

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
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-C
Chapter number/title: Ch. 2, Aquaculture Lease Regulations
Filing number: 2022-033
Effective date: 3/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rule is to provide compliance with recent statutory changes, to address feedback concerning aquaculture site marking requirements, and clarify that wild sources of stock or seed must be taken in compliance with existing laws.

Basis statement:

This rule makes a number of changes to comply with statutory changes made by Public Law 2021 ch. 52. It establishes a fee for an amendment of a lease of \$200. The rule specifies that the maintenance of a bond or escrow account and timely payment of rent is a minimum lease maintenance standard. The rule also restructures section 2.90(2)(B) for greater clarity and provides that any stock or seed obtained from wild sources needs to be taken in accordance with applicable season or size limits or any other limitations concerning take. In compliance with the National Shellfish Sanitation Program (NSSP) Model Ordinance (MO), the rule adds surf clams to the list of species contemplated in 2.95(A)(4)(a) and a provision that would require Department permission for any other species not listed. This rule updates lease and LPA marking requirements, so that by January 1, 2023, sites must be marked with yellow floating devices that host reflective material. The floating devices must display the lease or license identifier, and the words SEA FARM. The marking changes also increase the distance between floating devices from 100 yards to 200 yards. Lease and LPA license sites that have received a Private Aid to Navigation permit from the U.S. Coast Guard are exempt from the requirements but must still display the lease or license identifier and the words SEA FARM. It removes the limit on the number of helpers that may be designated for an LPA that is held by a municipal shellfish committee.

The recent statutory changes increased the fees for LPA licenses from \$50 to \$100 for Maine residents and \$300 to \$400 for non-residents. In processing the proposed rule, DMR noted that it should have updated the fees for LPA licenses listed in regulation. During the public hearing, DMR explained that the LPA fees would need to be updated to reflect the statute. Therefore, the rule has been updated accordingly.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
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. 8, Landings Program: Halibut Reporting
Filing number: 2022-065
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rulemaking is to update the harvester reporting requirements in Maine's halibut fishery, namely to implement weekly harvester reporting during the halibut season for Maine's territorial waters. Harvester reports must be submitted via an approved electronic mechanism no more than two days after the end of each reporting week. The elements required in the harvester report remain unchanged.

Basis statement:

This rule updates the frequency of harvester reporting for Maine's halibut fishery, implementing a requirement for harvesters to submit harvester reports on a weekly basis during the halibut season for Maine's territorial waters. Harvester reports must be submitted via an approved electronic mechanism no more than two days after the end of each reporting week. The data elements required in the harvester report remain unchanged. This rule is necessary to provide better data about in-season halibut landings to help ensure Maine stays within its quota and to reduce the number of late reports. Exceeding quota allocations can have a variety of negative implications for Maine's halibut fishery. Based on a public comment received, Maine DMR modified the proposed language to clarify that the requirement is for the submission of trip level catch reports on a weekly basis, as opposed to a single accrued weekly report, and to indicate that this requirement applies to those who are commercially fishing for halibut.

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, 2022 to December 31, 2022
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: Scallop, Herring, Lobster, and Pelagic and Anadromous
Filing number: 2022-213
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purpose of this rulemaking is to update the harvester reporting requirements for scallop, herring, lobster, and pelagic and anadromous license holders. For scallop license holders, the frequency of reporting is changed from monthly to weekly, and reports must be submitted through an approved electronic reporting mechanism. For herring license holders, the period of time for which daily reports are required is extended from September 30 to December 30. For lobster license holders, the requirement to report is changed from 10% of license holders to all license holders, and reports must be submitted through an approved electronic reporting mechanism. For pelagic and anadromous license holders, a clarification is provided that they only need to report those species authorized under the pelagic and anadromous license.

Basis statement:

This rule makes changes to the reporting requirements for scallop, herring, lobster, and pelagic and anadromous license holders. It changes the frequency of reporting for scallop license holders from trip level data reported monthly to trip level data reported weekly (no later than 11:59 p.m. Sunday) and requires that reports are submitted via an approved electronic mechanism. The data elements in the scallop harvester report remain unchanged. The rule also extends the time frame for which daily reporting is required in the herring fishery, from September 30 to December 30 annually. The data elements in the herring harvester report remain unchanged. The rule clarifies that pelagic and anadromous license holders only need to report those species authorized under the pelagic and anadromous license. Effective January 1, 2023, the rule requires all lobster license holders (except apprentice and noncommercial license holders) to report trip level data monthly and requires reports to be submitted via an approved electronic mechanism. The data elements required in the lobster harvester report remain unchanged.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (9), Gouldsboro & Dyers Bay LAA; (10) Wahoa Bay & West Moosabec Reach LAA
Filing number: 2022-001
Effective date: 1/2/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for the Gouldsboro and Dyers Bays limited access area and Wahoa Bay including the West Moosabec Reach limited access area all within Zone 2. The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Spring Scallop survey that are 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 these three scallop resource areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay LAA; (10) Wahoa Bay & West Moosabec Reach LAA.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (11) Johnson Bay and Eastport Breakwater
Filing number: 2022-016
Effective date: 2/6/2022
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 for Johnson Bay and Eastport Breakwater within Zone 3. The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Fall Scallop survey that are 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 Johnson Bay and Eastport Breakwater area.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (11) Johnson Bay & Eastport Breakwater.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 11, Scallops. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands
Filing number: 2022-023
Effective date: 2/20/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for Cobscook, Whiting, and Dennys Bays (Zone 3), Upper Machias Bay Rotational Area (RA), Gouldsboro & Dyers Bays RA and West Vinalhaven Islands in the Lower Penobscot RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Scallop surveys that are 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 four important scallop harvest areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands.

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, 2022 to December 31, 2022
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, 6122
Chapter number/title: Ch. 11, Scallops: 2022-2023 Season
Filing number: 2022-214
Effective date: 11/1/2022
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 rulemaking establishes the 2022-2023 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 would begin on December 12, 2022 and the last day of the season would be March 23, 2023. For Zone 1, a 60-day season for divers would start on November 15, 2022 and the last day of the season would be April 29, 2023. For Zone 2, a 70-day season for draggers would start on December 1, 2022 and the last day of the season would be March 30, 2023. For Zone 2, a 70-day season for divers would start on November 17, 2022 and the last day of the season would be April 22, 2023. For Zone 3, a 50-day season for draggers would begin on December 5, 2022 and the last day of the season would be March 28, 2023. For Zone 3, a 50-day season for divers would begin on December 1, 2022 and the last day of the season would be April 29, 2023.

Harvesting of scallops by hand (diving) is restricted to Rotation A (First) only for the 2022-2023 season. Harvesting for scallops by dredge gear is restricted to Rotation B (Second) only for the 2022-2023 season. A new limited access area is proposed for East Moosabec Reach in Zone 2 for the 2022-2023 season. The St. Croix River in Zone 3 re-opens to harvest for the 2022-2023 season.

DMR would maintain the following Limited Access Areas: Western Penobscot Bay, Muscle Ridge, Whiting and Denny's Bays. Additionally, the following existing targeted closures based on depletion, high concentrations of seed/sublegal scallops and/or the presence of spat-producing scallops would be maintained: Lower Muscle Ridge, Upper Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge

- Section 11.12 [Rotational Management] was updated to remove references to prior years. These changes provide additional clarity.

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 §6071
Chapter number/title: Ch. 25, Lobster and Crab: 25.04, Lobster Trawl Limits
(Hancock County)
Filing number: 2022-071
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In Zone B, there was an area with an existing 3 trap trawl maximum that needed to be modified in order to comply with a new 5 trap trawl minimum in the 2021 Atlantic Large Whale Take Reduction Plan final rule. The Zone B Council requested that the area from 3 to 6 mile nautical line from there is a 5 trap minimum have a 5 trap maximum.

Basis statement:

This rule modifies an existing 3-trap maximum in Zone B to a 5-trap maximum to comply with the new Atlantic Large Whale Take Reduction Team rule.

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 §§ 6071, 6526
Chapter number/title: Ch. 25, Lobster and Crab (Technical Corrections)
Filing number: 2022-148
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal reason is to make technical corrections to Chapter 25 to improve the clarity of the regulation.

Basis statement:

This rule makes technical corrections to Chapter 25. Specifically, it provides accurate buoy colors and numbers in Linekin Bay, as well as correcting the name of an island which the owners have renamed "Oak Island". Finally, it clarifies that a harvester who is selling fish that they caught for bait is not a bait dealer.

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 §6749
Chapter number/title: Ch. 26, Sea Urchins (2022-2023 Season)
Filing number: 2022-149
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation establishes 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 2022-2023 season. For Zone 1, seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2021-2022 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2021-2022 season. For Zone 2, 40-day seasons are implemented for divers, trappers, rakers and draggers in 2022-2023, from which harvesters may only fish up to 30 days of their choosing. This regulation has the same number of fishing days and opportunity days as the 2021-2022 season. For the Whiting & Dennys Bays Limited Access Area in Zone 2, a 15-day season is implemented for Zone 2 divers, trappers, rakers and draggers in 2022-2023. For Zone 2, the daily tote limit is six (6), the same as in the 2021-2022 season.

The Blue Hill Bay Limited Access Area designation sunset on April 1, 2022 and that language has been removed from the regulation.

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, 2022 to December 31, 2022
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 §6505-A
Chapter number/title: Ch. 32, Eel Regulations (Elver Quota System for the 2022 Season)
Filing number: 2022-034
Effective date: 3/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Each year, the method of calculating annual elver quota must be specified for the upcoming season.

Basis statement:

This rulemaking establishes the elver quota allocations for the 2022 season for individuals licensed under §§ 6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. The quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2021 season. 2022 allocations for individuals who held a license in 2021 are the same as their 2021 allocations, plus any quota associated with licenses not renewed in 2021, or licenses suspended for the duration of the 2022 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. Existing requirements around the distribution of transaction cards have been eliminated so that cards may be distributed whatever manner is appropriate and most protective of public health.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.06, Recreational Groundfish Restrictions
Filing number: 2022-163
Effective date: 9/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This action is intended to manage the Gulf of Maine cod and haddock recreational fishery in compliance with the federal fishery management plan.

Basis statement:

The Commissioner adopts this emergency rulemaking to modify the recreational fishing measures for Gulf of Maine cod and haddock. Cod and haddock are regulated by NOAA Fisheries as part of the Northeast Multispecies Fishery Management Plan (FMP). NOAA Fisheries sets recreational sub-annual catch limits (sub-ACLs) for both species as well as a suite of effort controls to ensure catch stays within the sub-ACLs. To this end, NOAA Fisheries issued a final rule to set the recreational measures for the 2022 fishing year. The rule increases the bag limit for haddock while expanding the fishing season and increasing the minimum size limit for cod. This is in response to analysis from NOAA Fisheries which suggests these modifications are not expected to result in an overage of the sub-ACLs for Gulf of Maine cod and haddock.

Specifically, for the 2022 fishing year, the bag limit for Gulf of Maine haddock is increased from 15 fish to 20 fish; the season and minimum size for haddock remain unchanged. For Gulf of Maine cod, the minimum size is increased from 21 inches to 22 inches and the fishing season is expanded such that cod can be harvested from April 1 -14 and from September 1 – October 7, inclusive. This season applies to both private and for-hire recreational anglers, re-aligning the seasons for these two sectors. The 1 fish bag limit for Gulf of Maine cod remains unchanged.

Importantly, this action ensures compliance with the federal fishery management plan. It also expands recreational fishing opportunities for these species in Maine state waters. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish measures for Gulf of Maine cod and haddock in accordance with 12 MRS §6171(3)(C).

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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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 34, Groundfish Regulations: 34.06, Recreational Groundfish Restrictions
Filing number: 2022-215
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This action is intended to manage the Gulf of Maine cod and haddock recreational fishery in compliance with the federal fishery management plan.

Basis statement:

On September 1, 2022, DMR adopted an emergency rule to be consistent with a NOAA Fisheries federal rulemaking. DMR is adopting the emergency rule as part of its regular rules. Consistent with the existing emergency rule, this rule implements regulatory changes for charter, party and recreational fishing vessels operating in state waters regarding Gulf of Maine cod and haddock. The bag limit for Gulf of Maine haddock is increased to 20 fish, with the fishing season and minimum size remaining unchanged. The season for Gulf of Maine cod is expanded such that cod may be possessed on board charter, party, or recreational fishing vessels from April 1-14, inclusive, and from September 1 – October 7, inclusive. The minimum size for Gulf of Maine cod is also increased to 22 inches, and there is no change to the 1-fish bag limit. This action ensures compliance with the federal fishery management plan. It also expands recreational fishing opportunities for these species in Maine state waters.

No changes were made to the proposed rule.

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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2022-105
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

The Days Out Commissioners have set zero landing days for June 1 through July 10, 2022 at 6:00 pm. The Days Out Commissioners have set five landing days for Season 1 (Trimester 2; June 1 – September 30) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Friday at 6:00 p.m., beginning on Sunday, July 10, 2022 at 6:00 p.m. The weekly landing limit for Atlantic Herring Limited Access Category A vessels is 240,000 pounds (or 6 trucks). Harvesters may not transfer herring to carrier vessels while at-sea. Carrier vessels may not receive herring from a harvester vessel while at-sea. All herring harvesters are required to report electronically prior to landing through an agency approved electronic method (i.e. LEEDS or VESL app) or through a Federal electronic reporting method. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 36, Atlantic Herring
Filing number: 2022-195
Effective date: 9/29/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

During the Days Out meeting held on September 14, 2022, the Days Out Commissioners set zero landing days for October 1 through November 6, 2022 at 5:59 p.m. The Days Out Commissioners designated four landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery, Sunday at 6:00 p.m. through Thursday at 6:00 p.m., beginning on Sunday, November 6, 2022 at 6:00 p.m. contingent upon receipt of the 1,000 mt quota transfer from the management uncertainty buffer associated with catches from the Canadian weir fishery. If the quota transfer does not occur as anticipated prior to October 31, 2022, there will be another Days Out meeting to determine next steps.

The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(C).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
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. 41, Atlantic Menhaden: 2022 Harvest Start Date
Filing number: 2022-066
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is a technical update amending the opening date of the State Allocation fishery from Monday, June 14, 2021 to Monday, June 13, 2022 at 12:01 a.m. for the 2022 fishing year. This rule is needed to update the opening of the 2022 menhaden season.

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
Chapter number/title: Ch. 41, Atlantic Menhaden: 2022 Harvest Start Date
Filing number: 2022-066 (*Correction*)
Effective date: 5/15/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rule is a technical update amending the opening date of the State Allocation fishery from Monday, June 14, 2021 to Monday, June 13, 2022 at 12:01 a.m. for the 2022 fishing year. This rule is needed to update the opening of the 2022 menhaden season.

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, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-106
Effective date: 5/31/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. In previous seasons, Maine has reduced harvest opportunity through either landing days or trip limits to minimize the risk of incurring an overage within the state directed fishery. With the anticipation of additional effort for the 2020 fishing season, it is necessary to reduce open harvest days for the state directed fishery to only Mondays and Thursdays to ensure effective monitoring of the State's available quota. The weekly limit remains at 23,800 pounds (or 68 barrels). Reporting is still required on the same day as fish are landed to ensure that DMR has the most accurate accounting of the catch as possible. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-120
Effective date: 6/21/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 :fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. An emergency rulemaking, filed on May 31, 2022, reduced harvest days from four days per week to only two days per week for the FY2022 state allocation fishery. This action was completed in anticipation of increased effort related to legislative action to implement a limited entry license program for the FY2023 menhaden fishery and to allow for additional time to tabulate landings reports. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signals a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA is permitted on Tuesdays and Fridays only as was determined practical during the FY2021 season. However, harvesters are restricted to a daily vessel landing of 6,000 pounds with same day reporting required. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 41, Atlantic Menhaden
Filing number: 2022-164
Effective date: 8/28/2022
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signaled a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA was permitted two days a week and effort remained constant for the duration of the program. To avoid an overage in this fishery, Maine DMR closed the EESA fishery on June 28, 2022.

Commercial harvesting under the incidental catch and small scale fishery (ICSSF) began on July 6, 2022 and has operated at three days a week with a daily landing limit of 6,000 lbs. Comparing the first 17 days of harvest under the ICSSF across years, Maine has landed 170% more pounds of menhaden in 2022 than in 2021, and 250% more pounds in 2022 than in 2020. To date, we have landed 15.8 million pounds under the ICSSF.

The non-commercial rate of harvest is significantly lower than the commercial rate of harvest, with the non-commercial daily landing limit set to 1,050 pounds. These additional landings will not significantly impact the overall total landings of menhaden. Additionally, there are non-directed fixed gears within state waters targeting multiple species (i.e. mackerel). The allowance for fixed gears to retain 7,350 pounds of menhaden per week is to ensure continued access to other pelagic fisheries while reducing incidental mortality of menhaden.

Since 2018, Maine has been allocated roughly 2.2 million pounds of menhaden but has been landing greater than 20 million pounds through a combination of EESA quota, transfers of quota from other states and the use of the ICSSF once all quota options have been exhausted. Maine's ICSSF landings peaked at 13.6 million pounds in 2020 and decreased to 12.5 million pounds in 2021 as regulatory changes were established to moderate effort and landings during that portion of the fishery. However, in 2021, total landings of menhaden (including landings under the ICSSF provision) exceeded the Total Allowable Catch (TAC) for menhaden.

The Commissioner has determined that it is necessary to take emergency action to end the commercial fishing season to prevent unusual damage to the menhaden resource by

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exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

No fiscal impact anticipated.

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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(C)
Chapter number/title: Ch. 50, Spiny Dogfish (Harvest, Possession, and Landing)
Filing number: 2022-073
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

This rule increases the spiny dogfish commercial trip limit to 7,500 pounds to align Maine state water regulations with those published by NOAA Fisheries and those voted on at the Atlantic States Marine Fisheries Commission.

Basis statement:

The Commissioner adopts this emergency rule to align Maine state waters regulations for spiny dogfish with action taken by the Atlantic States Marine Fisheries Commission (ASMFC) and the recent publication of spiny dogfish specifications by NOAA Fisheries. Specifically, this emergency rule increases the spiny dogfish commercial trip limit to 7,500 pounds per calendar day or 24-hour period, effective May 1, 2022.

The spiny dogfish stock is not overfished and overfishing is not occurring. Spiny dogfish are jointly managed by the New England Fishery Management Council and Mid-Atlantic Fishery Management Council (Councils) in federal waters, and by the Atlantic States Marine Fisheries Commission (ASMFC) in state waters. In recent years, catch has been well below the coastwide quota and the fishery has not been reaching optimal yield. As a result, the Councils recommended an increase in the federal trip limit to NOAA Fisheries for the 2022 fishing year. A 7,500-pound trip limit was proposed as a modest increase which would move the fishery closer to optimal yield while also minimizing potential market disruptions. In response, on April 7, 2022 NOAA Fisheries published final spiny dogfish specifications for the 2022 fishing year, including an adjustment of the federal commercial trip limit to 7,500 pounds. In addition, at its January 2022 meeting, the ASMFC Spiny Dogfish Management Board voted to set the trip limit for the Northern Region, which includes state waters of Maine through Connecticut, equal to the federal trip limit. This was done to align the spiny dogfish measures in state and federal waters.

Based on the recent rulemaking by NOAA Fisheries and action at ASMFC, DMR is modifying its regulations to adopt a 7,500-pound trip limit per calendar day or 24-hour period in the commercial spiny dogfish fishery. Establishing a consistent commercial trip limit between state and federal waters unifies management of the stock and improves enforcement of the regulations. The higher trip limit also provides additional fishing opportunities to Maine harvesters. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the spiny dogfish commercial trip limit in accordance with 12 MRS §6171(3)(C). DMR will follow this emergency rulemaking with a regular rulemaking to collect public comment.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
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. 50.02(A), Spiny Dogfish: Harvest, Possession, and Landing Restrictions)
Filing number: 2022-150
Effective date: 8/16/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule increases the spiny dogfish commercial trip limit to 7,500 pounds to align Maine state water regulations with those published by NOAA Fisheries and those voted on at the Atlantic States Marine Fisheries Commission. It would incorporate the May 1, 2022 emergency rule as a regular rule.

Basis statement:

On May 1, 2022, the Department of Marine Resources (DMR) adopted an emergency rule that increased the spiny dogfish commercial trip limit in Maine state waters to 7,500 pounds per calendar day or 24-hour period. The increased trip limit aligned Maine's regulations with the 2022 fishing year spiny dogfish specifications published by NOAA Fisheries on April 7, 2022 and with a recent vote at the Atlantic States Marine Fisheries Commission to mirror the federal waters trip limit in state waters. As emergency rules are temporary, this rule adopts the May 1, 2022 emergency rule making it part of DMR's regular rules.

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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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. 52, Atlantic Mackerel
Filing number: 2022-216
Effective date: 11/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

A 2021 stock assessment found that Atlantic mackerel are overfished and overfishing is occurring. In response, the Mid-Atlantic Fishery Management Council developed a new rebuilding plan for Atlantic mackerel, which includes a 20 fish per person possession limit in the recreational fishery. Given over 90% of Atlantic mackerel recreational catch occurs in New England state waters, the Mid-Atlantic Council requested the states of Maine, New Hampshire, and Massachusetts to implement complementary Atlantic mackerel recreational measures in state waters.

Basis statement:

This rule establishes a 20-fish per person per day recreational take and possession limit for Atlantic mackerel. Atlantic mackerel caught on a recreational, party, or charter vessel can be pooled in one or more containers; compliance with the 20-fish limit will be determined by dividing the number of Atlantic mackerel onboard by the number of persons onboard. Atlantic mackerel caught recreationally may be communally stored in dockside bait pens. Mackerel purchased from a lawful bait dealer with proof of receipt do not count towards the 20 fish possession limit. Similarly, chunked frozen mackerel do not count towards the 20 fish limit. Individuals who hold a commercial pelagic and anadromous fishing license are exempt from the possession and take limit. Further, the possession limit does not apply to several commercial licenses including lobster and crab fishing licenses, finfish licenses, and wholesale and retail licenses issued by the Maine Department of Marine Resources.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
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: 2022-072
Effective date: 5/1/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule was proposed for the purpose of ensuring compliance with the 2021 Atlantic Large Whale Take Reduction Plan federal regulations, including the requirements for 1700-pound weak link inserts, gear marking, and minimum trawl lengths specified by Zone and distance from shore and the LMA 1 Restricted Area.

Basis statement:

This rule incorporates the measures in the 2021 Atlantic Large Whale Take Reduction Plan final rule for 1700-pound weak link inserts, gear marking requirements, minimum trawl lengths, and defines the LMA1 Restricted Area.

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

- The exemption to the minimum number of traps per trawl requirement for certain islands has been expanded to include all islands eligible for this exemption as listed in the federal regulation.
- The requirements for the use of weak point insertions in exempt waters has been clarified to specify that the manufactured weak links and weak rope may be attached in whatever manner the fisherman chooses.

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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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: PL 2021 ch. 348 §58
Chapter number/title: Ch. 100 (*Repeal*), Grievance Procedures for the Handicapped
Filing number: 2022-035
Effective date: 5/13/2022
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In compliance with PL 2021 ch. 348 §58, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Ch. 100 of DMR's regulations is titled *Grievance Procedures for the Handicapped*, which was initially adopted by the agency in 1984 and would need to be updated in compliance with the recently enacted law. However, in the years following DMR's implementation of ch. 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in ch. 50 of the Maine Department of Labor's regulations. Therefore, this proposed rule would repeal ch. 100 and DMR would follow the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining a separate regulation.

Basis statement:

On June 23, 2021, Public Law 2021 ch. 348 §58 was enacted. This provision directs all state agencies to discontinue the use of the terms "Handicap, Handicapped, and Hearing Impaired" in all laws, rules, and official documents. In compliance with the law, DMR undertook a review of laws, regulations, and official documents under its jurisdiction. Ch. 100 of DMR's regulations is titled *Grievance Procedures for the Handicapped*, which was adopted in 1984 and needs to be updated in compliance with the recently enacted law and is generally out of date. However, in the years following DMR's implementation of ch. 100, the State of Maine adopted a disability-related Nondiscrimination Policy and Grievance Procedure, which applies to all agencies. The state's Nondiscrimination Policy and Grievance Procedure is codified in ch. 50 of the Maine Department of Labor's regulations. Therefore, this rule repeals ch. 100 and DMR will follow the state's Nondiscrimination Policy and Grievance Procedure rather than maintaining and updating a separate regulation.

Fiscal impact of rule:

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

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Rules Adopted January 1, 2022 to December 31, 2022
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171-A
Chapter number/title: Ch. 115, *Vibrio parahaemolyticus* Control Plan
Filing number: 2022-067
Effective date: 4/26/2022
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This regulation incorporates specified areas of the Weskeag River to existing vibrio control areas. The addition of the Weskeag 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 Weskeag River will cause *Vp* infections in consumers. The Maine Department of Marine Resources recognizes that this area 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. This regulation is necessary to minimize threats to public health posed by *Vp* infections.

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.