

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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. 2 , Aquaculture Lease Regulations: 2.95 , Water Quality Classifications and Shellfish Aquaculture (Maximum Seed Sizes in Prohibited Areas)
Filing number:	2021-055
Effective date:	3/13/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

Compliance with the Model Ordinance and to eliminate the need to close aquaculture sites that receive seed from prohibited areas, so long as the movement of seed complies with the proposal.

Basis statement:

This rule pertains to seed shellstock that is cultured within the prohibited growing area classification. The regulation requires the removal of cultivated seed from prohibited areas before it exceeds the listed maximum size for each species contemplated. The rule is necessary to comply with provisions set forth in the National Shellfish Sanitation Program Model Ordinance (Model Ordinance). The rule eliminates the need to close receiving aquaculture lease or license sites for depuration, provided seed is moved in compliance with what is specified in the rule. The rule removes the existing requirement that a permit be obtained for seed that comes from any growing area not classified as approved or conditionally approved. Aquaculturists cultivating seed in prohibited areas must have a DMR approved operations plan that needs to include corrective action for dealing with seed that exceeds the maximum size specified in the rule. Failure to implement the corrective actions will result in the destruction of the seed. The Department has also adopted a rule change to Chapter 94 (Sanitary Control of Molluscan Shellfish), which specifies that aquaculture lease and license holders may buy, or possess seed from growing areas in the prohibited classification, so long as the seed size complies with what is set forth in this regulation.

Fiscal impact of rule:

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

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Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6173
Chapter number/title:	Ch. 5 , Confidentiality of Fisheries Statistics
Filing number:	2021-160
Effective date:	8/10/2021
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:

This rule clarifies that any statistics collected by the Department of Marine Resources from a dealer, harvester, business, person or vessel as a result of compliance with reporting requirements, or an agreement by that dealer, harvester, business, person or vessel to participate in a Department led project to develop or test new methodologies or technologies for the reporting of fisheries statistics, is confidential data as provided by 12 MRS 6173.

Fiscal impact of rule:

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

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171(3)(A)
Chapter number/title: Ch. 8, Landings Program: 8.20, Harvester Reporting
Filing number: 2021-115
Effective date: 6/1/2021
Type of rule: Routine Technical
Emergency rule: Yes

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

Basis statement:

Public Law 2020 ch. 640 created a new license for the harvest of menhaden. Prior to the creation of the menhaden license, menhaden were harvested under the commercial pelagic and anadromous license. This rulemaking updates reporting requirements for menhaden to reflect that the individuals who are required to report menhaden harvest are those that hold the menhaden license under 12 MRS §6502-C. Reporting elements remain the same as in prior seasons. The Commissioner has determined that it is necessary to take emergency action to amend the menhaden harvester reporting section as it relates to reporting requirements specific to fishery operations to ensure accurate and timely monitoring of the menhaden quota and to prevent the imminent depletion of the menhaden resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(A).

Fiscal impact of rule:

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

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Rules Adopted January 1, 2021 to December 31, 2021
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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 8, Landings Program: 8.20(M), Menhaden License Update
Filing number: 2021-161
Effective date: 8/10/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

Public Law 2020 ch. 640 created a new license for the harvest of menhaden. Prior to the creation of the menhaden license, menhaden were harvested under the commercial pelagic and anadromous license. This rule updates reporting requirements for menhaden to reflect that the individuals who are required to report menhaden harvest are those that hold the menhaden license under 12 MRS §6502-C. Reporting elements remain the same as in prior seasons.

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, 2021 to December 31, 2021
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: 8.20(T) , Mussel Harvester Reporting
Filing number:	2021-218
Effective date:	10/31/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

On August 13, the Department received a request from the Maine Mussel Fisheries Improvement Project to implement mandatory harvester reporting for the wild mussel fishery as a means of providing information to better monitor the health of the mussel resource and fishery. The collection of effort and location information from harvesters is a standard practice to provide information necessary for fisheries management.

Basis statement:

This rule establishes mandatory monthly trip-level harvester reporting for individuals who hold a mussel boat license or a hand-raking mussel license. Required reporting elements are specified in the rule. The purpose of having harvesters report their activity is to better monitor the health of the mussel resource and fishery.

Fiscal impact of rule:

Collection of this additional data can be done within the Department's existing resources.

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Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6171(3)
Chapter number/title:	Ch. 11 , Scallops. 11.08 , 11.08, Targeted Closures: (7) Roque Island Harbor and Kennebec River in Englishman's Bay Rotational Area; (8) Harrington and Pleasant Rivers in Addison Rotational Area; (9) Fox Island Thorofare in Isle au Haut Rotational Area; (10) Casco Passage in Swan's Island Rotational Area
Filing number:	2021-026
Effective date:	1/17/2021
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08. Targeted Closures will be established in (7) Roque Island Harbor and Kennebec River in Englishman's Bay Rotational Area; (8) Harrington and Pleasant Rivers in Addison Rotational Area; (9) Fox Island Thorofare in Isle au Haut Rotational Area; and (10) Casco Passage and western Toothacher Bay in Swan's Island Rotational Area.

Basis statement:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in Roque Island Harbor and Kennebec River; Harrington and Pleasant Rivers; Fox Islands Thorofare; and, Casco Passage and western Toothacher Bay in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2020-2021 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2020 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these four scallop resource areas.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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: (7) Upper Englishman Bay RA; (8) Addison RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Frenchmen Bay; (13) Damariscotta River LAA; (14) West Casco Bay
Filing number:	2021-043
Effective date:	2/14/2021
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 in Cobscook, Whiting and Dennys Bays, Upper Frenchman's Bay, Damariscotta River and western Casco Bay; and, to expand existing closures in Englishman Bay and Addison rotational areas. In Cobscook, Whiting and Dennys Bays, there is an exception to the conservation closure to allow the harvest of scallops by drag on Monday, February 15, 2021 and to allow the harvest of scallops by diving on Saturday, February 20, 2021. The Department is concerned that continued harvesting for the remainder of the 2020-2021 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2020 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these six scallop resource areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (7) Upper Englishman Bay RA; (8) Addison RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Frenchman Bay; (13) Damariscotta River LAA; and (14) West Casco Bay.

In summary, the Department is concerned that continued harvesting for the duration of the 2020-21 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Cobscook, Whiting, Dennys Bays, Upper Englishman Bay RA, Addison RA, Upper Frenchman Bay, Damariscotta River LAA and West Casco Bay.

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, 2021 to December 31, 2021
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) Isle au Haut RA; (10) Expanded Swan's Island; (11) Cobscook, Whiting & Dennys Bays & St. Croix River; (12) Expanded Upper Frenchmen Bay
Filing number: 2021-054
Effective date: 3/7/2021
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure in the St. Croix River in Zone 3; and to expand existing closures in Frenchman Bay, Swan's Island and Isle au Haut rotational areas. The Department is concerned that continued harvesting for the remainder of the 2020-2021 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2020 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these four scallop resource areas.

Basis statement:

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08, Targeted Closures: (9) Isle au Haut RA; (10) Expanded Swan's Island; (11) Cobscook... & St. Croix River; (12) Expanded Upper Frenchman Bay.

In summary, the Department is concerned that continued harvesting for the duration of the 2020-21 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in St. Croix River, Upper Swans Island RA, Upper Frenchman Bay RA, and Isle au Haut RA.

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, 6722
Chapter number/title: Ch. 11, Scallops: 2021-22 Season
Filing number: 2021-219
Effective date: 10/31/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

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

Basis statement:

This rule-making establishes the 2021-2022 scallop fishing season. Daily possession limits of 15 gallons for Zone 1 and Zone 2, and 10 gallons for Zone 3 remain unchanged. For Zone 1, a 60-day season for draggers begins on December 6, 2021 and the last day of the season is March 17, 2022. For Zone 1, a 60-day season for divers starts on November 16, 2021 and the last day of the season is April 29, 2022. For Zone 2, a 70-day season for draggers starts on December 1, 2021 and the last day of the season is March 31, 2022. For Zone 2, a 70-day season for divers starts on November 19, 2021 and the last day of the season is March 26, 2022. For Zone 3, a 50-day season for draggers begins on December 1, 2021 and the last day of the season is March 28, 2022. For Zone 3, a 50-day season for divers begins on December 2, 2021 and the last day of the season is March 26, 2022.

New limited access areas for the 2021-2022 season: Western Casco Bay and Sheepscot River in Zone 1; and, Gouldsboro/Dyers Bay and West Moosabec Reach in Zone 2. Targeted seed closures are re-established in Eastern Casco Bay and Damariscotta River in Zone 1. In Zone 3, St. Croix River is established as a new targeted seed closure. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest all days beginning December 1, 2021 through March 31, 2022.

A new mooring closure is implemented for Sullivan Harbor. The Limited entry system is updated to allow entry to either the scallop dragging license lottery or the scallop hand harvest lottery but individuals may not enter both lotteries.

DMR is maintaining 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 are maintained: Lower Muscle Ridge, Back River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

Fiscal impact of rule:

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

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Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6171(3)(A)
Chapter number/title:	Ch. 24 , Importation of Live Marine Organisms
Filing number:	2021-044
Effective date:	2/14/2021
Type of rule:	Routine Technical
Emergency rule:	Yes

Principal reason or purpose for rule:

Polymerase Chain Reaction (PCR) results received on January 22, 2021 from Kennebec River Biosciences in Richmond, Maine confirmed the presence of MSX (*Haplosporidium nelsoni*) in wild American oysters in Quahog Bay. MSX was detected at a low level in 2 of 24 oysters sampled, one of which also displayed thin tissues. MSX is an oyster disease caused by a microscopic parasite. It is a health and mortality problem for American oysters but does not affect human health or consumption.

Basis statement:

Routine health surveillance has confirmed the presence of MSX (*Haplosporidium nelsoni*) in Quahog Bay. MSX is a microscopic parasite that affects the health and survival of the American oyster (*Crassostrea virginica*) resource but does not pose a risk to consumers or human health. This emergency rulemaking creates an American oyster restricted area within Quahog Bay and Ridley Cove in Harpswell, Maine. The movement or transfer of American oysters greater than 3 mm in size, from the newly established restricted area to other waters of the state, is prohibited without a permit from the Maine Department of Resources (DMR). Persons will be required to obtain a permit for the movement, but not harvest, of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with ch. 24.05. This emergency rulemaking is necessary to protect the American oyster resource (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of oysters infected by MSX throughout Maine's waters. As authorized by 12 MRS §6171(3)(A), the Commissioner of DMR adopts this emergency 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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Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6071
Chapter number/title: Ch. 24, Importation of Live Marine Organisms
Filing number: 2021-162
Effective date: 8/10/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

On February 14, 2021, DMR implemented an emergency rule because routine health surveillance confirmed the presence of MSX (*Haplosporidium nelsoni*) in Quahog Bay, Harpswell, Maine. MSX is a microscopic parasite that affects the health and survival of the American oyster (*Crassostrea virginica*) resource but does not pose a risk to consumers or human health. This rule continues the American oyster restricted area within Quahog Bay and Ridley Cove in Harpswell, Maine previously adopted under the emergency rule. The movement or transfer of American oysters greater than 3 mm in size, from the restricted area to other waters of the state, is prohibited without a permit from DMR. Persons are required to obtain a permit for the movement, but not harvest, of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with ch. 24.05.

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, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6749
Chapter number/title: Ch. 26, Sea Urchins (2021-2022 Season)
Filing number: 2021-163
Effective date: 8/10/2021
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 2020-2021 season. For Zone 1, seasons are implemented for divers, trappers, rakers and draggers in 2020-2021, from which harvesters may only fish up to 15 days of their choosing, the same number of days allowed during the 2019-2020 season. For Zone 1, the daily tote limit is nine (9), the same as in the 2019-2020 season. For Zone 2, 40-day seasons are implemented for divers, trappers, rakers and draggers in 2020-2021, from which harvesters may only fish up to 30 days of their choosing. This adoption has the same number of fishing days and opportunity days as the 2019-2020 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 2020-2021. For Zone 2, the daily tote limit is six (6), the same as in the 2019-2020 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, 2021 to December 31, 2021
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. 30 , River Herring: 30.03 , Taking of River Herring from Walker's Brook
Filing number:	2021-056
Effective date:	3/13/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

In consideration of successful restoration efforts, this rule will allow a limited recreational harvest of surplus river herring spawning stock. The rule will provide opportunity for individuals to catch river herring for personal use.

Basis statement:

In consideration of successful restoration efforts at Walker's Pond in Brooksville, DMR has established a limited recreational fishery in Walker's Brook. The rule authorizes the take of river herring from May 15th through June 5th. In accordance with existing regulations and statutes, individuals may take up to 25 river herring per day using hook and line or dip net. Although fishing is allowed in Walker's Brook from May 15th through June 5th, the weekly closed periods still apply, so that fishing is prohibited from 6:00 am Thursday to 6:00 a.m. Sunday. The regulation does not expressly reference the method of take, daily limit, and weekly closed periods because these restrictions are already specified in other sections of DMR's regulations and statutes.

Fiscal impact of rule:

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

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

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 30, River Herring: 30.03, Taking of River Herring from Walker's Brook
Filing number: 2021-220
Effective date: 10/31/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

In March 2021, DMR established a limited fishery in Walker's Brook, which runs between the Towns of Brooksville and Sedgwick. However, the March 2021 rule only listed the portion of the brook that runs through the Town of Brooksville. This rule is a technical change that adds the Town of Sedgwick to the existing regulatory language. This change is intended to provide greater clarity to the public and Marine Patrol.

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, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §§ 6171, 6173
Chapter number/title:	Ch. 32 , Eels and Elvers (Elver Quota System for the 2021 Season)
Filing number:	2021-057
Effective date:	3/13/2021
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. In addition, this rule-making establishes a minimum tending requirement for fyke nets and Sheldon traps. Specifically, Marine Patrol Officers have observed nets and traps not being tended on a regular basis, which results in elver and bycatch mortality. Some elver harvesters have also brought this issue to the attention of Marine Patrol. Requiring tending at regular intervals is intended to address the issue raised by some harvesters and observed by Marine Patrol.

Basis statement:

This rule establishes the elver quota allocations for the 2021 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. 2021 allocations for individuals who held a license in 2020 are the same as their 2020 allocations, plus any quota associated with licenses not renewed in 2020, or licenses suspended for the duration of the 2021 season, in excess of that which is allocated to new license holders, which will be distributed evenly to all existing license holders. Finally, the rule establishes a tending requirement, so that the contents of fyke nets and Sheldon box traps are removed at least once every 16 hours. The tending requirement is intended to reduce by-catch and elver mortality by requiring harvesters to check nets and box traps on a regular basis.

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, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 34, Groundfish Regulations: 34.07, Atlantic Halibut
(*Hippoglossus hippoglossus*)
Filing number: 2021-058
Effective date: 3/13/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This action is intended to protect and conserve the halibut resource in compliance with the federal management plan and avoid future implementation of accountability measures.

Basis statement:

In May 2020, the Department of Marine Resources adopted an emergency rule in order to remain within the state waters subcomponent of the federal Annual Catch Limit, and to prevent accountability measures from being triggered if the Allowable Biological Catch is exceeded. The Department incorporates the emergency changes via this regular rule. This rule reduces the length of the state waters halibut season by one week at each end of the season (resulting in a season of May 18-June 13). This action is intended to protect and conserve the halibut resource in compliance with the federal management plan and avoid future implementation of accountability measures.

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, 2021 to December 31, 2021
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:	2021-116
Effective date:	6/1/2021
Type of rule:	Routine Technical
Emergency rule:	Yes

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

Basis statement:

This rulemaking sets the start date for the Atlantic herring fishery to commence on Sunday, June 13, 2021 and sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 22, 2021. The Days Out Commissioners designate zero landing days June 1 through June 12, 2021. The Days Out Commissioners designate five consecutive landing days, beginning June 13, 2021, from 6:00 p.m. Sunday to 6:00 p.m. Friday, weekly. Vessels issued an Atlantic Herring Limited Access Category A Permit are limited to landing 240,000 lbs. (6 trucks), weekly. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. The Commissioner has determined that it is necessary to take emergency action to implement these effort restrictions to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(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, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Marine Resources
Umbrella-Unit: 13-188
Statutory authority: 12 MRS §6171
Chapter number/title: Ch. 36, Atlantic Herring: 2021-Season 2 Closed
Filing number: 2021-200
Effective date: 10/1/2021
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 Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. The Commissioner has determined that it is necessary to take emergency action to implement this harvest schedule to prevent the depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 MRS §6171(3)(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, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §6171
Chapter number/title:	Ch. 36 , Atlantic Herring: 2021-Season 2 Open
Filing number:	2021-228
Effective date:	11/6/2021
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 four landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery, Monday at 12:01 a.m. through Thursday at 11:59 p.m., beginning on Monday, November 8, 2021 at 12:01 a.m. All individuals harvesting herring are required to email their pre-land haul weight three hours prior to landing to herring.dmr@maine.gov. 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.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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, Menhaden: 2021 Commercial Harvest Rules
Filing number: 2021-087
Effective date: 4/27/2021
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

This rulemaking establishes the effort restrictions for the commercial menhaden fishery management program for FY2021. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Tuesdays, Thursdays and Fridays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Tuesdays and Fridays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Fridays with a daily vessel limit of 6,000 pounds. Transfers at sea of menhaden to either a harvester or carrier vessels are prohibited during the State Allocation, Episodic Event and Small Scale fisheries. During all three fishery phases, menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest and remain stored either on the harvester vessel and the dory towed by the harvester vessel, if utilized for all gear types.

Menhaden cannot be transferred to another vessel while at sea. Menhaden cannot be received from another vessel while at sea. Same day reporting is required by commercial menhaden harvesters during the state allocation and episodic event fisheries.

The noncommercial menhaden fishery daily limit has been amended from 1,000 pounds to 1,050 pounds to reflect the amount landed in three barrels.

Summary of changes made:

- Proposed language on the prohibition of transferring nets at sea has been removed;
- Proposed language related to tender vessel length has been removed and clarity on harvester vessel's activity has been added;
- Definition of carrier vessel has been removed and clarity on no transfer of fish at sea has been added;
- Harvest days for state allocation fishery changed from the proposed Mondays, Wednesdays, Thursdays, Saturdays to the same schedule as FY2020 of Mondays, Tuesdays, Thursdays, Fridays;
- Harvest days for the episodic fishery changed from the proposed Wednesdays, Saturdays to Tuesdays, Fridays;
- Harvest days for the small scale fishery changed from the proposed Mondays, Wednesdays, Saturdays to Mondays, Wednesdays, Fridays; and,
- Recreational fishing does not specify a method of take except as limited in statute.

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, 2021 to December 31, 2021
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. 42 , Striped Bass: Statewide Striped Bass Harvest Methods
Filing number:	2021-117
Effective date:	6/1/2021
Type of rule:	Routine Technical
Emergency rule:	Yes

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

Basis statement:

The Commissioner adopts this emergency rule to come into compliance with the Atlantic States Marine Fisheries Commission (ASMFC). Specifically, the emergency rule identifies a definition of ‘bait’ for the circle hook requirement and specifies what happens if striped bass are incidentally caught when targeting other species with non-circle hooks with bait attached.

Striped bass are managed by ASMFC. As a part of Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan, the use of circle hooks is required when recreationally fishing for striped bass with bait. As states along the Atlantic coast worked to implement this regulation, many questions arose including how bait should be defined, does the requirement apply to artificial lures with bait attached, and what happens if an angler incidentally catches a striped bass with a non-circle hook. At a March 2021 meeting, the Atlantic Striped Bass Management Board approved clarifications to the striped bass circle hook requirement. This included defining bait and specifying that striped bass incidentally caught with non-circle hooks with bait attached must be released. The Board also exempted artificial lures with bait attached from the circle hook requirement, allowing Maine to maintain its current exemption for rubber and latex tube rigs.

ME DMR must modify its striped bass regulation to come into compliance with the ASMFC Striped Bass Interstate Fishery Management Plan. Further, establishing additional information on the required use of circle hooks will provide clarity to recreational anglers and support Maine Marine Patrol efforts. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the circle hook requirements in the striped bass recreational fishery in accordance with 12 MRS §6171(3)(C). ME DMR will follow this emergency rulemaking with regular rulemaking to provide for public comment.

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, 2021 to December 31, 2021
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. 42 , Striped Bass
Filing number:	2021-164
Effective date:	8/10/2021
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:

On June 1, 2021 the Department of Marine Resources adopted an emergency rulemaking to come into compliance with the Atlantic States Marine Fisheries Commission. The Department incorporated these emergency changes via this regular rulemaking. The rulemaking implements a definition of bait as it pertains to the required use of circle hooks in the recreational striped bass fishery. It also specifies what happens if a striped bass is incidentally caught while targeting other species with a non-circle hook with bait. Further, it maintains the circle hook exemption for rubber and latex tube rigs and expands the exemption to include willow leaf spinner rigs. In addition to incorporating changes from the emergency rule, this rule also clarifies language in Section 42.01(C). Specifically, it removes language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait. Greater definition on the required use of circle hooks will provide clarity to anglers and Marine Patrol.

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

- Added willow leaf spinner rigs to the list of terminal tackle which are exempt from the circle hook requirement when fishing with bait

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, 2021 to December 31, 2021
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. 43 , Bluefish
Filing number:	2021-165
Effective date:	8/10/2021
Type of rule:	Routine Technical
Emergency rule:	No

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

Basis statement:

Bluefish and striped bass are two species whose recreational fisheries often overlap. Like the striped bass fishery, there is a circle hook requirement when fishing with bait in the recreational bluefish fishery. The Department has amended the striped bass regulations to provide greater clarity on the use of circle hooks in the striped bass recreational fishery. This includes providing a definition of bait. To ensure continued consistency between the circle hook requirements for the two fisheries, the Department has amended the bluefish regulations to adopt the same definition of bait as is in the striped bass regulations. The rule also cleans up regulatory language in Section 43.01(C), removing language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait. Continued consistency in the circle hook requirements for striped bass and bluefish will provide clarity to anglers and Marine Patrol.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name:	Department of Marine Resources
Umbrella-Unit:	13-188
Statutory authority:	12 MRS §§ 6171, 6856
Chapter number/title:	Ch. 94 , Sanitary Control of Molluscan Shellfish
Filing number:	2021-059
Effective date:	3/13/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The purpose of the rule adoption is to reference the most recent version of the model ordinance and to specify minimum compliance requirements for buying stations. The compliance requirements are intended to protect public health by ensuring that buying stations are operated in a manner that prevents contamination, deterioration and decomposition of shellstock.

Basis statement:

This rule amends ch. 94 to reference the most current version of the National Shellfish Sanitation Program Model Ordinance (Model Ordinance). The rule also specifies certain compliance requirements for the operation of buying stations. Specifically, buying station representatives need to maintain activity logs that document information such as date and time of purchase, quantity of shellstock purchased, and the date and time of harvest. The regulation also specifies that vehicles must have a mechanical refrigeration unit, onboard thermometer and a time/temperature data logger. The rule also changes the expiration date of Shellfish Sanitation Certificates, Bulk Tagging, and Buying Station Permits from June 1st to April 1st. The expiration date for wet storage permits has changed from August 1st to April 1st. The Department has processed a rule change to ch. 2 (Aquaculture Regulations), which establishes maximum seed size definitions for growing areas in the prohibited classification. In order to maintain consistency with those changes, this rule specifies that aquaculture lease and license holders may buy or possess seed from growing areas in the prohibited classification, so long as the seed size complies with definitions established in Chapter 2.

Change to proposal:

No comments were received on this proposal. However, in processing the final proposal, the agency noted that the expiration date for wet storage permits should have been changed from August 1st to April 1st. This change provides consistency with all other permit expiration dates listed in the chapter. DMR has made this change in the final proposal.

Fiscal impact of rule:

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

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
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 , <i>Vibrio parahaemolyticus</i> Control Plan
Filing number:	2021-060
Effective date:	3/13/2021
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

This rule incorporates designated portions of the Scarborough and Nonesuch Rivers and Spinney Creek into the existing *Vibrio parahaemolyticus* (*Vp*) control plan in order to reduce the likelihood that American and European oysters (*Crassostrea virginica* and *Ostrea edulis*) and hard clams (*Mercenaria mercenaria*) harvested from these areas will cause *Vp* infections in consumers. It also updates elements of control plans to reflect best practices concerning time and temperature protocols. It also permits recreational harvest in designated control areas, so long as the municipality meets the requirements specified in the proposed regulation.

Basis statement:

This regulation adds specified areas of the Scarborough and Nonesuch Rivers and Spinney Creek to existing vibrio control areas. It changes the dates the control plan is in effect in all designated control areas from May 1st through October 31st to June 1st through October 15th. It changes the submission deadline for control plans from March 1st to April 1st. The rule also modifies what information harvesters and dealers must include in their control plans. It also permits recreational harvest in designated control areas provided the town has a municipal shellfish ordinance that issues recreational licenses, and the municipality provides vibrio education to recreational harvesters prior to the issuance of the recreational license.

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.