

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRSA, Sections 10104, 12452 & 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations; Ch. 1-A, State Heritage Fish Waters
Filing number: 2023-182, 2023-183
Effective date: 1/1/2024
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 rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2024 ice fishing and open water seasons, The State Heritage Fish Waters list has also been amended with the removal of a water and the addition of one water. 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, 2024,

The rulemaking packet was advertised to include 24 individual proposals presented in the following "theme" categories: State Heritage Fish Waters; Special Need; North Zone Bass Management; Errors, Conflicts, and Confusion; Endangered and Threatened Species Clarification; and Recreational Baitfish and Smelt Clarification.

One amendment to the original proposals was recommended based on public comment that was received. The proposed regulation for Grand Lake, East in Danforth, Forest City Twp, Orient, Weston was amended to retain the "B" ice fishing season which would allow anglers to continue use of ice shacks until the end of the ice fishing season.

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, 12504, 12504-A, & 12505
Chapter number/title: Ch. 2, Rules Pertaining to Commercial Fishing, Fish Culture and Fishing Derbies and Tournaments
Filing number: 2023-189
Effective date: 1/1/2024
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is designed to simplify and consolidate existing rules, capture items as rule that were previously being applied as permit conditions and incorporate strategic planning and other administrative needs. This sets specific rules in regard to conducting Bass Fishing Tournaments and Fishing Derbies.

Basis statement:

The Department of Inland Fisheries and Wildlife has amended Chapter 2 rules as they apply to Fishing Derbies and Bass Tournaments to simplify and consolidate existing rules, capture items as rule that were previously being applied as permit conditions and incorporate strategic planning and other administrative needs. The rules are the result of the vetting process of the fisheries division law and rule committee based on biological information, public outreach, strategic plan action items, and survey results. The rules will have an effective date of January 1, 2024.

A public hearing was held on July 10, 2023 (minutes attached) with seventeen citizens in attendance. The Department also received 21 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 summary of public comment and testimony and the Department's response is attached outlining amendments to the original rule proposal affecting the following sections of the rule language - 2.04 (C.5.) (D.3.); 2.05 (B.2.) (C.2.) (C. 10. a.b.) (C.16.) and (C.17.) (E.3.).

On September 19, 2023, the Commissioner brought forward the amended rule packet for adoption by the Advisory Council. Nine (9) of the ten (10) members present voted in favor to adopt the Chapter 2 rulemaking proposal as amended with one (1) member (Eric Ward) voting in opposition.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS 10104, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities;
Filing number: 2023-072
Effective date: 5/21/2023
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is transitioning operations at the Steve Powell Wildlife Management Area (WMA) to a self-access model for both day-use and overnight camping. This model of operation also removes the need for the public to reserve camping facilities. The rule change removes the obligation for a reservation system and provides clarity to other provisions within Department Rule Chapter 5, specific to the Steve Powell Wildlife Management Area

Basis statement:

The rule will apply to the Swan Island WMA in the Kennebec River. The WMA receives a lot of public use with a campground on the north end of the island that for quite a number of years the Department provided access from the Richmond side. Historically, a DIFW staff member from the Sidney regional office spent about 6-8 months per year operating as a full time Swan Island manager and we hired two seasonal staff during the summer. There had been a few changes over the past couple of years that caused the Department to rethink the model by which we facilitated public access to the island. Staff housing used for seasonal staff was condemned due to mold and other issues, and there was also a determination by the Coast Guard in 2022 that the ferry used to transport the public to the island needed to meet Coast Guard requirements for a ferry in tidal waters. For the Department to continue operating the ferry in the way that we had we would have to make significant upgrades to the ferry and we would have to hire someone with a captain's license to run the ferry for the trip across the river to the island. A captain's license required a significant amount of training. The Department felt the appropriate path forward was to switch to a self-access model where the island would stay open for public use and camping, but the public would have to provide their own access or contract with a Maine guide to get them back and forth across the river.

Chapter 5 rules have been amended by removing the requirement for a reservation and fee and going to a first come first served approach which was similar to remote campsites across the state on the Bureau of Public Lands land base. The Department has retained the Commissioner's authority to charge a fee but is not something we anticipate doing in the short term. Camping will be limited to three consecutive nights rather than two, and the rules pertaining to campfires has also been amended. The rule will enable public access to the WMA from May 1 to October 30 annually. The Department anticipates these rule changes will allow for continued public use and enjoyment of the resource while at the same time, creating consistency regarding access to Swan Island WMA to all other Department WMAs. Removing the requirement for reservations will simplify the process for the public to access the WMA and remove the administrative and financial burden on the Department to receive, track and maintain a reservation system.

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The rule proposal was advertised on March 29, 2023 and a public hearing was held on April 20, 2023. No members of the public attended the hearing and no written comments were received.

The Commissioner brought forward the original rule proposal to the Advisory Council on May 9, 2023 and of the seven (7) 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, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2023-054
Effective date: 4/10/2023
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. Proposed 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. In addition, the Department communicates with a separate waterfowl council consisting of members appointed by the Commissioner of IFW, similar to the Commissioner's Advisory Council in that it is a subset of individuals representing each county in the interest of waterfowl hunters when developing waterfowl seasons and bag limits.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2023/24 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 mallard bag limit was increased from 2 per day to 4 per day (with no more than 2 being hen mallards). This bag limit increase is a result of an estimated increase in the overall eastern mallard population. In addition, the brant season and daily bag limit was reduced from a 50-day season and a 2-bird daily bag limit to a 30-day season and a 1-bird daily bag limit based on winter aerial surveys in the brant range.

A public hearing on the proposal was held on February 28, 2023, with 9 citizens attending (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Only 1 member of the public offered testimony, which was generally supportive of the rule proposal particularly the increased bag limit for Canada geese. Two (2) written comments were received on the proposal (attached). One comment was advocating for extending the coastal zone season longer into January; this would affect the front end of the season. Sea duck guides had provided input previously that they looked at 3-day windows when setting up sea duck hunts, so the season dates were set to try to avoid breaking that up in the beginning. The comment recommended going from the 9th to the 11th of January, which was only a couple of days but would mean a November 11th start date which was a Friday and would break up that 3-day window. Discussions with the

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Commissioner's Waterfowl Council members and staff determined the Department response was not in favor of the recommendations in the comment. The second written comment had several items listed regarding the proposal. Basically, all of the items went against the USFWS sideboards and the desires of the Commissioner's Waterfowl Council. In response to the comments the Department did not see any reason for adjustments to the original proposal.

The Commissioner moved forward with the original proposal and the Commissioner's Advisory Council met on March 28, 2023, and of the eight (8) members participating, voted unanimously to accept 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 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting Permit Allocations
Filing number: 2023-073
Effective date: 5/21/2023
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 2023 season. Permits may be valid for either antlered moose or antlerless moose 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. These recommendations are designed to achieve the goals of the 2017-2027 Big Game Management Plan which are focused on population health, rather than managing for specific densities of moose. The attached memorandum from the Department moose biologist Lee Kantar outlines the moose population status and recommended actions by WMD.

The Department advertised a proposal on March 29, 2023, and recommended issuing 4,155 permits statewide to meet moose harvest objectives. This included a total of 2,645 antlered moose permits, and 1,510 antlerless permits. The proposal included 600 permits for the Adaptive Management Unit hunt referred to as WMD 4a which was implemented beginning in 2021. The rule also combines several units wherein a permittee can hunt either WMD. This will include WMD 14 and 17 combined, WMD 15 and 12 combined and WMD 7 and 13 combined. Permit levels remain unchanged in WMD 14/17 as well as 7/13. For WMD 15 permits will change from Any moose to Bull only and be reduced to 15 permits. This also means WMD 15 season will occur during the October Bull season and no longer run in conjunction with the November firearms season on deer (month of Nov.). There will also be an increase of 50 antlerless permits in WMD 8 where the population is stable to decreasing. The Department also proposed to transition the Adaptive Management Unit hunt to three, two-week seasons beginning on October 23rd and running until December 2, 2023.

A public hearing on the proposal was held on April 18, 2023 with eight (8) members of the public in attendance (minutes attached). Six written comments were also received on the proposal (attached). The comments were acknowledged and forwarded to the Commissioner's

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Advisory Council and staff for consideration. In summary, the written comments and testimony received at the public hearing consistently showed concern with the following sections of the proposal:

16.08 (1.B.) – Although supportive of expanding the antlerless seasons, the timing of implementing the change for 2023

was problematic for guides; permit holders may face issues with securing lodging and guide services as most were already booked for the upcoming seasons.

-Department response: The proposal was amended to revert back to original rule language and keep the season start date to begin on the Monday preceding the opening day of the regular firearms deer season rather than the proposed additional week of hunting to begin the third Monday in October.

16.08 (1.D.) – Concerns that combining WMDs may result in hunter conflicts. Hunters may gravitate towards these areas during one week in October for potential conflicts.

-Department response: The Department has seen success in areas previously combined (27 & 28) and combining the WMDs would give hunters greater flexibility and provide opportunity. These areas, in some cases, result in fairly low hunter success rates and by combining the WMDs hunters have more opportunity to be successful. The Department moved forward with the originally proposed language and will monitor for potential change during the next annual rulemaking.

16.08 (9.C.) – Concerns with the timing of the adaptive moose hunt season to begin later and extend into December. This was too late in the season and availability of lodging would be limited as well as safety concerns with inclement weather and hunters being unprepared and potential for damage to roads to occur. Hunter conflicts with deer, grouse and moose hunting occurring at the same time in the area was also a concern.

-Department response: The Department amended the proposed Adaptive Management Unit hunt back to the original framework of three, weeklong seasons beginning on October 16th and running until November 4, 2023 with an additional 4th week, November 6 – 11, 2023 for adaptive permit hunters to come back if they had not filled their tag. Permit numbers were also amended back to the original rule language.

The Commissioner brought forward an amended proposal (attached with changes to original proposal highlighted in blue) for a total number of 4,105 (2,645 antlered; 1460 antlerless) moose permits to be issued for the 2023 hunting season. The Advisory Council met on May 9, 2023 and of the seven (7) 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, Hunting: 16.07, Antlerless Deer Permit allocations
Filing number: 2023-106
Effective date: 7/12/2023
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. Also included are changes to establish a 2-day Youth Hunt in accordance with legislation from the 131st Legislature.

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). Adjustments to antlerless deer permit numbers are based on the Department's Deer Management System, which was developed as part of our long-term species planning process. This comprehensive document includes an extensive scientific assessment of deer populations and management strategies. Currently, we collect and analyze several types of data to develop informed recommendations for permit numbers. These data sources include measures of winter severity, hunter effort, yearling frequencies, yearling antler beam diameters, recruitment estimates, harvest density, and ages of harvested deer.

For 2023, the Department will issue a total of 108,070 antlerless deer permits across 25 WMDs and two deer management subunits to meet our doe harvest objective of 15,486 does, which is an increase of 11,730 permits or 12.1% more than 2022. WMDs 1, 2, 4, and 5 will be open to buck harvest only (aside from the Youth Hunt and archery and crossbow season) as they remain under objective and have low growth potential. Slight increases in antlerless deer permits in nearly all districts that had permits in 2022 will occur. Doe harvest recommendations were largely met where needed in 2022 and increases across these districts are the result of steady growth and mild winter conditions during the 2022-23 winter. The Department will continue to issue additional permits in two deer management subunits in WMDs 25 and 26. The harvest of antlerless deer without a permit during the youth hunt and the regular archery and crossbow season is allowed only in designated WMDs and all WMDs are designated as open to the harvest of antlerless deer without a permit during these seasons in 2023.

In accordance with Public Law 2023 Chapter 191, the rule includes language to institute a 2-day youth hunt to be held on the Friday and Saturday preceding the residents-only Saturday of the regular deer season. When determining how to configure the 2-day youth hunt, the Department considered historic harvest during the youth day season and made a best estimate of the impacts of adding a Friday to that hunt. These estimated impacts were factored into development of recommendations for permit allocations.

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A public hearing was held on June 1, 2023 and no members of the public were in attendance; no written comments were received.

The Commissioner brought forward the original rule proposal and the Advisory Council gave their consent on June 20, 2023 and of the seven (7) 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, Sections 10104, 10105, 11401
Chapter number/title: Ch. 16, Hunting
Filing number: 2023-217
Effective date: 10/27/2023
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This emergency rule is brought forth in light of the mass shooting incident in Lewiston, Maine occurring on October 25, 2023, where an active shooter killed 18 people and wounded 13 others. The shooter has not been brought into custody, remains at large, and is considered armed and dangerous. The Commissioner of Inland Fisheries and Wildlife, in consultation with Maine State Police, Governor Mills and the Attorney General's Office, finds that an emergency exists under these circumstances and the immediate adoption of this rule is necessary to avoid an immediate threat to public safety and health. Therefore, the Commissioner adopts this rule prohibiting any hunting activity, for any species, with use of any implement in the locations where the "shelter-in-place order" issued by the Maine State Police exists. The prohibitions in this rule will go into effect at 12:01 a.m., Saturday, October 28, 2023, until the "shelter-in-place order" issued by the Maine State Police is lifted or 90 days after the effective date, whichever comes sooner.

Basis statement:

This emergency rule is brought forth in light of the mass shooting incident in Lewiston, Maine occurring on October 25, 2023, where an active shooter killed 18 people and wounded 13 others. The shooter has not been brought into custody, remains at large, and is considered armed and dangerous. The Commissioner of Inland Fisheries and Wildlife, in consultation with Maine State Police, Governor Mills and the Attorney General's Office, finds that an emergency exists under these circumstances and the immediate adoption of this rule is necessary to avoid an immediate threat to public safety and health. Therefore, the Commissioner adopts this rule prohibiting any hunting activity, for any species, with use of any implement in the locations where the "shelter-in-place order" issued by the Maine State Police exists. The prohibitions in this rule will go into effect at 12:01 a.m., Saturday, October 28, 2023, until the "shelter-in-place order" issued by the Maine State Police is lifted or 90 days after the effective date, whichever comes sooner.

The Commissioner convened a special meeting of the Advisory Council on Friday, October 27, 2023 via videoconference (Microsoft Teams) and of the eight (8) members present voted unanimously to adopt the emergency rule 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, 12251
Chapter number/title: Ch. 17, Trapping: 17.06, Beaver Trapping
Filing number: 2023-107
Effective date: 7/12/2023
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. As in previous years, we are opening or closing certain areas to beaver trapping in response to requests from landowners.

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. Wildlife Biologists consider annual requests from landowners to close their properties to beaver trapping, in conjunction with the amount of habitat, past harvests, and complaints of beaver damage to public property. This information informs staff recommendations on closures for the upcoming trapping season.

The Department has replaced the current list of beaver trapping closures with new closures to accommodate the wishes of private landowners on whose land the trapping activity would occur. Townships or portions thereof are opened and closed on an individual basis to manage local beaver populations within the general season framework. The list of areas open or closed to beaver trapping has been amended to remove the closure in an area of Charleston in WMD 17; remove a closure in the town of Freedom and add a closure in the towns of Searsmont and Waldo in WMD 23.

A public hearing was held on May 30, 2023 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 20, 2023 and of the seven (7) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.