

## Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 2.95 Water Quality Classifications and Shellfish Aquaculture; Maximum Seed Sizes in Prohibited Areas

TYPE OF RULE (*check one*):         Routine Technical         Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

**BRIEF SUMMARY:** This proposed rule pertains to seed shellstock that is cultured within the prohibited growing area classification. The proposed regulation would require the removal of cultivated seed from prohibited areas before it exceeds the listed maximum size for each species contemplated. The proposed change is necessary to comply with provisions set forth in the National Shellfish Sanitation Program Model Ordinance (Model Ordinance). The proposal would also eliminate 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 proposal would remove 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 would need to include corrective action for dealing with seed that exceed the maximum size specified in the proposal. Failure to implement the corrective actions would result in the destruction of the seed. The Department is also processing 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 proposal.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: February 12, 2021

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: §6171-A

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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\* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§

2.95 Water Quality Classifications and Shellfish Aquaculture

4. ~~Seed Shellstock source: Seed that comes from an approved hatchery will not require a permit, except for any applicable permits for importation or introduction. Seed that comes from any growing area in the approved classification or the conditionally approved classification in the open status will not require a permit. Seed that comes from growing areas in any other classification will require a permit. A permit may be issued by the department provided that:~~
- ~~(a) The movement of the seed is approved by the Commissioner if it is from a growing area in other than the approved or conditionally approved classification. Applications may be requested to be mailed by writing the Department of Marine Resources, attn: Public Health Division, 21 State House Station, Augusta, Maine 04333-0021 or may be printed from the Department's web site;~~
  - ~~(b) Seed from growing areas in the restricted or prohibited classification have poisonous or deleterious substances that are at or below acceptable levels.~~
  - ~~(c) (a) Seed from growing areas in the prohibited classification are cultured for a minimum of 6 months. must be moved to approved, conditionally approved, restricted or conditionally restricted growing areas before exceeding the maximum seed size as defined below. The length is measured along the longest axis.~~
    - i. American oyster (*Crassostrea virginica*): 0.5 inch total length
    - ii. European oyster (*Ostrea edulis*): 0.5 inch total length
    - iii. sea scallop (*Placopectin magellanicus*): 1.5 inch total length
    - iv. bay scallop (*Argopectin irradians*): 1 inch total length
    - v. softshell clam (*Mya arenaria*): 0.75 inch total length
    - vi. hard clam (*Mercenaria mercenaria*): 0.75 inch total length
    - vii. blue mussel (*Mytilus edulis*): 0.5 inch total length
    - viii. razor clam (*Ensis directus*): 2 inches total length
- Aquaculturists growing seed in areas in the prohibited classification must have a Department approved operations plan that includes corrective actions for addressing seed exceeding the maximum size. The approved corrective actions shall be implemented when maximum seed size is exceeded. Failure to implement the approved corrective actions will result in destruction of the seed.
- ~~(d) (b) Seed for LPAs must meet the requirements of the Health Areas in Chapter 2.90(3)(D) and 2.05(1)(J).~~
  - ~~(e) (c) Inspection: The Commissioner and his/her agents may inspect the lease site, seed, operations, and business records of ~~seed permit holders~~ individuals cultivating seed in areas in the prohibited classification.~~

## Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 2.95 Water Quality Classifications and Shellfish Aquaculture; Maximum Seed Sizes in Prohibited Areas

STATUTORY AUTHORITY: §6171-A

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: February 12, 2021

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

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.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

Aquaculturists who cultivate seed in prohibited areas need to have a DMR approved operations plan that includes corrective actions for addressing seed that exceeds the maximum size. The corrective actions are only implemented when the maximum seed size is exceeded. Failure to initiate the approved corrective actions will result in destruction of the seed.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]:

The Model Ordinance, Bureau of Public Health staff, and Marine Patrol.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

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

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[*see* §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [*see* §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [*see* §8057-A(2)(C)]