

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Kennebec River)
Filing number: 2016-014
Effective date: 2/1/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

At the request of the Department of Marine Resources (DMR), the Department adopts rules on a portion of the Kennebec River specifically for striped bass from the downstream side of the Lockwood Dam to the upstream side of the Donald Carter Bridge and from the upstream side of the Donald Carter Bridge in Waterville to the downstream side of the power lines located about 4,200 feet above the Calumet Bridge in Augusta (head of tidewater) for consistency with DMR's catch and release season with special gear restrictions for striped bass.

This is to ensure protection of a small spawning population of striped bass that crosses the jurisdictional limits of the DMR (tidal waters) and enters into the Kennebec River above Augusta (inland waters).

Basis statement:

This amendment to the current rule is being adopted at the request of the Department of Marine Resources (DMR), on a portion the Kennebec River specifically for striped bass from the downstream side of the Lockwood Dam to upstream side of the Donald Carter Bridge and from the upstream side of the Donald Carter Bridge in Waterville to the downstream side the power lines located about 4,200 feet above the Calumet Bridge in Augusta (head of tidewater) for consistency with DMR's catch and release season with special gear restrictions for striped bass. The rule will ensure protection of a small spawning population of striped bass that crosses the jurisdictional limits of the DMR (tidal waters) and enters into the Kennebec River above Augusta (inland waters).

From May 1 through June 30, inclusive, fishing for striped bass in this area will be restricted to single hooked (may be a single treble hook) artificial lures only and use or possession of marine bait, dead or alive, is prohibited. Any striped bass caught during this special season/area fishery shall be immediately released and returned alive, without further injury, to the waters from which they were taken, DMR will continue to sample for young of the year striped bass in an attempt to detect any spawning populations. The catch and release rule will prohibit the take of any striped bass that may be in the area preparing to spawn, Length and bag limits on striped bass are reflected in DMR rules, Ch. 42, and apply to all territorial waters.

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, 12456
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Early Open Water Fishing Season)
Filing number: 2016-044
Effective date: 7/17/2016
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The emergency rule will open bodies of water that are closed to open water fishing until April 1, 2016 so that anglers will be able to fish those bodies of water beginning March 17, 2016. Based on earlier-than-normal seasonal temperature changes the Commissioner feels an emergency early opening of the season will enhance fishing opportunities and increase angler ability to fish.

Basis statement:

During the 126th legislative session, PL 2013 ch. 3 was passed giving the Commissioner the authority to change the established opening date of an open season if, in the Commissioner's opinion, the change is necessary due to earlier-than-normal seasonal temperature changes or weather conditions. Due to warmer than normal temperatures and lack of ice in many areas, the Commissioner has determined an early opening of the open water fishing season will enhance fishing opportunities and increase angler ability to fish. This is being accomplished by emergency rule.

Due to the overall lack of ice during the 2015/2016 ice fishing season and reduced recreation, the early opening of open water season would not likely increase pressure on fish populations but would increase opportunity for anglers. The emergency rule will open bodies of water that were closed to open water fishing until April 1, 2016 to become open to open water fishing effective March 17, 2016. This rule does not close any body of water currently open to ice fishing or open any water to ice fishing that is currently closed to ice fishing. All waters with S-10 and "CO" designations will also be open to fishing. All other S-codes, tackle restrictions, daily bag, possession and length limits still apply as listed.

The Commissioner contacted the 10-member Advisory Council on March 14, 2016 by phone and e-mail and eight (8) members voted in favor of the early opening of open water fishing season, one (1) member, Larry Farrington - Piscataquis/Somerset County voted in opposition and one (1) member, Dick Fortier - Aroostook County, did not respond.

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. 4, Hunting and Trapping:
Filing number: 2016-062
Effective date: 4/16/2016
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 shorten the length of the hunting season for sea ducks within the sea duck hunting zone from 107 days to 60 days. This is in response to federal guidelines after observations of declines in some sea duck populations. It also modifies language as it applies to the youth waterfowl hunt to comply with current laws regarding junior hunters. Language was also updated as it applies to federal duck stamp and state migratory waterfowl permit requirements.

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.

Typically, the Flyway Council would hold their meeting in July, but instead, held their meeting in October, 2015 to start setting the 2016/2017 season. This moved up the Department's rulemaking schedule to meet the USFWS request to have states adopt their season by mid-April. When studying 2 year vs. 1 year trends, the USFWS determined there would be no real impact so they decided to advance the process to avoid publishing the season framework in the federal register so close to the season start date (September 1 for some species).

After receiving the framework from USFWS, the proposed season dates were similar to last year with the exception of the sea duck season. Based on some long term trends and decline in our sea birds the USFWS was looking to reduce the harvest by 25%. In order to accomplish that they reduced the number of allowable days from 107 down to 60 and the bag limit down from 7 to 5. One other small change, up until 2016 there was no daily limit for long-tail duck and now there was a 4 bird limit per day.

During the past legislative session, the Legislature removed the age limit for youth hunters. As we went through rule-making we were updating the language for youth days. In the past, where we had articulated the age, we had some struggles with youth that had turned 16 and felt they were not eligible to hunt on the youth day even though they had a youth hunting license. Language was clarified that if you bought a youth hunting license and then turned 16 during the year, you were eligible for any species that had a youth hunting day. USFWS requires anybody 16 years of age or older have a federal duck stamp; that requirement stayed in place and anybody 16 years of age or older would be required to have the federal duck stamp to participate on youth day.

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. 4, Hunting and Trapping: 4.06, Wild Turkey
Filing number: 2016-065
Effective date: 4/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the First Regular Session of the 127th Maine Legislature, PL 2015 ch. 127 directed the Department to expand the fall wild turkey hunting season to include a week of hunting in the month of November. In addition, PL 2015 ch. 136 removed the minimum age for hunting, which requires the Department to update the rules for the Youth Spring Wild Turkey Hunting Day. Finally, the Department revised the description of the spring wild turkey hunting season in WMDs 1-6 so that the dates do not have to be adjusted each year through rule-making.

Basis statement:

The rules for the spring turkey hunting season were amended to remove calendar references for the A, B seasons so the Department would not have to go through rule-making every year for updates. The change will only affect WMDs 1-6 (northern zones) which were recently opened to wild turkey hunting in 2015. The split season was implemented in those districts to reduce hunting pressure on private land in those areas.

Another update to the spring season is the result of PL 2015 ch. 136 which removed the minimum age for hunting. The Department has been updating the rules as they apply to youth hunts for consistent language in Ch. 4. The Youth Spring Wild Turkey Hunting Day has been amended to eliminate the age requirements for participation in the youth day hunt, and specify that hunters must hold a valid Junior Hunting License in order to hunt wild turkeys on this day.

During the last legislative session the Legislature directed us to have an additional turkey season in November that lasted at least a week. The Department opted to have the season run from October 1 to November 7th so there would always be a full week of opportunity in November in those WMDs open to a fall turkey hunt. The bag limit will remain unchanged at 2 birds in the fall.

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 §11111
Chapter number/title: Ch. 25, Leashed Dog Tracking Permit Rules
Filing number: 2016-066
Effective date: 4/17/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the First Regular Session of the 127th Maine Legislature, PL 2015 ch. 90 authorized the Department to go through rule-making to adopt changes to the leashed dog tracking license. The Department updated references to “license” in the rule and changed to “permit” to be consistent with law; licensed hunting guides will be exempt from the permit process, and the number of dogs that could be used when tracking bear, deer or moose will be limited to one (1).

Basis statement:

The purpose for updating the rule was a law change (PL 2015 ch. 90) which was supported by the Maine Professional Guides Association. The section of law that listed the “leashed dog tracking license” as a license was repealed and was now in a new section of law which appropriately listed it as a “permit” instead. The reference to license has been changed throughout rule Ch, 25 to a permit to be consistent with law.

The rule was also amended to allow a person licensed to guide hunters under 12 MRS §12853 and whose client during a guided hunt wounds or kills a bear, deer or moose to track and dispatch the animal outside of legal hunting hours without obtaining a leashed dog tracking license. The rule was further amended to restrict the number of dogs that are able to be used when tracking a wounded or dead deer, bear or moose to one (1).

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 §§ 12952, 12953
Chapter number/title: Ch. 20, Taxidermy License
Filing number: 2016-067
Effective date: 4/18/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

During the 1st session of the 127th Legislature, PL 2015 ch. 281 amended permit fees and structure of the taxidermy license (12 MRS §12953). The Department took this opportunity to meet with the taxidermy licensing board and reevaluate the taxidermy license rules and incorporate changes to set specific criteria for applicants and current license holders and update record keeping and completion requirements.

Basis statement:

During the 1st session of the 127th Legislature, PL 2015 ch. 281 amended permit fees and structure of the taxidermy license (12 MRS §12953). The Department took this opportunity to meet with the taxidermy licensing board and reevaluate the taxidermy license rules and incorporate changes to set specific criteria for applicants and current license holders and update record keeping and completion requirements.

The changes add language to the rule under judging criteria that current taxidermy license holders will also adhere to competency standards or can be found incompetent or negligent. This had not been addressed previously. There will also be an added requirement that a taxidermist complete work in a timely manner and a time period agreed upon between the taxidermist and customer. Department log books will also need to be completed and returned as part of the license requirement. The rule was also reformatted to comply with Secretary of State formatting guidelines.

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 §11251
Chapter number/title: Ch. 4, Hunting and Trapping: 4.04, Bear Hunting Season (Youth Day)
Filing number: 2016-088
Effective date: 5/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will add a youth hunting day to the bear hunting season as directed by the Legislature in PL 2015 ch. 79. Placing the season in rule will provide consistent language for the Department's youth hunts.

Basis statement:

This rule is in response to a change that occurred during the 1st Session of the 127th Legislature which added a youth bear hunting day to the bear hunting season. To be consistent with other youth hunts which were in rule, the Department spoke with the sponsor of the bill and he was agreeable to the language being placed in rule. During the next legislative session the Department will work to have the language removed from statute and let the rule stand.

The youth bear hunt will occur the Saturday prior to the opening day of the bear hunting season as is the case with other established youth hunting days. The youth bear hunting day will allow holders of a junior hunting license to hunt bear with either a firearm, bow and arrow or crossbow and they must be in the presence of and under the effective control of an adult supervisor as defined by Title 12 §11108-C. An adult supervisor, parent or guardian accompanying a youth on youth bear hunting day may not possess a firearm, bow and arrow or crossbow while the youth is participating in the bear hunt. The use of dogs is prohibited.

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. 4, Hunting and Trapping: 4.05, Moose Hunting Season
Filing number: 2016-089
Effective date: 5/14/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

In addition to adjusting moose permit numbers, the Department is adjusting the timing of the November (sometimes referred to as the “3rd week”) moose hunting season that occurs in northern Maine so that it occurs during the week preceding the opening of the firearms season on deer. The timing of the season had resulted in conflicts with deer hunters that were using the same areas. Moving the moose season to the week prior to the firearms deer season will alleviate these conflicts.

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 2016 season. The Department advertised a proposal on March 9, 2016 with a recommended total of 2,140 permits be issued in order to meet moose harvest objectives. This was a decrease in overall permits of 22% from 2015 with the reductions occurring in WMDs 1-4 and 19. Bull permits were also reduced in WMDs 3 and 4 where helicopter surveys and harvest data indicated the number of mature bulls in the population was below target. Permit numbers in remaining WMDs with moose hunting seasons remain unchanged from 2015.

The Department also amended the “3rd week” of moose hunting and moved the season from the first full week of November to occur during the week prior to the opening day of the firearms season on deer. The Department had received negative feedback in the past about the timing of this week and conflicts with moose and deer hunters. Changing the timing of the season to occur prior to the deer hunt would help to alleviate those conflicts. However, moose hunting districts 15, 16, 23, 25 and 26 would still allow moose hunting during November. These were referred to as the “southern” Maine moose hunting districts and were not highly sought after. Moose/deer hunter conflicts were basically a non-issue in these areas and the purpose of the hunt was to reduce moose/vehicle collisions.

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 §§ 11552, 11401
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Seasons
Filing number: 2016-141
Effective date: 8/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To establish antlerless deer permit allocations for each of the 29 Wildlife Management Districts (WMDs) for the 2016 deer hunting season. Any-deer permits are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. The winter of 2015-16 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer. For 2016, the Department proposed a total of 45,755 permits be issued in order to meet our doe harvest objective of 5,297 animals. Permit numbers were amended in WMD 7 for a total number 45,625 permits.

Basis statement:

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

Any-deer permit recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities according to the publicly derived goals in the deer management system. The winter of 2015-2016 was of below-average severity in most of the state, which resulted in higher survival rates for our over-wintering deer. A recommended total of 45,755 was proposed to achieve a harvest of approximately 24,400 deer; an increase of 59% in permits that were issued in 2015 (28,770).

No public hearing was held or requested on the proposal. The Department received 3 written comments which were acknowledged and forwarded to the Advisory Council members and Department staff. One comment questioned the rationale behind the large increase in permit numbers after only one mild winter but did not indicate any specific WMD of concern; one comment opposed the increase in permit numbers specifically in WMD 7 and the third comment was from a Department employee (game warden) mentioning “pockets” of deer found along the coast in Washington County and concern with removal of antlerless deer in Lubec (WMD 27) specifically.

The Department held a regularly scheduled Advisory Council meeting in Kittery on June 11, 2016 and concern was expressed by Council members about the permit increase from zero to 505 in WMD 7 after only one mild winter. Permit numbers in the other remaining WMDs were not discussed, but there was concern with the overall increase in permit numbers of 59% from 2015.

Another portion of the proposal was the result of Public Law 2015 c. 136 which removed the minimum age for hunting. The Department has been updating the rules as they apply to youth hunts for consistent language in Ch. 4. The Youth Deer Hunting Day has been amended to eliminate the age requirements for participation in the youth day hunt and that hunters must hold a valid junior hunting license in order to hunt deer on this day. No comments were received pertaining to this portion of the proposal.

After reviewing public comments, comments received from the Advisory Council and discussion with staff the Commissioner amended the proposed number of permits in WMD 7

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from 505 to 375, a reduction of 130 permits. The proposed number of permits remained unchanged in the remaining districts. The Advisory Council gave their consent on August 17, 2016 and 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, 12704
Chapter number/title: Ch. 6, Educational and Scientific Collection Permit Rules
Filing number: 2016-142
Effective date: 8/28/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with PL 2015 ch. 374, the Department of Inland Fisheries and Wildlife has amended language in Ch. 6 rules as it applies to scientific collection permits to include “educational permits.”

These rules will apply to the use of native wild animals and native wild birds, including their parts, for educational or scientific purposes within the State of Maine. The Department also removed language from the rule as it pertains to rehabilitation permits. This language has been relocated and updated in Ch. 7, *Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife*.

Basis statement:

During the 127th Legislature, PL 2015 ch. 374 was passed directing the Department to restructure the permitting process for wildlife and exotic species in captivity. As part of the process of repealing and replacing Ch. 7 rules to comply with the directive, the Department simultaneously advertised the Ch. 6 amendments and Ch. 7 repeal and replace.

The Ch. 6 title and rule was amended to include “educational permits” as was required by the legislature, and these rules will apply to the use of native wild animals and native wild birds, including their parts, for educational or scientific purposes within the State of Maine; scientific and educational projects going on in Maine focused on taking native wildlife either into captivity or collecting research specimens for analysis.

The Department also removed language from the rule as it pertained to rehabilitation permits. The language was relocated and updated in Ch. 7, *Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife*.

Fiscal impact of rule:

None 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, 12152
Chapter number/title: Ch. 7, Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife
Filing number: 2016-144
Effective date: 8/30/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This will provide consistency for the captive wildlife permitting process for both statute and rule and modify the rules as directed by the Legislature in PL 2015 ch. 374.

Basis statement:

During the 127th Legislature, PL 2015 ch. 374 was passed directing the Department to restructure the permitting process for wildlife and exotic species in captivity. As part of the process of repealing and replacing Ch. 7 rules to comply with the directive, the Department simultaneously advertised amendments to Ch. 6 (*Educational and Scientific Collection Permit Rules*) as language as it applies to rehabilitators was removed from Ch. 6 and placed in Ch. 7 for consistency.

The new rule will provide for a strong emphasis on helping to protect the integrity of the native species in Maine and will allow for Wildlife in Captivity Inspectors designated by the Commissioner to review applicant's facilities during the application process removing the burden from Department staff. It also makes it clear which permit is necessary for the type of activity and whether a permit is necessary if a person wishes to keep wildlife in captivity. It provides categories within which a species can be placed and each category has criteria based on risk.

A public hearing was held on the proposal on June 7, 2016 at the Augusta Civic Center. There were approximately 54 citizens in attendance and 28 of them presented testimony. The comments covered many portions of the proposal ranging from concern with "backyard zoos" and exhibition of large cats and other animals; concern with how the rule would affect animal damage control officers; traveling reptile educational shows and concerns they would no longer be allowed to operate in Maine; availability of lizards/reptiles for hobbyists, or sale in pet shops; concern from wildlife rehabilitators specific to the "Health and Comfort" portion of the rule, having to pay for inspections, release site requirements and training and credentials; concern that grant funding may be lost due to permit requirements and slow Department turnaround time; enforcement issues surrounding Game Wardens and biologists not being able to identify species; concern with section 7.12 and reference to "therapy animals." Several comments were also made supporting the Department's efforts in creating stricter regulations for possession and exhibition of wildlife.

Comments made at the hearing and also written comments received showed concern/confusion with Category and prohibited species lists and CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) listings. The Department, at the hearing and at prior Advisory Council meetings announced, and it was our intention, that we would take the actual populating of the species list, the prohibited, Category 1 and 2 restricted species lists through rule-making as a separate process. A provision in the proposal existed to establish a technical advisory committee to the Commissioner. The Department will create that committee and populate it, review the species and make suggestions through rule-making to actually finalize the three lists. The unrestricted species would not be listed as part of the rule because it was a list of species that did not require a permit. The Attorney General's

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office advice was to keep the unrestricted list outside of rule-making, but the three lists that were creating restrictions on what people could have should go through rule-making to give people a chance to comment.

The Department also received numerous written comments. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff. 200 form letter e-mails were received; 93 comments related to DEW Animal Kingdom that were not relevant to the proposal (comment file available upon request to the Department) and 57 additional written comments were received including comments from the Humane Society of the United States, a staff member from the University of Maine, Department of Agriculture, Conservation and Forestry, private business owners, members of herpetological societies, exhibitors, rehabilitators, Pet Industry Joint Advisory Council, United States Association of Reptile Keepers, the Zoological Association of America (ZAA) and the general public.

Based on comments received and discussion with staff the Commissioner made amendments to the original proposal. The amendments included clean-up of language/formatting; clarification of training and what would be accepted by the Department for qualifications, additional language under the Unclassified Species category to allow for a request for review of species; additional language exempting rehabilitators from the cost of site inspections; additional language under keeping of records to clarify that species being transferred out of state did not require written approval from the Department only those within the state; age restrictions when working with restricted species on the Category 1 list; rehabilitators can now contact the Department upon the death of an animal in the family Cervidae for retrieval and would no longer be required to submit the head, and clarification within 7.16 "Grandfathering Provisions" for those currently possessing species to be able to comply with new requirements by January 1, 2018.

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
Chapter number/title: Ch. 4, Hunting and Trapping:
4.01(G), Open Seasons for Hunting and Trapping of
Furbearing Animals:
(1), Beaver Trapping; (1.a) (no title); (1.b), Open and Closed
Areas for Beaver Trapping
(4) Statewide Hunting Seasons for Furbearing Animals
4.01(O), Mandatory Submission of Teeth
Filing number: 2016-168
Effective date: 10/12/2016
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 trapper participation, and biological data collection. In 2015 the trapping regulations for several species were altered in order to reduce the chance of accidentally capturing lynx, which are listed as a threatened species by the federal government. Unfortunately, these changes resulted in reduced trapper participation, and have made it more difficult for the Department to collect quality biological data on some species. Several adjustments to current furbearer trapping and hunting seasons were made in an effort to allow more opportunity for hunters and trappers to pursue some species. A tooth submission for bobcat, fisher, marten and otter will also be required when presenting the animal for registration which will enable the Department to collect improved biological data from these species to support science-based management decisions in the future. Certain areas will also be closed to beaver trapping in response to requests from private landowners.

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in trapper participation, and biological data collection. The Department advertised a rule-making proposal on August 3, 2016 to adjust the trapping season dates for beaver in WMDs 15, 16, 20-26 and 29 for an opening date of October 30 to align the start of the season with other furbearer seasons and provide an additional 2 weeks of opportunity. The proposal also included areas that would be open and closed to beaver trapping to reflect landowner requests, an additional week of bobcat hunting for a season of December 1 - February 21 each year, and a request for a tooth submission for bobcat, fisher, marten and otter when presenting the animal for registration in an effort to collect additional biological data.

After the proposal was advertised a request was made to the Department by 9 members of the public to hold a public hearing on the proposal. The notice was re-advertised on September 7, 2016. The public hearing was held in Portland on September 26, 2016 with over 60 members of the public in attendance. There were also 164 written comments received on the proposal during the initial and extended comment periods. Some individuals sent multiple written comments and spoke at the public hearing; multiple written comments were counted as one submission. Comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate Department staff for consideration.

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After reviewing all comments and discussion with staff the Commissioner presented the originally proposed rule to the Advisory Council at their meeting held on October 7, 2016 for adoption. There were 9 members present at the Advisory Council meeting and they voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2016 to December 31, 2016
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, 11401
Chapter number/title: Ch. 4, Hunting and Trapping:
4.03, Deer Hunting Season
Filing number: 2016-173
Effective date: 10/19/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

PL 2015 ch. 401 was passed allowing a nonresident who owns 25 or more acres of land in the State of Maine and leaves that property open to hunting, holds a valid hunting license and is not otherwise prohibited by law may hunt deer on the Saturday preceding the first day of open season on deer (Resident only day). It is set to be repealed on September 15, 2018. The Legislative intent was to have the Department develop rules clarifying the details of how nonresident hunters will provide verification of land ownership and what kind of land access they provide for other hunters to show they qualify to hunt on this day.

Basis statement:

In 2015 PL ch. 401 was passed allowing a nonresident who owns 25 or more acres of land in the State of Maine, leaves that property open to hunting, holds a valid hunting license and is not otherwise prohibited by law to hunt deer on the Saturday preceding the first day of open season on deer, also known as “Maine resident only” day. The legislative intent when the law was passed was to have the Department of Inland Fisheries and Wildlife develop rules clarifying the details of how the hunter would provide verification of land ownership.

The Department received one comment from the public during the open comment period stating the Norway Paris Fish and Game Club, along with the Sebago Anglers Club, were not in favor of the proposal. They felt it would be burdensome to the Department and that nonresident hunters should be allowed to hunt on “resident’s day” without any special requirements. Their comment was acknowledged and forwarded to the Commissioner’s Advisory Council as well as appropriate staff for consideration during the rule-making process. No public hearing was held on the proposal.

The Department, to comply with the intent of the law, has created a form which will be made available to nonresident landowners via the web or by request, to be used for verification. The document includes the landowner’s information and land information such as the town, number of acres, map and lot number, etc. and shall be used for verification purposes if requested by the Commissioner or an agent of the Commissioner. The form will also be presented when tagging a deer on that day. By requiring the landowner to complete and carry the form this will alleviate any extra burden on the Department.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2016 to December 31, 2016
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 Ice Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2016-174, 175
Effective date: 1/1/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2017 ice fishing and open water seasons and made additions to the State Heritage Fish Waters list. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits, including economic, are retained.

These rules were initiated through Department field personnel and as a result of a simplification process for the annual open water and ice fishing regulation booklet. The regulation changes were advertised with 5 public hearings held in Presque Isle, Millinocket, Ellsworth, Farmington and Brunswick. The Department also received 10 comments in writing both for and against various proposals.

The focus of the proposals was a restructure of the law book to create an easy to use book by the general public. Most of the changes proposed reflected that effort. Comments received were overall in support of the restructuring effort. One area of concern was in relation to northern Oxford County and Franklin County where bag limits were changing from 2 to 5 trout. There were some concerns with how staff determined when it was appropriate to retain 2 trout bag limits in those areas, and there had been some suggestions made for specific waters where they felt we should entertain 2 trout bag limits. When the package was presented at the public hearing in Millinocket there was very strong support for the Department moving in the direction of more liberalized trout bag limits in small lakes and ponds. They had been finding an overall decrease in angler use and those populations of brook trout were becoming more abundant and size quality was declining. Some comments received were also centered around the component to establish maximum length limits for salmon and trout on rivers and streams, a 25" maximum (S-33). This was an effort to provide protections to state listed adult Atlantic salmon. Those recommendations were generally well received. There were also some concerns that maybe we had not identified all the lakes and ponds that might have adult sea run Atlantic salmon that might also warrant the same kinds of protection. Overall there was strong support for the Department proposing to list 3 new waters on the heritage waters list. There were comments received from Trout Unlimited and Maine Audubon indicating they thought there would be more waters nominated for that listing. The Department indicated at the public hearings we were planning to review waters that had potential for nomination to the heritage waters list, and though they would not be advanced during this rule-making effort, we may undertake a separate process if warranted. There was

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one written comment in opposition to making a portion of the Kennebec River (Shawmut Impoundment) artificial lures only (ALO) (S-6), and although the Department agreed that it did take away some opportunity, the consensus was that those few people that took advantage of that during the winter had a lot of opportunities elsewhere to use non ALO tackle. The simplification overall was going to make the Kennebec River much more user friendly and net use overall would likely increase.

The Department did put forth amendments to the original proposal due to public comment and review for the following bodies of water: Round Mountain Pond, Boundary Pond, Long Pond and Rump Pond were removed from the proposed list of waters as they would retain the 2 trout bag limit. Crowell Pond and Haley Pond, the intent was to retain the 2 trout bag limit and they were not listed in the proposal but were reviewed during the comment period. The final water modified was Beddington Pond in Beddington where the Department would apply an S-33 regulation in the law book.

Fiscal impact of rule:

No fiscal impact anticipated as a result of these rules.

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Rules Adopted January 1, 2016 to December 31, 2016
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 §11402
Chapter number/title: Ch. 4, Hunting and Trapping: 4.03, Deer Hunting Season: I. Open and Closed Seasons: 8. City of Eastport...
Filing number: 2016-205
Effective date: 12/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The City of Eastport requested that the Maine Department of Inland Fisheries and Wildlife (MDIFW) authorize a Special Hunt for antlerless deer. Deer-human conflicts, including residential property damage and vehicle accidents, have been steadily increasing in Eastport for the past decade. A no-discharge of firearms ordinance within the city, coupled with restrictions on archery hunting and posted private property have likely contributed to an increase in deer numbers over time. Eastport has also been subject to bucks-only hunting for the past 11 years due to Wildlife Management District boundary changes in 2005 when Eastport became part of WMD 27. In response to a vote of residents that indicated strong support for reducing the deer population, the Eastport City Council established a Deer Committee in March 2016 to recommend deer population reduction measures. These recommendations included submitting a request to MDIFW to authorize a special hunt to control deer numbers. A town meeting was held on the Committee's recommendations in August 2016, which resulted in the City Council voting to approve the request to MDIFW.

Basis statement:

This rule is in response to a request from the City of Eastport for assistance in reducing the deer population there. The island formed a deer reduction committee and the committee worked with regional wildlife biologist Tom Schaeffer in developing the proposal. The City of Eastport was concerned about certain factors such as residential property damage, vehicle collisions, deer behavior (becoming tame) and Lyme disease. Lyme disease has been increasing in all parts of the state but has not really surfaced in Eastport at this time. Eastport has had a no discharge of firearms ordinance in place for many years due to safety considerations in the area. As a result, archery hunting was the only means available. Due to the reconfiguration of wildlife management district (WMD) boundary lines in 2005, Eastport became part of WMD 27 and due to the management goals for the district had been bucks only for the last 11 years which contributed to the increase in the population.

The deer reduction committee examined different types of control mechanisms and discussed sharp shooters, trap and transfer, contraception, etc. Eastport did not have the funds available to be able to utilize other methods so came to the Department for consideration and the proposal was created in response to the voters of the Eastport area. Land available for hunting was less than 50% of the total acreage due to the concentration of residents and municipal lands (airport) that were closed to hunting. The special hunt was being proposed for 2 consecutive weeks during December over a 3-year period of time. Hunting would be archery only from a fixed ground blind or elevated stand. The locations had to be preapproved and the committee was working with landowners to secure hunting locations. They requested 30 permits with 22 permits for residents/property owners and 8 permits to non-island residents. A small number of permits were recommended for the initial hunt to gain landowner trust to ensure future hunts and potential opening of more hunting areas. The permits would allow the harvest of one antlerless deer and would be in addition to the regular

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season bag limits. A tagging station would be established in Eastport and staff would be trained on tooth extraction for Department research. The overall objective was to reduce the deer related damage in Eastport, track the number and age, vehicle accidents, complaints of damage, assess landowner satisfaction and general public perception.

No public hearing was held on the proposal and 14 public comments were received. The comments were acknowledged and forwarded to the Commissioner's Advisory Council and Department staff for their consideration during the rule-making process. The comments were overall in favor of a special hunt and recognized that there was an overabundance of deer on the island. Two of the comments expressed concern with hunting there in general and hoped the Department would control any "egregious" behavior. Three comments were opposed to the hunt stating they were not aware that the town vote would mean the deer would be killed. They stated many of the deer had become socialized by the residents and were thought of as pets. Both the Senator and Representative for the City of Eastport wrote in favor of the special hunt. Four members of the Commissioner's Advisory Council sent comments asking that the hunt be reduced to one year with the expectation that other efforts be pursued to manage the deer population there; that a report be submitted by Eastport after they conducted the special hunt to show how many deer were tagged, how many hunters, overall conditions during the hunt and suggestions on how the hunt could be improved; that an estimate of the deer population there be provided to help measure success; and a request that the Department develop some criteria for future special hunts.

After reviewing the comments the Commissioner made one modification to the original proposal and reduced the length of the special hunt from three years to a one year hunt. An assessment of the hunt and the deer population there would take place and Department staff would continue to work with Eastport to develop a long term solution to prevent the necessity of a future special hunt there. The Advisory Council voted on the proposal on November 21, 2016 with 8 members participating. The Council voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2016 to December 31, 2016
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, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas and Shooting Ranges
Filing number: 2016-206
Effective date: 12/3/2016
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

IFW currently operates 2 shooting areas located on Department-owned land at the Major Gregory Sanborn WMA and Summerhaven shooting area in Augusta. These areas have been used for recreational shooting by the general public for many years, and see significant use. The sites were unsupervised, and over time behavior at the ranges has deteriorated. After-hours shooting, discharge of firearms in unsafe directions, vandalism of range infrastructure, and littering have become regular problems. Nearby residents also expressed concern over noise levels from the increased use of exploding targets.

Basis statement:

The rules for Department-owned shooting ranges will set clear expectations of behavior for the public, and provide a mechanism for law enforcement to respond to users that display disrespectful or potentially dangerous behavior at the ranges. The rule will impact all current and potential public users of Department owned ranges who will be required to follow clear expectations for behavior while using a range. These changes will improve the safety of the ranges for all users and nearby residents and recreational users of adjacent property and protect significant improvements being made to the ranges with available Pittman-Robertson grant monies.

Two public hearings were held on the proposal, one in Brownfield to discuss the Department range operated by the Fryeburg Fish and Game Association at the Major Gregory Sanborn WMA and the second hearing was held in Hallowell to discuss the Summerhaven shooting range located in Augusta. The Brownfield hearing was well attended with over 50 citizens and the Hallowell hearing had 6 citizens attending. Testimony overall was in favor of improvements being made to the ranges with emphasis on anything the Department could do to reduce noise. Use of automatic firearms was also brought up and the majority of citizens that testified did not want them to be prohibited. Testimony opposing the prohibition on steel core ammunition was also given. Other factors that were included in testimony were they were not in favor of prohibition on airborne targets such as clay pigeons and a set distance for handgun shooting from the target. These items were not part of the proposal, and there was some confusion between what the Department was proposing and range rules that were currently posted at the Brownfield range.

The Department also received 10 written comments that were acknowledged and forwarded to the Commissioner's Advisory Council as well as Department staff for consideration. The comments were overall in support of the proposal and the Department making improvements to the ranges. Five of the comments specifically mentioned concerns with noise and encouraged the Department to do all it could to mitigate the noise. Two comments relating to the Brownfield range suggested the range be moved altogether. A range safety officer also provided comment and discussed steel core ammunition and steel targets. He felt the steel core ammunition prohibition should be changed, and also that steel targets should be prohibited because of the chance of ricochet with certain calibers at close range.

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Concern with automatic firearms and rapid fire were included in three of the comments and felt they should be prohibited.

After reviewing the comments and discussion with staff, the Commissioner moved forward with the original proposal. Further examination of steel core ammunition and the potential for damage to the ranges needed to be conducted before the Department could comfortably allow its use. The rule could be amended in the future if automatic firearms, rapid fire or use of steel targets became an issue.

Fiscal impact of rule:

No fiscal impact anticipated.