exemption does not restrict either the riparian or non-riparian density.
- **Siting Prohibitions:** The rule prohibits siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas with certain exceptions. Based on comments received, the Department amended the rule to allow for a one-year license renewal to provide an opportunity to identify a new site should an area's classification be downgraded and require the termination of the LPA due to water quality classification.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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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, Eel Regulations: 32.05, Area Closures – Eel Fishing;
32.35, Elver Quota System for 2018 Season
Filing number: 2018-040
Effective date: 3/19/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule establishes the elver quota allocations for the 2018 season for individuals licensed under §§ 6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The 2018 allocations for individuals who held a license in 2017 are the same as their 2017 allocations, less any quota that was associated with licenses suspended for the 2017 season, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which are distributed evenly to all license holders. Individuals who are eligible to purchase an elver license in the 2018 elver license lottery are allocated a quota of 4 lbs. The rule also deletes language that was moved to Ch. 55.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- Removed the proposed limitation on additional allocation for elver license holders that had a quota of 50 lbs. or more in 2017. This limitation had been suggested by representatives of the Maine Elver Harvesters Association, but based on the comments received it was agreed that every license holder should be eligible for any redistribution of quota, regardless of the amount of their existing allocation.
- Clarified the allocation formula to deduct quota that allocated in 2017 that is associated with licenses that were suspended in 2017, but which will be returning to the fishery in 2018. This is necessary to ensure that Maine does not exceed the quota that is allocated through the Atlantic States Marine Fisheries Commission.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.07, Atlantic Halibut
(*Hippoglossus hippoglossus*)
Filing number: 2018-065
Effective date: 4/23/2018
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

In recent years, state waters catch of Atlantic halibut has been steadily increasing. Federal waters catch has also been increasing, but the overall Allowable Biological Catch (ABC) has remained relatively static. Maine exceeded its State Waters Sub-Annual Catch Limit (ACL) in 2015 and 2016, and in 2016, total catch nearly exceeded the ABC, which would have triggered implementation of restrictive Accountability Measures for the federal groundfish fishery. As a result, new Accountability Measures have been imposed that would restrict all federal permit holders from possessing halibut (in the year subsequent) should the ABC be exceeded. In 2017, the halibut stock assessment was also updated, and resulted in a lower ACL of 104 mt, or 21.8 mt for the State Waters Sub-ACL (a reduction from 25 mt in 2017). The new ACL will be effective at the start of the federal fishing year and state waters season on May 1, 2018. In order to remain within the State Waters Sub-ACL, and to prevent the ABC from being exceeded and Accountability Measures being triggered, Maine is taking this emergency action to reduce catch in the state waters fishery by the following measures: 1) reducing the length of the state waters halibut season by ten days at each end of the season; 2) reducing the number of hooks to 250; and 3) imposing a prohibition on possession of halibut by those license holders who have been issued state commercial halibut tags when operating seaward of the territorial waters boundary. This action is intended to protect and conserve the halibut resource in accordance with the federal management plan. For these reasons, the Commissioner has determined that it is necessary to take this emergency action under 12 MRS §6171(3)(C).

Fiscal impact of rule:

Enforcement of this rule 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 41, Menhaden
Filing number: 2018-066
Effective date: 4/28/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to align State of Maine menhaden fishing regulations with those set forth in the Amendment 3 to the Atlantic Menhaden Interstate Fisheries Management Plan. Amendment 3 was adopted by the ASFMC Atlantic Menhaden Management Board on November 14, 2017.

Basis statement:

This rule-making establishes the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery. The state allocated fishery will operate under the quota assigned to Maine by the Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) until such time that the quota is near to or is achieved. Notification will be then given that this fishery is closed. The episodic event fishery may be subsequently opened by notice to license holders, provided there is sufficient evidence of substantial resource remaining in territorial waters. Both the state allocation fishery and the episodic event fishery will operate under a daily landing limit of 120,000 lbs. and a weekly landing limit of 160,000 lbs. with one landing per day allowed for both catcher and carrier vessels. Additionally, for both state allocation and episodic event fisheries, vessels may only fish for and land menhaden from territorial waters Monday through Thursday. Daily reporting of Atlantic menhaden landings will be required for both the state allocated and the episodic event fisheries. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic event fishery, with a daily landing limit of 6,000 lbs. under gear restrictions. For both the state allocation and episodic event fisheries, a transfer at sea to a vessel utilizing menhaden as bait is considered a landing event. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- A definition of a dory, which has been a traditional method of transporting an individual harvester vessel's daily catch has been included in 41.30(1).
- A clarification has been provided that should the State of Maine receive an adjustment to its state allocation quota via an annual quota update or a quota transfer as outlined in the Atlantic States Marine Fisheries Commission Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner has the ability to extend or re-open the State Allocation Fishery program through notice (per 41.30(2)(A)).
- Harvest limits, daily (120,000 lbs.) and weekly (160,000 lbs.), for the state allocated fishery have been made consistent with limits within the episodic event fishery to simplify the monitoring and enforcement of these two distinct fisheries, as noted in 41.30(2)(B).

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- During the incidental catch and small scale fishery, harvesters are required to store fish in either barrels or totes, so that the 6000 lb. daily limit may be monitored and enforced both at sea and upon landing.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 32, Eel Regulations: 32.65, Closure of the 2018 Elver Season
Filing number: 2018-083
Effective date: 5/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

An investigation by Maine Marine Patrol has revealed that there have been significant illegal sales of elvers for cash that have not been recorded through the swipe card system. Based on the extent of this activity, it is very likely that the 2018 quota has already been met or exceeded. For this reason, an immediate closure of the fishery is necessary to prevent unusual damage and imminent depletion of the elver resource, caused by further exceeding the 2018 elver fishing quota.

Basis statement:

The sustainable management of Maine's elver fishery relies on adherence to the overall annual quota established by the Atlantic States Marine Fisheries Commission (ASMFC). For 2018, the overall quota was 9,688 lbs. Because the fishery is managed under this quota, other management measures have been eliminated in recent years, including weekly closed periods to allow passage, and limitations on gear type. As of 6:00 p.m. May 21, 2018, DMR was aware of 9,030.81 lbs. of elvers that had been legally reported through the swipe card system. However, an investigation by Maine Marine Patrol has revealed that there have been significant illegal sales of elvers for cash that have not been recorded through the swipe card system. Based on the extent of this activity, it is very likely that the 2018 quota has already been met or exceeded. For this reason, an immediate closure of the fishery is necessary to prevent unusual damage and imminent depletion of the elver resource, caused by further exceeding the 2018 elver fishing quota.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6706(3)
Chapter number/title: Ch. 11, Scallops: 11.14, Atlantic Sea Scallop Limited Entry Program
Filing number: 2018-089
Effective date: 6/24/2018
Type of rule: Major Substantive
Emergency rule: No

Principal reason or purpose for rule:

The statute requires the Department to develop a limited entry system for the issuance of scallop licenses.

Basis statement:

This regulation creates a limited entry system for the issuance of new scallop licenses, as required by 12 MRS §6706(3). It establishes two annual lotteries (one for drag licenses, one for dive licenses). The number of new licenses available is calculated by applying an exit ratio to the number of licenses retired by each gear sector in the previous calendar year. The regulation also establishes the eligibility criteria to enter the lottery and factors that would give an individual additional chances in the lottery. In developing the limited entry system, the Department consulted with the Scallop Advisory Council. The Council recommended that eligibility for the lottery be limited to individuals 18 years of age or older. The purpose of this requirement is to ensure that new licenses are awarded to individuals that have a good probability of being able to use the license. The scallop fishery occurs over the winter and spring, so would present a conflict for individuals still in high school. The SAC also felt that the fishery is a dangerous one, and that individuals should be a minimum of 18 years of age in order to safely participate as a captain in the fishery. Finally, the SAC recommended designing the lottery for drag licenses to ensure that there is opportunity for both younger (18-31 years of age) and older (31 years of age and older) fishermen.

Based on the comments received during the rulemaking process, the Department made the following changes:

- Amended the eligibility criteria pertaining to fishing violations to clarify that an individual is not eligible for the lottery if they have been convicted or adjudicated of a marine resource violation that resulted in the suspension of their license within the past seven years.
- Reduced the number of weighting criteria for extra draws in the drag lottery to being a primary crew member onboard an active commercial scallop drag vessel and/or having previously held a Maine commercial scallop drag license.
- Reduced the number of weighting criteria for extra draws in the dive lottery to being a primary crew tender for an active commercial scallop diver and/or having previously held a Maine commercial scallop dive license.

This regulation was submitted to the Legislature for review, pursuant to 5 MRS ch. 375, sub-ch. 2-A as LD 1767 during the second session of the 128th Legislature. The Legislature authorized the adoption of the rule only if the Department removed the additional weighting criteria that were provided for past participation as a license holder or crew member in the fishery. Instead, the Legislature required the inclusion of a method to increase the number of draws an applicant would receive based on the applicant's unsuccessful attempts in the lottery in consecutive years immediately preceding the lottery in which the applicant has submitted a lottery application. See Resolve 2017 ch. 43.

Fiscal impact of rule:

Enforcement of this rule will not require additional activity in this agency.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-093
Effective date: 6/2/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held April 25, 2018.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). At the Days Out meeting on April 25, 2018, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Trimester 2 (June 1 - September 30) may be four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Thursday and vessels are limited to landing 480,000 lbs. (12 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. (2 trucks). All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and may transfer no more than 120,000 lbs. weekly to a carrier. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-143
Effective date: 7/21/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out conference call held July 17, 2018.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). During the Days Out conference call on July 17, 2018, the Atlantic Herring Section determined landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Trimester 2 (June 1 - September 30) may be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and vessels are limited to landing 640,000 lbs. (16 trucks) weekly; and, may transfer to one carrier vessel per week up to 160,000 lbs. (4 trucks). All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and may transfer no more than 120,000 lbs. weekly to a carrier. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6446, 6447
Chapter number/title: Ch. 25, Lobster and Drab: 25.04, Lobster Trawl Limits
Filing number: 2018-145
Effective date: 10/1/2018 (*sunset December 31, 2019*)
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

12 MRS §6447 allows Lobster Zone Councils to propose to the Commissioner rules placing certain limitations on lobster and crab fishing license holders that fish in that zone. One of those limitations is the number of lobster traps allowed on a trawl. On December 20, 2017, the Zone B Council voted unanimously in favor to initiate a referendum, which would consider limiting the maximum number of traps on a trawl to five within the waters of Zone B from the six-mile line to the 25675 line. The proposal was supported by over two thirds of those Zone B license holders voting in a referendum conducted in February 2018. On April 25, 2018 the Zone B Council voted unanimously to recommend to the Commissioner to advance this proposal to rulemaking.

Basis statement:

This rule limits the number of lobster traps on a trawl to a maximum of five within the waters of Zone B from the six-mile line to the 25675 line. The rule was amended from what was originally proposed to become effective on October 1, 2018, to allow fishermen to modify their gear in compliance with the rule. The rule change was initiated by the Zone B Council, in accordance with 12 MRS §6447. A referendum of Zone B license holders was conducted in February 2018, and over two thirds of those voting in the referendum supported the proposed rule change. Following review of the referendum results at their meeting on April 25, 2018, the Zone B Council voted unanimously to recommend to the Commissioner to advance the proposal to rule-making. On May 22, 2018, the Department held a public hearing on the proposal and accepted written comment until June 1, 2018. The Commissioner reviewed the proposal and input received through the rule-making process in accordance with 12 MRS §6446, which provides that the Commissioner may adopt the rule if it is determined to be reasonable. While the rule is reasonable, based on the input received it is clear there remains a lack of consensus amongst both Zone B fishermen, as well as fishermen from other Zones who also fish the area. Therefore, a sunset of December 31, 2019 has been added to the regulation. The Department will facilitate conversations between all fishermen fishing in this area prior to the sunset to determine if the rule should be further modified based on any compromise achieved, or continued in its current form beyond the date of the sunset.

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6671
Chapter number/title: Ch. 7, Requirements for Municipalities Having Shellfish Conservation Programs
Filing number: 2018-151
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These changes are for the purpose of achieving greater clarity and consistency in the application of these requirements.

Basis statement:

This rule-making clarifies the existing requirements for municipalities having shellfish conservation programs by reorganizing sections to be more understandable and improving the wording of the regulation throughout the chapter. It also provides greater consistency throughout the chapter with regard to the establishment of various deadlines, using “days” throughout rather than “business days.” Finally, it amends the components of municipal shellfish management plans to be consistent with what the law allows.

Fiscal impact of rule:

No fiscal impact is anticipated.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§
Chapter number/title: Ch. 14, Oysters
Filing number: 2018-152
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

At their meeting in the fall of 2017, the Shellfish Advisory Council voted unanimously to recommend to the Department to go to rule-making to establish a minimum size of 2.5 inches for wild American oysters, with a 10% tolerance. This will minimize undersize product from being brought to market and provide opportunity for individuals who wish to harvest wild product that is not on lease or license sites.

Basis statement:

This rule creates a minimum size (2.5 inches) for American oysters, with a 10% tolerance. An exception is provided for aquaculturists who take or possess undersize oysters from their lease or license sites. The rule also establishes a 10% tolerance for European oysters, which already have a minimum size of 3 inches.

Fiscal impact of rule:

No fiscal impact is anticipated.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6071
Chapter number/title: Ch. 24, Importation of Live Marine Organisms
Filing number: 2018-153
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rule amends Ch. 24 to make clarifying changes, including improving and creating definitions as necessary, using consistent terminology, and providing updates throughout the chapter. The rule also allows the Commissioner, in consultation with the Aquatic Animal Health Technical Committee, to issue permits to an approved quarantine facility from facilities that do not otherwise meet the regulation requirements, under certain limited circumstances. Transfer from an approved quarantine facility is permitted only if post-import testing provides satisfactory evidence of freedom from pathogens of regulatory concern for which evidence of disease freedom of the import was not satisfied at the time of import. The rule allows for consideration of evidence other than direct testing of lots to provide evidence of disease freedom from Ceratomyxosis, Whirling disease, and PKD if importation is only in the form of embryos that have been iodine disinfected before and immediately after import, prior to the time of introduction to the waters of the receiving facility.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this Agency. These changes will be implemented by responsible staff in their routine work.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6851-B
Chapter number/title: Ch. 25, Lobster and Crab: 25.70, Legal Lobster Tail (Lobster Tail Weights)
Filing number: 2018-164
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Maine businesses purchasing and selling whole lobster tails requested guidance from DMR regarding the range of weights for lobster tails that would ensure those tails were legal for sale within Maine.

Basis statement:

This rulemaking was initiated at the request of Maine businesses purchasing and selling whole lobster tails. These businesses requested guidance from DMR regarding the range of weights for lobster tails that would ensure those tails were legal for sale within Maine. This rulemaking provides minimum (2.7 oz.) and maximum (14 oz.) weights for legal lobster tails in the shell for sale in Maine. Previously, the only measurement provided was the legal length of tail meat that had been removed from the shell. Providing a weight for tails in the shell ensures that all retail and wholesale establishments are buying and selling only tails that are from lobsters that are of legal size in Maine.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6749
Chapter number/title: Ch. 26, Sea Urchin Regulations (2018-2019 Harvesting Season)
Filing number: 2018-155
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation would establish open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2018-2019 season.

For Zone 1, 20-day seasons are proposed for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2017-18 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 15 days beginning in September into October (“early season”), or 15 days in December, January and February (“late season”); and, draggers may fish 15 days in December (“early season”), or February and March (“late season”).

For Zone 2, 45-day seasons are proposed for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2017-18 season. The Sea Urchin Zone Council recommended the selection of these particular days for divers, rakers and trappers who may fish 38 days in September through December (“early season”), or 38 days in December through March (“late season”); and, draggers may fish 38 days in October through January (“early season”), or December through March (“late 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 2018-2019, which is the same as the 2017-18 season. Zone 2 divers, rakers and trappers may fish 15 days in September, October, November and December (“early season”), or 15 days in December, January, February and March (“late season”); Zone 2 draggers would have 15 days in October, November, December, and January (“early season”), or 15 days in December, January, February and March (“late season”). The particular days mirror days which the Sea Urchin Zone Council recommended for the Zone 2 season calendars.

This regulation also modifies the spatial closure around Cat Ledges, west of Southport Island. Recommendation from the Sea Urchin Zone Council was received to extend the closure time of this area for continued collaborative research potential. The proposed regulation clarifies the daily reporting requirement and substitutes the term “reporting device” for “transaction card” to allow for the use of more inexpensive technologies should they become available.

Basis statement:

This regulation establishes open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2018-2019 season. For Zone 1, 20-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2017-2018 season. For Zone 2, 45-day seasons are established for divers, trappers, rakers and draggers in 2018-2019, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2017-2018 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers,

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trappers, rakers and draggers in 2018-2019. This regulation also modifies the spatial closure of Cat Ledges Area and removes the sunset provision. The regulation clarifies the daily reporting requirement and substitutes the term “reporting device” for “transaction card” to allow for the use of more inexpensive technologies should they become available.

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations: 34.07, Atlantic Halibut (Hippoglossus hippoglossus)
Filing number: 2018-156
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

In recent years, state waters catch of Atlantic halibut has been steadily increasing. Federal waters catch has also been increasing, but the overall Allowable Biological Catch (ABC) has remained relatively static. Maine exceeded its State Waters Sub-Annual Catch Limit (ACL) in 2015 and 2016, and in 2016, total catch nearly exceeded the ABC, which would have triggered implementation of restrictive Accountability Measures for the federal groundfish fishery. As a result, new Accountability Measures have been imposed that would restrict all federal permit holders from possessing halibut (in the year subsequent) should the ABC be exceeded. In 2017, the halibut stock assessment was also updated, and resulted in a lower ACL of 104 mt, or 21.8 mt for the State Waters Sub-ACL (a reduction from 25 mt in 2017). The new ACL will be effective at the start of the federal fishing year and state waters season on May 1, 2018. In order to remain within the State Waters Sub-ACL, and to prevent the ABC from being exceeded and Accountability Measures being triggered, the Department took emergency action under 12 MRS §6171(3)(C) to reduce catch in the state waters fishery by the following measures: 1) reducing the length of the state waters halibut season by ten days at each end of the season; 2) reducing the number of hooks to 250; and 3) imposing a prohibition on possession of halibut by those license holders who have been issued state commercial halibut tags when operating seaward of the territorial waters boundary. The emergency rule went into effect on April 23, 2018. Consistent with what was adopted as an emergency regulation, the Department is adopting these changes as a regular rule to ensure long-term compliance with the ACL.

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 40, Smelt Regulations
Filing number: 2018-157
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

DMR received a request from fishermen who have traditionally fished for smelt with hook and line in the fall in Zone 1. DMR has determined that the minimal level of fishing effort anticipated will not have a negative impact on the smelt resource and therefore is adopting this change to allow this activity.

Basis statement:

This rulemaking was initiated at the request of fishermen who have traditionally fished for smelt with hook and line in the fall in Zone 1. The rule allows individuals to fish for smelt by hook and line between October 1 and December 31, or by hook and line through the ice when ice is present. Prior to this rule change, the taking of smelt in Zone One (1) was allowed only by hook and line through the ice. The existing four-quart limit applies.

Fiscal impact of rule:

No fiscal impact is anticipated.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171-A, 6856
Chapter numbers/titles: **Ch. 94** (*New*), Sanitary Control of Molluscan Shellfish
Ch. 15 (*Repeal*), General Shellfish Sanitation Requirements
Ch. 16 (*Repeal*), Uniform Physical Plant Equipment and Operation
Ch. 17 (*Repeal*), Shucker-Packer
Ch. 18 (*Repeal*), Shellstock Shipping
Ch. 19 (*Repeal*), Reshipping
Ch. 20 (*Repeal*), Depuration
Ch. 21 (*Repeal*), Shellfish Relay
Ch. 23 (*Repeal*), Standards for Closure of Contaminated or Polluted Flats
Filing number: 2018-158 thru 166
Effective date: 8/21/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The intent of this adoption and these repeals is to avoid the necessity of amending multiple regulatory chapters as the Model Ordinance is updated over time. Instead, when the Model Ordinance is updated, the Department will undertake rule-making to amend this new chapter to specify the current version.

Basis statement:

This rulemaking repeals certain existing chapters of regulation pertaining to the sanitary control of molluscan shellfish (Ch. 15, 16, 17, 18, 19, 20, 21, and 23) and replaces them with a single chapter (Ch. 94) that adopts the *National Shellfish Sanitation Program Model Ordinance* (NSSP MO) by reference. Existing Department requirements for the retail trade and various permits that are not currently included in the NSSP MO, have been incorporated in the new chapter. Some of these existing requirements have been modified to provide technical clarity.

The original proposed rule would have also repealed Ch. 9, *Harvester: Shellstock Harvesting, Handling and Sanitation*. Maine Marine Patrol provided comments that they would prefer to retain Ch. 9 to ensure clarity and enforceability of these requirements. Due to these comments, Ch. 9 is not repealed.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)C
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-186
Effective date: 9/12/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC as determined by a memorandum dated September 10, 2018 indicating that the assigned Trimester 2 quota for Area 1A is projected to be fully consumed by Wednesday, September 12, 2018 and thus, zero landing days would commence on Thursday, September 13, 2018.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). ASMFC monitors the consumption of the available Trimester 2 (June 1 - September 30) quota via NOAA Fisheries Atlantic Herring Quota Monitoring site and will initiate the move to zero landing days when the Area 1A quota has reached 95% of the available quota allowance. Full utilization of the Trimester 2 quota has been projected and thus, ASMFC designates zero landing days for the Atlantic herring fishery beginning 12:01 a.m. on Thursday, September 13, 2018. Fish taken on Wednesday, September 12, 2018 may be landed on Thursday, September 13 until 12 p.m. The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(B)
Chapter number/title: Ch. 41, Menhaden: 41.30, Menhaden Program
Filing number: 2018-199
Effective date: 9/15/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and is expected to remain present into the fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait. Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30(2)(A). The Commissioner has determined that it is necessary to take emergency action to implement a further reduction on the daily catch (from 120,000 lbs. to 80,000 lbs.) to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2018 was 2,439,114 pounds, which was fully consumed prior to commencing participation in the Episodic Events Set-Aside program on July 22, 2018. The quota for the episodic event fishery has also been fully exploited and that fishery was subsequently closed on August 11, 2018. Since that time, the fishery has been operating as an incidental and small scale fishery, with a daily limit of no more than 6,000 lbs. For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and are expected to remain present into the fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait.

Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30(2)(A), effective September 17, 2018. As was the case under the State Allocation fishery previously, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily landing limit is reduced by this emergency regulation from 120,000 lbs. to 80,000 pounds. There remains a weekly limit of 160,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per 24-hour period. All landings must be reported daily via email to menhaden.dmr@maine.gov.

The Commissioner has determined that it is necessary to take emergency action upon reopening of the State Allocation fishery to implement the reduction of the daily limit from 120,000 lbs. to 80,000 lbs. to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)C
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-219
Effective date: 9/29/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to establish the open harvest days for the Atlantic herring fishery Trimester 3, October 1 - December 31. The Atlantic Herring Section held a conference call on September 18, 2018 to determine the landing days for Trimester 3 and designated five consecutive landing days for all vessels.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). The Atlantic Herring Section held a Days Out conference call on September 18, 2018 to determine the landing days for Trimester 3 (October 1 - December 31) and designated five consecutive landings days for all vessels. Trimester 3 will open at 12:01 a.m. on Monday, October 1, 2018 and harvesters may land Atlantic herring through to 11:59 p.m. Friday, October 5. Starting October 7, 2018, landing of Atlantic herring will resume the schedule of 6 p.m. on Sundays through to 6 p.m. on Fridays. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6722
Chapter number/title: Ch. 11, Scallops: 2018-2019 Season
Filing number: 2018-243
Effective date: 11/14/2018
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 lessons learned from the previous season.

Basis statement:

This rule establishes the 2018-2019 scallop fishing season. As in the 2017-2018 season, there is a daily possession limit of 15 gallons for Zone 1 and Zone 2, and a daily possession limit of 10 gallons for Zone 3. For Zone 1, a 60-day season for draggers begins on December 10, 2018 and the last day of the season is March 28, 2019. For Zone 1, a 60-day season for divers starts on November 20, 2018 and the last day of the season is April 20, 2019. For Zone 2, a 70-day season for draggers starts on December 3, 2018 and the last day of the season is March 28, 2019. For Zone 2, a 70-day season for divers starts on December 1, 2018 and the last day of the season is April 13, 2019. For Zone 3, a 50-day season for draggers begins on December 3, 2018 and the last day of the season is March 27, 2019. For Zone 3, a 50-day season for divers begins on December 1, 2018 and the last day of the season is March 28, 2019.

In Zone 1, Casco Bay, Sheepscot River, Damariscotta River, Muscle Ridge, and W. Penobscot Bay Areas, as well as Whiting/Dennys Bays in Zone 3 are Limited Access Areas with reduced harvesting days. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest all days during January 2019, in addition to open Zone 2 calendar days throughout the season.

DMR is maintaining the following targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops: Lower Muscle Ridge, Eastern Casco Bay, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

This rule removes the sunset provision that capped the vessel limit of dive harvested scallops to 30 gallons when two or more licensed scallop divers are utilizing the same platform.

This rule removes the specific drag size gear restrictions in the Kittery area (currently 5'6"), Swan's Island Conservation area (currently 8'6"), and Gouldsboro Bay (currently 4'6"). Harvesters can utilize any drag size, provided it does not exceed the State maximum of 10' 6."

In consideration of comments, the Department made the following changes:

- Zone 2 dive calendar was modified to re-distribute days from March and April into January and February, 2019.
- Section 11.10 was included and also modified to be consistent with section 11.07.

Fiscal impact of rule:

Enforcement of this rule 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: **Ch. 10**, Clams and Quahogs: **10.05**, Taking of Quahogs in the Sub-tidal Waters of the New Meadows, Brunswick and West Bath
Filing number: **2018-253**
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

During the spring of 2017, the Department was made aware that harvesting of quahogs by drag was occurring in an area below the New Meadows Lakes. The Department has been monitoring the status of the quahog resource in the upper New Meadows since 2012 and has documented a decline in the population. The purpose of the proposed rule is to extend the management measures that had previously been put in place over the known extent of the quahog resource, to better manage the quahog resource to ensure the future economic viability of the fishery.

Basis statement:

The adopted regulation expands certain existing limitations on the subtidal harvest of quahogs in the New Meadows River. Under the existing regulation, the line north of which the harvest restrictions apply is the Bath/State Road in Brunswick and West Bath. The adopted regulation draws a new line north of which the limitations apply, from the northwestern tip of Indian Point, southeasterly to northern tip of Bragdon Island, continuing east to Bragdon Rock, and then continuing in a northeasterly direction to the point of land at the end of Close Reach Rd, West Bath, 43°51'21"/069°52'1". By specifying this new line, the existing restriction on the method of harvest to hand digging only, the prohibition on harvesting during the winter months (January-March), and the prohibition on harvesting on Sundays, would extend over the known subtidal quahog resource, in order to better manage the quahog fishery in this area. The rule sunsets the expanded limitations on December 31, 2020. The Department will conduct surveys to determine whether the rule should be continued beyond that date.

In consideration of the comments, the Department made the following modifications:

- Clarified that the expanded area includes those waters west of Rt. 24
- Clarified that the limitations apply only to harvest in the subtidal
- Included a sunset, so that the Department can conduct a survey of the area to determine if the limitations should be continued beyond that date.

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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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6446, 6447
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
Filing number: 2018-254
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

12 MRS §6447 allows Lobster Zone Councils to propose to the Commissioner rules placing certain limitations on lobster and crab fishing license holders that fish in that zone. One of those limitations is the number of lobster traps allowed on a trawl. On November 27, 2017, the Zone A Council voted unanimously to initiate a referendum, which would consider eliminating the three traps on a trawl limit maximum in Zone A and allow fishing longer trawls (more traps on a trawl). The proposal was supported by over two-thirds of the Zone A license holders voting in a referendum conducted in June 2018. On August 29, 2018, the Zone A Council voted unanimously to recommend to the Commissioner to advance this proposal to rule-making.

Basis statement:

Initiated by the Zone A Council in accordance with 12 MRS §6447, this rule eliminates the Hancock County Trawl Limit area in Zone A. This eliminates the three traps on a trawl maximum in Zone A and allows license holders to fish longer trawls (more traps on a trawl). The proposal was supported by over two-thirds of the Zone A license holders voting in a referendum conducted in June 2018. On August 29, 2018, the Zone A Council voted unanimously to recommend to the Commissioner to advance this proposal to rule-making.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2018-255
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to amend the open harvest days for the Atlantic herring fishery Trimester 3, October 1 – December 31. The Atlantic Herring Section held a conference call on November 13, 2018 to re-evaluate the landing days for Trimester 3 and designated seven landing days for all vessels.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). The Atlantic Herring Section held a Days Out conference call on November 13, 2018 to amend the landing days for Trimester 3 (October 1 – December 31) and designated seven landings days for all vessels. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 37, Freshwater Fish Regulations
Filing number: 2018-256
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the proposed rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

Basis statement:

This rule makes it unlawful to take or possess brown trout which are greater than 25 inches in total length, from the coastal waters of the State of Maine. The rule mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6174-A
Chapter number/title: Ch. 91 (New), Spat Collection
Filing number: 2018-257
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for adopting the rule is to specify the limitations that will apply to spat collection under the spat collection license.

Basis statement:

The Department of Marine Resources has adopted a new chapter of regulation for the collection of scallop spat under the spat collection license (12 MRS §6074-A). The rules create a maximum size for the possession and sale of scallop spat of 2 inches. It limits a license holder to no more than 15 vertical lines, with a maximum of 30 spat collection bags per line. The rule limits the size of bags that may be used, and specifies marking requirements. It requires that all collection equipment is removed from the coastal waters during the month of July, and specifies the records a license holder must retain.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6810-A
Chapter number/title: Ch. 110, Marine Harvesting Demonstration License
Filing number: 2018-258
Effective date: 11/24/2018
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The intent of the rule is to provide consistency between the statute and associated rule governing the Marine Harvesting Demonstration License.

Basis statement:

Pursuant to 12 MRS §6810-A(7-A) Marine Harvesting Demonstration License holders are exempt from prohibitions on raising and hauling lobster traps during closed periods as specified in 12 MRS §6440 subsection 2. This rule removes language from the existing regulation, which did not recognize the exemption provided for in statute. This is a minor technical change intended to provide consistency between relevant statutory provisions and the regulation.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.08, Targeted Closures: (7), Gouldsboro and Dyers Bays
Filing number: 2018-271
Effective date: 12/16/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is 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 the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in the inner portions of Gouldsboro and Dyers Bays to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. This areal closure is within Zone 2.

Gouldsboro and Dyers Bays

This area opened for harvest on December 3rd, 2018 with approximately 40 boats concentrated within Gouldsboro Bay. Initial reports from industry indicated that rate of time to reach limits started to increase by Wednesday, December 5th – day 3 of harvesting. Boats had started to move around within Gouldsboro Bay and focus shifted towards the mouth of the Bay and also with several boats going into Dyers Bay. Marine Patrol confirmed on Friday, December 7th, 2018 that those boats working at the mouth of the bays were taking longer, into the afternoon, to reach their daily limit, with the boats harvesting inside the bays not reaching their limit at all. Reports received both from industry and Marine Patrol on Monday, December 10th, 2018 – day 6 of harvesting, indicate that many boats have moved toward the mouth of the bays, are working outside of the bays, or have left the rotational area all together. There were still a few boats remaining inside the bays on Monday (approximately 5 observed) and they were not able to reach their daily limit.

Spring survey stations were concentrated in the bays. This also represents where most the effort has taken place. This area will have been open to harvest for 10 days. This is 3 additional harvest days than was previously experienced in December 2015. There were also more active harvesters observed in the area in 2018. Denoted is a relative abundance of harvestable biomass, shown as size frequency of scallops present in the rotational area. While growth of the resource occurred during the closure period, it wasn't at a level to sustain concentrated harvesting.

The last day of harvesting for scallop draggers will be Friday, December 14, 2018. The final day of harvesting for scallop divers will be Wednesday, December 19, 2018. These specific days allow for equal harvest opportunity of ten days. This action stems from a

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Rules Adopted January 1, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is 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 the Gouldsboro and Dyers Bays within the Gouldsboro and Dyers Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

Enforcement of this rule 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, 2018 to December 31, 2018
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: 11.08, Targeted Closures: (8), Machias and Little Machias Bays
Filing number: 2018-278
Effective date: 12/30/2018
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement a conservation closure in Machias and Little Machias Bays within the Machias Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is 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 a portion of the Machias Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in Machias and Little Machias Bays to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. These areal closures are within Zone 2.

This area opened for harvest on December 3rd, 2018 with approximately 15 boats concentrated within Little Machias Bay. This rate of effort in Little Machias remained steady during the second week, with several boats venturing outside of the bay on good weather days. By week three, less than 5 boats remained in Little Machias. Vessels either left the rotational area or have moved outside to harvest in deeper waters as additional tows were needed to reach the daily limit inside the bay. By week four, the few boats that remain have been unable to reach the daily limit. Effort within Machias Bay was very low, a reported 3 boats were in the area within the first week of harvesting before leaving in search of better resource.

Survey stations observed in April 2018 indicated no presence of scallops during the study in Machias Bay, but healthy resource south of Little Machias Bay. However, there was sublegal and seed scallop resource observed in the Cross Island Narrows. There was an increase in available legal product during the closed years.

Most of the harvestable biomass was located outside of the Machias and Little Machias Bays. This closure would protect areas that have experienced removals of harvestable biomass.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is 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 a portion of the Machias Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

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