

**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171(3)  
**Chapter number/title:** Ch. 11, Scallops: 11.22, Targeted Closures - (6), (15), (16)  
**Filing number:** 2016-004  
**Effective date:** 1/16/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2015-16 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays as authorized by 12 MRS §6171(3). In addition, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

**Basis statement:**

The Maine scallop fishery was formerly a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing 33,141 meat pounds of scallop meats from Maine waters valued at \$272,703. The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity in a limited fishery. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan accompanied by a 30% harvest target that when met would trigger in-season emergency management actions to ensure areas are not overfished and rebuilding continues. The combination of conservation measures appears to be effective as demonstrated by 605,224 meat pounds being landed in 2014 valued at \$7.7 million, a fifteen-fold increase in landings and an almost twenty one-fold increase in value from 2005, while the fishery has experienced a significant increase in active participation in recent years.

This season was undertaken with the understanding that the length of the season likely far exceeds what the resource can sustain, and that the Department may need to use emergency rule-making authority during the season to prevent overfishing. The industry, through the Scallop Advisory Council, requested that the Department provide the fishing opportunity up front, and make adjustments in-season as necessary. The Department was willing to take this approach in part because this fishery is prosecuted in the winter months, and proposing a very limited season could create an incentive to fish in unsafe conditions. The Department emphasized that it will take action to continue to rebuild the scallop resource, as well as provide stability and predictability for the industry into the future. Therefore, the DMR expanded the trigger mechanism to the entire fishery last season in order to move towards a more sustainable harvest of the resource statewide so that when data indicate that 30% of the

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harvestable biomass has been removed from an area, it will be closed early via emergency action in order to ensure that the resource has the ability to replace what has been removed and continue to rebuild. Such action will ensure continued progress towards the goal of a sustainable, rebuilt fishery.

The Department seeks to take rule-making action to close the following targeted area: Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these discrete areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens future recruitment of sublegal "seed" scallops in these areas and remaining broodstock scallops that are needed for successful spawning. Finally, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

**Fiscal impact of rule:**

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

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6171(3)  
**Chapter number/title:** Ch. 11, Scallops: 11.22, Targeted Closures (2<sup>nd</sup> paragraph, and (1), Muscle Ridge; (17), Western Penobscot Area)  
**Filing number:** 2016-012  
**Effective date:** 1/23/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in Muscle Ridge and Western Penobscot Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may reduce the broodstock essential for continuing recovery of the resource. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Muscle Ridge and Western Penobscot Bay as authorized by 12 MRS §6171(3).

**Basis statement:**

The Department is taking emergency rule-making action to close the following targeted areas: Muscle Ridge and Western Penobscot Bay. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these discrete areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning that is needed to rebuild the resource in these areas.

**Fiscal impact of rule:**

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

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171(3)  
**Chapter number/title:** Ch. 11, Scallops: 11.22, Targeted Closures: (18) Cobscook Bay; (19) St. Croix River; (20) Owls Head  
**Filing number:** 2016-019  
**Effective date:** 2/6/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Cobscook Bay and Owls Head in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers, and one day per week for divers. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Cobscook Bay and Owls Head as well as restricts harvest in the St. Croix River, as authorized by 12 MRS §6171(3).

**Basis statement:**

The Department is taking emergency rule-making action to close the following targeted area: Cobscook Bay. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers on Wednesdays and one day per week for divers on Fridays during the months of February, March and April 2016. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years.

**Fiscal impact of rule:**

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

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6171(3)  
**Chapter number/title:** Ch. 25, Lobster and Crab: 25.45, Crab Fishing Limitations  
**Filing number:** 2016-031  
**Effective date:** 3/7/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

In August of 2015, the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved a Jonah crab (*Cancer borealis*) Interstate Fisheries Management Plan (FMP). This action was initiated as the result of an observed rapid increase in landings and value of Jonah Crab in the Northwest Atlantic Ocean. The plan lays out management measures for commercial and recreational Jonah crab fishery. Maine is required to comply with certain elements of the FMP, including *Sections 3.4.1, 4.1, and 4.2* (See ASMFC Jonah Crab FMP at [http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP\\_Aug2015.pdf](http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP_Aug2015.pdf)). In accordance with those sections, the Department's proposed rule sets a minimum size for Jonah crab of 4.75 inches; makes it unlawful to possess egg-bearing, female Jonah crab; makes it unlawful to possess mutilated Jonah crabs on board a vessel; and makes it unlawful for recreational possession of more than 50 Jonah crabs per person per 24-hour day.

**Basis statement:**

In August of 2015, the Atlantic States Marine Fisheries Commission (ASMFC) American Lobster Management Board approved a Jonah crab (*Cancer borealis*) Interstate Fisheries Management Plan (FMP). This action was initiated as the result of an observed rapid increase in landings and value of Jonah Crab in the Northwest Atlantic Ocean. The plan lays out management measures for commercial and recreational Jonah crab fishery. Maine is required to comply with certain elements of the FMP, including *Sections 3.4.1, 4.1, and 4.2* (See ASMFC Jonah Crab FMP at [http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP\\_Aug2015.pdf](http://www.asmfmc.org/uploads/file/55e9daffJonahCrabInterstateFMP_Aug2015.pdf)). In accordance with those sections, the Department's proposed rule sets a minimum size for Jonah crab of 4.75 inches; makes it unlawful to possess egg-bearing, female Jonah crab; makes it unlawful to possess mutilated Jonah crabs on board a vessel; and makes it unlawful for recreational possession of more than 50 Jonah crabs per person per 24-hour day.

This rule complies with ASMFC management measures, thereby helping to ensure a sustainable Jonah crab fishery in the future. Marine Patrol will enforce the requirements as part of their existing enforcement activities.

**Fiscal impact of rule:**

No additional effort will be needed in terms of personnel or time, as enforcement personnel will monitor compliance during routine patrols and already conduct overlapping monitoring activities for the lobster and crab fishery.

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

**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6449  
**Chapter number/title:** Ch. 25, Lobster and Crab: 26.97, Management Framework for Island Limited Entry Programs  
**Filing number:** 2016-032  
**Effective date:** 3/7/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The proposed rule provided a seasonal exemption to the existing 3 trap per trawl limit for a specified area within and around the Piscataqua River, allowing up to 10 traps per trawl from January 1 - April 10. This change was requested by Zone G fishermen fishing in this area, to improve gear handling and minimize gear loss during the winter months. DMR received comments in opposition to making this change, and has removed the proposed exemption from the rule-making.

**Basis statement:**

The proposed rule provided a seasonal exemption to the existing 3 trap per trawl limit for a specified area within and around the Piscataqua River, allowing up to 10 traps per trawl from January 1 - April 10. This change was requested by Zone G fishermen fishing in this area, to improve gear handling and minimize gear loss during the winter months. DMR received comments in opposition to making this change, and has removed the proposed exemption from the rule-making.

The regulation strikes Chebeague Island from the list of islands participating in the Island Limited Entry Program. The Chebeague Island Limited Entry Committee requested a referendum be conducted to assess whether license holders on Chebeague supported the continuation of the Program. Of those voting, 83% supported eliminating the Program. After reviewing the referendum results, the Chebeague Island Limited Entry Committee requested the Commissioner undertake rule-making to terminate the Chebeague Island Limited Entry Program. The Department received no comments opposing the elimination of this Program.

The rule will terminate the Chebeague Island Limited Entry Program.

**Fiscal impact of rule:**

There is no anticipated fiscal impact.

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §§ 6171, 6505-A  
**Chapter number/title:** Ch. 32, Eels: 32.03, Commercial Harvesting Regulations; 32.06, Recreational Eel Harvesting Regulations; 32.30, Elver Gear and Fishing License Lottery 32.35, Elver Quota System for 2016 Elver Season  
**Filing number:** 2016-033  
**Effective date:** 3/7/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

*(See Basis Statement)*

**Basis statement:**

The principal reason for proposing this rule was to establish the elver quota allocations for the 2016 season for individuals licensed under §§ 6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The rule-making also creates an area closure to the taking of eels and elvers within a portion of the Kennebec River and Cobbosseecontee Stream in Gardiner, so that Maine DMR can undertake the eel life cycle study required for compliance with the ASMFC fisheries management plan. The elver gear and fishing license lottery has been suspended by the Legislature, so the language regarding the lottery is struck, until such time as the lottery is reinstated in law. Finally, there is some reorganization of the chapter to combine the regulations regarding commercial and recreational eel harvesting.

The rule will establish overall and individual quota allocations, and create a closure to the taking of eels and elvers within a portion of the Kennebec River and the Cobbosseecontee Stream in Gardiner. Other changes to the rule are reorganization for clarity. The proposed rule was amended to clarify that quota from licenses that were not renewed in 2015 will be allocated across current license holders. It was also amended to strike the prohibition on fishing fyke nets in the St. Croix River, for consistency with pending legislation that will also eliminate that prohibition.

**Fiscal impact of rule:**

There is not expected to be any fiscal impact.

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6171  
**Chapter number/title:** Ch. 45, Shrimp: 45.05, Shrimp Season Closure  
**Filing number:** 2016-034  
**Effective date:** 3/7/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

*(See Basis Statement)*

**Basis statement:**

In November 2014, the Atlantic States Marine Fisheries Commission (ASMFC)'s Northern Shrimp Section approved a moratorium for the 2015 commercial fishery in response to the 2014 Stock Status Report, indicating record low fishable biomass.

On December 7, 2015, the Section met to review the 2015 stock status update, receive Advisory Panel input, and set fishery specifications for the 2016 fishing season. In developing the 2015 stock status update, the Northern Shrimp Technical Committee (NSTC) evaluated a suite of indicators including fishery performance, survey indices of abundance and biomass, and environmental conditions. Abundance and biomass indices for 2012–2015 were the lowest on record of the thirty-two year time series. Recruitment indices for the 2010–2014 year classes were also well below average, and included the three smallest year classes on record. As a result, the indices of fishable biomass from 2013–2015 are the lowest on record. The recruitment index increased slightly in the 2014 survey (2013 year class), however, in 2015 the index dropped to the lowest in the time series. Recruits of the 2013 and 2014 year classes are not expected to reach exploitable size until 2017 and 2018, respectively. Despite the marginal increase in the recruitment index in 2014, the population continues to meet the criteria defining a collapsed stock.

At the December 7th meeting, a motion was passed to approve a moratorium for the 2016 shrimp fishery.

This rule-making is necessary for the timely implementation of a closure in order to conserve the shrimp fishery from unusual damage that would be caused by any fishing effort. As authorized by 12 MRS §6171(3), the Commissioner of Marine Resources adopts this regulation due to the risk of unusual damage and imminent depletion of the shrimp resource that would occur if any fishing were to occur during a necessary closed season.

**Fiscal impact of rule:**

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6171(3)  
**Chapter number/title:** Ch. 11, Scallops:  
11.22, Targeted Closures:  
(21) Inner Machias Area;  
(22) Wohoa / Western Bay;  
(23) Gouldsboro / Dyer Bay;  
(24) Upper Blue Hill Bay / Union River;  
(25) Eggemoggin Reach / Southeast Harbor;  
(26) Lower Jericho Bay;  
(27) Casco Bay.  
**Filing number:** 2016-049  
**Effective date:** 3/20/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rule-making for the implementation of conservation closures located in the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay (hand harvest by scuba diving allowed) in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay (hand harvest by scuba diving allowed), as authorized by 12 MRS §6171(3).

**Basis statement:**

The Department is taking emergency rule-making action to close the following targeted areas: the Inner Machias Area, Wohoa/Western Bay Rotational Area, Gouldsboro/Dyers Bay Rotational Area, Upper Blue Hill Bay/Union River Rotational Area, Jericho Bay Area, Eggemoggin Reach/Southeast Harbor Rotational Area and Casco Bay Area (hand harvest by scuba diving allowed). Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years.

**Fiscal impact of rule:**

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

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**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRSA §6171(3)  
**Chapter number/title:** Ch. 34, Groundfish Regulations: Recreational Cod  
Federal Compliance  
**Filing number:** 2016-087  
**Effective date:** 5/6/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department is enacting emergency rule-making for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, the size limit of 24" (60.1 cm) will apply. In addition to complying with federal law, this emergency regulation will also increase fishing opportunity in Maine State waters. The rule implements NMFS's increase of recreational possession limits for Haddock from 3 to 15 fish. Finally, restrictions on recreational haddock possession are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas the rule had restricted recreational haddock possession in both the fall and spring months.

**Fiscal impact of rule:**

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

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

**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171-A(4-A), 6192  
**Chapter number/title:** Ch. 25, Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River  
**Filing number:** 2016-106  
**Effective date:** 6/21/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the proposed expansion of the existing closed area. Recent confirmation data collected by the Department and analyzed by the Maine Department of Health and Human Services, Center for Disease Control (Maine CDC) indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes the expansion of the existing closure is warranted. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in the expanded area as authorized by 12 MRS §6171-A(4-A).

As authorized by 12 MRS §6171-A(4-A) and 12 MRS §6192 the Commissioner of Marine Resources adopts this emergency regulation because "immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested."

**Basis statement:**

The Commissioner adopts this emergency rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southernmost point on Squaw Point on Cape Jellison in the Town of Stockton Springs.

The justification for the expanded boundary of the closed area is based on recent data collected by the Department that shows lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of data collected in 2014 through the confirmation work, DMR determined that a consumption advisory is warranted for lobster taken from an expanded area. Because this remains a very discrete area and in order to be health protective, DMR is instead taking immediate action to expand the existing closed area. DMR will continue to analyze lobster data collected in 2015 and anticipates that additional information would be collected prior to any future regulatory and public health actions. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints.

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This emergency rule-making is necessary to protect the public health. As authorized by 12 MRS §6171-A(4-A) and 12 MRS §6192, the Commissioner of Marine Resources adopts this emergency regulation. Separate regular rule-making will be forthcoming to expand this closed area.

**Fiscal impact of rule:**

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

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6192  
**Chapter number/title:** Ch. 36, Herring Regulations: 36.01, Herring Management Plan  
**Filing number:** 2016-107  
**Effective date:** 6/22/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. Early landing reports indicate that the concentration of fishing effort in Management Area 1A may deplete the herring supply as early as July. In order to effectively slow the rate of harvest, the Commissioner is restricting harvesting days to the same days that are designated as landing days by the Atlantic States Marine Fisheries Commission.

**Fiscal impact of rule:**  
See §8057-A(1)(C)

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

**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6192  
**Chapter number/title:** Ch. 36, Herring Regulations: 36.01, Herring Management Plan  
**Filing number:** 2016-115  
**Effective date:** 7/2/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch to determine if it is necessary to take emergency action to slow the fishery. At this time, the Department has received reports from industry members and Department staff who are port sampling that landings remain exceptionally heavy, and there is considerable additional fishing and carrying capacity in the fleet. This additional capacity could cause the landings to far exceed the projections that were anticipated to ensure the distribution of the resource throughout Trimester 2. The Department initially limited fishing and landing days to four days, but that was not sufficient to prevent the depletion of the supply of herring. The emergency rule adopted on June 22 limiting the fishing and landing days to four days is repealed and replaced by this emergency rule. A further restriction on the fishing and landing days to one day ( 6 p.m. Sunday to 6 p.m. Monday) is necessary. The rule also puts into effect certain measures required under the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan (FMP) for Atlantic Herring in February 2016. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(8) and (C) to prevent the depletion of the supply of herring and to achieve compliance with changes to the interstate fisheries management plan.

**Fiscal impact of rule:**

No fiscal impact anticipated.

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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6192  
**Chapter number/title:** Ch. 36, Herring Regulations: 36.01, Herring Management Plan; D. Catch Restrictions, (3) Effort Restrictions  
**Filing number:** 2016-116  
**Effective date:** 7/9/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch, and has taken multiple emergency actions previously to slow the fishery. Due to increased fishing and carrying capacity in the herring fleet, the Department initially limited fishing and landing days to four days, then further restricted fishing and landing days to just one day. However, those actions have resulted in a very constrained bait supply to the lobster fishery. At this time, the Department intends to modify its emergency regulatory strategy but maintain the same objective of maintaining a steady bait supply throughout July and August and into September if possible. To achieve this objective, the Department is imposing weekly landing limits on the harvest of herring, as well as providing additional fishing and landing opportunities (three days of fishing, and two landing days) to increase the likelihood that the weekly landing limits will be met, providing a steady bait supply to the lobster fishery. These actions are intended to prevent an unusual concentration of fishermen from depleting the supply of herring. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(B).

**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6171-A  
**Chapter number/title:** Ch. 10, Clams and Quahogs  
**Filing number:** 2016-117  
**Effective date:** 7/17/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Commissioner has become aware of fishermen using electricity based harvesting practices to target razor clams along the Maine Coast, but the impacts of this gear type have not been tested and are not well understood. Existing research indicates that these harvesting methods cause harm to razor clam populations, and may pose real danger to the divers and fishermen who need to be in close proximity to the electrical equipment during the harvesting process. Therefore, the Commissioner finds it prudent to adopt this rule while simultaneously exploring the harvest technique on an experimental basis using Department resources in order to determine if the Department can safely regulate these techniques.

**Basis statement:**

Razor clams have great potential as a commercially harvested species in Maine. In order to conserve the species in a way that will make harvest sustainable given increased fishing pressures, the Department has determined that size and gear restrictions are needed. Size restrictions were determined based on a survey of current literature on razor clam populations in Maine and also in other countries where razor clams are harvested for commercial purposes. Gear restrictions were based on current analysis of known and reported detrimental effects via a literature review demonstrating that there are detrimental impacts associated with electrical field based fishing techniques. This includes the impacts of electrical fields on the razor clam resource. In addition, there may be impacts to non-target species (such as fish), and also a danger posed to divers and draggers who work in close proximity to the electrical harvesting equipment. While more research on the impacts are needed, the threats posed to the benthic habitat represents a substantial threat to the trophic structure that supports not just razor clam but all commercial fisheries in Maine, indicating that the risk this gear type poses is unjustified until further research can be conducted. Therefore, the Department will simultaneously pursue a study to test and assess the impacts of electrically based harvesting techniques. Tolerance levels for Quahogs were determined based on the Department's understanding of current practices in Maine, a survey of the literature on sustainable harvest sizes, and after receiving feedback from Marine Resource Officers.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 11, Scallops  
**Filing number:** 2016-118  
**Effective date:** 7/17/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this rule-making is to improve the structure and transparency of Ch. 11.

**Basis statement:**

This rule-making restructures the scallop regulations, for greater clarity and ease of use by the public and industry members.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6173, 6749  
**Chapter number/title:** Ch. 26, Sea Urchin Regulations  
**Filing number:** 2016-119  
**Effective date:** 7/17/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This regulation establishes season limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 during the 2016-2017 season.

For Zone 1, a 15-day season is for divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as in the 2015-2016 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 15 days in September ("early season"), or 15 days in December ("late season"); and draggers in December ("early season"), or February and March ("late season").

For Zone 2, a 38-day season is for divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as in the 2015-2016 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 38 days in September through December ("early season"), or 38 days in December through March ("late season"); and draggers would have 38 days in October through March ("early season") or November through March ("late season").

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 9-day season is for Zone 2 divers, trappers, rakers and draggers in 2016-2017, which is the same number of days as the season in 2015-2016. Zone 2 divers, rakers and trappers may fish 9 days in November and December ("early season"), or 9 days in January, February and March ("late season"); both early and late season Zone 2 draggers would have 9 days in December, February and March. The Sea Urchin Zone Council recommended the selection of these particular days.

**Basis statement:**

This regulation establishes season limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 during the 2016-2017 season. This regulation will also change the date by which a Zone 2 harvester must designate the early or late season, from September 15 to August 15, if the harvester wishes to change his/her designation. These updates in the management approach were developed over the course of three meetings with industry members and fishermen to determine the methods that would both satisfy the resource management needs and industry needs in terms of industry participation in the fishery. Based on comments received, the Zone 2 late season diver, trapper and raker calendar for Whiting/Denny's Bay was corrected to have 9 fishing days instead of 10.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 34, Groundfish Regulations  
**Filing number:** 2016-120  
**Effective date:** 7/17/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rule-making on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This rule will permanently instate those changes made via emergency rulemaking on May 7, 2016, and will also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply. Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. Additional changes are largely structural in nature.

The rule-making strikes the rule and replaces it with a restructured version which clarifies the overall outline structure of the rule and to make it easier for the industry and public to locate applicable sections. In addition, certain minor changes clarify the contents of Ch. 34. Bait gillnet is added to the definitions section of the rule, which includes clear measurements for the mesh and length. Goosefish are renamed monkfish under Groundfish definitions, and size limits for monkfish are added to the section on recreational minimum fish sizes. Clarification of methods of mesh measurements for gillnets are added. Common names are added to lists of species in order to align the rule with current naming practices for fish. Pounds of fillets measuring less than minimum size, except for Atlantic Halibut, are added to the section on minimum size limit exceptions. Language is added to the section on commercial fishing possession limits to clarify the pounds of each species that can be taken from state waters by state commercial fishing license holders who do not hold federal groundfish permits. Windowpane flounder and Ocean Pout are added to prohibited species under the Recreational Groundfish Restrictions to reflect the same prohibition for commercial fishing and to bring the state recreational restrictions into line with federal recreational prohibitions.

**Basis statement:**

In accordance with the New England Fisheries Management Council and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 1, 2016, the Department enacted emergency rule-making on May 7, 2016 for charter, party and recreational fishing vessels operating in state waters regarding cod and haddock. This rule will permanently instate those changes made via emergency rule-making on May 7, 2016, and will also make additional changes. For the recreational fishery, the cod fishery has been taken off the prohibited list and it is now lawful to take or possess one cod per day in state waters. Cod may not be possessed on board a charter, party or recreational fishing vessel from October 1 to July 31 inclusive. For cod fish, a minimum size limit of 24" (60.1 cm) will apply.

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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*

Recreational possession limits for haddock increase from 3 to 15 fish. Finally, seasonal restrictions on haddock are being shifted, so that haddock may not be possessed on board a recreational fishing from March 1 through April 14, whereas recreational haddock possession had previously been restricted in both the fall and spring months. In addition, the rule makes certain structural changes that will clarify the contents and enforcement of the chapter. The rule will also add certain common names for species, as well as greater detail on gear measurements and sizes.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171(3)(C)  
**Chapter number/title:** Ch. 41, Menhaden  
**Filing number:** 2016-130  
**Effective date:** 7/31/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Department has received reports from industry members and Department staff that the state allocation for Atlantic menhaden has been met or exceeded, and that there is significant fishable biomass that warrants the implementation of an episodic event fishery. Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden specifies the regulatory provisions that must be implemented in order to allow such an episodic event fishery to occur. Access to the additional menhaden biomass will provide an important source of bait for Maine's lobster fishery and minimize the risk for fish kills. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(C) to allow for the occurrence of an episodic event fishery.

**Basis statement:**

Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden was approved in December 2012. Amendment 2 enables the Atlantic Menhaden Management Board to set aside 1% of the overall total allowable catch (TAC) for episodic events. Episodic events are times and areas where Atlantic menhaden are available in more abundance than they normally occur. The set aside is designed to enable increased harvest of Atlantic menhaden during episodic events. As part of the episodic events set aside provision, the Board developed the mechanism for state(s) to use the set aside. The Technical Addendum detailing the episodic events set aside program was subsequently approved by the Board at its May 22, 2013 meeting. To participate in the episodic events program, a state must implement daily trip level harvest reporting. Each state must track landings and submit weekly reports to ASMFC staff. Episodic event harvests and landings must be restricted to state waters of the state that declares participation in an episodic event. States must implement a maximum daily trip limit no greater than 120,000 pounds/vessel.

Maine DMR is aware that the allocated state quota for menhaden has been met, and the biomass still available is such that an episodic event fishery is necessary. For compliance with the requirements established in Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner adopts this emergency rule. The requirements for daily trip level harvester reporting, requiring menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3(A) and (C).

**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171(3)(A)  
**Chapter number/title:** Ch. 41, Menhaden  
**Filing number:** 2016-137  
**Effective date:** 8/5/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Department has received reports from industry members and Department staff that the 2016 state allocation for Atlantic menhaden has been met or exceeded. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(A) to prevent unusual damage or imminent depletion of the menhaden resource.

**Basis statement:**

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved a total allowable catch (TAC) for the 2015 and 2016 fishing seasons of 187,880 mt per year. The TAC is made available to the states based on the allocation established by Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. The percentage allocated to Maine for 2016 is 0.04%, or 161,466 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on landings reports received, Maine DMR is aware that the 2016 menhaden quota has been exceeded, and is closing the menhaden fishery for 2016 in order to avoid unusual damage and imminent depletion of the menhaden resource. An exception to the closure is provided in order to allow a small amount of menhaden to be taken by hook and line for personal use only. A second exception to the closure is provided to allow for the incidental take of menhaden as bycatch, up to 6,000 lbs. per day. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3 (A).

**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*

<b>Agency name:</b>	<b>Department of Marine Resources</b>
<b>Umbrella-Unit:</b>	<b>13-188</b>
<b>Statutory authority:</b>	12 MRS §6171(3)(A)
<b>Chapter number/title:</b>	<b>Ch. 41</b> , Menhaden
<b>Filing number:</b>	<b>2016-138</b>
<b>Effective date:</b>	8/15/2016
<b>Type of rule:</b>	Routine Technical
<b>Emergency rule:</b>	Yes

**Principal reason or purpose for rule:**

Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery in order to ensure reporting compliance, as well as limiting landings to two days per week with a 20,000 lb. daily landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS §6171(3)(A) to prevent unusual damage or imminent depletion of the menhaden resource.

**Basis statement:**

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved Maine's participation in the 2016 episodic event fishery on July 31, 2016, at which time the remaining 2016 episodic event quota available was 3,548,111 lbs. The episodic event quota is made available to the states based on the program established by Technical Addendum I to Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. States have the responsibility to close the episodic event fishery in their state once the episodic event quota has been reached. Based on landings reports received, Maine DMR believed that the 2016 menhaden episodic event quota was being utilized more quickly than daily landings report indicated, and took steps to ensure it was not exceeded by closing the Maine episodic event fishery on August 5, 2016. However, actual landings were not as high as anticipated, and now Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery no later than noon on August 18, 2016 in order to ensure reporting compliance, and declare a single carrier vessel for the duration of the fishery, as well as limiting fishing and landing days to three days per week (Tuesday 00:01 am through Thursday 11:59 pm) with a 120,000 lb. weekly landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by §6171-3 (A). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 36, Herring Regulations: 36.01, Herring Management Plan  
**Filing number:** 2016-152  
**Effective date:** 9/25/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

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

**Basis statement:**

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. To mitigate the likelihood of that happening again, fishing and landing days have been combined to better control fishing effort. Additional measures are being put into place based on changes to the Interstate Fishery Management Plan for Atlantic Herring developed by the ASMFC in 2016 to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6671  
**Chapter number/title:** Ch. 4, Municipal Shellfish Conservation Warden Certification  
**Filing number:** 2016-190  
**Effective date:** 11/15/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this adoption is to clarify the Municipal Shellfish Conservation Warden Certification rule chapter.

**Basis statement:**

This rule-making is a repeal and replace of Ch. 4. The primary purpose of the rule-making is to restructure the chapter, clarify the requirements for Shellfish Conservation Warden positions, and put in place certain requirements for Warden applications that will ensure that Marine Patrol can better utilize Warden testimony in the context of shellfish violations. Specifically, changes include requiring candidates for Municipal Shellfish Conservation Warden positions to complete the MDMR Municipal Shellfish Conservation Warden Training Course, specifying that the background check will be specifically in regards to employment, and that candidates must specifically complete the MDMR Municipal Shellfish Conservation Warden Training Course. In addition, the rule requires that applicants to Warden positions qualify as candidates able to provide courtroom testimony in both civil and criminal courts. A clarifying change was made from the original proposed language to specify that the Commissioner may also suspend certification, in addition to revoking or denying certification, if certain circumstances exist.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 11, Scallops  
**Filing number:** 2016-191  
**Effective date:** 11/15/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

Scallop Regulations must be updated for each new season in order to adjust the schedules and closure lines based on lessons learned from the previous season.

**Basis statement:**

This rule establishes the 2016-2017 scallop fishing season. As in the 2015-2016 season, there is a daily possession limit of 15 gallons for Zone 1 and Zone 2, and a daily possession limit of 10 gallons for Zone 3. For Zone 1, a 60-day season is set for draggers to start on December 5, 2016 and the last day of the season is April 11, 2017. For Zone 1, a 60-day season is set for divers to start on December 1, 2016 and the last day of the season is April 15, 2017. For Zone 2, a 70-day season is set for draggers to start on December 5, 2016 and the last day of the season is March 28, 2017. For Zone 2, a 70-day season is set for divers to start on December 1, 2016 and the last day of the season is April 15, 2017. For Zone 3, a 50-day season is set for draggers to start on December 5, 2016, and the last day of the season is March 29, 2017. For Zone 3, a 50-day season is set for divers to start on December 1, 2016 and the last day of the season is March 24, 2017.

In addition, DMR is either maintaining or implementing the following targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops which include: Muscle Ridge (limited); Lower Muscle Ridge; Eastern Casco Bay; Ocean Point; Sheepscot River; Muscongus Bay; New Meadows River; Card Cove; and East Moosabec Reach.

Finally, DMR is implementing a Limited Access Area in the MDI region of Zone 2.

Based upon comments received during the proposed rule-making process, the Department changed the following items in the adoption documents:

- The proposed East Moosabec Reach Targeted Closure size is reduced by moving the eastern boundary west and renaming the closure as Beal-Jonesport Bridge Targeted Closure and establishing a Limited Access Area in the remaining portion of the original closure, which shall be named the East Moosabec Reach Limited Access Area.
- A minor change to the boundaries of the Lower Jericho Bay, Lower Blue Hill Bay/Jericho Bay and East Isle Au Haut Rotational Areas, which were originally made in the 2015-16 season rulemaking, but reversed in error during the restructuring of the regulation in the spring of 2016.
- A minor change to the Lower Penobscot Bay & Outer Island Rotational Area eastern boundary as it included an error referencing North Haven which was corrected to Vinalhaven.
- A minor change to the eastern boundary of the Chandler Bay/Head Harbor Island rotational area and the western boundary of the Little Kennebec/Englishman Bay rotational management to include an intercept on East Black Rock to assist in the enforcement of the boundary by Marine Patrol.
- Zone 1 Dive Calendar: Two days were moved from the middle of January to the first week of that month to provide for five consecutive days of fishing before the split in the season. Two

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

days in the middle of January were also moved to the end of March when weather is better. Finally, three Thursday Limited Access Area days in the month of January were moved from January 7, March 18 & 25, 2017 to enable an early split season to facilitate diving in better conditions as well as to enable tenders and helpers to find alternative work.

- Zone 2 Dive Calendar: Five days were moved from April to January (2) and February (3) to allow for three day fishing weeks in lieu of two day fishing weeks during those months to provide divers with better access to the resource before closures are implemented mid-season.

**Fiscal impact of rule:**

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

**Annual List of 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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171-A  
**Chapter number/title:** Ch. 25, Lobster and Crab: 25.65, Lobster and Crab Closure in Penobscot River  
**Filing number:** 2016-192  
**Effective date:** 11/15/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Commissioner adopts this rule-making in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the proposed expansion of the existing closed area. Recent confirmation data collected by the Department and analyzed by the Maine Department of Health and Human Services, Center for Disease Control (Maine CDC) indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes the expansion of the existing closure is warranted.

**Basis statement:**

This rule-making is necessary to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southernmost point on Squaw Point on Cape Jellison in the Town of Stockton Springs.

The justification for the expanded boundary of the closed area is based on recent data collected by the Department that shows lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of data collected in 2014 through the confirmation work, DMR determined that public health risks exist relating to the consumption of lobster taken from the area. Because this remains a very discrete area and in order to be health protective, DMR is taking action to expand the existing closed area. In making this determination, DMR considered issuing a consumption advisory in lieu of a closure but determined that a closure would be the most effective means to achieve public health protection due to the difficulty of effectively communicating the risk to the public, including non-commercial harvesters who may be fishing in this area, the seasonal nature of the commercial fishery in this area, and the inability to track lobsters taken from the area once they enter into the market. DMR will continue to analyze lobster data collected in 2015 and anticipates that additional information would be collected prior to any future regulatory and public health actions. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints.

**Fiscal impact of rule:**

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.

**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 Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6431-B, 6446, 6449, 6482  
**Chapter number/title:** **Ch. 25**, Lobster and Crab: **25.08**, Lobster Trap Tag System; **25.90**, Swans Island Area Lobster Trap Regulation; **25.97**, Management Framework for Island Limited Entry Program  
**Filing number:** 2016-193  
**Effective date:** 11/15/2016  
**Type of rule:** Routine Technical  
**Emergency rule:** No

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

**Basis statement:**

This rule-making addresses 1) a new requirement for the use of second zone lobster trap tags statewide, 2) the removal of the registration period for the Swans Island Lobster Conservation area, 3) a change in the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600 traps, for consistency with a previous statutory change, and 4) the creation of an island limited entry program for the island for Swans Island.

This rule-making creates a requirement to use a second zone tag in all traps when fishing those traps in a zone other than their declared lobster zone. The second zone tag is in addition to their declared lobster zone tag, and is needed to increase Marine Patrol's ability to enforce the current 49/51% trap component of the Lobster Zone Limited Entry rules. The adopted language is amended from what was originally proposed to clarify that a license holder may not fish more than 49% of their traps in a limited entry zone unless that zone is identified as their declared zone.

This rule-making also removes the deadline for registration for the Swans Island Lobster Conservation Area, allowing individuals to register at any time of the year. In addition, this rule-making changes the maximum allowable number of lobster trap tags for the Swans Island Lobster Conservation Area from 475 to 600, for consistency with existing Maine law.

Finally, this rule-making addresses a recent island limited entry referendum vote for Swans Island. It creates the Swans Island limited entry program, allowing up to 72 commercial island resident lobster licenses to be issued annually, as authorized by 12 MRS §6449.

**Fiscal impact of rule:**

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