

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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: Targeted Scallop Conservation Closures:
West Vinalhaven
Filing number: 2019-005
Effective date: 1/6/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closure west of Vinalhaven within Lower Penobscot Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the inside islands west of Vinalhaven within the Lower Penobscot Bay Rotational Area.

Basis statement:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in the inside islands west of Vinalhaven to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding. This area closure is within Zone 2.

West of Vinalhaven

This area opened for harvest on December 1st, 2018 with approximately 25 boats concentrated within the islands west of Vinalhaven. Effort was strong during the first week, as Zone 1 was not yet open. By week 2, the number of boats in the area dropped to 15 or so, as some boats returned to Zone 1. By week four effort remains around 20 boats that have now spread from the inner islands to west and south of the area.

Spring survey stations were concentrated inside the islands. This also represents where most the effort has taken place. This area will have been open to harvest for 21 days. Information denotes the relative abundance of harvestable biomass, shown as size frequency of scallops present in the rotational area prior to the season opening and after the first ten days of harvest. The overall decrease in available harvestable biomass was approximately 46%. The additional 11 days of harvest opportunity were not fully utilized due to weather and tides; however, resource extraction continued at a reduced level such that a closure is now warranted.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the West Vinalhaven portion within the Lower Penobscot Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

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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: Targeted Scallop Conservation Closures: Wohoa Bay within the Wohoa/ Western Bay Rotational Area; Cobscook Bay including Whiting and Denny's Bay
Filing number: 2019-022
Effective date: 1/27/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement a conservation closure in Wohoa Bay within the Wohoa/Western Bay Rotational Area. Additionally, the Zone 3 harvesting calendar in Cobscook Bay will be reduced to one day only for drag (Monday, January 28, 2019) and dive (Saturday, February 2, 2019), followed by a conservation closure in Cobscook Bay including Whiting and Denny's bay on Sunday, February 3, 2019. These closures are required to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3.

Basis statement:

The Department is taking emergency rulemaking action to implement targeted conservation closures in Wohoa Bay within Zone 2 and Cobscook, Whiting and Denny's Bays within Zone 3 to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding.

Wohoa Bay

This area opened for harvest on December 1st, 2018 with approximately 20 boats concentrated within the upper portion of the rotational area in the first week, spread between Moosabec Reach over to Tibbett Narrows. By week 2, the number of boats in the area dropped to a dozen or so, with reports that the effort within Moosebec Reach was greatly reduced. At the end of December, less than 10 boats were in the area, searching between Little Pond Head and Western Way. All reports received during January indicate that 1 to 4 boats occasionally enter the area, and have not been able to reach a daily limit.

Spring survey stations were spread throughout the rotational area, with many station tows resulting in 0 observations of scallops. Wohoa/Western Bay Rotational Area had the lowest mean harvestable density of all the surveyed rotational areas in April 2018. While weather has been a factor to limit activity in this area, all reports indicate that scallop resource extraction occurred mostly during the month of December. What legal scallop resource remains needs to be conserved as broodstock.

Cobscook Bay

Effort within Cobscook Bay in December was estimated at 60 to 70 boats, and quickly ramped up to 85 harvest vessels by the end of December and has leveled out at 100 boats for the last several weeks of January. This season, the harvest effort was not clustered like previous years; boats were spread out into all sections of Cobscook Bay. There has been a steady effort of 20-25 boats harvesting in the Whiting/Denny's Bay Limited Access Area on Mondays.

Two in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on December 28-30, 2018 and second survey on January 15-17, 2019. Results from the first survey indicated that most harvest effort

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was occurring in Johnson Bay, coinciding with harvester and marine patrol reports. While the survey did not warrant conservation closures after 10 harvest days, results from the second in-season survey, after 20 days of harvesting, indicate the overall scallop density in Cobscook Bay has decreased by 36%, with both Johnson Bay and South Bay slightly exceeding the target; 42% and 44% respectively. However, Whiting and Denny's Bay has experienced a decrease in harvestable density of 19% only. There has been little change in density in the Breakwater sites, yet the density has been lower than previous years.

The comparison of harvestable densities between Johnson Bay (8.06 g/m² in 2018 vs 5.97 g/m² 2017) and the Breakwater (9.17 g/m² in 2018 vs 3.24 g/m² 2019) is an important indicator that overall scallop legal biomass has declined from previous season (see Table 1 & 2). Thus, in addition to there being a relative decline by 40%, there is also a broad scale decrease in the available biomass of scallops within Cobscook Bay. However, there is a very strong year class of just below legal scallops available for the future season.

Qualitative information from both marine patrol and active harvesters in the area have observed that sublegal sized cut shells have been coming up in commercial tows. These reports that small scallop product is being harvested is also observed in the science survey size frequency data in which scallops below legal size experienced a decline in density over the course of the two in-season surveys. This information also factored into the rationale for this closure. Cobscook Bay has high proportions of both seed and sublegal product that would incur damage, if harvest continued with the existing 100 boats in the area.

General comments from harvesters this season indicate smaller meats overall, when compared to the last two previous seasons. Additionally, there were less hotspots with high densities of scallops; the resource was also spread out more evenly. These observations from harvesters are also shown within the data; the annual fall scallop surveys, occurring annually in November, with the starting densities of individual areas being lower than in previous years.

Considering that there is still available legal product to be harvested within the Whiting/Denny's Bay Limited Access Area, and additionally effort has been minimal in the East Bay portion, we are allowing one additional harvest day to occur for each the drag and dive sector of the scallop fishery prior to the closing of Cobscook, Whiting and Denny's Bays. Harvest may occur on Monday, January 28, 2018 for the drag sector with the ability to access either Cobscook Bay or Whiting Denny's Limited Access Area. Hand harvest may occur on Saturday, February 2, 2019 with access in either Cobscook Bay or Whiting Denny's Limited Access area. On Sunday, February 3, 2019, Cobscook, Whiting and Denny's Bays will close while the St Croix remains open for harvesting until further notice. This arrangement will allow for the harvesting of scallops in areas that have not yet reached maximum yield prior to the conservation closure occurring.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 11, Scallops: Targeted Scallop Conservation Closures: Gouldsboro / Dyers Bays Rotational Area; Upper Machias Bay Rotational Area; Vinalhaven Islands in the Lower Penobscot Bay Rotational Area
Filing number: 2019-039
Effective date: 2/10/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in Gouldsboro Dyers Bay Rotational Area, Upper Machias Rotational Area and Vinalhaven Islands in the Lower Penobscot Bay Rotational Area. These closures are required to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season will further reduce the abundance of remaining broodstock that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Vinalhaven Islands, Upper Machias and Gouldsboro Dyers Bay Rotational Area within Zone 2.

Vinalhaven Islands

This area opened for harvest on December 1, 2018 with approximately 25 boats concentrated within the islands west of Vinalhaven. Effort was strong during the first week, as Zone 1 was not yet open. By week two, the number of boats in the area dropped to 15 or so, as some boats returned to Zone 1. By week four effort remained around 20 boats that had spread from the inner islands to west and south of the area. This range of 15 – 20 boats, depending on weather, has maintained effort in the open portion of the Lower Penobscot Bay rotational area for the duration of January with vessels harvesting around islands outside the closure and other areas within the rotational zone down to Matinicus.

Survey stations were concentrated inside the inner islands. This also represents where most the effort had taken place during December and where the initial closure took place. This area was opened to harvest for 21 days prior to the first in-season survey; the overall decrease in available harvestable biomass at all stations was approximately 46%. While the additional 11 days of harvest opportunity were not fully utilized due to weather and tides, resource extraction continued at a reduced level such that a closure was warranted on January 6, 2019.

A second in-season survey was conducted on January 26, 2019 in which the relative change in legal density of scallops was calculated at 65% (5.76 g/m² to 1.98 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops. While this survey commenced after 34 days of total harvest, approximately 12 of the 20 survey stations were within the closed area and represent a significant proportion of the decrease in legal density of scallops. Approximately four stations that remained in harvestable waters exhibited higher proportions of legal sized scallops to harvest, albeit at lower densities. Due to continued poor weather following the week of the survey, and forecasted for week ahead, the delay to expand the closure until this coming weekend was to allow access on the best weather days to provide harvest opportunity prior to this area closing until the 2021-22 season.

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Machias and Little Machias Bays

This area opened for harvest on December 1, 2018 with approximately 15 boats concentrated within Little Machias Bay. This area experienced a partial closure on December 30, 2018 that closed Machias and Little Machias Bays because of information received from the first in-season survey as described in a previous action. Harvest continued outside of this closure line with activity of 12-15 boats ranging from Cross Island to Old Man; harvesting has been inconsistent due to the poor weather conditions during January.

A second in-season survey was conducted on February 3, 2019 in which the relative change in legal density of scallops was calculated at 74% ((4.30 g/m² to 1.14 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops. This survey took place after 38 days of total harvest, with ¼ of the survey stations having already been within an existing partial closure. Rate of effort has been variable in this area due to ongoing poor weather conditions, as conditions did not allow for prospecting and harvesting further from shore. As such, the area closest to shore contained most vessels during opportune harvest days, resulting in the decreased density of legal scallops. This proposed closure encompasses most of the survey stations for continued conservation.

Gouldsboro Dyers Bay Rotational Area

This area opened for harvest on December 3rd, 2018 with approximately 40 boats concentrated within Gouldsboro Bay and was partially closed on December 16, 2018 in the upper portion of Gouldsboro and Dyers Bays after 10 days of intense fishing pressure. After the initial closure, many boats left the area. However, several local scallop boats remained fishing near Prospect Harbor and the outer portion of the area searching deeper waters for scallops. Recent reports indicate 4-6 boats have been steadily in the area during January on pleasant weather days. However, over the last two weeks of harvesting, vessels have not been able to reach a daily limit and a closure is needed to protect the remaining legal product for rebuilding purposes.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Gouldsboro & Dyers Bay, Vinalhaven, and Machias areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: **Ch. 11**, Scallops: Targeted Scallop Conservation Closures: Cobscook Bay including Whiting and Denny's Bays and St. Croix River; Blue Hill Bay / Union River Rotational Area; West Lower Jericho Bay; Upper Damariscotta River
Filing number: **2019-041**
Effective date: 2/24/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to implement conservation closures in St. Croix River, Blue Hill Bay/Union River Rotational Area, West Lower Jericho Bay and Upper Damariscotta River. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in St. Croix River, Blue Hill Bay/Union River Rotational Area, West Lower Jericho Bay and Upper Damariscotta River.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Cobscook Bay area to include St. Croix River, Upper Blue Hill Bay/Union River, West Lower Jericho Bay in Zone 2 and Upper Damariscotta River Limited Access Area within Zone 1.

St. Croix

This area has been open to harvest for 35 days, within Zone 3, but the primary focus of effort has been in the most recent 9 days of the calendar after Cobscook Bay closed. Beginning February 4, 2019, no more than 10 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed medium to large meat counts and scattered low to medium densities of scallops over variable depth ranges. In the previous season, this area was targeted for 12 days after Cobscook closed. Observations from harvesters this year indicate catch rates were lower than the previous year, but meat size was comparable. Initially, daily limits were being reached between around 10-12pm, depending on tide cycles. However, boat activity greatly decreased by the week of February 11th, 2019 and harvesters suggested that closing it may allow for moderate rebuilding for next year. DMR's fall scallop survey also observed low densities of legal scallops in the area. Thus, based on reduced catch rates, and harvester input, it was recommended to close this area to reduce repeated effort and allow for a longer period of recovery.

Upper Blue Hill Bay/Union River Rotational Area

This area opened for harvest on December 1, 2018 with approximately 10 boats; prospecting in Union River, Morgan Bay. Initial reports indicated there were large scallops in the area with large meats. Boats had variable catch rates around the 2nd week of December but most vessels had their daily limit before noon time.

At the end of December and into January, boat counts ranged from 5-7 vessels with some boats choosing to go harvest in Jericho on good weather days and save Upper Blue Hill Bay for bad weather days. Harvest rates were decreasing as more effort was needed to search

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for smaller scallop beds. By the end of January, most of the drag fleet moved over to Jericho, but diving harvesters remained active with 6-7 divers in the area.

Harvesters observed small sublegal scallops around Alley Island that was not caught during the April 2018 Spring scallop survey. Other general comments reported by harvesters in the area indicated there were few sublegal scallops showing up in tows otherwise. At the start of February, Marine Patrol indicated that drag vessels were not able to reach limits. Harvesters and Patrol reported renewed dragging activity during mid-February, with little success at reaching daily limits. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

West Lower Jericho Bay Rotational Area

This area opened for harvest on December 1st, 2018 with approximately 15 to 20 boats focused around Lazy Guts on southward toward Fog and York Islands, sticking to the western side of the Rotational Area in shallow waters. Daily limits were being reached around noon.

As the season progressed, boat counts increased to 25-30 at the end of December. Effort was still focused around the York Island area, with reports of good meat sizes being caught. Daily limits were reached by noon.

By January, boats began spreading, prospecting other parts of the bay and harvesting in deeper waters. The area is heavily dependent on weather and as such activity fluctuated; vessels opting for areas in the lee. The area around York and Fog Islands had a return of activity as it is moderately protected. By the end of January, harvesters were taking longer to reach their daily limit; but this was also a factor of longer steam time, continued prospecting in the area as well as lower densities of scallops.

Currently, harvester reports indicate that little activity is still occurring in the proposed closure area, with the shallow waters having been harvested since the opening of the area (50 calendar days). Marine Patrol also indicates that several harvesters are not reaching daily limits. Of the 28 survey stations in the spring scallop survey, there were observations of seed scallops in the shallow waters between Fog and York Islands. Harvesting has been occurring in this area since the beginning of the season, with catch rates decreasing over the last month. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

Upper Damariscotta River Limited Access Area

This area has been alternating between closed and open as a limited access area (LAA) with the area having been closed in the 2015-2016 season, open LAA for 2016-2017, closed 2017-2018 and open for this current season. Reports from harvesters have all been positive and it appears this schedule is working to sustain a moderate harvest for local vessels in the area. Meat size has been in the U10-U15 range and also good quality.

Divers had access to the area beginning on December 7th, 2018 while the drag fleet began harvest on January 7th, 2019. As with the previous open season, the effort from the drag fleet focused on the area west and north of Jones Point to Fort Point. Over the last available 7 harvest days within this LAA, a range of 4-6 boats have been steadily working and catching their limits by noon to early afternoon. In comparing effort to the previous open season, this area had upwards of 8 or more boats for 5 harvest days prior to closing. This would result in a similar removal estimates between the two open seasons. Harvesters have reported that this upper portion has slowed down, and it would be best to repeat the closure line from the previous open season.

Therefore, the recommendation is for an immediate conservation closure of the upper portion of the river to allow for the remaining broodstock to rebuild in time for the next open season. The lower section of the river south of Jones Point and Farnham Point shall remain open for continued harvest as it has not been heavily targeted and will provide additional opportunity.

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The last day of harvesting for scallop draggers will be Monday, February 18, 2019. The final day of harvesting for scallop divers will be Friday, March 15, 2019. These specific days allow for equal harvest opportunity of seven days. This action stems from a recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Gouldsboro & Dyers Bay, Vinalhaven, and Machias areas. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 8, Landings Program: 8.20, Harvester Reporting
Filing number: 2019-045
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule updates reporting requirements for halibut, shrimp, and scallop harvesters to remove outdated references to Loran stations and bearings as options for reporting harvesting locations. It requires halibut harvesters to report landings numbers rather than license numbers and would add a new component to the halibut harvester reporting requirements to include total number of hooks fished.

Fiscal impact of rule:

Enforcement of this amendment would not require additional activity in this agency.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
Filing number: 2019-046
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In October 2018, a new trawl limit area was established at the request of the Zone B Council. DMR was aware that there was potential to refine the area described by the new trawl limit to better meet the needs of Zone B and Zone C fishermen fishing there. The Department held meetings with fishermen from Zone B and Zone C to determine what changes to the area were advisable. At their January 2019 meeting, the Zone B Council supported the Department's proposal to amend this area in accordance with the changes proposed through the meetings that were held. The rule represents the amended area and eliminates the sunset on the original 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 MRS §6171(3)
Chapter number/title: Ch. 32, Eels (Elver Quota System for the 2019 Season)
Filing number: 2019-047
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Annually the Department must conduct rulemaking to establish the individual quotas for the upcoming elver season. In addition, the Department is adopting changes for the 2019 pertaining to the activities of elver dealers and elver exporters to curtail the illegal activity that occurred during the 2018 elver season.

Basis statement:

This rule establishes the elver quota allocations for the 2019 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. 2019 allocations for individuals who held a license in 2018 will be the same as their 2018 allocations, plus any quota associated with licenses not renewed in 2018, or licenses suspended for the duration of the 2019 season, which will be distributed evenly to all license holders. This rule also prohibits more than one elver dealer from engaging in the licensed activities at the same physical address and requires that transfers from vehicles to permanent facilities include all the contents of the vehicle. Finally, the rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export. Based on the comments received, the Department is not recommending any changes to what was originally proposed.

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. 34, Groundfish Regulations: 34.07, Atlantic Halibut (*Hippoglossus hippoglossus*) (Atlantic Halibut Size Limit)
Filing number: 2019-048
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Charter and party boats often catch Atlantic halibut on excursions offshore while fishing for groundfish species such as haddock and cod. Possession for Atlantic halibut is limited to one fish per boat. Often, these charter boats have many customers and there is a desire and willingness to share the harvest of halibut among fishing participants. The current rule does not allow fisherman or charter/party boat captains to fillet Atlantic halibut on a vessel in transit. This rule is in place to ensure the fish can be measured and is greater than the minimum size limit of 41 inches or 32 inches to the pectoral fin if the head is removed. However, Department Marine Patrol officers have indicated that accurate measurements can be taken from a halibut carcass with the fillets removed. This change would allow charter/party boat captains the ability to fillet Atlantic halibut at sea if the halibut carcass remains in possession on the vessel through transit until the fishing customers have departed the boat. This change will allow a single Atlantic halibut to be shared with several fishing customers instead of one customer retaining the entire fish. Marine patrol officers would still be able to enforce Atlantic halibut minimum size and possession limits.

Basis statement:

This rule allows charter and party boat operators to fillet Atlantic halibut at sea. Possession for Atlantic halibut is limited to one fish per boat. This rule ensures the fish can be measured and is greater than the minimum size limit of 41 inches total length or 32 inches from the pectoral fin if the head is removed. This rule allows charter/party boat captains to fillet Atlantic halibut at sea if the halibut carcass (rack) remains in their possession until all customers have landed on shore. This rule allows a single Atlantic halibut to be shared with several fishing customers instead of one customer retaining the entire fish. Marine patrol officers will be able to measure Atlantic halibut carcasses (racks) to ensure fish of legal sizes are possessed.

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. 36, Atlantic Herring (2019 Season)
Filing number: 2019-049
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is except from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

Basis statement:

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is exempt from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

Specifications for the Atlantic herring fishery for the 2019 fishing year have been set by the Greater Regional Atlantic Office (GARFO) of NOAA Fisheries and were effective on February 8, 2019. The annual catch limit (ACL) for domestic harvest is 15,065 mt; the sub-ACL allotted to Herring Management Area 1A is 4,354 mt with a fixed gear set aside (FGSA) of 39 mt. This represents an 84% decrease from the 2018 sub-ACL of 27,743 mt for Area 1A.

A reduction in harvest limits will be experienced by all permit holders directing on Atlantic herring. Specific effort restrictions pertaining to Federal Limited Access Atlantic Herring Category A and C permits will not be finalized until the Days Out Conference Meeting of the Atlantic Herring Board commissioners that is scheduled annually in the spring.

Several commenters suggested that transitioning to a weekly landing limit, as opposed to a daily landing limit, would be more practical and economical for those participating in the mobile state waters fishery. These comments, in conjunction with the enforcement challenges associated with a weekly limit, factored into the Department's decision to adopt a weekly landings limit, but to reduce harvest days from seven days a week to four days a week. This will still maintain harvest opportunity while providing Maine Marine Patrol an effective enforcement schedule.

Based on comments received during the rulemaking process and discussion at the DMR Advisory Council, the Department has made the following changes:

- Fishing weirs, stop seines and pound nets will be exempt from the harvest schedule and may operate seven days a week. Fixed gear harvesting is subject to a weekly limit of 25,000 lbs.
- Harvesting of Atlantic herring by state permit holders will be limited to a weekly landing limit of 25,000 pounds, instead of a daily limit of 6600 lbs. Additionally, the harvest schedule is restricted to Sunday at 6:00 p.m. through to Thursday at 6:00 p.m.

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The discussion at the DMR Advisory Council meeting on March 6, 2019 highlighted additional details that contributed to the final rulemaking. These details included anticipated increase in landed value for Atlantic herring, the exceptional need for bait products at smaller wharves and a greater understanding of mobile state Atlantic herring participation and landings over the previous several years. With the understanding that the Atlantic herring resource is in a depleted state, this is the appropriate timeframe to maintain historical participation while conservatively allowing harvest to occur within state waters. The result of this discussion, the DMR Advisory Council passed a motion to accept the Ch. 36 rulemaking conditional on amending the weekly landing limit to 25,000 lbs. Based on 2018 landings information, and the projected value of bait, the Advisory Council concluded that this weekly limit would minimally reduce harvesting opportunity weekly for the 2019 fishing year but not seasonally. That is, a weekly limit may result in lower catches when compared to 2018, but still would allow ample opportunity for the duration of the Atlantic herring season when the fish are present in state waters.

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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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. 41, Menhaden (2019 Menhaden Fishery Program)
Filing number: 2019-050
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking clarified the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the small incidental/small scale fishery requires monthly reporting.

This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

Basis statement:

This rulemaking clarifies the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the incidental/small scale fishery requires monthly reporting.

This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

Both the state allocation fishery and the episodic event fishery will continue to operate under a daily landing limit of 120,000 lbs. and a weekly landing limit of 160,000 lbs. with one landing per day allowed for both catcher and carrier vessels. Additionally, for both state allocation and episodic event fisheries, vessels may only fish for and land menhaden from territorial waters Monday through Thursday. Daily reporting of Atlantic menhaden landings is required for both the state allocated and the episodic event fisheries within 24 hours of landing. For both the state allocation and episodic event fisheries, a transfer at sea to a vessel utilizing menhaden as bait is considered a landing event. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic event fishery, with a daily landing limit of 6,000 lbs. under gear restrictions. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- The exemption for fixed gear operations were clarified to allow for a seven day harvest schedule, but maintain the same daily and weekly limits as described for the state allocated and episodic fisheries.

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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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. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2019-051
Effective date: 3/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule incorporates the Sheepscot River into 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 Sheepscot River will cause *Vp* infections in consumers.

Basis statement:

This rule incorporates the Sheepscot River, north of Route 1, into the existing *Vibrio parahaemolyticus* (*Vp*) control plan. The addition of the Sheepscot 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 Sheepscot River will cause *Vp* infections in consumers. In 2018, DMR received an illness report of a laboratory confirmed case of *Vp* that implicated oysters from the Sheepscot River as the sole source. The Maine Department of Marine Resources recognizes that the portion of the Sheepscot River north of Route 1 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.

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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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: Targeted Scallop Conservation Closures:
Damariscotta River
Filing number: 2019-053
Effective date: 3/17/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to expand the conservation closure in the Damariscotta River. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this area will greatly reduce the abundance of the remaining broodstock as well as sub legal scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the Damariscotta River Limited Access Area.

Basis statement:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in the Damariscotta River Limited Access Area within Zone 1.

Upper Damariscotta River Limited Access Area

This area has been alternating between closed and open as a limited access area (LAA) with the area having been closed in the 2015-2016 season, open LAA for 2016-2017, closed 2017-2018 and open for this current season. Reports from harvesters have all been positive and it appears this schedule is working to sustain a moderate harvest for local vessels in the area. Meat size has been in the U10-U15 range and good quality.

Divers had access to the area beginning on December 7th, 2018 while the drag fleet began harvest on January 7th, 2019. A partial closure occurred in the Damariscotta River after 7 drag harvest days in the area west and north of Jones Point to Fort Point (mid-river). The 4-5 vessels in the area then shifted focus to outer portion of the river, south of the closure line. There has been three additional calendar days of harvest within this portion of the river. Reports by both harvesters and Marine Patrol indicate that of the three remaining vessels, they were no longer able to achieve their daily limited and suggested it was time to close the area for recovery.

The last day of harvesting for scallop draggers was Monday, March 11, 2019. The final day of harvesting for scallop divers will be Saturday, March 23, 2019. These specific dates allow for equal harvest opportunity of ten days; hand harvesting of scallops tends to occur in the northern portion of the river not accessed by the drag fleet. This action stems from a recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this area will deplete the remaining broodstock as well as damage any sublegal scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Damariscotta River Limited Access Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 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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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 §§ 6072, 6072-A, 6072-B
Chapter number/title: Ch. 2, Aquaculture Lease Regulations
Filing number: 2019-057
Effective date: 4/1/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of the rule is to clarify the aquaculture leasing regulations, including the elimination of redundant language from 12 MRS §§ 6072, 6072-A, and the *Maine Administrative Procedures Act*. It would also eliminate duplicative references to the *National Shellfish Sanitation Program (NSSP) Model Ordinance* which was adopted by reference in 2017. The rule clarifies and establishes additional minimum lease maintenance standards. It would also establish lease expansion application procedures in accordance with 12 MRS §6072(12-C).

Basis statement:

This rule clarifies the aquaculture leasing regulations, including the elimination of redundant language from 12 MRS §§ 6072, 6072-A, and the *Maine Administrative Procedure Act*. It eliminates duplicative references to the *National Shellfish Sanitation Program (NSSP) Model Ordinance*, and includes the addition or modification of provisions based on the NSSP including maintenance of a lease operation plan, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an authorized representative of an aquaculture license holder, in accordance with 12 MRS §6810-B, may engage in. It makes several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It enacts lease expansion application procedures in accordance with 12 MRS §6072(12-C). The rule restricts the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It clarifies that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The rule also clarifies and establishes additional minimum lease maintenance standards.

In consideration of the comments received, the Department has made the following changes:

- Kept the term "Experimental" in reference to limited purpose aquaculture leases.
- Allow up to two tracts to 1) accommodate site rotation/fallowing or 2) to site around geographic feature, navigation corridor or existing uses so long as the tracts are no more than one half mile apart
- Removed the provision allowing other proposals for same site to be accepted if an applicant is required to hold a second scoping session.
- Clarified that assessment of both discharge and non-discharge leases must consider existing and potential uses in application
- Clarified requirements of oil spill prevention and control plan
- Clarified that riparian permission is only needed for use of intertidal lands if the riparian owns the intertidal lands that will be used by the applicant

Fiscal impact of rule:

Enforcement of this amendment 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; Resolves 2019 ch. 23
Chapter number/title: Ch. 25, Lobster and Crab: 25.02, Definitions
Filing number: 2019-117
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In Resolves 2019 ch. 23, the Legislature directed the Commissioner of Marine Resources to adopt regulations to define this area to ensure the boundaries of this area are clearly delineated for the purpose of allowing lobster license holders authorized to fish in this area.

Basis statement:

This regulation defines the area in the Bay of Fundy referred to as the “gray zone” that encompasses approximately 210 square miles around Machias Seal Island where there are overlapping claims of sovereignty by the United States and Canada. In Resolves 2019 ch. 23, the Legislature directed the Commissioner of Marine Resources to adopt regulations to define this area to ensure the boundaries of this area are clearly delineated.

Fiscal impact of rule:

There is no fiscal impact of the rule.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6749
Chapter number/title: Ch. 26, Sea Urchins (Sea Urchin 2019-2020 Season)
Filing number: 2019-118
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation would establish open harvest days and tote limits for the taking of sea urchins by divers, rakers, trappers, and draggers in Zones 1 and 2 for the 2019-2020 season. For Zone 1, seasons are proposed for divers, trappers, rakers and draggers in 2019-2020, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2018-2019 season, while the number of opportunity days is increased. For Zone 1, the proposed daily tote limit is nine (9) which is 3 totes lower than the 2018-2019 season. For Zone 2, 40-day seasons are proposed for divers, trappers, rakers and draggers in 2019-2020, from which harvesters may only fish up to 30 days of their choosing. This proposal reduces the fishing days by eight days and opportunity days by five days from the 2018-2019 season. 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 2019-2020. For Zone 2, the proposed daily tote limit is six (6) which is one fewer than the 2018-2019 season.

Based on comments received during the proposed rulemaking, the Department has made the following modifications:

- Errors between the text and the calendars were addressed per the comment supplied by Margaret Hunter.

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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations
Filing number: 2019-119
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In order to be consistent with the National Marine Fisheries Service (NMFS) federal proposed rulemaking anticipated to be finalized shortly, this rule allows harvesters 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 through April 14 inclusive, and May 1 through September 14 inclusive. For cod, a minimum size limit of 21" (53.3 cm) is established. The rule also implements increased recreational possession limits for haddock from 12 to 15 fish. Finally, seasonal restrictions on recreational haddock possession are reduced, so that haddock may not be possessed on board a recreational fishing only from March 1 through April 14. In addition to complying with federal law, the rule will increase fishing opportunity in Maine State waters.

Fiscal impact of rule:

This change is anticipated to provide a modest increase in economic opportunity for charter vessels and the recreational fishing sector.

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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
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2019-120
Effective date: 7/17/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019. Additionally, Addendum II to Amendment 3 of the Interstate Fisheries Management Plan for Atlantic herring amended the requirements surrounding the protection of spawning herring; this proposed rule reflects final action taken by the Atlantic Herring Board on April 30, 2019.

Basis statement:

This rule amends the existing seasonal spawning closures in accordance with the recently approved Addendum II of Amendment 3 to the Interstate Fishery Management Plan for Atlantic herring: the initial closure period is extended from 28 days to 42 days; the default closure date for both the Western Closure and the Massachusetts/New Hampshire Closure has been modified from October 4 to September 23; and, the re-closure protocol may be initiated with a lower percentage of spawning fish present in the population, from 25% to 20%.

This rule amends the start date for the mobile Atlantic herring fishery to commence on Sunday, July 14, 2019 and also sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 3, 2019. The Days Out Commissioners designated zero landing days for Period 1 (June 2019). The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit for Period 2 (July – August 2019. These vessels are limited to landing 160,000 lbs. (4 trucks) weekly). The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(B)
Chapter number/title: Ch. 41, Menhaden: 41.30, Menhaden Fishery Management Program
Filing number: 2019-121
Effective date: 7/14/2019
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. The estimated 234 trips completed during the state fishery were predominantly trips landing less than 6,000 lbs. (107 trips) or trips landing more than 6,000 lbs. but less than 30,000 lbs. (90 trips). Trips that had landings between 30,000 and 60,000 lbs. or were greater than 60,000 lbs. were 10.2 % and 5.6% of the fishery, respectively. Preliminary estimates for landings indicate that the state quota was exceeded by 1.5 million pounds and landing reports are still being received. The bulk of landings occurred during the final four days of June.

The Department requested, and received, approval to enter the Episodic Event Set Aside (EESA) fishery at the beginning of July. However, with the nearly 4 million lbs. already landed during the state fishery, in conjunction with the summer lobster shed not yet occurring, the demand for bait was low compared to the available supply. As such, the Department was made aware of the dumping of fish that harvesters could not sell and did not have available storage arrangements. This practice was unacceptable and also factored into the delay of opening the EESA until there was a demonstrated need for fresh bait once again.

Currently, there are over 528 active Commercial Pelagic and Anadromous license permits issued, with over 100 of those individuals declared into the fishery for the onset of the EESA. With the understanding that the harvest capacity of this fleet is above 2 million lbs. weekly, it was imperative to reduce the weekly harvest limit by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used. Menhaden have now been observed in state waters from Kittery through to the Penobscot Bay.

As was the case under the State Allocation fishery previously, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily limit remains at 120,000 pounds while the weekly landing limit is reduced by this emergency regulation from 160,000 lbs. to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov.

The Commissioner has determined that it is necessary to take emergency action upon opening the EESA fishery to implement the reduction of the weekly limit from 160,000 lbs. to 120,000 lbs., to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

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)
Chapter number/title:	Ch. 41 , Menhaden (Menhaden Fishery Management Program)
Filing number:	2019-136
Effective date:	7/21/2019
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2019 was 2,438,677 pounds, which was fully consumed by June 30, 2019. Additionally, Department of Marine Resources (DMR) was granted access to the Episodic Event Set Aside program (EESA); it is projected that 80% of the 4.7 million lbs. EESA has been consumed by Thursday, July 18, 2019. The Commissioner has secured several transfers of menhaden quota that will allow for the DMR to re-open the directed state allocated fishery. Beginning July 22, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs. and this regulation reduces the weekly limit to 120,000 lbs. as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov. The Commissioner has determined that it is necessary to take emergency action to implement the reduction of the weekly limit to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(B).

Basis statement:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. Preliminary estimates for landings indicate that the state quota was exceeded by 2 million pounds. The bulk of landings occurred during the final four days of June.

The Department opened the Episodic Event Set Aside (EESA) fishery on Monday, July 15, 2019. Currently, there are over 560 active Commercial Pelagic and Anadromous license permits issued, with over 180 of those individuals declared into the fishery for the onset of the EESA. To date, there are 118 active harvesters reporting landings for menhaden during the BESA fishery with preliminary landing estimates at 2.4 million lbs. after two days of open harvest. The number of trips reported peaked on Monday, July 15 at 107, with preliminary data indicating less trips for the remainder of the open harvest days. Projections indicate that with an additional two days of harvest, approximately 80% of the quota will be consumed by the end of the harvest week.

The Commissioner has acquired several transfers of menhaden quota from partner States; these transfers rectified the overage that occurred during the initial directed fishery and the remaining allotment will allow for the reopening of the directed State allocated fishery. With the understanding that the harvest capacity of this fleet is now nearing 3 million lbs. weekly, it was imperative to reduce the weekly harvest limit within the directed State allocated fishery by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used as was the case for the EESA. Menhaden have now been observed in state waters from Kittery through to the Mount Desert Island.

As was the case under the EESA fishery, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily limit remains at 120,000 pounds while

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the weekly landing limit is reduced by this emergency regulation from 160,000 lbs. to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov .

The Commissioner has determined that it is necessary to take emergency action upon re-opening the directed State allocated fishery to implement the reduction of the weekly limit from 160,000 lbs. to 120,000 lbs., to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(8).

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring (Period 2 Closes; Open Date Period 3)
Filing number: 2019-151
Effective date: 8/17/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019.

Basis statement:

As of August 13, 2019, the Herring Management Area (HMA) 1A fishery has harvested 92% of the Period 2 (July – August) allocation. The Atlantic States Marine Fisheries Commission (ASMFC) has designated zero landing days for the remainder of Period 2, starting Sunday, August 18 through August 31, 2019.

Period 3 (September – October) Atlantic herring fishery will commence on Sunday, September 1, 2019. At the Days Out meeting on April 3, 2019, the Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit with a weekly landing limit of 160,000 lbs. (4 trucks). The Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. 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 imminent 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 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, 2019 to December 31, 2019
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, Atlantic Herring (Period 3 Closes)
Filing number: 2019-166
Effective date: 9/14/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rulemaking is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019.

Basis statement:

Landings data indicate 92% of the Period 3 (September – October) allocation for the Herring Management Area (HMA) 1A fishery has been harvested. The Atlantic States Marine Fisheries Commission (ASMFC) has designated zero landing days for the remainder of Period 3, starting 12:01 a.m. Sunday, September 15 through Thursday, October 31, 2019 at 11:59 p.m.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent 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 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, 2019 to December 31, 2019
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, Atlantic Herring (Period 3 Closes; Open Date Period 4)
Filing number: 2019-191
Effective date: 10/31/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area (HMA) 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

Basis statement:

The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

On Monday, October 28, 2019, NOAA Fisheries announced adjustments to the 2019 Atlantic Herring Specifications; the action increased the HMA 1A sub-ACL for the 2019 season by 1,000 mt. This was a result of the New Brunswick weir fishery landing below 4,000 mt through October 1 and thereby decreasing the management uncertainty buffer and re-allocating it to the HMA 1A sub-ACL.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent 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 will not require additional activity in this agency.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 §6173
Chapter number/title: Ch. 8, Landings Program
Filing number: 2019-195
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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, 2019 to December 31, 2019
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 §6173
Chapter number/title: Ch. 36, Atlantic Herring (Herring Permit)
Filing number: 2019-196
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
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 §6173
Chapter number/title: Ch. 41, Menhaden (2019 Menhaden Fishery Program - Menhaden Permit)
Filing number: 2019-197
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason for proposing the change to the lobster reporting requirements is to comply with ASMFC requirements that must in place for the 2020 licensing year. The principal reason for proposing the changes to the IVR herring permit and requiring a menhaden permit is to facilitate in season reporting for those fisheries.

Basis statement:

This rule updates reporting requirements for lobster license holders to replace “distance from shore” with a 10-minute square, and also require the reporting of the number of endlines fished. Based on the comment received supporting these data elements in compliance with Addendum XXVI to Amendment 3 of the American Lobster Fishery Management Plan, DMR has modified the reporting requirement for the number of endlines for clarity that the data element is the number of endlines the individual has in the water. This is the piece of information that would be most useful in understanding potential interactions with right whales. The rule also replaces references to the IVR herring permit in Ch. 8 and 36 with a herring permit. Finally, it requires individuals intending to participate in the menhaden fishery to obtain a menhaden permit on their commercial pelagic and anadromous license, to facilitate proper reporting in that fishery as required in Ch. 41.

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, 2019 to December 31, 2019
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, **Section 10.05:** Taking of Quahogs in the Sub-Tidal Waters of the New Meadows Lakes, Brunswick and West Bath
Filing number: **2019-198**
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule would maintain closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion.

Basis statement:

This rule maintains the winter closed period for the harvest of quahogs from the New Meadows Lakes, which ended on April 1, 2019. The sunset provision has been removed from the regulation, so that the winter closed period remains in effect. Maintaining the winter closed period is intended to reduce fishing pressure on the quahog resource and to minimize mortality associated with winter fishing.

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, 2019 to December 31, 2019
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
Chapter number/title: Ch. 11, Scallops (2019-20 Season)
Filing number: 2019-199
Effective date: 11/13/2019
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 data from the previous season.

Basis statement:

This rule-making establishes the 2019-2020 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 9, 2019 and the last day of the season is March 26, 2020. For Zone 1, a 60-day season for divers starts on November 14, 2019 and the last day of the season is April 30, 2020. For Zone 2, a 70-day season for draggers starts on December 2, 2019 and the last day of the season is March 31, 2020. For Zone 2, a 70-day season for divers starts on November 18, 2019 and the last day of the season is April 18, 2020. For Zone 3, a 50-day season for draggers begins on December 2, 2019 and the last day of the season is March 25, 2020. For Zone 3, a 50-day season for divers begins on December 5, 2019 and the last day of the season is March 28, 2020.

In Zone 1, Casco Bay, Sheepscot River, Muscle Ridge, and 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 all days during December 2019, in addition to open Zone 2 calendar days throughout the season.

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

This rule removes the drag size gear restriction in the Blue Hill Bay area (currently 8'6") allowing harvesters to utilize any drag size, provided it does not exceed the State maximum of 10' 6". Additionally, this rule amends the boundary for the Cutler Shore Rotational Area by moving the western boundary eastward to Western Head and extending south to the three nautical mile junction.

In consideration of the public comments, the Department has made the following changes:

- The proposed amendment to the harvest start and stop time to be a set time was struck and the rule remains as originally written; harvest will commence at sunrise and cease at sunset, as defined in 12 MRS 6001 45 and 46.
- Zone 2 dive calendar was modified to re-distribute days from April into December, 2019, January and February, 2020.
- The open month for Machias Seal Island and North Rock state waters was moved to December 2nd through 31st, 2019 from the proposed January 1st through 30th 2020, to accommodate the request for additional harvest opportunity in the month of December.

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, 2019 to December 31, 2019
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: 2019-200
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In order to be consistent with the National Marine Fisheries Service (NMFS) federal regulations, the Department implemented this rule change for charter, party and recreational fishing vessels operating in state waters targeting cod. For the recreational fishery, this rule eliminates the April 15 to April 30 opening for cod adopted earlier this year. The April opening was originally proposed in federal rulemaking but was not ultimately adopted.

Fiscal impact of rule:

This change is required to comply with federal regulations.

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Rules Adopted January 1, 2019 to December 31, 2019
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. 75, Protected Resources
Filing number: 2019-201
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This regulation is intended to replace an existing gear mark (red) used only in the sliver area and federal waters with a Maine specific gear mark (purple) that will be used in all Maine coastal waters, and an additional mark in the top two fathom of endline beginning by April 1, 2020. It will also require any gear fished within the Exemption area to have an additional green mark.

Basis statement:

There is an existing regulatory requirement for persons fishing lobster gear and trap/pot gear to mark their buoy lines with specific red marks in the sliver area and in federal waters. This regulation removes the requirement for the red marks and instead requires persons fishing lobster gear and trap/pot gear in all Maine coastal waters to mark their buoy line with purple marks. The purpose of changing the color of the marking is to implement a Maine-only gear mark. Inside the Exemption Area, fishermen are required to have three purple marks: a 36-inch mark in the top two fathom of their endline, and a 12-inch mark in the middle and at the bottom of their endline. Outside the Exemption Area, fishermen are required to have 4 purple marks: a 36-inch mark in the top two fathom of endline, and three 12-inch marks at the top, middle, and bottom of their endline. Finally, all lobster gear and trap/pot gear fished outside the Exemption Area is required to have an additional green mark of 6-inches in the top two fathom of buoy line. Lobster gear fished inside the Exemption Area is prohibited from having a green mark. The new marking requirements are required to be in place by September 1, 2020.

Based on the comments received, DMR made the following changes to the proposed rule prior to the adoption:

- The requirement to mark gear inside the Exemption Area was changed from 4 marks to 3 marks, with the requirement that the top mark be 36-inches, and located in the top two fathom of the buoy line; and
- The requirement for the additional 6-inch green mark in the top two fathom of the buoy line was moved from within the Exemption Area to outside the Exemption Area and it was clarified that a fisherman may not maintain a green mark on gear fished inside the Exemption Area; and
- The implementation date was moved from April 1, 2020 to September 1, 2020.

Fiscal impact of rule:

Persons fishing lobster and trap/pot gear in Maine's coastal waters will bear the costs associated with marking their gear as the regulation requires.

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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, 6856
Chapter number/title: Ch. 94, Sanitary Control of Molluscan Shellfish
Filing number: 2019-202
Effective date: 11/13/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This adoption amends the chapter to specify the current version of the Model Ordinance.

Basis statement:

This rule amends ch. 94 to specify the current version of the *National Shellfish Sanitation Program Model Ordinance* (Model Ordinance). The previous version of the rule specified the 2015 Model Ordinance, whereas this rule specifies the 2017 Model Ordinance, which is the most current version.

Fiscal impact of rule:

No fiscal impact is anticipated.

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Rules Adopted January 1, 2019 to December 31, 2019
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, Atlantic Herring (HMA 1A Closes)
Filing number: 2019-218
Effective date: 11/30/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission and NOAA Fisheries. GARFO announced on Tuesday, November 26, 2019 that the sub-ACL for HMA 1A was projected to have reached its 92% threshold with the addition of landing reports from the harvest on Monday, November 25, 2019. The area will be closed to directed harvesting for the remainder of the calendar year.

Basis statement:

NOAA Fisheries' Greater Atlantic Regional Fisheries Office (GARFO) has moved to close Herring Management Area (HMA) 1A. GARFO has been projected the sub-ACL for HMA 1A to reach the 92% threshold with the inclusion of reported landings from Monday, November 25, 2019. Directed fishery for Atlantic herring will remain closed through to December 31, 2019.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent 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, 2019 to December 31, 2019
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: 11.08, Targeted Scallop Conservation Closures;
(8) Moosabec Reach
Filing number: 2019-223
Effective date: 12/8/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure in Moosabec Reach within the Chandler Bay/Head Harbor Island Rotational Area in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in this area will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Moosabec Reach area.

Basis statement:

Amendment to ch. 11.08 Targeted Closures for closure of (8) Moosabec Reach within the Chandler Bay/Head Harbor Island Rotational Area.

The Department is taking emergency rulemaking action to expand the targeted conservation closure in the Moosabec Reach area of Chandler Bay/Head Harbor Island Rotational Area within Zone 2.

Moosabec Reach Area

Moosabec Reach area opened on December 2, 2019 with the beginning of the Zone 2 scallop season and was available to harvest for four dragging days and four diving days as indicated on the 2019-2020 Zone 2 harvest calendar. This area was previously open to harvest during the 2016-2017 Scallop Season as a limited access area beginning on January 2, 2017 and closing on January 22, 2017, allowing three dragging days and eight diving days of harvest opportunity.

On opening day, DMR science staff observed the area and boarded vessels along with Marine Patrol staff to assess harvest rates, catch composition, meat size and also discards. Initially, approximately 15 vessels were observed in Moosabec Reach with some vessels choosing to leave the area mid-morning for better scallop catches. The observed tows were of mixed content; containing majority of legal shellstock, some sublegal shellstock in addition to cut shells from the previous open season. Additionally, drags were observed to be kelp covered in a few instances and the majority of scallops did appear to be covered with barnacles.

General comments from harvesters in the area indicated the area wasn't as plentiful as expected, with several harvesters suggesting an early closure was warranted.

DMR science staff along with Marine Patrol staff followed up with a second day of field observations. Only one vessel was observed within Moosabec Reach with the majority of boats having moved out of the area for better scallop grounds and cleaner tows.

In summary, the Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in this area will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An

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

immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Moosabec Reach area.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 MRS §6171(3)(A).

In accordance with 5 MRS §8052 sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

Fiscal impact of rule:

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