

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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: 11.05, Scallop Harvesting Gear Restrictions; 11.08, Targeted Scallop Conservation Closures; 11.09, Limited Access Areas
Filing number: 2017-001
Effective date: 1/1/2017
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 Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. 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. In the Hussey Sound/Chandler Cove area, high concentrations of both seed and sublegal scallops were observed in the December 2, 2016 pre-season fishery independent DMR survey. 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. 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 2016-17 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 South Portland Harbor, Hussey Sound/Chandler Cove (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay and Chandler Bay, as authorized by 12 MRS §6171(3). In addition, there are a number of clarifications in this rulemaking which include:

11.05: Additional language was added to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;

11.08: A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08, in addition to (10)(11)(12) & (13) being added;

11.09: A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as Sheepscot River and Muscongus Bay being clarified that they are in fact closed during the 2016-17 scallop season. In addition, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and

11.12: A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2 and are therefore not subject to rotational management.

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Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Portland Harbor, Hussey Sound/Chandler Bay (hand harvest by scuba diving allowed), Narraguagus/Pigeon Hill Bay Rotational Area and Chandler 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 areas during the fishing season has 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 and therefore the areas described above will be closed to fishing (except Hussey Sound/Chandler Cove, which shall remain open to divers). In addition, there are a number of clarifications in this rulemaking which include:

- **11.05:** Additional language to clarify the exact points of land that the Blue Hill Bay Drag Restriction pertains to;
- **11.08:** A correction is needed to clarify that (1) Muscle Ridge is open to dragging on Mondays and Tuesdays in the opening paragraph of section 11.08;
- **11.09:** A clarification that Limited Access Areas are open unless otherwise indicated in section 11.08, such as the Sheepscot River and Muscongus Bay being closed during the 2016-17 scallop season. Also, a clarification was needed to change Southwest Harbor to Northeast Harbor for the southern boundary of the (5) Mount Desert Island Limited Access Area, and
- **11.12:** A correction to the C Third Rotation (7) Lower Penobscot Bay & Outer Islands Rotational Area which removed the language referring to Little Green and Large Green Islands as they are actually in Zone 1, not Zone 2, and are therefore not subject to rotational management.

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: 11.08, Targeted Scallop Conservation Closures: (1) Muscle Ridge, (13) Chandler Bay / Head Harbor, (14) Inner Cranberry Isle Area
Filing number: 2017-008
Effective date: 1/22/2017
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 Muscle Ridge, Jonesport Area and Cranberry Isle Area in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. 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. In addition, high concentrations of sublegal scallops in both the Muscle Ridge and Inner Cranberry Isle Area require protection from incidental mortality caused by drag gear; however, due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. In addition, there is a clarification in this rulemaking to the Hussey Sound/Chandler Bay targeted closure to reflect that it is open to divers for continued harvest.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Muscle Ridge (hand harvest by scuba diving only), Inner Cranberry Isle Area (hand harvest by scuba diving only), and Chandler Bay/Head Harbor Area. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in both the Muscle Ridge and Inner Cranberry Isle Area require protection from incidental mortality caused by drag gear; however, due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue. 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 and therefore the areas described above will be closed to fishing (except Muscle Ridge and Inner Cranberry Isle Area, which shall remain open to divers). In addition, there is a clarification to the Hussey Sound/Chandler Cove targeted closure to reflect that is open to hand harvest by scuba diving only.

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: **11.08**, Targeted Scallop Conservation Closures: (2nd paragraph, and) (11) Casco Bay, (13) Chandler Bay / Head Harbor, (15) Upper Damariscotta River, (16), North Haven, (17), Mid Penobscot Bay, (18), Lower Blue Hill Bay / Jericho Bay; **11.09**, Limited Access Areas: (2), Damariscotta / Sheepscot Area; **11.12**, Ten (10) Year Rotational Management Plan: 1. Zone Two (2) Eastern Maine; B. Second Rotation
Filing number: **2017-012**
Effective date: 2/5/2017
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 Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay, and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have to sublegal product, diving in this area will be allowed to continue when the Zone 1 dive season resumes on March 1. Divers will also be allowed continued access in North Haven, Upper Damariscotta River and Lower Blue Hill Bay/Jericho Bay until such time as further management actions are necessary.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Bay (hand harvest only), Upper Damariscotta River (hand harvest only), Mid Penobscot Bay (draggers limited to Mondays & Tuesdays), North Haven (hand harvest only), Lower Blue Hill Bay/Jericho Bay (hand harvest only) and Chandler Bay/Head Harbor Island. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue as divers have not had access to the area since the first week of January and will resume fishing on March 1. Diving will also be allowed to continue in Upper Damariscotta River as a section of the furthest reaches of the upper river has not yet been fully exploited and will provide additional opportunity to divers when their season resumes on March 1. Finally, diving will also be allowed to continue in both North Haven and Lower Blue Hill Bay/Jericho Bay. Since the beginning of the season, draggers have had a total of 41 fishing days in these areas

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while the divers have only had 34 days. To provide equal access to the resource for both gear types, access will remain open for divers. Continued fishing threatens the remaining broodstock scallops 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 and therefore the areas described above will be closed to fishing, except Casco Bay, Upper Damariscotta River, North Haven and Lower Blue Hill Bay/Jericho Bay, which shall remain open to divers until such a time as further management actions are necessary.

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: 11.08, Targeted Scallop Conservation Closures: (2nd paragraph, and) (13) Chandler Bay / Head Harbor Island; (15) Damariscotta River; (16) North Haven; (17) Mid Penobscot Bay; (18) Lower Blue Hill Bay / Jericho Bay; 11.12, Ten (10) Year Rotational Management Plan: (5) Lower Blue Hill Bay / Jericho Bay; (7) Mid Penobscot Bay
Filing number: 2017-033
Effective date: 2/26/2017
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 Chandler Bay/Head Harbor Island, Damariscotta River (hand harvest only), North Haven, Mid Penobscot Bay and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. Divers will also be allowed continued access to Damariscotta River until such time as further management actions are necessary.

Basis statement:

The Department is taking emergency rulemaking action to implement expanded targeted closures in the following areas: Chandler Bay/Head Harbor Island, Damariscotta River (hand harvest only), North Haven, Mid Penobscot Bay rotational area and Lower Blue Hill Bay/Jericho Bay rotational area. 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 exceeded the 30% removal target that ensures the fishery continues to rebuild. Diving will be allowed to continue in the Damariscotta River as the upper portion of the river has not yet been fully exploited and will provide additional opportunity to divers when their season resumes on March 1, 2017. Finally, harvest by divers in both North Haven and Lower Blue Hill Bay/Jericho Bay will close; these two areas remained open to divers only for additional opportunity to ensure that both the divers and the draggers had equal access to the resource, as divers had a reduced season in January and February. Continued fishing threatens the remaining broodstock scallops 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 and therefore the areas described above will be closed to fishing, except in the Damariscotta River which shall remain open to divers until such a time as further management actions are necessary.

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 §§ 6447, 6448
Chapter number/title: **Ch. 25**, Lobster and Crab: **25.04**, Lobster Trawl Limits; **25.93**, Management Framework for Limiting Lobster Fishing Effort on a Local or Regional Basis – Operational Rules; **25.96**, Lobster Apprentice Program
Filing number: **2017-041**
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

This rulemaking 1) expands the Hancock County Trawl Limit area in Zone B, 2) amends the exit ratio for Zone B, 3) creates an exit ratio for Zone C, 4) amends the exit ratio for Zone E, 4) creates a separate waiting list for existing lobster license holders wishing to change their declared lobster zone (a “transfer” list) and 5) makes minor clarifications for consistency with recent legislative changes.

This rulemaking expands the Hancock County Trawl Limit area in Zone B. In this area it is unlawful to have more than 3 lobster traps on any trawl. One of the lobster zone council authorities is to propose the number of lobster traps allowed on a trawl. The Zone B Council proposed extending the western boundary of the Hancock County Trawl Limit line to the 6-mile line.

This rulemaking changes the Zone B 5:1 exit ratio using the currency of lobster licenses not renewed to a 3:1 exit ratio using the currency of lobster license not renewed. At the Lobster Zone B Council meeting on September 21, 2016, there was a unanimous vote by the Zone B Council to change their exit ratio in this way.

This rulemaking establishes Zone C as a limited entry zone with an exit ratio of 1:1 using the currency of lobster licenses not renewed. At the Lobster Zone C Council meeting on September 8, 2016, there was a majority vote by the Zone C Council to establish this exit ratio.

This rulemaking changes the Zone E 5:1 exit ratio currency from the number of trap tags associated with licenses not renewed to the number of licenses not renewed. At the Lobster Zone E Council meeting on February 29, 2016, there was a majority vote by the Zone E Council to change their exit ratio in this way.

For consistency with changes in statute, this rulemaking requires that limited entry zones that opt to use trap tags retired in their exit ratio calculation, use the historic high of trap tags purchased, up to the current zone limit.

This rulemaking addresses the lobster waiting lists, which currently consists of both apprentices who do not have a lobster license, as well as individuals that do hold a lobster license, but are requesting to switch to a different lobster zone. The Legislature recently passed a law directing the Department of Marine Resources to remove those individuals who already hold a lobster license from the existing waiting list, and create a separate “transfer” waiting list, as authorized by 12 MRS §6448. This rulemaking creates a single “transfer” list and make transfers “one for one” with no net increase from transfers in any zone. The Department of Marine Resources will authorize any such “swaps” annually until there are no matches remaining.

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Finally, this rulemaking clarifies that if an individual completes the apprentice program in multiple zones, individuals would still be required to document at least the minimum of 1,000 fishing hours that is accumulated over a minimum of 200 calendar days in each desired zone. However, the minimum of the 24-month requirement is met 24 months from the date the individual logs their first day in the apprenticeship program.

Fiscal impact of rule:

Enforcement of these proposed amendments 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 §6446
Chapter number/title: Ch. 25, Lobster and Crab: 25.94, Lobster Management Zones
Filing number: 2017-042
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to achieve greater clarity regarding the Lobster Zone line boundaries.

Basis statement:

This rulemaking makes clerical corrections to the Lobster Zone line boundaries, amends the regulation for greater clarity, and adds positions where Lobster Zone lines intersect with the Lobster Management Area 3 line.

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.

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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 §§ 6302-B, 6505-A
Chapter number/title: **Ch. 32**, Eel Regulations; **32.35**, Elver Quota System for 2017 Elver Season; **32.40**, Elver Transaction Cards; **32.50**, Mandatory Elver Dealer Meeting to Prepare for the 2017 Elver Season
Filing number: **2017-043**
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rulemaking establishes the elver quota allocations for the 2017 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. 2017 allocations will be the same as the 2016 allocations, plus any quota associated with licenses not renewed in 2016 or suspended for the duration of 2017. Finally, the regulation clarifies that an individual may not possess or sell in any combination an amount of elvers that exceeds that individual's individual elver individual fishing quota, and that a transaction card may only be used to sell elvers that individual has taken.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 40, Smelt Regulations: 40.12(C), Smelt Management Zone Restrictions
Filing number: 2017-044
Effective date: 3/12/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking amends the smelt regulations for Zone One (1), which is the area from the New Hampshire border to Owl's Head Light. In this Zone, it would permit the taking of smelting only by hook and line through the ice. Currently, fishing is prohibited after March 15, whether there is ice or not. This change allows fishing for smelt as long as the ice is present. The existing four quart limit would remain in place.

Basis statement:

This rulemaking was initiated at the request of a smelt camp operator, who wanted the smelt camps to be able to remain on the ice beyond March 15, in those years where ice is still present after that date. Under the existing rule, no fishing is allowed after March 15. The Department felt that this was a reasonable request, and that the impact on the smelt population of continued fishing through the ice at that time of year would not be significant. As a result of the amendment to the rule, in Zone 1 (New Hampshire border to Owl's Head Light) smelt may only be taken by hook and line through the ice and there are no limitations on the season.

Fiscal impact of rule:

No fiscal impact is anticipated.

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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: 11.08, Targeted Scallop Conservation Closures: *(2nd paragraph, and)* (19) Cobscook Bay
Filing number: 2017-049
Effective date: 3/12/2017
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 in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage.

Basis statement:

The Department is taking emergency rulemaking action to implement an expanded targeted closure in Cobscook Bay. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in this specific area may damage sublegal scallops potentially being caught with an increased frequency, and also, reduce the level of broodstock essential to continuing recovery. Based on observations and direct input from Marine Patrol, industry participants, and data provided by the Department's monitoring program, the level of fishing effort in this area has exceeded the 30% removal target. Continued fishing threatens both seed and the remaining broodstock scallops in the area needed for future recruiting and successful spawning as management maintains a rebuilding strategy to increase overall stock biomass.

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, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.07, Atlantic Halibut
(*Hippoglossus hippoglossus*)
Filing number: 2017-068
Effective date: 4/30/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

(See Basis Statement)

Basis statement:

The Department is taking emergency rulemaking action to implement a clarification that it is illegal to possess Atlantic Halibut when operating seaward of Maine's territorial waters. In January 2017, the New England Fishery Management Council passed a motion to ask the United States Coast Guard and states operating under a Joint Enforcement Agreement with the National Oceanic and Atmospheric Administration (NOAA) that enforcement of the three nautical mile limit be a high priority during the Atlantic halibut season in Maine. This motion was passed based on concerns that state waters-only license holders are targeting Atlantic halibut outside of Maine's territorial waters, resulting in increased catch rates. Based on State landing reports, the State waters fishery from 2010-2014 has historically caught an average of 65 percent of the sub-Annual Catch Limit and in fishing year 2015 (May 1, 2015-April 30, 2016), caught 101 percent. It is anticipated that 2016 landings may be even higher. This rule clarifies that fishermen targeting halibut with State commercial tags may not possess Atlantic halibut outside of Maine's territorial waters. This action is intended to protect and conserve the halibut resource from unusual damage and imminent depletion. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(A).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2017 to December 31, 2017
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-083
Effective date: 6/4/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held May 23, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). At their Days Out Meeting in May 23, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday and are limited to landing 400,000 lbs. (10 trucks) weekly; and, may transfer to one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C shall fish and land Atlantic herring on seven consecutive days a week and shall not transfer fish caught to a carrier vessel at sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

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, 2017 to December 31, 2017
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: 41.30, Menhaden Program (Menhaden Fishery Closure)
Filing number: 2017-084
Effective date: 6/3/2017
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 2017 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 close the fishery 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 2017 fishing season of 200,000 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 amount allocated to Maine for 2017 is 171,882 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on its knowledge of existing fishing activity, Maine DMR is aware that the 2017 menhaden quota has been reached, and is closing the menhaden fishery for 2017 in order to avoid unusual damage and imminent depletion of the menhaden resource. The Commissioner adopts this emergency rulemaking under the authority provided by §6171-3(A).

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(3)(C)
Chapter number/title: Ch. 41, Menhaden: 41.05, Territorial Waters Trawl Prohibition; 41.30, Menhaden Program (Episodic Event Fishery)
Filing number: 2017-088
Effective date: 6/8/2017
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, and potentially exceeded. However, there remains significant fishable biomass in Maine territorial waters 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 there is biomass still available such that an episodic event fishery is necessary. Requirements for executing an episodic event fishery include: daily trip level reporting for all harvesters, menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel. These effort controls 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.

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Rules Adopted January 1, 2017 to December 31, 2017
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-101
Effective date: 7/1/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting via telephone on June 28, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). During the Days Out Conference Meeting on June 28, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Thursday and are limited to landing 600,000 lbs. (15 trucks) weekly; and, may transfer to only one carrier vessel per week up to 80,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring on seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 80,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 80,000 lbs. per week. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3).

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, 2017 to December 31, 2017
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: 41.30, Menhaden Program (Menhaden Episodic Event Fishery Closure)
Filing number: 2017-102
Effective date: 7/3/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department has received confirmation from the Atlantic States Marine Fisheries Commission's Atlantic Menhaden Board that over 80% of the episodic quota has been harvested. The Commission has directed all States participating in the episodic fishery to close midnight on Wednesday, July 5, 2017. For this reason, 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. Upon the closure of the episodic event fishery, a vessel may fish for or take up to 6,000 pounds of menhaden per day as incidental bycatch and the vessel shall not land more than 6,000 lbs. per calendar day. A vessel that is taking Atlantic menhaden as incidental bycatch shall not transfer Atlantic menhaden at sea.

Maine DMR has received confirmation from the Atlantic States Marine Fisheries Commission's Atlantic Menhaden Board that over 80% of the episodic quota has been harvested. The Commission has directed all States participating in the episodic fishery to close at 11:59 p.m. on Wednesday, July 5, 2017. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(C) to close the Atlantic Menhaden episodic event fishery.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-115
Effective date: 7/29/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting via telephone on July 26, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Effort controls for the Atlantic Herring fishery are reviewed by the Atlantic Herring Section of the ASMFC bi-weekly using the best available data from staff. During the latest Days Out Conference Meeting on July 26, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and are limited to landing 680,000 lbs. (17 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2017 to December 31, 2017
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 §§ 6749, 6173
Chapter number/title: Ch. 26, Sea Urchin Regulations
Filing number: 2017-116
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation would establish open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2017-2018 season. It also establishes the utilization of harvester swipe cards for picking days to fish. This is a pilot project which aims to evaluate the swipe card system which could potentially provide industry the flexibility to fish in a more safe manner and to increase sea urchin roe quality.

For Zone 1, 20-day seasons are proposed for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2016-2017 season. The Sea Urchin Zone Council recommended the selection of these particular days. Divers, rakers and trappers may fish 15 days beginning in September into October ("early season"), or 15 days in December and February ("late season"); and, draggers may fish 15 days in December ("early season"), or February and March ("late season").

For Zone 2, 45-day seasons are proposed for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 38 days of their choosing, the same number of days allowed during the 2016-2017 season. The Sea Urchin Zone Council recommended the selection of these particular days for divers, rakers and trappers who may fish 38 days in September through December ("early season"), or 38 days in December through March ("late season"). Based on the recommendation and discussions at the most recent Sea Urchin Zone Council meeting, the Department proposes a single season calendar for Zone 2 draggers, who may fish 38 days beginning in mid-October through to March.

For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is proposed for Zone 2 divers, trappers, rakers and draggers in 2017-2018, which is six additional days compared to the 2016-17 season. Zone 2 divers, rakers and trappers may fish 15 days in October, November and December ("early season"), or 15 days in December, January, February and March ("late season"); Zone 2 draggers would have 15 days in November, December, January, February and March. The particular days mirror days which the Sea Urchin Zone Council recommended for the Zone 2 season calendars

This regulation also establishes a limited access area in Blue Hill Bay for a Department-initiated, five year collaborative, research project in which industry partners are provided with spatial trackers. The goal of this project is to gain insight into the dynamics between fishery removals and the resource at the reef level. The spatial tracker must be turned on and continuously recording data for the entire duration of each season, chosen by the harvester. Scientific evidence indicates that a critical mass of sea urchins is required to maintain a productive "barren", urchin's preferred habitat. Information collected through this project will assist in establishing optimum harvesting strategies which could help the fishery rebuild and support potential new entrants.

Basis statement:

This regulation establishes open harvest days for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 through the 2017-2018 season. In order to

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

provide industry with greater flexibility and possibly improve roe quality, the regulation establishes the utilization of harvester swipe cards for picking days to fish. For Zone 1, 20-day seasons are established for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 15 days of their choosing. For Zone 2, 45-day seasons are established for divers, trappers, rakers and draggers in 2017-2018, from which harvesters may only fish up to 38 days of their choosing. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is established for Zone 2 divers, trappers, rakers and draggers in 2017-2018. This regulation establishes a limited access area in Blue Hill Bay for a Department-initiated, five year research project in collaboration with industry using Department issued spatial trackers. These management approaches were developed through a series of meetings with industry members and fishermen to determine outcomes that would be amenable to stakeholders and encourage resource preservation.

Based on comments received during the proposed rulemaking, the Department has split the proposed single Zone 2 dragger calendar into early and a late season calendars, as has been the practice in previous fishing seasons. This will address many of the commenters concerns regarding the proposed Zone 2 dragger calendar, particularly those regarding the co-occurrence of the lobster fishery in the later summer/early fall. The days chosen reflect concerns cited by fishermen during the public comment period balanced with the recommendations of the Sea Urchin Zone Council at their March 23, 2017 meeting in Brewer. Finally, the Whiting and Dennys Bay's Limited Access Area calendars were also revised to ensure that there was access in the area for both the early and late season Zone 2 draggers, as well as switching the dive days from Wednesdays to Tuesdays to minimize gear conflict and provide for safer fishing in the area.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations: 34.06, Recreational Groundfish Restrictions (Recreational Cod, Haddock and Pollock Federal Compliance and Technical Changes)
Filing number: 2017-117
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In accordance with the New England Fisheries Management Council (NEFMC) and for consistency with the National Marine Fisheries Service (NMFS) federal regulations effective May 25, 2017, the Department adopts changes for the charter, party and recreational vessels operating in state waters regarding cod, haddock and pollock.

Basis statement:

In compliance with the New England Fisheries Management Council (NEFMC) and the National Marine Fisheries Service (NMFS) federal regulations, the Department proposed changes for charter, party and recreational vessels operating in state waters regarding cod, haddock and pollack. In 2016 recreational fishermen exceeded their sub-ACL of cod by 92%. The NEFMC recommended zero (0) possession of cod on all charter, party and recreational vessels. Therefore, a zero (0) possession limit is adopted for cod. Recreational possession limits for haddock are decreased from 15 to 12 fish along with a new closed season for the fall, in addition to the spring closure. While the original rulemaking proposed a season closure for an expanded time period, which encompassed both options which were being considered in the federal proposal (September 1 through October 31 annually), the final closure period has been reduced to ensure consistency with what has been adopted federally, which is September 17 through October 31 annually. In 2016 recreational fishermen exceeded their 2016 sub-ACL of haddock by 15%. Therefore, the NEFMC recommended that recreational haddock possession be further restricted. For pollack, possession limit and the minimum size limit of 19" (48.3 cm) is removed for consistency with adjacent state recreational fisheries and to provide additional fishing opportunities for the fleet, as the pollack resource is considered to be in a healthy state.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2017 to December 31, 2017
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: 2017-118
Effective date: 8/7/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out meeting held May 23, 2017. Also, clarifying regulation regarding landing limits for State only license holders as well as the individual trimesters of Management Area 1A has been added.

Basis statement:

The Atlantic Herring Section of the Atlantic States Marine Fisheries Commission has pre-scheduled conference call meetings to discuss and review effort controls for the Atlantic herring fishery. These "Days Out" meetings use updated information by ASMFC technical staff to better inform the members of the Days Out committee of the current status of the Atlantic herring fishery. Since May, there have been subsequent Days Out meetings to modify the effort controls. At the beginning of the season, the restrictions for Federal Limited Access Atlantic Herring Category A Permit were that of a weekly limit of 400,000 lbs. (10 trucks); a prohibition on harvester to harvester transfers at-sea; and, a transfer limit to carrier vessels of 80,000 lbs. (2 trucks).

During the latest Days Out Conference Meeting, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area IA, SubACL Trimester 2 (June 1 - September 30) shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and are limited to landing 680,000 lbs. (17 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs. per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2017 to December 31, 2017
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. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2017-123
Effective date: 8/9/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule incorporates the New Meadows River into certain elements of the existing *Vibrio parahaemolyticus* (Vp) control plan in order to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers.

Basis statement:

This emergency rule incorporates the New Meadows River, north of Bath/State Rd in Brunswick and West Bath, into certain elements of the existing *Vibrio parahaemolyticus* (Vp) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has shown positive results for total Vp, so the organism is known to be present in the growing area. The Maine Department of Marine Resources recognizes that the New Meadows River has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vp infections. As a result, DMR seeks to reduce the potential for Vp illnesses, by requiring industry members to shade product upon harvest and to adequately ice the product until delivery to a certified dealer. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171-A.

Fiscal impact of rule:

Enforcement of these amendments would not require additional activity in this agency. The regulation imposes minor changes to harvesting practices for shellfish harvesters.

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Rules Adopted January 1, 2017 to December 31, 2017
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. 36, Herring Regulations: 36.01, Herring Management Plan, D., Catch Restrictions
Filing number: 2017-149
Effective date: 9/17/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out Conference meeting via telephone on September 15, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). Effort controls for the Atlantic Herring fishery are reviewed by the Atlantic Herring Section of the ASMFC bi-weekly using the best available data from staff. During the latest Days Out Conference Meeting on September 15, 2017, the Atlantic Herring Section determined that landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be seven consecutive days, and are limited to landing 1 million lbs (25 trucks) weekly; and, may transfer to only one carrier vessel per week up to 120,000 lbs. All vessels issued a Federal Limited Access Atlantic Herring Permit Category C may fish and land Atlantic herring seven days a week and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs per week. All harvesters issued a State Commercial Pelagic and Anadromous License may fish and land Atlantic herring on seven days a week in territorial waters and are restricted to the transfer of Atlantic herring to one carrier vessel only and no more than 120,000 lbs per week. Harvester vessels may transfer catch to another harvester vessel while at-sea. The Atlantic Herring Section also designated landing days for Area 1A Trimester 3 (October 1 – December 31). Designated landing days for all vessels shall be three consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Wednesday. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The immediate adoption of this rule is necessary to comply with changes to federal or interstate fisheries management plans. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

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.

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Rules Adopted January 1, 2017 to December 31, 2017
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: 41.30, Menhaden Program, 2., State Allocation Fishery
Filing number: 2017-159
Effective date: 9/30/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Landings for Atlantic menhaden have continued well beyond what is typical for this fishery. Excessive fishing pressure may cause harm to the Atlantic menhaden resource, as the available quotas have been achieved. The extended presence of Atlantic menhaden, into September is not considered typical behavior for this fish species. For this reason, the Commissioner has determined that it is necessary to further limit the daily take of menhaden through this emergency action under 12 MRS §6171(3)(A).

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine is allocated 171,882 lbs. of the overall quota, which was harvested by June 3, 2017, at which point the state fishery was closed. Maine was then authorized by ASMFC to open an "episodic event" fishery. The quota for the episodic event fishery was reached and that fishery was subsequently closed on July 3, 2017. Since that time, the fishery has been operating as an incidental take fishery, with a daily limit of no more than 6,000 lbs. It is unusual for menhaden to persist in Maine waters into late September. Without a further limitation on the take of menhaden, the regulation will revert to a 120,000 pound daily limit, which will cause Maine to exceed its allocation and negatively impact the management of the menhaden resource. A very limited take is appropriate to supplement the bait supply for the lobster fishery. For this reason, this regulation lowers the existing incidental take daily limit of 6000 lbs. to 5000 lbs. The Commissioner has determined that it is necessary to take this emergency action under 12 MRS §6171(3)(A), to protect and conserve the Atlantic menhaden population from unusual damage from excessive fishing pressure.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: **Ch. 10**, Clams and Quahogs: **10.05**, Taking of Quahogs in the Sub-Tidal Waters of New Meadows Lake, Brunswick and West Bath
Filing number: **2017-177**
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule would establish closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion. The closed periods were developed in consultation with industry.

Basis statement:

This rule establishes Sunday closed periods and a seasonal closed period for the taking of quahogs in the New Meadows Lakes. Harvesters are prohibited from fishing or taking quahogs in the New Meadows Lakes on Sundays, and winter months from sunset on December 31 through sunrise on April 1. The winter closed period sunsets April 1, 2019. Recent surveys of the New Meadows Lakes conducted by the Maine Department of Marine Resources indicate a decline in the quahog population. These effort control measures were proposed at meetings with industry members held in the spring of 2017, and are intended to reduce fishing pressure on the quahog resource, and to minimize the mortality associated with winter fishing. During the comment period, industry expressed concern that a weekend closed period would concentrate harvesting efforts Monday through Friday. To address these concerns, the Department has reduced the weekend closed period to Sundays only.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §§ 6171, 6722, 6728-C
Chapter number/title: Ch. 11, Scallops: 2017-18 Season
Filing number: 2017-178
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

This rule establishes the 2017-2018 scallop fishing season. As in the 2016-2017 season, there is a daily possession limit of 15 gallons for Zone 1 and Zone 2, and a daily possession limit of 10 gallons for Zone 3. For Zone 1, a 60-day season for draggers begins on December 4, 2017 and the last day of the season is April 10, 2018. For Zone 1, a 60-day season for divers starts on December 1, 2017 and the last day of the season is April 15, 2018. For Zone 2, a 70-day season for draggers starts on December 4, 2017 and the last day of the season is March 29, 2018. For Zone 2, a 70-day season for divers starts on December 1, 2017 and the last day of the season is April 14, 2018. For Zone 3, a 55-day season for draggers begins on December 4, 2017 and the last day of the season is March 28, 2018. For Zone 3, a 55-day season for divers begins on December 1, 2017 and the last day of the season is April 14, 2018.

In Zone 1, Casco Bay, Sheepscot River and Muscongus Bay/W. Penobscot Bay Areas, as well as Whiting/Dennys Bays in Zone 3 are Limited Access Areas with reduced harvesting days. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest daily for the month of March 2018, only.

DMR will maintain the following targeted closures based on depletion, high concentrations of seed/sub legal scallops and/or the presence of spat-producing scallops: Muscle Ridge, Lower Muscle Ridge, Eastern Casco Bay, Upper Sheepscot River, Ocean Point, Damariscotta River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

Additionally, the daily possession and harvest limits for individuals issued a license under either 12 M.R.S §6701 or §6702 and 6302-A are updated to reflect possession limits for divers have both a personal limit and a vessel limit.

Based upon comments received during the rulemaking process, the Department has changed the following items:

- The proposed dates for open harvest within territorial waters surrounding Machias Seal Island and North Rock has been changed to the month of March 2018, from December 2017.
- Zone 2 Drag Calendar: Six days were moved from April and redistributed to December (2 additional days), January (1 additional day), February (1 additional day) and March (2 additional days). Both the price and quality of meat for landed product is generally better in all months prior to April.
- Zone 2 Dive Calendar: Nine days from March (4) and April (5) were redistributed to January (5 additional days) and February (4 additional days) to maintain four-day fishing weeks in lieu of three day fishing weeks during January and February to provide divers with better access to the resource before potential mid-season closures are implemented.

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Rules Adopted January 1, 2017 to December 31, 2017
Prepared by the Secretary of State pursuant to 5 MRS §8053-A, sub-§5

- Zone 3 Drag Calendar: Six days were moved from April and redistributed to December (5 additional days) and January (1 additional day). This is based on industry feedback that the price and quality of meat for landed product is generally better in months prior to April.
- A technical change to modify the waypoint of the Eastern Casco Bay Target Closure and the Casco Bay Limited Access Area from RN "4" at Drunkers Ledges to RN "2" at Eastern Drunkers Ledge for alignment between legal text and existing charts.
- The proposed removal of a vessel limit for individuals issued a license under either 12 MRS §6701 or §6302-A for scallop diving has been amended to implement both an individual and a vessel limit.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 25, Lobster and Crab: Technical Corrections and Jonah Crab Claw Exception
Filing number: 2017-179
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make technical corrections for the purpose of greater clarity, and to provide an exemption to the possession of crab claws at sea that was permitted by the Atlantic States Marine Fisheries Commission in Addendum II to the Jonah Crab Fishery Management Plan.

Basis statement:

This regulation makes technical corrections to Ch. 25. It moves existing lobster trawl limits that are currently in Ch. 55 into Ch. 25, so that all lobster trawl limits are in the same chapter. It strikes expired language regarding second zone tags in Zones Band C, and F and G, now that a statewide second zone tag system is in place. It clarifies language regarding construction of green crab traps. Finally, it creates an exemption that would allow a lobster and crab fishing license holder to possess up to 5 gallons of crab claws detached at sea.

Fiscal impact of rule:

Enforcement of these amendments will not require additional activity in this agency.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 44, American Shad Limits
Filing number: 2017-180
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To improve the ability to enforce the existing limitations on fishing for shad by adding "take" to limits on 2 fish per day.

Basis statement:

This regulation makes a correction to Ch. 44, *American Shad*, to specify that an individual may not take or possess more than 2 shad per day. Prior to this change the regulation only prohibited possession, which led to challenges with proper enforcement of the intended limitation.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 55, Gear Restrictions: Technical Corrections
Filing number: 2017-181
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To make technical corrections for greater clarity of the regulations within Ch. 55.

Basis statement:

This regulation makes technical corrections to Ch. 55. It corrects an inaccurate reference under 55.06. It deletes existing lobster trawl limits that are currently in Ch. 55 so that they are moved into Ch. 25, so that all lobster trawl limits are now located in the same chapter. It reinstates language regarding fishing in the Sheepscot River, Lincoln County, which had been moved into Ch. 32.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2017-182
Effective date: 11/19/2017
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule incorporates the New Meadows River, north of Bath/State Rd. in Brunswick and West Bath, into the existing *Vibrio parahaemolyticus* (Vp) control plan. The addition of the New Meadows River is intended to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from the New Meadows River will cause Vp infections in consumers. Independent, biological sampling of hard clams (quahogs) in the New Meadows River has shown positive results for total Vp, so the organism is known to be present in the growing area. The Maine Department of Marine Resources recognizes that the New Meadows River has the environmental characteristics (primarily water and air temperature and salinity) that potentially pose a threat to public health with regard to Vp infections. Research indicates that the most reliable way to minimize potential Vp illnesses is to utilize time and temperature controls.

Based on comments received, the Department has removed the New Meadows River from the 115.04(E) mandatory ambient air temperature records as 115.05(B)(2) requires icing immediately after harvest for the New Meadows River. The Department also added a provision to the dealer plan that requires dealers to indicate how they will maintain and continue cooling of the product that was initiated by the harvester. These modifications are intended to avoid redundancies in the regulation and to ensure proper temperature controls are maintained after harvest.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2017 to December 31, 2017
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. 36, Herring Regulations: 36.01, Herring Management Plan
Filing number: 2017-205
Effective date: 12/18/2017
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule is intended to align State of Maine regulations with those set forth by the ASFMC and the management plan decided upon by the Atlantic Herring Section during the Days Out Conference meeting via telephone on December 15, 2017.

Basis statement:

Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). During the Days Out Conference Meeting on December 15, 2017, the Atlantic Herring Section amended the landing days for Area 1A Trimester 3 (October 1 - December 31) based on the most recent landings data available. Designated landing days for all vessels shall be seven consecutive days. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). The immediate adoption of this rule is necessary to comply with changes to federal or interstate fisheries management plans. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171 (3)(C).

Fiscal impact of rule:

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