

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Fishing Regulations
Filing number: 2020-221
Effective date: 1/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are designed to provide for the effective conservation of game fish throughout the state and provide for a variety of fishing opportunities. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives. Additionally, a recent review and digitization of all special regulations during the development of the Fishing Laws Online Angling Tool (FLOAT) identified several errors, conflicts, or confusing regulations. Solutions to correct and clarify those regulations consistent with original intent and/or common interpretation are also included in the amended rules. A list of proposals containing information regarding each proposal was provided during the comment period.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2021 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition and removal of certain waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained.

The Department, in a notice advertised August 12, 2020, proposed changes to open water and ice fishing regulations and modifications to State Heritage fish waters. One (1) water was added to the State Heritage Fish Waters list and two (2) waters were removed. A new approach was implemented involving the use of "Regulation Themes", where rule proposals were "categorized" to create immediate awareness regarding the general content of each category. The themes in the current regulations packet including the number of changes within each theme are as follows: Special Need (6); Lake Trout (Togue) Growth (4); Landlocked Salmon Growth (1); Angling Opportunity (5); New Special Regulation Listing (1); Simplify to General Law (14); Trout to Brook Trout (44); Errors, Conflicts, and Confusions (64).

The proposed changes were advertised with one public hearing held virtually via Microsoft Teams (minutes attached) with 5 citizens in attendance. The Department also received 75 comments in writing both for and against various proposals (comment summary with justifications attached). Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration.

On October 20, 2020, the Commissioner brought forward the original proposal for adoption by the Advisory Council. The nine (9) members present voted unanimously in favor to adopt the fishing regulations package for 2021 as presented.

Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled **Open Water & Ice Fishing Laws and Rules (January 1, 2021 – December 31, 2021)** and by authority of Title 12 MRS Section §12452, is an official

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consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1-A, State Heritage Fish Waters
Filing number: 2020-222
Effective date: 1/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

These rules are designed to provide for the effective conservation of game fish throughout the state and provide for a variety of fishing opportunities. The rules set specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives. Additionally, a recent review and digitization of all special regulations during the development of the Fishing Laws Online Angling Tool (FLOAT) identified several errors, conflicts, or confusing regulations. Solutions to correct and clarify those regulations consistent with original intent and/or common interpretation are also included in the amended rules. A list of proposals containing information regarding each proposal was provided during the comment period.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2021 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition and removal of certain waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained.

The Department, in a notice advertised August 12, 2020, proposed changes to open water and ice fishing regulations and modifications to State Heritage fish waters. One (1) water was added to the State Heritage Fish Waters list and two (2) waters were removed. A new approach was implemented involving the use of "Regulation Themes", where rule proposals were "categorized" to create immediate awareness regarding the general content of each category. The themes in the current regulations packet including the number of changes within each theme are as follows: Special Need (6); Lake Trout (Togue) Growth (4); Landlocked Salmon Growth (1); Angling Opportunity (5); New Special Regulation Listing (1); Simplify to General Law (14); Trout to Brook Trout (44); Errors, Conflicts, and Confusions (64).

The proposed changes were advertised with one public hearing held virtually via Microsoft Teams (minutes attached) with 5 citizens in attendance. The Department also received 75 comments in writing both for and against various proposals (comment summary with justifications attached). Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration.

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consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §12505
Chapter number/title: Ch. 2, Rules Pertaining to Commercial Fishing, Fish Culture and Fishing Derbies and Tournaments: 2.05, Bass Fishing Tournaments
Filing number: 2020-023
Effective date: 2/16/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is designed to allow bass clubs more opportunity for participation during a club event, while limiting social concerns, including congestion at public boat launches. The popularity of bass tournament angling has increased and thus membership in many clubs has increased. In the past, clubs have had to decide which members must sit out in order to remain compliant with the rule.

Basis statement:

This rule is an effort to provide more opportunity for organized bass fishing tournaments to increase the number of participants at club events. Currently, clubs were allowed up to 15 boats and the Department proposed to increase the number of boats participating to 20, but only on waters that were 1,000 acres or larger in size where the clubs were able to utilize offsite parking. The rule should reduce some of the concerns with congestion at existing public boat launches. The popularity of bass tournament angling has increased and thus membership in many clubs has increased. In the past, clubs have had to decide which members must sit out in order to remain compliant with the rule.

No public hearing was held and only 3 written comments were received. Comments were acknowledged and forwarded to the Commissioner's Advisory Council and Department staff. Two comments were in support of the proposal and one was not germane to the subject matter.

The Commissioner determined a slight clarification to the language was necessary after questions from the organized bass fishing community were posed to staff about whether or not only 5 of the boats would have to find offsite parking. The intent of the rule was to relocate parking associated with the entire event to off-site parking. The proposal was amended to include additional language "*for all participants*" to section 2.05, C.8. to clarify.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12152
Chapter number/title: Ch. 6, Educational and Scientific Collection Permit Rules
Filing number: 2020-243
Effective date: 12/7/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule will implement consistency between new statutory language and rule language related to collection of wildlife for an educational and scientific collection permit.

Basis statement:

The rule addresses a small change in the educational and scientific collection permit rules, ch. 6. In an effort to provide consistency with a statutory change that occurred in 2017 (Public Law 2017 ch. 205), under the scope of rules the term is amended to “wildlife” instead of “wild animals and wild birds.” The term “wildlife” as defined by Title 12 includes all species of the animal kingdom except fish so by making the change it allows the Department to provide permits for people to collect reptiles and amphibians in addition to mammals and birds. A small change was also made in Section 6.12 under transfer of permits. Instead of providing a letter to the permittee we will provide a written authorization the person will keep with them while conducting permitted activities.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12152
Chapter number/title: Ch.7, Rules for Importation, Possession, Propagation, Rehabilitation and Exhibition of Wildlife (Agritourism)
Filing number: 2020-025
Effective date: 2/18/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

During the 2019 Legislative session LD 355, “An Act to Exclude Domesticated Species Used for Agricultural Purposes from the Laws Governing Permits To Possess Wildlife in Captivity”, was introduced. The bill would’ve exempted wildlife that was domestically raised, hybridized or genetically altered and specifically used for farming or ranching or agritourism activity from the prohibition on keeping wildlife in captivity. This proposed law would have allowed any farmer who used their farm for agritourism (as defined in MRS 7), farming or ranching activity to keep any sort of wildlife as part of their agritourism business and they would not have been required to work with IFW or adhere to guidelines set forth in ch. 7 rules that provide for the safety and welfare of the animal, public safety and safety to our environment should the captive wildlife escape. The bill was pulled and DIFW would propose rulemaking to address the roles of DIFW and DACF and a requirement for the two agencies to clearly communicate the responsibilities of each as it pertains to application review of domestically raised wildlife to be kept in captivity.

The adopted rule will provide clarity to wildlife exhibition permit applicants, farmers, ranchers or agritourism professionals about which agency should be communicated with when interested in exhibiting captive, domesticated wildlife associated with agritourism business.

No public hearing was held, and no written comments were received on the proposal.

After consulting with the Attorney General’s Office, the Commissioner removed the proposed language change in 7.18 Species Lists. The proposed addition of *D. Any species native to Maine* was removed and there were no further changes to the section. By classifying native wildlife, it would have made them eligible for permitting and that was not the intent of the Department when proposing the rule. The Advisory Council met on February 4, 2020 and of the 8 members participating voted unanimously to adopt the amended proposal.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12909
Chapter number/title: Ch. 14, Commercial Whitewater Rafting
Filing number: 2020-141
Effective date: 6/18/2020
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Due to the closure of McKay Station access point, training runs for whitewater guides seeking to obtain a Level One or Level Two license are not able to be completed. The emergency rule will temporarily remove language requiring guide training runs from McKay station to a specific section river. New language will temporarily allow runs to start just below the gorge (Little Eddy) on the West Branch of the Penobscot River.

Basis statement:

On April 13, 2020, Brookfield Renewable Energy, who is the owner of McKay Hydroelectric Power Station, located on the upper gorge of the West Branch of the Penobscot River, reported a rock slide that did damage to the security fence protecting the access point for commercial and noncommercial whitewater boating activities. Specifically, the rocks weighed an estimated 700 pounds, and the slide occurred off the vertical bedrock wall located approximately ten feet behind the McKay Station.

A geological engineer, hired by the company to make an assessment at the facility, reported that the existing portions of the rock faces are heavily fractured and are at risk of becoming dislodged and toppling without warning. These findings resulted in their decision to keep the river access closed, as it continues to pose an unacceptable public safety hazard.

With McKay Station being closed, it will not allow the commercial and noncommercial boaters to run the upper gorge which is approximately 1,500 feet long section of the river. An alternate put-in location near Little Eddy is being finalized by the owner of the property and the whitewater boating community.

With McKay Station being closed, this directly affects training requirements for a whitewater guide to obtain either a Level One and a Level Two whitewater guide license issued by the Department, outlined in ch. 14.03. Current rule lists a specified number of guided training runs from McKay Station to be completed before being able to obtain a Level One and Level Two License.

These changes are necessary to temporarily remove language in ch. 14.03, that requires a minimum number of guided training runs from McKay Station to a designated rapid down river for a Level One and Level Two license issued by the Department. Language will also address the required number of guided runs when access from McKay Station is allowed.

Legislative findings (12 MRS §12902) state that the recreational use of watercraft on rapidly flowing rivers in this State has become an increasingly popular sport. Many members of the public rely on commercial whitewater outfitters to provide safe and enjoyable trips on these rivers. This sport may pose significant risks to the users of these rivers if outfitters are not skilled and knowledgeable in the navigation of those rivers and are not properly regulated.

The Legislature further found that increased use of the State's rapidly flowing rivers has increased the environmental, physical and social burdens on that resource, and that it is in the public interest for the State, as trustee of the public waters, to regulate commercial whitewater rafting, pursuant to: the State's authority to protect the health, safety and welfare of its citizens; the State's authority to protect its natural resources or rapidly flowing rivers; and the State's authority over the

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care, supervision and protection of navigation. The Legislature further found that, in exercising this authority, it is in the public interest for the State to adopt measures to ensure the competence of commercial whitewater outfitters.

Adoption of these rules on an emergency basis is necessary to avoid an immediate threat to the public safety that would be caused by occurrence of whitewater rafting activities in the vicinity of McKay Station. In addition, the Department finds the adoption of these rules on an emergency basis is necessary for the proper administration, implementation and enforcement of the whitewater rafting laws as provided for by 12 MRS §10104(1).

The Commissioner convened a special meeting of the Advisory Council on Monday, June 15th via videoconference (Microsoft Teams) and of the six (6) members present voted unanimously to adopt the emergency rule as presented.

The emergency rule will remain in effect for 90 days in order to allow whitewater guide training requirements to be fulfilled through the summer months. Commercial whitewater rafting trips on Maine's rapidly flowing rivers is at its peak during this time.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2020-090
Effective date: 4/12/2010
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

These rules are adopted for the purpose of implementing the *Federal Migratory Bird Treaty Act*, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2020/21 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. There was little change to season framework and bag limits from the previous season other than adjustments for calendar dates. In the past four years, we have started the second segment of the coastal zone concurrently with the sea duck season. The rule differs and the coastal zone would start on November 6, 2020 to include a weekend that would otherwise be lost if the season start date was November 9, 2020. The sea duck season reflects the balance of desires from some sea duck hunters to go later into January and other to wishing to have the season end in mid-January.

A public hearing was held on March 10, 2020 with 6 members of the Waterfowl Council present, and 22 citizens in attendance (minutes attached). The Department presented the proposal and discussed the season frameworks and bag and possession limits. Only 3 members of the public offered testimony. One expressed interest in the woodcock season being extended later in the year, one discussed the coastal zone season and interest in having it extend to the end of the sea duck season, and the final comment was from a falconer who expressed concern over predation of ducks by bald eagles and did not want to see the gunning season extend any further into the month of January. No written comments were received.

There was one minor change from the original proposal. The original proposal indicated that brant season limits were subject to change pending aerial survey results in late January/early February 2020. After those results were received, the brant season dates were adjusted slightly in all three zones. North zone end date changed from Dec. 5, 2020 to Nov. 24, 2020; South zone, the second season end date from Dec. 26, 2020 to Dec. 15, 2020; Coastal zone, the second season start date from changed from Nov. 6, 2020 to Nov. 18, 2020. The remainder of the proposal was unchanged.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting
Filing number: 2020-129
Effective date: 6/2/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2020 season. The Department advertised a proposal on April 1, 2020 with a recommended total of 3,135 permits be issued in order to meet moose harvest objectives. This is an increase of 315 permits from 2019. Permits may be valid for either antlered moose, antlerless moose, or a moose of either sex, depending on the WMD and specific season in which the permit authorizes hunting. Moose permit allocations are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. Moose permit recommendations are based on removal rates of antlered and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature antlered moose for viewing by the general public. The attached memorandum from the Department moose biologist Lee Kantar outlines the moose population status and recommended actions by WMD.

The slight increase in permits is focused on WMDs 1-6 which are within Maine's core moose range. Moose numbers in these WMDs are stable and can accommodate additional harvest without decline. These allocations are in concert with the goal of maintaining a healthy moose population while providing both hunting and viewing opportunities.

Due to the State of Emergency declared by Governor Mills, public hearings were not able to be held in person, so a virtual (Microsoft Teams) public hearing was scheduled for April 21, 2020. No members of the public requested to join the hearing, so the meeting was not launched. Three written comments were received on the proposal (attached). The comments were acknowledged and forwarded to the Commissioner's Advisory Council and staff for consideration. One comment was received in support of the proposal, and two comments were received in opposition. Of those opposed, one was not in favor of the lottery, felt there were few moose left and the lottery was only held for financial gain by the Department. The second comment in opposition discussed a petition for judicial review filed in the previous year and

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stated the Department's attempts to comply with law in the proposed rule were wholly inadequate. Much of the comment was not germane to the proposal but rather stating their views that the Department's proposal was not consistent with and in violation of Title 12, Section 10104 (Commissioner's rulemaking authority). The comment also stated that the rule was not consistent with Department management goals and that there was insufficient data to support the Department's estimate regarding the moose population. The Department disagrees with both comments in opposition as this rule is adopted and filed in compliance with existing statutory authorities and within the requirements of the Administrative Procedures Act (APA); and the attached memorandum from moose biologist Lee Kantar explains the reasons for the moose permit allocations based on the Department moose management goals and objectives. Finally, the Department's estimates of the moose population in the various WMD's is based on annual aerial surveys within the core range of Maine's moose population in order to provide a statistically reliable estimate of moose numbers. Aerial surveys use a peer-reviewed mark-recapture framework to estimate moose densities within specified WMDs. Since aerial surveys are conducted on rotation (~5 years), these estimates are used with a number of other empirically derived population parameters (e.g., reproduction, mortality, age distributions, sex-age ratios) within a population model to assess moose population dynamics thru time. This collection of data is used within the framework of a publicly derived management system to make annual recommendations on moose permit allocations.

The Commissioner recommended no changes to the original proposal. The Advisory Council met virtually via Microsoft Teams on May 20, 2020 and, of the 9 members participating, voted unanimously to adopt the proposal as presented.

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 Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11402
Chapter number/title: Ch. 16, Hunting: 16.07, Deer Hunting (Expanded Archery Areas)
Filing number: 2020-162
Effective date: 7/25/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The expanded archery program was created to promote archery hunting in areas where hunting opportunities were limited, often by local firearms discharge ordinances, and where this additional hunting pressure would not disrupt other hunting opportunities or pose a public safety risk. Expanded archery areas include Wildlife Management District (WMD) 29, a large portion of WMD 24, and nine smaller areas near or around Augusta, Bangor, Bucksport, Camden, Castine, Eliot, Lewiston, Portland, and Waterville. Authority to establish an expanded archery season was first granted by the Legislature in 1997, and this authority was expanded in subsequent years to allow for a longer season and later to increase the bag limit for expanded archery hunters. The Department periodically makes small additions and corrections to existing expanded archery boundaries as necessary.

All recommended adjustments to expanded archery boundaries and boundary language were made cooperatively with input from the MDIFW deer biologist and regional biologists and game wardens in the related areas. When considering additions to existing boundaries, the following were taken into consideration: Changes in road, house, and business development since the boundaries were created; firearm ordinance boundaries; known areas of high deer-human conflict such as limited land access, frequent nuisance deer complaints or requests for depredation permits, and high deer-vehicle collision rates; impacts on area habitat due to over-browsing by deer.

Existing expanded archery boundaries were reviewed by the MDIFW deer biologist as well as regional biologists and game wardens in the related areas. Additions to existing expanded archery areas were considered as well as adjustments to boundary language to reflect changed road or landmark names. The Department has made additions to four of the expanded archery areas: WMD 24 area, Augusta area, Camden area, and Lewiston area.

A virtual (Microsoft Teams) public hearing on the proposal was scheduled for June 17, 2020 and no members of the public indicated a desire to participate, so the hearing was not launched. The Department received one written comment (attached). The comment was specific to the proposed addition to the Lewiston area and expressed some concern that the landowners in the proposed expansion area weren't amendable to allowing hunters on their property. The Department reached out to local staff in the area including game wardens. Staff indicated the landowners did carefully screen hunters prior to giving permission on their property, but did allow hunting. They also indicated they felt the addition in the Lewiston area would help manage the deer situation locally.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11701
Chapter number/title: Ch. 16, Hunting: 16.10, Wild Turkey Hunting
Filing number: 2020-163
Effective date: 7/25/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The wild turkey population in Wildlife Management District (WMD) 6 has been stable to increasing over the past several years and can now sustain a small annual harvest during the fall season.

WMD 6 was first open to a spring wild turkey hunting season in the spring of 2015. Harvest data from 2015 to 2019 shows a stable trend, with annual fluctuations characteristic of the natural cycle of wild turkey populations. A Citizen Science on-line survey conducted during winter 2019/20 confirmed that wild turkeys are well established in WMD 6. Observations were recorded in 17 towns, all within the area considered suitable wild turkey habitat, and we estimate a minimum winter population size of more than 1,000 wild turkeys in WMD 6. These observations were in winter, when some proportion of the previous fall population had already been lost to predation and other natural causes of mortality; the population during the fall hunting season will be higher.

Satellite flocks and small groups of turkeys have been observed deep into the North Maine Woods to the west and in Madawaska and St. Agatha to the north, suggesting dispersal and expansion beyond WMD 6, characteristic of a growing wild turkey population. The Department has also received some wild turkey nuisance complaints in WMD 6. This is characteristic of a healthy population as experienced in Southern and Central Maine, where the wild turkey population is considered abundant.

Basis statement:

WMD 6 was first open to a spring wild turkey hunting season in the spring of 2015. Harvest data from 2015 to 2019 shows a stable trend, with annual fluctuations characteristic of the natural cycle of wild turkey populations. A Citizen Science on-line survey conducted during winter 2019/20 confirmed that wild turkeys are well established in WMD 6. Observations were recorded in 17 towns, all within the area considered suitable wild turkey habitat, and we estimate a minimum winter population size of more than 1,000 wild turkeys in WMD 6. These observations were in winter, when some proportion of the previous fall population had already been lost to predation and other natural causes of mortality; the population during the fall hunting season will be higher. Satellite flocks and small groups of turkeys have been observed deep into the North Maine Woods to the west and in Madawaska and St. Agatha to the north, suggesting dispersal and expansion beyond WMD 6, characteristic of a growing wild turkey population. The Department has also received some wild turkey nuisance complaints in WMD 6. This is characteristic of a healthy population as experienced in Southern and Central Maine, where the wild turkey population is considered abundant.

The Department used several sources of information to evaluate the status of turkeys in WMD 6, including previous spring harvest levels in WMD 6 and adjacent WMDs, a citizen science survey to document minimum winter population size, and nuisance complaints from the public. By establishing a bag limit of one wild turkey in WMD 6, the proposed rule also aligns with the Department's Big Game Management Plan, which recommends maintaining a

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conservative fall hunting season framework in northern, eastern, and western Maine to allow turkey population growth.

WMD 6 will be opened to a fall turkey season with a one turkey of either sex bag limit. All other rules for fall wild turkey hunting will apply. A fall hunting season is a valuable tool to keep wild turkeys at a level that balances a huntable population with human tolerance.

No public hearing was held on the proposal and none was requested. The Department received one written comment. The comment was quite thorough, and the points raised were carefully reviewed. The comment stated they thought the fall season in WMD 6 was being opened to mitigate a nuisance issue in Houlton. There was a bit of a misconception the proposal was focused on addressing nuisance issues in WMD 6, and although the Department does consider nuisance complaints when making a recommendation to open a turkey season such as this one, they were not put in place specifically to address those issues, but a source of data we considered. The numbers the Department used to inform the proposal were from the past winter. The public comment also questioned whether the numbers were from two winters ago when the population statewide was higher. The Department agrees that statewide we were seeing fewer birds in the state as compared to two summers ago and that was typical for turkeys. Turkey populations can fluctuate dramatically from year to year, and to address that, the Department looks at a longer period of data. The proposal was informed by a long-term trend in increasing numbers of wild turkeys in WMD 6 as well as an expansion of their range in that part of the state. Based on all those factors, the Department was confident that opening WMD 6 to a limited fall hunt with a one turkey bag limit was appropriate and did not recommend any changes to the proposal based on the comment.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 16, Hunting
Filing number: 2020-180
Effective date: 8/24/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule amendments are necessary to implement language changes based on three individual laws that were passed during the 129th Legislature. The laws affected department rules related to use of crossbows during the regular archery only deer hunting season, fall wild turkey hunting season and the supervision of junior hunters. The definition of an “antlerless moose” was also enacted.

Basis statement:

These rule amendments are necessary to implement language changes based on three individual laws that were passed during the 129th Legislature. Statutory changes were reviewed, and these necessary language amendments were made in rule to be consistent with the law as follows:

Public Law 2019 ch. 355 went into effect by emergency on June 18, 2019. For consistent definitions between the law and rule, the rule language within 16.08 defining an antlerless moose was amended.

Public Law 2020 ch. 639 amended the name of a person who supervises a junior hunter from an “adult supervisor” to a “junior hunter supervisor.” These amendments were made throughout the rule chapter anytime youth hunt days were described for deer, bear, spring and fall turkey and for migratory waterfowl hunting.

Public Law 2020 ch. 637 and Public Law 2019 ch. 98 made changes to certain uses of crossbow for deer hunting for years 2020-2022 and the amendments to the rules are necessary to provide consistency between law and rule. A description on the allowance for use of a crossbow during the Regular Archery-Only Season in October for deer hunting has been included along with language defining how hunters under the age of 65 can hunt and how they may harvest an antlerless deer with their permit and also explains how hunters age 65 and over and hunters with a special permanent disability permit can hunt for deer with a crossbow and have the ability to harvest a deer of either-sex without an antlerless deer permit. Additionally, crossbow becomes an added method to turkey hunt in the fall season.

No public hearing was held on the proposal and none was requested. The Department received two written comments on the proposal. One comment pointed out a typographical error that was corrected, and the second comment was opposed to the amended definition of an antlerless moose. The law change required the rule amendment for consistency and the change was implemented to ensure hunters with antlerless moose permits were indeed harvesting cow moose and young bulls were not being targeted.

The Commissioner moved forward with the original proposal and the Advisory Council gave their consent on August 12, 2020 and of the nine (9) members present, voted unanimously to adopt the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11152, 11401
Chapter number/title: Ch. 16, Hunting: 16.07(4.A.)(6.), Deer Hunting
Filing number: 2020-181
Effective date: 8/24/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Any-deer Permits (ADP) are adjusted by MDIFW on an annual basis by department biologists who consider deer harvest levels, biological metrics and indices, and estimates of winter severity when evaluating the status of the deer population within each wildlife management district (WMD). ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities. In addition to annual ADP recommendations, we are also recommending issuance of bonus antlerless deer permits in two subunits. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions, and public complaints about deer.

Basis statement:

The Department allocates any-deer permits by Wildlife Management Districts (WMDs) to limit the number of antlerless deer taken by hunters in each WMD. Allocations vary across the state, reflecting the different quality of deer habitat and potential to support and grow deer populations in each WMD. ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities, according to the publicly derived goals in the deer management system.

For 2020, the Department will issue a total of 109,990 ADP to be issued across 26 WMDs, including 370 bonus antlerless permits in two deer management subunits, to meet our doe harvest objective of 13,176 does. This is an increase in permits of just under 62% from 2019 (68,145 ADP). WMDs 1, 4, and 5 will be open to buck harvest only as they remain under objective, are often subject to severe winters, have low growth potential as seen in low doe:buck ratios, and do not have prominent areas of deer-human conflict. In WMDs 2, 3, 8-11, 14, 19, 27 and 28, we elected to issue a small number of ADPs (<100). The limited allocations of permits will allow hunters to continue to address localized issues with vehicle collisions, limit deer impacts to limited overwintering habitats, and enjoy additional harvest opportunities in these areas. WMDs 6, 7, 12, 13, and 18 will have increased allocations between 100 and 360 ADP, which is largely a product of lower estimated winter mortality rates leaving some additional room for doe removal. Large increases in permits were recommended for WMDs 15-17 and 20-26. These WMDs represent the most productive deer range in Maine. In addition to being subjected to mild winter conditions, it is increasingly challenging to achieve desired levels of doe removal in these districts. The Department continues to issue additional bonus permits in two deer management subunits in WMDs 25 and 26.

A public hearing on the proposal was held on June 15th and there was one participant at the hearing (minutes attached). Testimony was given in support of the any-deer permit numbers. The comment deadline closed on June 25th and two written comments were received. One of the comments was generally opposed to the deer management framework and really was not germane to the proposal but more addressing the way in which we managed deer to cope with things such as Lyme disease, deer/vehicle collisions and nuisance complaints. The second comment was from a member of the Commissioner's Advisory Council, Mr. Cowperthwaite representing Aroostook County. The comment proposed a modest increase

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in permit numbers in WMDs 1, 2, 3, 5, and 6 based on a meeting he had with members of the Aroostook County Conservation Association. The association held a banquet each year to raise thousands of dollars to buy food for the deer and due to the coronavirus, they were unable to do that. He had also met with the Aroostook chapter of the Maine Trappers Association and again, their concern was with the numbers of deer and starvation. Residents of Allagash had voiced the same. It was an important issue for Aroostook county residents, and he recommended an increase in the number of permits by 25 in the WMDs within their communities and 50 in WMD 6. It was only a little over 100 permits, there were 110,000 any-deer permits statewide, so he didn't feel it was a substantial request.

After reviewing the public comments and discussion with staff the Commissioner was comfortable moving forward with the proposed changes. It was a relatively minor increase from the original proposal and fit within the variation in the biological data we collected and used to inform permit recommendations except for WMD 5. Our management system and the biological and weather data we collected indicated no permits in WMD 5 for 2020 based on the status of the deer population in that district. Based on that, the Department recommended amending permit numbers from the original proposal in the following WMDs: WMD 2, 25 permits to 50; WMD 3, 50 permits to 75; and WMD 6, 200 permits to 250 for a total of 100 additional permits.

The Advisory Council gave their consent on August 12, 2020 and of the nine (9) members present, voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12251
Chapter number/title: Ch. 17, Trapping
Filing number: 2020-182
Effective date: 8/24/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department regularly adjusts furbearer hunting and trapping regulations in response to emerging scientific information, changes in hunter and trapper participation, and biological data. Several minor changes were adopted to clarify or simplify existing trapping rules. As in previous years, the Department closed certain areas to beaver trapping in response to requests from landowners. Other changes included increasing the fisher bag limit from 10 to 25 fisher/trapper/year, to be consistent with the marten bag limit, remove the temporary transportation tags required for marten and fisher and to amend the requirement of completing annual surveys to trappers 16 years and older. There were approximately 4% of kids that had lifetime trapping licenses and some of those were infants so it was not reasonable for them to be completing the trapper surveys. A definition for “visible attractor” was adopted as there had previously been no definition for visible attractor measures that were put in place to reduce the incidental take of lynx and other non-target species in traps. Muskrat trap placement was clarified, and modifications were made to the rule to allow muskrats to be kept if caught incidentally while trapping for beaver and otter was added to the exemption to incidental catch requirements when trapping for muskrat.

These changes will reduce unnecessary complexity in our trapping rules, improve the clarity of rules for the public and for law enforcement personnel, provide additional opportunity for harvest where biologically appropriate, and help ensure the continued conservation of furbearer species in Maine.

A virtual public hearing was held via Microsoft TEAMS on the proposal on June 16, 2020 (minutes attached). One member of the public participated and provided testimony. The individual was representing the Maine Trappers Association (MTA) and had also submitted written testimony. The MTA had concerns with the portion of the proposal defining “visible attractor,” in particular with regard to flagging which many trappers liked to use to mark the location of their trap. The public comment period ended June 26, 2020 and two written comments were received. The first comment focused on the fisher bag limit portion of the proposal and expressed general support for the increase and support for the concept that fisher populations seemed to be doing very well statewide and seemed to have increased in the north in particular. The comment questioned whether or not a quota system might be more effective. The Department had discussed that approach in the past. There would be a statewide or regional harvest limit for fisher and once that limit was reached, the season would close. That was a viable harvest management tool that was appropriate in some circumstances for some species. The challenge was that would require trappers to register their fisher throughout the season as they were being harvested so we could monitor that level of harvest in relation to the quota established. It would also require trappers to pay close attention to when that season might be closed. If it were to close they would have to pull their

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traps immediately. From a trapper satisfaction and logistical perspective, the Department didn't view that as a good approach in this scenario.

The second written comment we received was from the Maine Trapper's Association (MTA) which was generally supportive of the proposal. They did raise some questions about the new definition of visible attractor, which they also commented on during the public hearing around the use of flagging to mark trap locations. The written comment included additional concerns with defining the use of vegetable matter and that it be clarified that the use of vegetable matter was permissible in the visible attractors section of the rule.

The Commissioner reviewed the comments and testimony and discussed with staff and did make a minor addition to the proposal in Section 17.03 Definitions, (17) Visible Attractor to include that fruits or vegetables used for muskrat trapping were not considered a visible attractor. The section was further amended to specify that small pieces of flagging could be used to mark trap site locations. The remainder of the proposal was unchanged. The Commissioner's Advisory Council met on August 12, 2020 and of the nine (9) members participating voted unanimously to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12851
Chapter number/title: Ch. 24, Licensed Guides
Filing number: 2020-164
Effective date: 7/25/2020
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The rule is the result of more than a year's review of ch. 24 rules and the necessity for updates resulting from enacted legislation requiring the need for a background check to be completed before a person could apply for or renew their guide license. The rule contains language adjustments, updates to qualifications for guide license, enhanced testing process and an expansion of the standards of competency section to include ethics. The updated rule will ensure the highest standards for issuing a guide license to insure the public's trust when hiring a Maine guide.

Specific changes to the rule include updates due to statutory requirements for criminal background check completion prior to applying and renewing; expansion of standards of competency and ethics; updates to the application and testing process to allow a person to complete the oral and written exams the same day, including allowing a person to complete testing for all three portions of the oral exam even if they fail any one of them; clarification that for all classifications a guide can conduct over-night camping trips in conjunction with the activities their license classification allows them to guide for; when applying, a higher standard of "field experience" will be required by verifying a minimum of 100 hours within the past 4 years of field experience, training, job shadowing and/or apprenticeship. Anyone testing for hunting or fishing classifications also have the ability to test for a recreational classification by paying the \$100 exam fee for each classification beginning January 1, 2021. Education and outreach materials will be posted on the Department's website under the guiding section and applicants will be informed of new rules. Guide examiners will be educated on the new rule and options for testing more than one classification in a day.

No public hearing was held, and the Department received four written comments on the proposal. A summary of comments and responses is attached.

The Commissioner supported modifying the proposal based on public comment that was received from the Maine Professional Guides Association. The comment suggested the proposed language in the Standards of Competency/Ethics section was too broad and should reflect current statutory wording. The rule language was amended in section 24.08 Standards of Competency/Ethics (A.)(5.) as follows: "Fully understand and abide by all state and federal laws and rules involving the activities in the classification(s) for which the Guide is licensed and report all fish and wildlife related or other violations that a client engages in, accordance with 12 M.R.S. §12858 to the appropriate law enforcement dispatch center." There were no further changes recommended to the original proposed rule.

Fiscal impact of rule:

No fiscal impact anticipated.