

13
Department of Marine Resources
2009-2010 Regulatory Agenda

AGENCY UMBRELLA-UNIT NUMBER: **13-188**
AGENCY NAME: **Department of Marine Resources**

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EMERGENCY RULES ADOPTED SINCE THE LAST REGULATORY AGENDA:

CHAPTER NUMBER AND TITLE: 45 Shrimp
STATUTORY BASIS: 12 M.R.S. §6171(3)
PURPOSE: To set the annual shrimp season for the harvest year 2007-2008. Parallel regular rulemaking followed.
EFFECTIVE DATE OF ADOPTED RULE: Ch. 45.05(1)(A)(2) Nov. 26, 2008 [Emergency](#)
AFFECTED PARTIES: The commercial shrimp fleet and the wholesale and retail seafood industry

CHAPTER NUMBER AND TITLE: 11 Scallops
STATUTORY BASIS: 12 M.R.S. §§6171, 6171(3) and 6192(4)
PURPOSE: Implementation of six conservation closures to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion of the scallop resource.
EFFECTIVE DATE OF ADOPTED RULE: Ch. 11.10(H)(1) February 4, 2009 [Emergency](#)
AFFECTED PARTIES: Scallop fishers

CHAPTER NUMBER AND TITLE: 11 Scallops
STATUTORY BASIS: 12 M.R.S. §§6171, 6171(3) and 6192(4)
PURPOSE: Modified four of six emergency closures to protect Maine's scallop resource due to the risk of unusual damage or imminent depletion of the scallop resource.
EFFECTIVE DATE OF ADOPTED RULE: Ch. 11.10(H)(1) February 21, 2009 [Emergency](#)
AFFECTED PARTIES: Scallop fishers

CHAPTER NUMBER AND TITLE: 25 Lobster / Crab
STATUTORY BASIS: 12 M.R.S. §§6171-A, 6192(4) and 5 M.R.S. §8054
PURPOSE: To address the gear conflicts on Matinicus Island, on an emergency to prevent serious economic dislocation in the area, as is authorized by 12 M.R.S. §6171-A(4-A); as well as to avoid an immediate threat to the public health, safety or general welfare, as authorized by 5 M.R.S. §8054.
EFFECTIVE DATE OF ADOPTED RULE: Ch. 25.65, July 23, 2009 (expire 8/6/09) [Emergency](#)
AFFECTED PARTIES: Lobster fisherman in the area of Matinicus

CHAPTER NUMBER AND TITLE: 25 Lobster / Crab
STATUTORY BASIS: 12 M.R.S. §§6171-A, 6192(4) and 5 M.R.S. §8054
PURPOSE: This rulemaking changes the expiration of this emergency regulation from midnight August 6th to 1/2 hour before sunrise, July 27, 2009.
EFFECTIVE DATE OF ADOPTED RULE: Ch. 25.65, July 25, 2009 (expire 7/27/09) [Emergency](#)
AFFECTED PARTIES: Lobster fisherman in the area of Matinicus

EXPECTED 2009-2010 RULE-MAKING ACTIVITY:
(CONSENSUS-BASED RULE DEVELOPMENT: Not contemplated for all rules listed.)

CHAPTER NUMBER AND TITLE: 1 Rules of the former Atlantic Salmon Commission
STATUTORY BASIS: 12 M.R.S. §9902 & §6171
PURPOSE: Repeal CHAPTER NUMBER AND TITLE: for compliance with the Endangered Species Act.
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: recreational fishermen, salmon and sportsmen clubs, general public

CHAPTER NUMBER AND TITLE: 1 Watercraft Excise Tax Decal

STATUTORY BASIS: 12 M.R.S. §6171
PURPOSE: Update rules
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: vessel owners

CHAPTER NUMBER AND TITLE: 2 Aquaculture
STATUTORY BASIS: 12 M.R.S. §§6072, 6072-A, 6072-C, 6171(3), 6192(4)
PURPOSE: Corrections based on rule review for errors and inconsistencies; bay management and husbandry practices; general revisions to update regulations to address changes in industry practices and new statutes; see 2009 LD 1398 pertaining to lease termination rules; comment period(s); experimental lease size from 2 to 4 acres; LPA's in intertidal areas rules; species size exemptions; duplication of antibiotic notices removed; rules on lease options; license refusals; land based aquaculture rules; abandoned gear; inspection rules; municipal fees; and green crab take by aquaculturists.
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Aquaculture industry

CHAPTER NUMBER AND TITLE: 4 CERTIFICATION, RECERTIFICATION, REVOCATION OF CERTIFICATION FOR MUNICIPAL SHELLFISH CONSERVATION WARDEN
STATUTORY BASIS: 12 M.R.S. §§6171, 6671
PURPOSE: Update CHAPTER NUMBER AND TITLE:
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Shellfish industry

CHAPTER NUMBER AND TITLE: 8 Landings Program
STATUTORY BASIS: 12 M.R.S. §§6171, 6173(1)&(2)
PURPOSE: Continue to update landings reporting requirements in conjunction with the implementation of the Atlantic Coastal Cooperative Statistics Program (ACCSP) and for greater consistency with dealer and harvesters reporting requirements.
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Harvesters and dealers

CHAPTER NUMBER AND TITLE: 9 Harvester: Shellstock Harvesting, Handling and Sanitation
STATUTORY BASIS: 12 M.R.S.A. §6856
PURPOSE: Updates for clarification and consistency with the Food and Drug Administration, National Shellfish Sanitation Program (NSSP).
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Shellfish dealers, harvesters, consumers, wholesale shellfish processors, aquaculturists

CHAPTER NUMBER AND TITLE: 10 Clams and Quahogs
STATUTORY BASIS: 12 M.R.S. §6171
PURPOSE: Amendments to quahog permitting and reporting requirements to be consistent with the federal management plan in accordance with the Mid Atlantic Fisheries Management Council, Quahog Management Plan, Amendment 10. Update with National Shellfish Sanitation Program and rule review for inconsistencies and errors.
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Quahog harvesters

CHAPTER NUMBER AND TITLE: 11 Scallops
STATUTORY BASIS: 12 M.R.S. §§6171, 6856, 6171-A, 6728, 6729
PURPOSE: Establish or amend local or state wide scallop conservation regulations and or management rules pertaining to conservation of the scallop resource. Amend to prevent gear conflicts between other fisheries and scallop fishermen. Amend for inconsistencies or technical corrections. Compliance with 2008 LD 2071.
SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: Scallop fishers; commercial lobster fishers

CHAPTER NUMBER AND TITLE: 12 Mussels
STATUTORY BASIS: 12 M.R.S. §6171
PURPOSE: Amendments to size and harvest restrictions, conservation regulations and or management rules pertaining to conservation of the mussel resource

SCHEDULE FOR ADOPTION: Prior to October 1, 2010
AFFECTED PARTIES: mussel harvesters

CHAPTER NUMBER AND TITLE: 15 General Shellfish Sanitation Requirements
CHAPTER NUMBER AND TITLE: 16 Uniform Physical Plant Equipment and Operation Requirements
CHAPTER NUMBER AND TITLE: 17 Shucker-Packer
CHAPTER NUMBER AND TITLE: 18 Shellstock Shipper
CHAPTER NUMBER AND TITLE: 19 Reshipper
CHAPTER NUMBER AND TITLE: 20 Depuration
STATUTORY BASIS: 12 M.R.S. §6856

PURPOSE: Outlines the requirements for all shellfish operations and protects the health and safety of the consumer by preventing the sale and distribution of shellfish that are unsafe for human consumption. Amend for consistency with the Food and Drug Administration, National Shellfish Sanitation Program (NSSP) or technical corrections. Update to address changes per new statutes or federal rules.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Shellfish dealers, harvesters, consumers, wholesale shellfish processors

CHAPTER NUMBER AND TITLE: 22 Retail Seafood
STATUTORY BASIS: 12 M.R.S. §6856 and §6172

PURPOSE: Establish regulations for holders of enhanced retail seafood license to purchase directly from licensed harvesters in accordance with the Maine Food Code, the National Shellfish Sanitation Program (Model Ordinance), the Atlantic States Coastal Cooperative Statistics Program and DMR Landings Program.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Shellfish harvesters, dealers, aquaculturists, retail stores, restaurants

CHAPTER NUMBER AND TITLE: 23 Standards for closure of contaminated or polluted flats
STATUTORY BASIS: 12 M.R.S. §6856 and 5 M.R.S. §9051

PURPOSE: Update and establish consistency with the Food and Drug Administration, National Shellfish Sanitation Program (NSSP) and rule review for inconsistencies and errors. Update rules that list violations of regulations as Class D crimes to civil crimes.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Shellfish harvesters, dealers, aquaculturists

CHAPTER NUMBER AND TITLE: 24 Importation of Live Marine Organisms
STATUTORY BASIS: 12 M.R.S. §§6071, 6171(3)

PURPOSE: Chapter 24 will be amended to prevent the introduction of infectious or contagious type organisms that pose a danger to indigenous marine life or its environment; update shellfish health guidelines for wild and aquaculture industry. Shellfish regulation updates or establishment of testing, movement restrictions and hatchery inspection requirements.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Any person seeking an importation permit, aquaculturists

CHAPTER NUMBER AND TITLE: 25 Lobster and Crab
STATUTORY BASIS: 12 M.R.S. §§6421, 6446, 6446(2-A), 6447, 6448, 6171

PURPOSE: To adopt lobster trap limits, number of traps per trawl, the periods allowed for complying with the trap limit and the time of day when fishing may occur as established by lobster management zones referendum on policy proposals; license entry eligibility requirements per zone; apprentice requirements; education and safety requirements; and resolve boundary line disputes. To update rules for consistency with new statutes; seed lobster fund rules; double tags requirements for enforcement; island lobster fishing communities (see 2009 LD 1231); and rules to address medical and mechanical exemptions for operating requirement (see 2009 LD 246).

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Present and future lobster harvesters

CHAPTER NUMBER AND TITLE: 25 Lobster and Crab
STATUTORY BASIS: 12 M.R.S. §§6171, 6171-A, 6431, 6001, 6175

PURPOSE: To comply with the ASMFC Amendments to the Interstate Fishery Management Plan for Lobster including but not limited to most restrictive rules, minimum & maximum sizes, gauge changes. Implementation of emergency rules, repeal of rules replaced by laws and corrections based on rules review for errors and inconsistencies would be promulgated. To provide compliance with federal rules on

whales under the Endangered Species Act and Marine Mammal Protection Act. Amend the student license rules pertaining to serving 50% of their time with their sponsor.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Present and future lobster harvesters; lobster dealers

CHAPTER NUMBER AND TITLE: 26 Sea Urchin

STATUTORY BASIS: 12 M.R.S. §§6749, 6749-W, 6749-V, 6749-A

PURPOSE: Provide protection from depletion. Amend the season to reallocate the days available for fishing or to reflect spawning conditions, set daily catch limits, adjust size limits or tolerance(s), minimum and maximum size, tolerances, closures for research, zone selection rules; establish rule to govern zone council elections. Designate the open days and selection of early or late season(s) for the sea urchin fishery in Zones 1 and 2. Suspend or reinstate the license lottery. Rules for compliance with 2009 LD278 on safety requirements for tenders; create new license.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Sea urchin harvesters, buyers, processors

CHAPTER NUMBER AND TITLE: 27 Sea Cucumber

STATUTORY BASIS: 12 M.R.S.A §6813

PURPOSE: Create method to access a surcharge on landings; the assessment on landings fee must be used for stock assessment. Up to 20 cents per 100 pounds may be allocated from the sea cucumber management fund (per statutory changes in 2007-2008)

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Marine worm harvesters, bait dealers, recreational fishers

CHAPTER NUMBER AND TITLE: 29 Seaweed

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: Establish rules for surcharge and management. (See public law Chapter 283.)

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: rockweed harvesters

CHAPTER NUMBER AND TITLE: 30 Alewives

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: To conserve and manage river herring stocks in Maine coastal waters; proposed rules would consider closed areas, closed seasons, gear restriction and/or creel limits. The rules adopted as necessary to meet state goals and requirements of the ASMFC Interstate Fisheries Management Plan for Shad and River Herring. Repeal of rules replaced by laws promulgated prior to 1979 and corrections based on rules review for errors and inconsistencies.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational river herring fishermen

CHAPTER NUMBER AND TITLE: 34 Groundfish

STATUTORY BASIS: 12 M.R.S. §§6171, 6171(3), 6171-A,

PURPOSE: To conserve and protect the decreased Groundfish stocks by adjusting the sizes and rules to conform to federal Fisheries Management Plan restrictions. Conversely, to adjust Maine regulations for liberalization of rules pertaining to recovering groundfish stocks. Compliance with ASMFC measures for Groundfish including winter flounder compliance with Addendum 1 to Amendment 1 on options to meet 11% recreational take reduction. Halibut rules will be updated.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational Groundfish fishermen

CHAPTER NUMBER AND TITLE: 36 Herring

STATUTORY BASIS: 12 M.R.S.A §§6171, 6171(2-A), 6171-A

PURPOSE: Amend regulations as necessary to conform to the joint New England Fisheries Management Council (NEFMC) and ASFMC herring plans, implementation of emergency rules, repeal of rules replaced by laws and corrections based on rules review for errors and inconsistencies. Changes include days out of the fishery, fixed gear rules, spawning closures, and addendums passed by ASMFC and NEFMC. Suspend wholesale dealers permit for lobster harvesters.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Herring harvesters and processors; bait dealers, lobstermen

CHAPTER NUMBER AND TITLE: 40 Smelts

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: Comprehensive update to entire CHAPTER NUMBER AND TITLE: to provide additional conservation measures for smelts, which, since 2004, have been listed as a species of concern from Labrador to New Jersey on the east coast by the National Marine Fisheries Service (NMFS).

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: smelt harvesters

CHAPTER NUMBER AND TITLE: 41 Menhaden

STATUTORY BASIS: 12 M.R.S. §6171, §6171-A

PURPOSE: Restrictions on areas for conservation and reduce potential for gear conflict.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: menhaden harvesters

CHAPTER NUMBER AND TITLE: 44 American Shad

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: Update coastal to territorial waters due to changes in the definitions.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: American Shad harvesters

CHAPTER NUMBER AND TITLE: 45 Shrimp

STATUTORY BASIS: 12 M.R.S. §§6171, 6171(3), 6171-A

PURPOSE: Chapter 45 will be amended to allow for the changes made to the Maine Shrimp Management by the ASMFC. Set the annual shrimp season. Buoy marking requirements for compliance with federal protected resources management plans.

SCHEDULE FOR ADOPTION: Prior to December 1st annually

AFFECTED PARTIES: The commercial shrimp fleet and the wholesale and retail seafood industry

CHAPTER NUMBER AND TITLE: 50 Spiny Dogfish and Coastal Sharks

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: To provide compliance with interstate fisheries management plans (ASMFC) for coastal sharks or the National Marine Fisheries Service (NMFS) Fishery Management Plan for Dogfish in territorial seas through limits on commercial and recreational fisheries. Update rules to be consistent with federal rules prohibiting shark finning, prohibit the commercial harvest of porbeagle shark, prohibit the take or landing of the species listed in the ASMFC Coastal Shark Plan, and require federal dealer permits for all Maine dealers purchasing Coastal Sharks.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational dogfish and coastal shark harvesters, dealers

CHAPTER NUMBER AND TITLE: 55 Gear Restrictions

STATUTORY BASIS: 12 M.R.S. §§6171, 6171(3), 6171(5), 6171-A, 6192

PURPOSE: Amend CHAPTER NUMBER AND TITLE: 55 to prevent conflict between different fisheries. Implementation of emergency rules, repeal of rules replaced by laws promulgated prior to 1979 and corrections based on rules review for errors and inconsistencies will be promulgated as necessary. To provide compliance with federal rules on whales under the Endangered Species Act and Marine Mammal Protection Act. SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Fishermen

CHAPTER NUMBER AND TITLE: 75 Protected Resources

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: Rules for compliance and consistency with the National Marine Fisheries Service rules; species may include whales, sea turtles, sturgeon, etc.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational fishers

CHAPTER NUMBER AND TITLE: 90 Conservation Areas

STATUTORY BASIS: 12 M.R.S. §6171, §6171(2-A)

PURPOSE: Adjustments to the pilot program in Taunton Bay.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Mussel, kelp, scallop and urchin harvesters in Taunton Bay

CHAPTER NUMBER AND TITLE: 95 Closed Polluted Areas

STATUTORY BASIS: 12 M.R.S. §6172

PURPOSE: CHAPTER NUMBER AND TITLE: 95 will be amended to establish closures and openings of waters that contain consumable marine organisms, which are or may become contaminated or polluted.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: All recreational and commercial fisheries

CHAPTER NUMBER AND TITLE: 96 Closed Areas – Paralytic Shellfish Poisoning

STATUTORY BASIS: 12 M.R.S. §6172

PURPOSE: Amend to establish closures and openings of waters that contain a consumable marine organism, which is or may become contaminated.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: All recreational and commercial fisheries

CHAPTER NUMBER AND TITLE: 110 Marine Harvesting Demonstration License

STATUTORY BASIS: 12 M.R.S. §6810-A

PURPOSE: Update tag issuance rules.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: demonstration license holders

CHAPTER NUMBER AND TITLE: NEW Monkfish

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: To provide compliance with the National Marine Fisheries Service (NMFS) Fishery Management Plan for Monkfish in territorial seas through minimum size and trip limits on commercial and or recreational fisheries.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational fishers

CHAPTER NUMBER AND TITLE: NEW Safety Requirements

STATUTORY BASIS: 12 M.R.S. §§6176, 6533

PURPOSE: To establish fishing vessel safety requirements; and require CPR training for divers and tenders.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational fishers

CHAPTER NUMBER AND TITLE: NEW Whiting

STATUTORY BASIS: 12 M.R.S. §6171

PURPOSE: To provide compliance with the National Marine Fisheries Service (NMFS) Fishery Management Plan for Whiting in territorial seas through minimum size and trip limits on commercial and or recreational fisheries.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational fishers

CHAPTER NUMBER AND TITLE: NEW Pelagic

STATUTORY BASIS: 12 M.R.S. §6176

PURPOSE: To establish a separate pelagic license possibly taking herring, dogfish etc under a new license system.

SCHEDULE FOR ADOPTION: Prior to October 1, 2010

AFFECTED PARTIES: Commercial and recreational fishers