

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2022-227, 228
Effective date: 1/1/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are designed to provide for the effective conservation and management of inland fish throughout the state and provide for a variety of fishing opportunities. The rule sets specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives. The list of waters contains information regarding each amendment.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2023 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition of three waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives and are the result of the vetting process of the fisheries division law and rule committee. Biological information, public outreach, angler counts, survey results, and other available data on individual water bodies are reviewed when crafting these rules. These rules will have an effective date of January 1, 2023.

The rule-making packet was advertised to include 131 individual proposals presented in the following "theme" categories: State Heritage Fish Waters; Special Need; Salmonid Growth and Performance; Expanded Angler Opportunity; S-8 (*Restricted to two lines per person*) Waters Review; Partial Simplification to General Law; Complete Simplification to General Law; Errors, Conflicts, and Confusion; New Special Regulation Listing; Transition to "Only 1 brook trout may exceed 12 inches"; and Transition to "Only 1 brook trout may exceed 14 inches".

A public hearing was held on August 22, 2022 (minutes attached) with seven citizens in attendance. The Department also received 61 written comments from individuals/organizations (attached) which were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration. A general summary of public comment and testimony and the Department's response is attached.

On October 26, 2022, the Commissioner brought forward the original proposal for adoption by the Advisory Council. The eight (8) members present voted unanimously in favor to adopt the fishing regulations package for 2023 as presented.

Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 353 Water Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled **Open Water & Ice Fishing Laws and Rules (January 1, 2023 – December 31, 2023)** and by authority of Title 12 MRS Section 12452, is an official consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of these rules.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13061
Chapter number/title: Ch. 13, Watercraft Rules (Boating Events)
Filing number: 2022-025
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

LD 394 titled “An Act To Protect Maine's Loons and Other Wildlife in the Issuance of a Permit To Hold a Regatta, Race or Boat or Water-ski Exhibition” was introduced during the first regular session of the 130th Legislature. The bill was then carried over to the second regular session (in 2022). In lieu of voting for a final resolution to the bill, a letter from the Joint Standing Committee on Inland Fisheries and Wildlife was sent to the DIFW requesting that appropriate rulemaking on the subject be undertaken and a report back to the committee by February 1, 2022 would be required. The purpose of this rulemaking will be to condition and restrict a boating event permit in order to protect public safety, wildlife and wildlife habitat and water quality.

Basis statement:

LD 394 titled “An Act To Protect Maine's Loons and Other Wildlife in the Issuance of a Permit To Hold a Regatta, Race or Boat or Water-ski Exhibition” was introduced during the first regular session of the 130th Legislature. The bill was then carried over to the second regular session (in 2022). In lieu of voting for a final resolution to the bill, a letter from the Joint Standing Committee on Inland Fisheries and Wildlife was sent to the DIFW requesting that appropriate rulemaking on the subject be undertaken and a report back to the committee by February 1, 2022 would be required. The basis for the bill being submitted to the Legislature was a loon mortality found on Watchic Lake after the conclusion of a motorboat race and public concern of increased loon mortality due to motorboat race events. These rules will condition and restrict a boating event permit in order to protect public safety, wildlife and wildlife habitat and water quality.

The rule language will be placed within the current watercraft related rule Chapter 13. The rule will address application details, expectations and conditions that must be adhered to for the event applicant(s) and participants(s) and consequences for the permit holder(s) as well as participants if violations occur. Three new sections of the rule chapter have been created as follows to set conditions and restrictions for each type of event: Motorboat race event; Boat regatta, parade, non-motorized boat race, boat exhibition or water-ski exhibition, and event conditions and restrictions. Applicants for motorboat race events will submit a map of the course showing any possible safety hazards and loon nesting sites (safety hazards may include docks, sunken logs, ledges or other objects) within or adjacent to the course. The application will include resources for the applicant to research loon nesting locations by contacting the Department’s Wildlife Resource Assessment Section bird biologist. The rule also clarifies the Commissioner’s authority based on people’s behavior to deny a future permit. The new rules will have an effective date of May 1, 2022.

The Department held a public hearing on the proposed rules on November 1, 2021 and there were 16 citizens in attendance with 13 people giving oral testimony. The Department also received 60 comments in writing (copies attached). A summary of comments is attached with Department responses.

Based on public feedback the Commissioner recommended amendments to the original

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proposal which are highlighted in the attached rule language. In section 13.10 specific language clarifying the need to provide information on loon nesting sites and any safety hazards as part of the application process was added. The role of the spotters was also clarified. The number of aquatic inspectors was reduced from two to one to make it more reasonable and the Department would be communicating with the Department of Environmental Protection regarding the training necessary to become an inspector and provide more opportunity during the course of the year. The number of days to submit notice of the motorboat race to the municipality was also corrected from 30 to 60 days to remain consistent with statute. The reference to a fee was also struck in section 13.10 and 13.11. Currently, applications for boat race events did not require a fee and staff did not feel a fee would be necessary as there was no anticipated increase in applications or administrative burden.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11152
Chapter number/title: Ch. 16, Hunting; 16.05, Possession, Transport and Labeling of Big Game; 16.07, Deer Hunting
Filing number: 2022-116
Effective date: 8/8/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule covers changes to antlerless deer harvest and the antlerless deer permit system. After over a decade of doe harvests significantly below objective, it has become clear that our current system of Any-deer Permits is not able to provide desired levels of doe harvest in much of the state. In 2021-2022, IFW undertook a review of the deer permit system, which included internal review as well as a stakeholder working group. The goal of this review was to develop recommendations that would improve the Department's ability to meet doe harvest objectives while maintaining fair and equitable antlerless harvest opportunity. Additionally, the system was reviewed to identify potential sources of revenue to aid in the acquisition and management of deer wintering habitat, primarily in northern Maine. As a result of this review, a list of recommended changes to Maine statutes and Department rules was developed, and the recommended changes to Department rules are presented in this rulemaking. A report resulting from this review is available on the [MDIFW website](#) at the legislative updates page under LD 116. These rules will have an effective date of August 8, 2022 which is also the effective date of new legislation passed during the 2nd regular session of the 130th Legislature (Public Law 2022 Chapter 599).

Basis statement:

This rule covers changes to antlerless deer harvest and the antlerless deer permit system. After over a decade of doe harvests significantly below objective, it has become clear that our current system of Any-deer Permits is not able to provide desired levels of doe harvest in much of the state. In 2021-2022, IFW undertook a review of the deer permit system, which included internal review as well as a stakeholder working group. The stakeholder group included representatives of the Maine State Legislature, MDIFW Advisory Council, Sportsman's Alliance of Maine, Maine Professional Guides Association, National Deer Association, Maine Woodland Owners, Maine Deer Hunters Facebook group, Maine Farm Bureau Association, Maine Forest Products Council, and MDIFW. Historic deer harvest data, license sales figures, any-deer permit applicant data, permit system information from other jurisdictions, and current Maine statutes and rules were summarized for review by the group.

The goal of this review was to develop recommendations that would improve the Department's ability to meet doe harvest objectives while maintaining fair and equitable antlerless harvest opportunity. Additionally, the system was reviewed to identify potential sources of revenue to aid in the acquisition and management of deer wintering habitat, primarily in northern Maine. As a result of this review, a list of recommended changes to Maine statutes and Department rules was developed and this was used to amend Chapter 16 rules. A report resulting from this review is available on the [MDIFW website](#) at the legislative updates page under LD 116. These rules will have an effective date of August 8, 2022 which is also the effective date of new legislation passed during the 2nd regular session of the 130th Legislature (Public Law 2022 Chapter 599).

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The rule transitions away from Any-deer Permits (ADP), which allow a hunter to use their hunting license to take an antlered deer anywhere in the state or an antlerless deer in a designated area, to antlerless permits, which will allow a hunter to take an antlered deer anywhere in the state and an additional antlerless deer in a designated area. Permits will be distributed via a one-round lottery where hunters may select two preferred permit areas (down from three), and permits remaining after the lottery will be made available for direct sale, in accordance with 12 MRS §11152 sub-§3. To provide consistency throughout the rule reference to the October archery season will now be referred to as the "regular archery and crossbow deer hunting season" to eliminate confusion on what harvest methods will be allowed. The rule will also eliminate the connection between issuing permits and allowing antlerless harvest without a permit during the Youth Deer Hunting Day and Regular Archery hunting seasons. Previously, if a WMD has received an allotment of permits for the year, a hunter during the Youth Deer Hunting Day or Regular Archery season may take an antlerless deer under the authority of their hunting license without a permit in that WMD. The new rule gives the Commissioner the authority to designate which WMDs will allow antlerless harvest without a permit during these seasons. Initially, we recommend allowing antlerless harvest without a permit statewide on Youth Deer Hunting Day and in WMDs 12, 13, 15-18, 20-26, and 29 during the Regular Archery Season for the 2022 hunting season.

A public hearing was held on May 2, 2022 and no members of the public attended and no testimony was received. Four written comments were received on the proposal (attached). One comment was rather in depth with multiple questions which were addressed by the Department's deer biologist. One comment was more about exp archery areas than anything but offered full support of the changes being proposed. The two remaining comments, including comments from the National Deer Association, were also in support of the proposed changes.

After review of the comments and discussion with staff, the Commissioner recommended two non-substantive changes to the proposal. To be consistent throughout the rule and clarify harvest methods, any reference to the October archery season would be referred to as the "regular archery and crossbow deer hunting season". Also, 16.07 (G.) was further amended to include persons 65 years of age and older for crossbow hunting exceptions along with disability permits. This is currently in statute, but the Department felt it would be beneficial to also include the reference in rule.

The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10053, 10104, 12301-A
Chapter number/title: Ch. 16.06(I.E.), Hunting (Submission of Teeth)
Filing number: 2022-128
Effective date: 7/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. These minor changes will improve the collection and the analysis of biological data.

Basis statement:

Since 2016, trappers and hunters must submit biological samples when registering bobcat, fisher, marten, and river otter. These samples allow the Department to monitor age and sex to ensure that harvest levels are sustainable. Multiple options are available to provide some flexibility in case the hunter/trapper wants to keep the skull intact. For bobcat, a lower incisor tooth, lower canine tooth, or lower jaw must be submitted, along with a small piece of tissue. Determination of gender for bobcats can be challenging, so tissue is collected to test and compare DNA gender to the hunter/trapper assessment. Tooth samples previously were labelled with Month, Year, Sex, Species, Town, and Method (Hunt or Trap).

Bobcats are typically taken and registered in small quantities (1-2/trapper or hunter/season) and the incisor tooth is often removed at the time of registration (bobcats must be registered and tagged by DIFW staff). Revising the rule to require a label that includes Species, Sex, and Seal number will ensure that all the registration information will be tied to the biological data. One recent change in the web-based registration system was to collect Hunt Type (e.g., hunting with dogs, bait, calling, etc.) for bobcat, coyote, red fox, and gray fox. Should there be any changes to the data collected in the registration system in the future, the seal number will provide a link to all this information.

A public hearing was held on June 13, 2022 and no members of the public were in attendance. One written comment on the proposal was received (attached). The individual seemed to have misunderstood the process for registering bobcat and data collection and this was clarified by the Department's furbearer biologist.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12301-B
Chapter number/title: Ch. 16.06, Hunting: Registration, Data Collection and Tagging of Big Game and Furbearing Animals
Filing number: 2022-225
Effective date: 11/22/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Chapter Law 704 became law on May 2, 2022 and requires the Department to allow electronic registration of turkey beginning with the spring 2023 wild turkey hunting season. This required the Department to adopt rules to implement the new law. The rules may include exceptions to or electronic means of compliance with any of the requirements of this chapter for a person who registers a turkey in accordance with the rules.

Basis statement:

This rule makes amendments to Chapter 16 to allow hunters to register wild turkeys electronically and requires the hunter to attach a tag bearing the seal number issued by the electronic registration system, until the turkey is processed and packaged for consumption. The rule also clarifies that if a wild turkey is registered electronically, all radio transmitters must be submitted, or arranged for submission, to the Department within 5 days. Any leg bands or wing tags can be retained by the hunter after reporting and following approval by the Department.

The Legislature directed the Department to allow self-registration or electronic registration of wild turkeys starting with the spring 2023 season (Public Law 2022 Chapter 704). Essentially, hunters through a system developed by the Department, will be able to self-register their turkey without needing to take them to an in person registration station. Implementing this new law will require program and procedural changes in our systems and database, but we also had to look at the rule and determine if any changes were required. There were a couple of minor changes to the wild turkey registration requirements under Chapter 16 that would need to be amended. One was to clarify that if a turkey is registered electronically and not at an in person station the hunter had to submit any transmitters, bands or wing tags to the Department. The Department originally proposed these be returned within 5 business days. The Department records information from those, and we have quite a bit of ongoing banding work for turkeys as part of our management. The other part of the proposal would require the hunter to attach a tag bearing the seal number that would be issued by the electronic registration system. That would serve as a replacement for the plastic seal that the hunter would get at the registration station.

A public hearing on the proposal was held on October 13, 2022. There were no members of the public in attendance and no testimony received. One written comment was received. The comment from the Maine Professional Guides Association requested the Department review the proposed language and remove the 5 day requirement for submission of leg bands or wing tags as hunters sometimes liked to keep these. The comment was otherwise supportive of the proposal.

After review of public comment and discussion with staff, the Commissioner recommended a slight change to the original proposal and modified the language so that hunters would only need to comply with the 5 day requirement to return or arrange for return

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of any transmitters found on harvested birds. Leg bands or wing tags would be able to be retained by the hunter after reporting and approval by the Department.

The Advisory Council met on October 26, 2022 and of the eight (8) members participating, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11152, 11402
Chapter number/title: Ch. 16.07, Hunting: Deer Hunting (Antlerless Deer Permit Allocations and expanded Archery Areas)
Filing number: 2022-127
Effective date: 8/8/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. In addition to annual recommendations for each WMD, we also recommend issuing antlerless deer permits in two deer management subunits. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of deer-human conflict. Two additions to the rule for the expanded archery program include land area impacting the towns of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27. Additional language has been included to better describe the expanded archery season including information on allowable weapons and required permits. These language changes do not change the way the season functioned in 2021 and prior, they only clarify or add specificity.

Basis statement:

Antlerless deer permit numbers are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). Antlerless deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. In addition to annual recommendations for each WMD, we also recommend issuing antlerless deer permits in two deer management subunits. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of deer-human conflict. Two additions to the rule for the expanded archery program include land area impacting the towns of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27. Additional language has been included to better describe the expanded archery season including information on allowable weapons and required permits. These language changes do not change the way the season functioned in 2021 and prior, they only clarify or add specificity.

For 2022, the Department will issue a total of 96,340 ADP to be issued across 24 WMDs, including 460 antlerless deer permits in two deer management subunits (25a and 26a), to meet a doe harvest objective of 13,809 does, which is 9.1% less than 2021. Overall, the number of permits allocated will be much lower than the 153,910 any-deer permits allocated in 2021; with the change in permit type from any-deer permits to antlerless deer permits, we expect much higher permit fill rates, so fewer permits will be needed to achieve comparable levels of doe harvest. Additions to the expanded archery areas to include portions of North Yarmouth and Yarmouth as well as the coastal islands of WMD 27 are included. The North Yarmouth-Yarmouth addition covers an area where firearm discharge is prohibited except for shotguns and in adherence to state and local restrictions on discharge in proximity to dwellings, businesses, schools, etc. The off-shore islands of WMD 27 are somewhat of an

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extension to the WMD 29 expanded archery area; on those off-shore islands with deer, it is very difficult to limit population growth given mild climate, lack of predators, and low hunting pressure. While expanded archery is typically applied to areas with discharge ordinances, the coastal islands have historically been an exception to this. The language changes to clarify and add specificity to the definition of the expanded archery season will not change the previously established function of that season.

A public hearing was held on June 14, 2022 and no members of the public were in attendance. One written comment on the proposal was received (attached) regarding the expanded archery area in Scarborough. The Department reviewed the request and determined it was ultimately a minute change which would move the existing boundary one road over into a town with a discharge ordinance which was already covered under expanded archery. The Department did not move forward with the requested change.

One small amendment to the proposal in the expanded archery areas was made under “E. Towns of Cumberland, Falmouth, North Yarmouth, Portland, Scarborough, South Portland, Westbrook, Windham, and Yarmouth.” After the rule was advertised an error in road names in the Yarmouth area was discovered and needed to be corrected. This did not change the map boundary but made the change to list the correct road names.

This rule will have an effective date of August 8, 2022 to be implemented in conjunction with previous rule filing 2022-116, Ch. 16 – Hunting (Antlerless deer permit system changes).

The Commissioner brought forward the amended rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting (Permit Allocations)
Filing number: 2022-093
Effective date: 5/25/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Moose permit areas are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. This allocation also addresses ongoing concerns about the impacts of winter tick on moose survival and productivity while continuing to provide hunting opportunity across Maine's moose range.

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2022 season. The Department advertised a proposal on April 6, 2022 with a recommended total of 4,080 permits be issued in order to meet moose harvest objectives. This is an increase of 50 permits from 2021. These numbers include the 550 permits for the Adaptive Management Unit hunt referred to as WMD 4a which was implemented beginning in 2021. Permits may be valid for either antlered moose, antlerless moose, or a moose of either sex, depending on the WMD and specific season in which the permit authorizes hunting. Moose permit allocations are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. Moose permit recommendations are based on removal rates of antlered and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature antlered moose for viewing by the general public. The attached memorandum from the Department moose biologist Lee Kantar outlines the moose population status and recommended actions by WMD.

The Department did not make any changes in bull or any-moose permits but did issue an increase of 50 antlerless permits in WMD 8 where the population is stable to decreasing. This is “ground zero” for winter tick impacts and the best source of data on moose and winter tick. Adaptive moose hunt season dates were also adjusted to reflect the current calendar year.

A public hearing on the proposal was held on April 26, 2022, but no members of the public attended. One written comment was received on the proposal. The comment was acknowledged and forwarded to the Commissioner’s Advisory Council and staff for consideration. The comment was in opposition to the proposed rule and offered nine separate statements. The Department’s response to each statement is attached as well as Mr. Kantar’s memo which summarizes the Department’s moose permit allocations for the 2022 hunting season and review of moose management actions.

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The Commissioner recommended no changes to the original proposal. The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11251, 11351
Chapter number/title: Ch. 16, Hunting: 16.09, Bear Hunting
Filing number: 2022-053
Effective date: 4/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule. Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

Basis statement:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule." Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

The rule creates a bag limit for bear of one by hunting with a possession limit of two bears in total. These limits are identical to those that were previously established in law. Bear hunting and trapping permit sales have increased by approximately 20% during the past two years, resulting in a corresponding increase in harvest above the long-term average. Due to other changes that were enacted by Public Law Chapter 100 (including a reduction in bear permit fees for residents) that will likely result in an additional increase in the bear harvest, the Department believes additional changes to bear bag limits or hunting seasons are not warranted at this time. The Department plans to monitor hunter and trapper participation and the bear harvest over the next 2 years before considering any additional incremental changes to further increase harvest. To ensure consistency with 12 MRS, the rule also clarifies that the bear hunting season ends no later than November 30. This clarification will not result in any changes to the actual hunting season dates for bear.

A public hearing on the proposal, in conjunction with the Chapter 17 proposal for bear trapping rules which was advertised simultaneously, was held on January 19, 2022. Two people were in attendance (minutes attached). One person testified in opposition to the Ch. 17 rule proposal but offered no comment on the Ch. 16 Bear Hunting rule proposal. One written comment in support of the rule as proposed was received from the Maine Professional Guides Association.

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The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on March 29, 2022 and of the six (6) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11701
Chapter number/title: Ch. 16, Hunting: 16.10, Wild Turkey Hunting (Fall Season)
Filing number: 2022-102
Effective date: 6/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To open Wildlife Management Districts 7, 8 and 14 to a fall turkey season with a one turkey (can be either sex) season limit.

Basis statement:

This rule opens Wildlife Management Districts 7, 8 and 14 to a fall turkey season with a one turkey of either sex season limit. The WMDs have been open to wild turkey hunting in the spring as follows: WMD 7 was first opened to a spring wild turkey season in 2007; WMD 8 was first opened to a spring wild turkey season in 2014; WMD 14 was first opened to a spring wild turkey season in 2006. Wild Turkey population numbers fluctuate annually, related to weather conditions in winter and in the breeding season, as well as availability of natural foods. These fluctuations are reflected in wild turkey spring harvest numbers in WMD 7, 8 and 14 as recorded by the Department. The fluctuations follow a similar trend when compared to the statewide spring wild turkey harvest, where wild turkey numbers are considered stable. The Department has seen production in all three WMDs and documented successful reproduction of turkeys over the last few years. With an overall stable trend in harvest, when considering the nature of annual fluctuations in wild turkey numbers, adding a conservative one turkey fall season limit to Wildlife Management Districts 7, 8 and 14 is recommended. The Department has also received requests over the years from wild turkey hunters to add fall hunting opportunity to these districts.

A public hearing on the proposal was held Monday, February 28, 2022. There were no members of the public in attendance and no testimony received. Three written comments in support of the proposal were received, including comment from the Rangeley Region Guides and Sportsman's Association. They were fully supportive and stated that the WMDs had been open for spring harvest, and even with fluctuations related to weather conditions in winter and the breeding season, as well as availability of food, their numbers continued to grow.

The Commissioner recommended no changes to the original proposal. The Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2022-103
Effective date: 6/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

These rules are adopted for the purpose of implementing the Federal Migratory Bird Treaty Act, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters. Adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies, including MDIFW. Information included in these analyses includes waterfowl banding information, harvest data, and population surveys.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2022/23 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. Upon recommendation from the Atlantic Flyway Council, the special sea duck season was eliminated by the USFWS, placing sea duck harvest within the regular duck season and part of the overall 6 duck daily bag limit. Although the special sea duck season was eliminated, the Sea Duck Hunting Area remains in place to allow for the shooting of crippled waterfowl under power, allowed in the USFWS Federal Register and is defined as all coastal waters and waters of rivers and streams seaward from the first upstream bridge. Also of note, the restriction of 2 hooded mergansers was lifted, following determination by Atlantic Flyway biologists that hooded merganser harvest is low and the population can sustain an increase to a 5-duck per day limit. The USFWS Service Regulations Committee approved this option for all Atlantic Flyway States.

A public hearing on the proposal was held on March 2, 2022 with 12 citizens attending including members of the Commissioner's Waterfowl Council (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Only 3 members of the public offered testimony which was generally supportive of the rule proposal. A waterfowl council member from York County expressed support via guide input informally, but that the guides in southern Maine were supportive of the season, especially the sea duck season. With the elimination of the sea duck season the coastal zone where sea ducks are hunted would be one week shy of when it had been in the past. It was still a 60-day season but would be closing earlier. Four (4) written comments were also received in support in general (attached). The written comments also included a request for future discussion on closing the early goose season sooner in the North Zone, a request for future action on eider duck harvest limits and season length as they didn't feel the current

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reductions went far enough, and a request for a later season end date for the second season in the coastal zone.

One thing pointed out at the hearing, which had been an oversight was under the Federal regulations there was now a one hen eider limit which was not indicated in the proposal. 16.11 (9. F. Exceptions) of the proposal was amended to include one hen eider as we did for hen mallard. An additional error was corrected under 16.11 (11. Special Falconry Season) for the Coastal and South Zone end date from March 2, 2022 to March 1, 2022. USFWS allowed a 45-day season and we would have been over that if we went to the 2nd. Two errors in the headings of the table for duck and brant seasons were also corrected.

After review of the comments and discussion with staff the Commissioner moved forward with the amended proposal. The Commissioner's Advisory Council met on May 18, 2022 and of the nine (9) members participating, voted unanimously to accept the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10053, 10104, 12251
Chapter number/title: Ch. 17, Trapping
Filing number: 2022-129
Effective date: 7/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Several changes have been made to simplify existing rules, address management goals, and/or improve biological data collection. As in previous years, areas open or closed to beaver trapping in response to requests from landowners are listed.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Several changes have been made to simplify existing rules, address management goals, and/or improve biological data collection. As in previous years, areas open or closed to beaver trapping in response to requests from landowners are listed.

Trappers and hunters are required to submit a lower partial jaw, full jaw or tooth during the registration and pelt tagging of bobcat, fisher, marten, and river otter. Biologists extract and section teeth from each animal to determine its age, then use this information to monitor the age and sex distribution of harvested furbearers and ensure the harvest is sustainable. Each sample must be labelled completely to ensure all information is recorded. The rule change will increase the data collected for bobcats by requiring that the sample label include a seal number that is issued during the registration process. The change also clarifies what types of samples are required in order to improve the number of viable samples. The list of beaver trapping closures with new closures to accommodate the wishes of private landowners on whose land the trapping activity would occur or to address management goals is listed. Townships or portions thereof are opened and closed on an individual basis to manage local beaver populations within the general season framework. Since the 1930's, regulations have been in place to reduce trapper competition and ensure fair chase when trapping near beaver dams, beaver houses, or muskrat houses. The Department has streamlined the distance of traps to a beaver house, muskrat den or house, active beaver dam, and to another person's beaver traps at 5ft. The rule also aims to increase beaver harvests in Wildlife Management Districts that have good beaver habitat and high conflicts. The changes create consistency and simplify regulations, but still allow fair chase when trapping beaver and muskrat.

A public hearing was held on June 13, 2022 with no members of the public attending. No written comments on the proposal were received.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on June 29, 2022 and of the nine (9) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11351
Chapter number/title: Ch. 17, Trapping: 17.06(1), Bear Trapping
Filing number: 2022-054
Effective date: 4/18/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 100, titled "An Act To Give the Commissioner of Inland Fisheries and Wildlife Rule-making Authority To Establish a Bear Season Framework and Bag Limits" and enacted by the Governor on June 8, 2021, directs the Department to conduct rulemaking to "establish by rule limits on the number of bears a person may hunt, trap and possess in a season, which may not exceed 2 bears in total and may not exceed one bear by trapping in a calendar year, except a person may keep more than 2 legally obtained bears in that person's home as otherwise provided in law or rule." Prior to this law, the bag and possession limits for bear hunting and trapping were established in 12 MRS. Therefore, the Department must undertake rulemaking prior to the fall 2022 bear hunting and trapping seasons to establish these limits and regulate the bear harvest at appropriate levels.

Basis statement:

The rule creates a bag limit for bear of one by trapping with a possession limit of two bears in total. These limits are identical to those that were previously established in law. Bear hunting and trapping permit sales have increased by approximately 20% during the past two years, resulting in a corresponding increase in harvest above the long-term average. Due to other changes that were enacted by Public Law Chapter 100 (including a reduction in bear permit fees for residents) that will likely result in an additional increase in the bear harvest, the Department believes additional changes to bear bag limits or hunting seasons are not warranted at this time. The Department plans to monitor hunter and trapper participation and the bear harvest over the next 2 years before considering any additional incremental changes to further increase harvest.

A public hearing on the proposal, in conjunction with the Chapter 16 proposal for bear hunting rules which was advertised simultaneously, was held on January 19, 2022. Two people were in attendance (minutes attached). One person testified stating they were opposed to recreational trapping and recommended the proposal be withdrawn or amended to a bag limit of zero bears. One written comment in support of the rule as proposed was received from the Maine Professional Guides Association.

The Commissioner moved forward with the original rule proposal and the Advisory Council gave their consent on March 29, 2022 and of the six (6) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12863
Chapter number/title: Ch. 28, Educational Trip Leader Rules
Filing number: 2022-104
Effective date: 6/5/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 162 (LD 1474) “*An Act To Promote Outdoor Recreational Opportunities for Maine Students*” passed into law by emergency on June 11, 2021. This law requires that the commissioner adopt rules outlined within Title 12 Section 12863 to create an Educational Trip Leader Permit program within the Department which will allow staff and students from public and private schools and postsecondary educational institutions to conduct, without a guide license, paddling and primitive camping trips for students and adults associated with those institutions. The rule was previously advertised in Secretary of State rulemaking ad dated July 14, 2021 but was not finalized. The current rule addresses concerns from the previous rulemaking regarding overextending authority of the ETL Advisory Committee. Modifications to their responsibilities clarify the committee will make recommendations to the Commissioner for approval or denial of permits. A substantive change in 28.09 now allows two educational institutions who have current ETL programs to collaborate and sponsor joint trips, and section 28.10 Standards of Competency has been established.

Basis statement:

For many years, educational institutions have been conducting trips into the Maine outdoors providing students a variety of outdoor education and peer leadership experiences. In many situations the trips include paddling opportunities and camping at primitive camping sites, which if conducted in conjunction with remuneration, require a Maine Guide’s license. Concerns and questions were raised by representatives of the UME system and Colleges Association attempting to find clarity on whether they were violating guide licensing laws when taking students on a variety of outdoor paddling and primitive camping trips. During the 129th Legislative Session LD 1932 was introduced. LD 1932 required IFW to establish a task force of stakeholders to convene and report back with recommendations, but unfortunately the bill died when the Legislature adjourned by emergency due to the Covid 19 pandemic. However, agreeing a remedy to the educational trip leader question was necessary, IFW did convene a task force of stakeholders. The task force included 15 members representing public and private education, nonprofit organizations which coordinates outdoor education for K-12, a member of the Camp Trip Leader committee, a representative from the Guide’s Advisory Board, a representative from the Maine Professional Guide’s Association and representatives from IFW. Twelve of the task force members were also Registered Maine Guides. Task force recommendations were taken into consideration during the 130th Legislative session and in crafting the rule.

During the 130th Legislature, a new law was passed ([Public Law Chapter 162](#) (LD 1474)) directing the Commissioner to adopt rules to establish the following: An advisory committee of appointed members and their responsibilities; Educational Trip Leader Administrator Responsibilities; Educational Trip Leader Instructor Eligibility and Application Process; Educational Trip Leader Permit Eligibility and Application Process; Educational Trip Leader Permit Authorization, and Standards for Revocation, Suspension or Denial. The law also

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contains a provision for institutions currently conducting these trips as part of their programming to continue to do so until October 1, 2022, when they will need to be compliant with the new permitting process that was adopted. The rule was previously advertised in Secretary of State rulemaking ad dated July 14, 2021 but was not finalized. The current rule addresses concerns from the previous rulemaking regarding overextending authority of the ETL Advisory Committee. Modifications to their responsibilities clarify the committee will make recommendations to the Commissioner for approval or denial of permits. A substantive change in 28.09 now allows two educational institutions who have current ETL programs to collaborate and sponsor joint trips, and section 28.10 Standards of Competency has been established. The adopted rule will allow staff and students from public and private schools and postsecondary educational institutions to conduct, without a guide license, paddling and primitive camping trips for students and adults associated with those institutions.

As a public hearing was held during the previous rulemaking with only one citizen attending the Department did not schedule a hearing for this rulemaking and none was requested. The Department received two written comments (attached) on the proposal. The first comment raised concerns with various sections of the proposal. After review, the Department felt these concerns would be better addressed by the Advisory Committee once it was established. The second comment, which was received shortly after the comment deadline, was from the legal office of PretiFlaherty. The Department agreed with these recommended minor changes in section 28.10 (1. a. and c.) and they were determined not to be substantial. The amended language will remove the words “safe” and “safest” which is important from a legal liability perspective as outdoor activities are not completely safe and need to be approached from a managing/mitigating risk standpoint.

The Commissioner brought the amended proposal forward to the Advisory Council at their May 18, 2022 meeting, and the nine (9) members present voted unanimously to adopt the proposed rule as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10105, 12152
Chapter number/title: Ch. 29 (New), Species of Special Concern
Filing number: 2022-024
Effective date: 2/27/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” and enacted by the Governor on May 25, 2021, directs the Department to conduct rulemaking to “establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.” Prior to this rule, the list of special concern species had existed only in Department policy and did not include an opportunity for review or input by the public. Incorporating the species of special concern criteria and list of species into a Department rule will increase transparency of the list and provide a formal opportunity for public involvement in species designation.

Basis statement:

Public Law Chapter 65, titled “An Act To Amend Maine’s Wildlife Laws Regarding Species of Special Concern” and enacted by the Governor on May 25, 2021, directs the Department to conduct rulemaking to “*establish criteria for determining when a species of fish or wildlife that is not an endangered species or a threatened species is of special concern. The rules may include different criteria for categories of species of special concern, including a category for species that are rare. The rules must list the species that meet the criteria established in rule. The commissioner shall use the list in administering section 12152 and may also use the list in administering any other laws or programs or when providing advisory recommendations to other entities or agencies on fish and wildlife matters in accordance with applicable laws or rules.*” Prior to this rule, the list of special concern species had existed only in Department policy and did not include an opportunity for review or input by the public. Incorporating the species of special concern criteria and list of species into a Department rule will increase transparency of the list and provide a formal opportunity for public involvement in species designation.

The proposed rule was advertised on October 13, 2021 and three written comments were received (attached). A public hearing was held on November 1, 2021 and one member of the public attended and provided testimony (attached). Comments received from Maine Audubon Society requested that we include text requiring a regular update of the list and suggested that happen every 10 years, and in our working definition of rare, they suggested we add a note about climate change and vulnerability being a factor driving the species into the rare category. They also requested a clarification that while we stated in the definition of rare that several of the species would qualify for the Maine Endangered Species Act, Maine Audubon wanted us to clarify that yes, they qualified, but were not included on the list. They

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also recommended the addition of Common Murre and Leach's Storm-petrel to the list of rare species. The bird group was fine with listing them given the few numbers of nesting locations.

Comments received from the Maine Forest Products Council stated they were encouraged by the public process and suggested more public availability of the data regarding each species and the reason for listing. The Department does have worksheets that biologists put together and a handbook that guided the listing process and all those materials were public information and could be made available upon request. The final written comment from a member of the public requested we consider Pied-billed Grebe be added to the list and King Rail. Bird group review of the comment found there was no reason to do that. He also requested Least Bittern which was currently on the Maine endangered species list. Testimony received at the public hearing requested adding wolf to the list, and staff did not support that recommendation.

In response to the public comments, the Department amended the rule as follows which is highlighted in the attached language. Under the Review of List (5.) it will make the Department review the list at least every 10 years. That was added at the request of Maine Audubon. Below that, under 29.03 Designation of Rare Species of Special Concern, the last line (again at the request of Maine Audubon) we added "a species highly vulnerable to climate change" as a factor. The final line after "qualifies for Maine endangered species status" added language "but has not yet been listed." At the request of Maine Audubon, Leach's Storm-petrel and Common Murre were both added as rare species of special concern. Fox Sparrow was eliminated from the list of rare species but continues to be listed as special concern.

Due to multiple lists being combined, some species were inadvertently included that were not special concern, and those have been struck from the list; Least Flycatcher, Wood Thrush, Veery, American Redstart, Yellow Warbler, Orchard Oriole and Dark-eyed Junco. They had appeared on a previous list and species specialists had dropped them from the list for special concern and they would become species of greatest conservation need in our state wildlife action plan. No public comment had been received on the species that were being struck out. A spelling error was also corrected for the "Bridle" shiner.

Fiscal impact of rule:

No fiscal impact anticipated.