

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

**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6072, 6072-A, 6072-B  
**Chapter number/title:** Ch. 2, Aquaculture Lease Regulations  
**Filing number:** 2020-193  
**Effective date:** 8/26/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The purpose of this adopted rule is to make minor corrections and clarifications to the aquaculture regulations.

**Basis statement:**

This rule corrects references to other chapters or sections of the regulation. It also strikes a provision requiring that the applicant secure a performance bond or escrow account and pay rent on their lease within 30 days of the Commissioner's final decision. These requirements must still be completed before aquaculture activities can occur, but they are no longer tied to the date a decision is signed. This change reflects administrative processing of new leases and provides for some additional flexibility, particularly for experimental lease holders who have the option to select the start date of their lease term.

**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, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6173  
**Chapter number/title:** Ch. 8, Landings Program (Bait)  
**Filing number:** 2020-039  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

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

**Basis statement:**

This rule updates reporting requirements for herring and menhaden. The Primary Buyer Permit reporting elements for herring are expanded and are required weekly. The Herring Harvester Permit reporting requirements are expanded and are required daily. The Menhaden Harvester Permit is implemented, and reporting is required daily during the quota fisheries and weekly during the small-scale fishery.

Based on the lack of comments received, the Department is not recommending any changes to what was originally proposed.

**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, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6173  
**Chapter number/title:** Ch. 8, Landings Program  
**Filing number:** 2020-040  
**Effective date:** 1/1/2021  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The principal reason for proposing this rule is to improve the accuracy and timeliness of the reporting of aquaculture harvesting information for all species other than finfish and to consolidate the collection of harvesting information in the Landings Program. Finfish aquaculture reporting will remain with the Aquaculture Division, as the annual reports provide information that cannot be collected through the Landings Program.

**Basis statement:**

Effective January 1, 2021, this rule creates a monthly reporting requirement for persons holding an aquaculture license and growing any species other than finfish on an aquaculture lease or license site. Currently these individuals report annually to the DMR Aquaculture Program. This rule changes this reporting requirement to a standardized monthly report to the DMR Landings Program, consistent with harvester reporting in other Maine fisheries. The data elements for the monthly reporting requirement are specified in the rule.

Based on the feedback received, DMR made the following changes to the original rule proposal:

- Removed the trip level reporting requirement.
- Removed the requirement to report gear type and quantity
- Removed the requirement to report the number of crew on each trip
- Implemented an effective date of January 1, 2021, which will allow time for DMR to conduct education and outreach about the change in reporting.

**Fiscal impact of rule:**

Enforcement of this amendment would not require additional activity in this agency. Existing Landings Program staff will process the reports collected.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 10, Clams and Quahogs  
**Filing number:** 2020-227  
**Effective date:** 11/9/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rulemaking reorganizes sections of the chapter for greater clarity. All prohibitions on dredging for quahogs are grouped under the same section. An existing December 31, 2020 sunset on a rule prohibiting dredging for quahogs in the New Meadows River is repealed, resulting in a continuation of the existing prohibition.

**Basis statement:**

This rule removes an existing sunset of December 31, 2020, pertaining to a prohibition on dredging quahogs in the New Meadows River. By removing the sunset, the existing prohibition will remain. The rule also reorganizes sections of the chapter for improved clarity.

**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, 2020 to December 31, 2020**  
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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, Targeted Scallop Conservation Closures: (9) Upper Narraguagus Bay  
**Filing number:** 2020-007  
**Effective date:** 1/5/2020  
**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 upper Narraguagus Bay in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 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 the upper Narraguagus Bay area.

**Basis statement:**

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08. Targeted Closures will be established in (9) Upper Narraguagus Bay.

**Upper Narraguagus Bay**

Local vessels began harvesting in the upper portion of Narraguagus Bay on opening day, December 2, 2019 of the 2019-2020 scallop season. A group of 4 boats have been consistently harvesting in this rotational area for the first three weeks of the season. Two additional boats have rigged over for scalloping during the 4<sup>th</sup> week of harvest, putting the total effort to 6 scallop drag harvesters.

Harvest rates within the rotation have been mixed; harvesters operating in the upper portion of Narraguagus Bay have not always been reaching their daily trip limit while those that are more southern (lower half) can reach their daily limit by late morning.

The 2019 spring scallop survey observed low levels of scallop biomass, with two stations highlighting hotspots of legal sized scallop resource intermixed with seed and sublegal scallops while four other nearby stations had zero scallops. However, fishermen have reported presence of 3 inch scallops mixed in with the legal product, suggesting that a good cohort will be recruiting into the fishery during the next open rotation cycle.

During the previous open rotation in 2016-2017, the full rotational area was closed after 16 open calendar days. For this current season, the area has been open for 20 days, with weather also being a limiting factor. While information from harvesters and Marine Patrol indicate that catch rates have significantly dropped in the upper portion of Narraguagus Bay, there is still harvest potential in the lower half of the bay. Establishing a conservation closure in the upper half of this rotational area coincides with the 2019 spring scallop survey for observed seed and sublegal produce in addition to fishermen observations regarding the general spread of sublegal product in the northern portion of the bay.

In summary, a reduction in harvest activity attributed to the decline in catch rates have been observed in each of these two areas: upper Narraguagus Bay and upper Cranberry Isles areas. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed during the 2019 Spring Scallop survey that is essential to

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
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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 the upper Narraguagus Bays and upper Cranberry Isles 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, 2020 to December 31, 2020**  
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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, Targeted Scallop Conservation Closures: (10) Chandler and Eastern Bays  
**Filing number:** 2020-011  
**Effective date:** 1/19/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Commissioner adopts this emergency rulemaking to expand the scallop conservation closure to include Chandler and Eastern Bay areas in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed in the 2019 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 the Chandler and Eastern Bay areas.

**Basis statement:**

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08. Targeted Closures will be established in (10) Chandler and Eastern Bays.

**Chandler and Eastern Bays**

On opening day, December 2, 2019, approximately 17 boats were observed harvesting scallops in the upper Chandler Bay area north of Ballast Island. DMR science staff observed vessels in the area directly and boarded vessels along with Marine Patrol staff to assess harvest rates, catch composition, meat size and also discards. During the first few weeks of December, the number of vessels operating in the area stayed constant, around 15 boats or less on poor weather days. On good days, boats would venture to more exposed areas to prospect. Meat quality and size was consistent, around 15 to 20 count per pound.

Routine observations by Marine Patrol indicate that 5 boats or less remain in each of the Chandler and Eastern Bay areas currently, with catch rates slowing. Daily trip limits are reached by late afternoon. Most boats have left the area to seek more efficient harvest grounds.

During the previous open rotation in 2016-2017 scallop season, this area experienced a similar amount of harvest effort over 16 open calendar days. For this current season, the area has been open for 28 days. Comparatively, there was less documented legal biomass observed in the 2019 spring scallop survey than in previous years. The scallop resource is mixed, with both seed and sublegal scallop amongst legal product.

The decrease in observed effort, along with a decrease in catch rate suggests the peak of harvesting within this area has been reached. The remaining scallop resource requires a conservation closure to allow for recruitment and recovery for the next open rotation.

In summary, a reduction in harvest activity attributed to the decline in catch rates has been observed in the Chandler and Eastern Bays area. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed during the 2019 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 the Chandler and Eastern Bays 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, 2020 to December 31, 2020**  
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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, Targeted Scallop Conservation Closures: (11) Middle Penobscot Bay Islands; (12) Somes Sound and Cranberry Islands  
**Filing number:** 2020-020  
**Effective date:** 2/2/2020  
**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 within Middle Penobscot Bay Islands, and also, Somes Sound and Cranberry Isles in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2019 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 the Middle Penobscot Bay and Cranberry Isles areas

**Basis statement:**

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08. Targeted Closures will be established in (11) Middle Penobscot Bay Islands and (12) Somes Sound & Cranberry Isles.

**Middle Penobscot Bay Islands**

On opening day, December 2, 2019, approximately 15 to 20 boats were observed harvesting scallops within the bounds of this proposed closure; between Great Spruce Head Island, Butter Island, Eagle Island and Bradbury Island and up towards Pickering Island. Initial meat count reports indicated 10 to 12 count scallops (per pound) were being landed during the first few weeks of harvest. Harvest was concentrated in and around these islands for most of December and January. Throughout the month of January, there was increased harvest pressure as more scallop vessels entered the area. But effort had remained focused amongst the islands.

DMR science staff conducted two in-season surveys within the Middle Penobscot Bay rotational area, first on January 3, 2020 and a follow-up survey on January 18, 2020. The initial decline in legal-sized scallop density was estimated at 38% from the first survey, assessed through sampling 22 stations within the area. The subsequent survey results indicated a 59% decline in legal sized scallop density. Additionally, there is no strong recruitment single being observed with regard to the presence of seed or sublegal scallops. Thus, ensuring a threshold of adult biomass is important.

Routine observations by Marine Patrol have also documented a decline in harvest rate and meat size during January. Vessels boarded opening week in December were reporting 3 to 5 bushels of scallops per 15-minute tow compared to the observations this week (January 30,2020) that indicated 1 to 2.5 bushels per tow with scallops; also, shellstock required measuring to ensure legal retention, while in December it was easier to select larger legal shellstock. Other observations by patrol documented the increase in active harvesters in the area:15 to 20 boats during December 2, 2019 to 30-35 boats steadily for the previous three weeks of January. This is approximately double the effort that was observed during the 2016-2017 season, where a peak of 15 boats were documented in January 2017.



**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
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Compiled information indicates there has been near 60% decline of legal density at the stations sampled throughout the season, in addition to the observed decline of bushels per tow. Eight additional harvest days have occurred since the last survey. Harvesters have not reported many observations of sublegal or seed product during harvesting which prompts action to reserve the remaining adult biomass for broodstock. The remaining scallop resource requires a conservation closure to allow for recruitment and recovery for the next open rotation.

**Somes Sound & Cranberry Isles**

There was moderate harvest activity during opening week in December in the upper portion of this rotational area, with the harvesters concentrating on scallops north of Sutton Island. According to the 2019 DMR spring survey, this was the largest density of legal scallops observed during the survey. There were approximately 11 harvesters steadily harvesting in or around this area in December.

Of the eight survey stations represented within this closure area, two stations had no presence of scallops and the remaining five stations, aside from the one north of Sutton Island, had very low densities of legal sized scallops.

Marine Patrol observations indicated that effort peaked around 25 vessels total during the third week of December, with activity very weather dependent. By the end of December, most vessels left the area for better fishing opportunities; those that remained moved further away into Western Bay and south of Great Cranberry Island. Recent reports indicate that less than 5 active vessels were harvesting mid-January with no effort observed during this final week of January. Harvesters also indicated by mid-January that the upper portion of this rotational area was depleted and should be closed so as to restrict new activity on depleted resources.

In summary, a reduction in catch rates have been observed in the Middle Penobscot Bay Islands and Somes Sound and upper Cranberry Isles area. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed during the 2019 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 the Middle Penobscot Bay and Cranberry Isles 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, 2020 to December 31, 2020**  
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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, Targeted Scallop Conservation Closures: (13) Cobscook, Whiting and Dennys Bays  
**Filing number:** 2020-027  
**Effective date:** 2/16/2020  
**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, all within Zone 3. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will impact the abundant sublegal scallop resource, as well as lower the existing scallop broodstock further, observed in the 2019 Fall Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource that supports an annual fishery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these Zone 3 areas.

**Basis statement:**

The Department is taking emergency rulemaking action to amend targeted conservation closures in ch. 11.08. Targeted Closures will be established in (13) Cobscook, Whiting & Dennys Bays.

**Cobscook, Whiting & Dennys Bays**

Effort within Cobscook Bay in December 2019 was estimated at 70 boats, and quickly ramped up to 100 harvest vessels by the second week of December. Effort has remained stable at 100 boats throughout January and the first two weeks of February. This season, the harvest effort was not clustered like previous years; boats were spread out into all sections of Cobscook Bay and made good use of the Whiting and Dennys Bay Limited Access Area (LAA) on its open days. There has been a steady effort of 25-35 boats harvesting in the Whiting/Denny's Bay Limited Access Area on Mondays.

Two in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on December 21-23, 2019 and second survey on January 23-25, 2020. Results from the both surveys indicated that most harvest effort was occurring in Whiting and Dennys Bay LAA and South Bay, coinciding with harvester and marine patrol reports. While the second survey did not warrant conservation closures after 23 harvest days, results indicated legal sized scallop density had decreased 24% and 26% respectively in Whiting and Dennys and South Bay. There has been an additional 9 days of harvest, and with steady harvest days with 100 boats, it is expected that the resource has exceeded the 30% reduction of legal scallop density estimates.

The comparison of harvestable densities between Johnson Bay (4.18 g/m<sup>2</sup> in 2019 vs 5.97 g/m<sup>2</sup> 2018) and Whiting & Dennys LAA (4.22 g/m<sup>2</sup> in 2019 vs 4.87 g/m<sup>2</sup> 2018) remains an important indicator showing scallop legal biomass remains lower than previous season observations. While there are very strong year classes of sublegal scallops available for the future seasons, it's still imperative to conserve the legal standing stock.

Qualitative information from both marine patrol and active harvesters in the area have observed that sublegal sized cut shells have been coming up in commercial tows. These reports that small scallop product is being harvested is also observed in the science survey size frequency data in which scallops below legal size experienced a decline in density over the

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
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course of the two in-season surveys. This information also factored into the rationale for this closure. Cobscook Bay has high proportions of both seed and sublegal product that would incur damage, if harvest continued with the existing 100 boats in the area.

On Sunday, February 16, 2020, Cobscook, Whiting and Dennys Bays will close while the St Croix River area remains open for harvesting until further notice.

In summary, catch rates have diminished and sublegal cut shells have been observed in the Cobscook, Whiting and Dennys Bays in Zone 3. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will impact the abundant sublegal scallop resource, as well as lower the existing scallop broodstock further, observed in the 2019 Fall Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource that supports an annual fishery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these Zone 3 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, 2020 to December 31, 2020**  
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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 (2020-21 Season)  
**Filing number:** 2020-228  
**Effective date:** 11/9/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

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

**Basis statement:**

This rulemaking establishes the 2020-2021 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 7, 2020 and the last day of the season is March 18, 2021. For Zone 1, a 60-day season for divers starts on November 17, 2020 and the last day of the season is April 24, 2021. For Zone 2, a 70-day season for draggers starts on December 1, 2020 and the last day of the season is March 31, 2021. For Zone 2, a 70-day season for divers starts on November 23, 2020 and the last day of the season is April 24, 2021. For Zone 3, a 50-day season for draggers begins on December 1, 2020 and the last day of the season is March 24, 2021. For Zone 3, a 50-day season for divers begins on December 3, 2020 and the last day of the season is March 27, 2021.

Eastern Casco Bay (Zone 1) and Damariscotta River (Zone 1) are Limited Access Areas for the 2020-2021 scallop season with reduced harvesting days. Western Casco Bay (Zone 1) is closed under the targeted closures based on local depletion. In Zone 2, territorial waters surrounding Machias Seal Island and North Rock are open to harvest all days during January 2021, in addition to open Zone 2 calendar days throughout the season.

The rule maintains 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, Sheepscot River, New Meadows River, Card Cove and Beals-Jonesport Bridge.

**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, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6171, 6749  
**Chapter number/title:** Ch. 26, Sea Urchins (2020-2021 Season)  
**Filing number:** 2020-194  
**Effective date:** 8/26/2020  
**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 proposal 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.

**Annual List of Rulemaking Activity**  
**Rules Adopted January 1, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 30, River Herring Pilot Project Exemption  
**Filing number:** 2020-041  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The primary reason for proposing this rule is to authorize the harvest of river herring at three specific municipal ponds in accordance with limitations specified by the Commissioner. Harvest from these municipal ponds would otherwise be prohibited, as they do not currently have an approved sustainable fisheries management plan.

**Basis statement:**

This rule adds an exemption to the existing prohibition on the taking, possession, harvest and sale of river herring to include three ponds that were approved for a pilot project by the Atlantic States Marine Fisheries Commission Shad and River Herring Management Board in October 2019. Specific harvest limitations will be established in the authorization provided by the Commissioner. The exemption will expire in December 2025, because within a five-year period, the municipal ponds selected for inclusion must meet the established sustainability criteria for harvest to continue under the sustainable fisheries management plan.

**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, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §§ 6505-A, 6865  
**Chapter number/title:** Ch. 32, Eels and Elvers (Elver Quota System for the 2020 Season)  
**Filing number:** 2020-042  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rule establishes the elver quota allocations for the 2020 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. 2020 allocations for individuals who held a license in 2019 are the same as their 2019 allocations, plus any quota associated with licenses not renewed in 2019, or licenses suspended for the duration of the 2020 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 \$500 fee for the inspection of elver export events by Maine Marine Patrol.

**Basis statement:**

Each year, the method of calculating annual elver quota must be specified for the upcoming season. In addition, this rule-making establishes a fee for inspecting elver export events that is authorized 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, 2020 to December 31, 2020**  
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**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171-A  
**Chapter number/title:** Ch. 32, Eels and Elvers: 32.03, Elver Harvesting Regulations  
Area Closures  
**Filing number:** 2020-059  
**Effective date:** 3/22/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Early in the season, elver fishermen will be concentrated in the southern part of the State, where the number of cases of COVID-19 and evidence of community spread is highest. In order to protect public health, the Commissioner is closing the coastal waters of the State to the fishing for and taking of elvers for a minimum of two weeks. This delay is intended to help limit the spread of COVID-19, a global pandemic that has reached Maine. As of 12: 15pm on March 19, 2020, Maine had 42 confirmed cases, and 10 presumptive positive cases of the virus.

**Basis statement:**

The Commissioner adopts this emergency rulemaking to close the coastal waters of the state to fishing for, taking, or possessing elvers. The elver fishery is typically undertaken in a manner that causes fishermen to be in close proximity on Maine's rivers, which would support the continued spread of COVID-19. Early in the season, fishermen will be concentrated in the southern part of the State, where the number of cases and evidence of community spread is highest. In order to protect public health, the Commissioner is closing the coastal waters of the State to fishing for, taking, and possessing elvers for a minimum of two weeks. Conditions will be reassessed at that time, and the emergency regulation repealed when appropriate.

As of March 19, 2020, COVID-19 has been found in eight of Maine's 16 counties, with nearly half of the 52 cases reported in Cumberland County. All Mainers have been asked to follow social distancing recommendations, including maintaining 6 feet from other people to reduce the spread of the virus. Following this recommendation is critically important to avoid overwhelming our health care system.

The elver season typically starts on March 22<sup>nd</sup>. However, in the current situation, the typical crowded conditions both on the rivers and in shops could not only allow transmission, but also speed the spread of the disease throughout the state as fishermen travel along the coast to harvest and sell elvers, and then return to their homes. An area closure of the coastal waters of the state is necessary to mitigate this risk.

**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, 2020 to December 31, 2020**  
*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. 32, Eels and Elvers: 32.03, Elver Harvesting Regulations  
Area Closures  
**Filing number:** 2020-064  
**Effective date:** 3/29/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Elver season was originally scheduled to begin on March 22, 2020. However, early in the season, elver fishermen would be concentrated in the southern part of the State, where the number of cases of COVID-19 and evidence of community transmission was highest. Therefore, effective March 22, 2020, the Commissioner closed the coastal waters of the State to the fishing for and taking of elvers to protect public health. The delay allowed the Department to develop protocols, consistent with guidance issued by relevant state agencies, for harvesters and dealers to follow, which help limit the spread of COVID-19. This action amends the existing emergency rule, so that beginning at 8:00am on March 30, 2020 the coastal waters of the state are open to elver fishing.

**Basis statement:**

Effective March 22, 2020, the Commissioner adopted an emergency rulemaking to close the coastal waters of the state to fishing for, taking, or possessing elvers. The elver fishery is typically undertaken in a manner that causes fishermen to be in close proximity on Maine's rivers, which would support the continued spread of COVID-19. Early in the season, fishermen are concentrated in the southern part of the State, where the number of cases and evidence of community transmission is highest. Therefore, in order to protect public health, the Commissioner temporarily closed the coastal waters of the State to fishing for, taking, and possessing elvers.

The temporary closure allowed Commissioner Keliher to work with Tribal leadership, industry leadership, and Maine Marine Patrol to develop a plan to allow the elver fishery to occur in a way that does not present unnecessary risk to the participants, or other residents of the State. The plan includes provisions for license holders to be able to catch and sell elvers on behalf of other license holders, in accordance with Executive Order 21 FY 19/20. The plan also includes agreement amongst elver dealers to follow specific protocols, consistent with guidance provided by the Maine Center for Disease Control, in sales transactions to minimize the potential for the spread of disease. Based on the development of these plans, the risk to public health presented by this fishery is mitigated, and the amendment opens the coastal waters of the state to elver fishing beginning at 8:00am on Monday, March 30, 2020.

**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, 2020 to December 31, 2020**  
*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: 34.07, Atlantic Halibut  
Emergency Regulations  
**Filing number:** 2020-115  
**Effective date:** 5/6/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**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 which include zero possession of Atlantic halibut by all federal permit holders.

**Basis statement:**

The Commissioner adopts this emergency rulemaking to reduce landings of Atlantic halibut in the 2020 state waters fishery. Atlantic halibut is regulated by NOAA Fisheries as part of the Northeast Multispecies Fishery Management Plan. It is also subject to requirements of the Magnuson-Stevens Act which requires that landings remain within an allowable catch. If that catch limit is exceeded, the fishery will be subject to management controls, called accountability measures, that prevent catch limits from being exceeded, or correct for overages if they occur.

The total allowable catch of Atlantic halibut is 106 metric tons (mt) for the upcoming federal fishing year. The state sub-component, which is a target established by NOAA for halibut landed in state waters, is 21 mt. In 2018, the Maine State waters fishery reported approximately 29.7 mt of landings. Discard calculations added an additional .9 mt, for a total 30.7 mt attributed to Maine state waters. The federal fishery is highly constrained as federal vessels are already limited to just one fish per trip. The federal fishery has come very close to its limit in recent years as well. In order to stay within the sub-component level of 21 metric tons, Maine must achieve a 30 percent reduction in halibut landings.

If the total Annual Catch Limit for Atlantic halibut is exceeded, the accountability measure requires that any vessel issued a federal permit, including a federal lobster permit, be subject to zero possession of Atlantic halibut in the following fishing year. This would significantly reduce access to the Atlantic halibut fishery for many Maine commercial fishermen. For these reasons, the Commissioner hereby adopts an emergency regulation to reduce the state waters Atlantic halibut season in accordance with 12 MRS §6171(3)(C).

**Fiscal impact of rule:**

This change is anticipated to provide a modest increase in economic opportunity for charter vessels and the recreational fishing sector.

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

**Agency name:** Department of 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:** 2020-202  
**Effective date:** 8/28/2020  
**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 management plan.

**Basis statement:**

The Commissioner adopts this emergency rulemaking to modify the recreational fishing seasons 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 for both species as well as a suite of effort controls to ensure catch stays within the sub-annual catch limits. On August 14<sup>th</sup>, NOAA Fisheries issued an interim final rule to set the recreational measures for the 2020 fishing year. The rule maintains the same minimum size and bag limit as the previous year but expands the recreational fishing season for both cod and haddock. This is in response to analysis from NOAA Fisheries which suggests additional fishing days are not expected to result in an overage of the sub-ACL.

For the 2020 fishing year, the Gulf of Maine cod season for the recreational fishery differs between charter and party vessels and private recreational fishing vessels. NOAA Fisheries implemented different seasons by mode in response to concerns regarding the economic impact of Covid-19 on the recreational for-hire community. Specifically, state restrictions in the spring may have limited the ability for for-hire vessels to carry passengers and operate trips. As a result, NOAA Fisheries extended the recreational cod season for the charter and party vessels by two weeks in the fall in order to provide additional economic opportunities for this sector.

Importantly, not only does this action ensure compliance with the federal fishery management plan, but it also expands the recreational fishing opportunities in Maine state waters. For these reasons, the Commissioner hereby adopts an emergency regulation to modify the recreational groundfish seasons in accordance with 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, 2020 to December 31, 2020**  
*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: 34.06, Recreational Groundfish Restrictions  
**Filing number:** 2020-229  
**Effective date:** 11/9/2020  
**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 management plan.

**Basis statement:**

On August 28, 2020, the Department of Marine Resources adopted an emergency rule in order to be consistent with a NOAA Fisheries federal rulemaking which was published on August 14<sup>th</sup>. The Department incorporates the emergency changes via this regular rulemaking. The regulation applies to charter, party and recreational fishing vessels operating in state waters regarding Gulf of Maine cod and haddock. Gulf of Maine cod can be possessed on recreational fishing vessels, which per Section 34.01 are exclusive of charter or party vessels, from September 15-September 30 inclusive, and April 1-April 14, inclusive. Charter or party vessels may possess Gulf of Maine cod from September 8-October 7, inclusive, and from April 1-April 14, inclusive. The rule also adopts the season for Gulf of Maine haddock such that haddock may be possessed on board a party, charter, and recreational fishing vessel from April 1-February 28. In addition to complying with federal law and incorporating an existing emergency rule into the regular rule, this rule will increase recreational fishing opportunity in Maine State waters.

**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, 2020 to December 31, 2020**  
*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 (2020 Harvest Framework)  
**Filing number:** 2020-043  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

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

**Basis statement:**

This regulation reorganizes the Atlantic herring fishery allocation into trimesters, as previously used. Updated definitions for landing, and carrier vessel are included. The Fixed Gear Set Aside has been reduced from 39 mt to 30 mt to comply with 2020 specifications.

Based on the comment received, the Department has clarified that harvesters with only a Commercial Pelagic and Anadromous License fishing for Atlantic herring in State waters is subject to the 25,000 pound trip limit, regardless of gear type utilized for the taking of fish.

**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, 2020 to December 31, 2020**  
*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 Harvest Rules  
**Filing number:** 2020-133  
**Effective date:** 5/30/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

This rulemaking sets the start date for the mobile Atlantic herring fishery to commence on Sunday, July 19, 2020 and sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held May 12, 2020.

**Basis statement:**

This rulemaking sets the start date for the mobile Atlantic herring fishery to commence on Sunday, July 19, 2020 and sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held May 12, 2020. The Days Out Commissioners designated zero landing days June 1 through July 18, 2020. The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit. These vessels are limited to landing 240,000 lbs. (6 trucks) weekly. The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. 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. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.). Daily electronic landings reports are required. The Commissioner has determined that it is necessary to take emergency action to implement these limitations 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 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, 2020 to December 31, 2020**  
*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 (Zero Landing Days)  
**Filing number:** 2020-189  
**Effective date:** 8/22/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

The Atlantic herring fishery Season 1 (specifically, Trimester 2: June 1 – September 30) closes when 92% of the sub-ACL is reached. It is projected that landings reached the closure trigger following harvest on Friday, August 21, 2020. The Days Out Commissioners have designated zero landing days beginning on August 22, 2020 through to September 30, 2020 for the remainder of season 1. The Commissioner has determined that it is necessary to take emergency action to implement this closure 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 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, 2020 to December 31, 2020**  
*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 (Season 2 Opens)  
**Filing number:** 2020-216  
**Effective date:** 10/6/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

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

**Basis statement:**

The Days Out Commissioners have determined landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Three landing days have been designated, starting 6:00 p.m. Sunday October 11 through 6:00 p.m. Wednesday, October 14, 2020. Following week, two landing days have been designated, starting 6:00 p.m. Sunday October 18 through 6:00 p.m. Tuesday, October 20, 2020. Two landing days will remain effective until further notice. 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 M.R.S. §6171(3)(C).

**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, 2020 to December 31, 2020**  
*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 (Modify Season 2)  
**Filing number:** 2020-230  
**Effective date:** 11/3/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The Days Out Commissioners have modified landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Four landing days have been designated, starting 6:00 p.m. Sunday, November 8, through to 6:00 p.m. Thursday, November 12, 2020 and will remain at four landing days until further notice.

**Basis statement:**

The Days Out Commissioners have modified landing days for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Four landing days have been designated, starting 6:00 p.m. Sunday, November 8, through to 6:00 p.m. Thursday, November 12, 2020 and will remain at four landing days until further notice. 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 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, 2020 to December 31, 2020**  
*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. 40, Smelt Regulations  
**Filing number:** 2020-044  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The principal reason for this rule is to provide greater clarity regarding the daily limits for smelts at different times of year in Zone 2.

**Basis statement:**

This rule is a reorganization of daily limits in the smelt regulation, for improved clarity regarding daily limits in specific zones during different times of year. The rule does not change any existing limits. The rule also removes a repealed statutory reference.

**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, 2020 to December 31, 2020**  
*Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5*

<b>Agency name:</b>	<b>Department of Marine Resources</b>
<b>Umbrella-Unit:</b>	<b>13-188</b>
<b>Statutory authority:</b>	12 MRS §6171(3)
<b>Chapter number/title:</b>	<b>Ch. 41</b> , Menhaden (Menhaden (2020 Season))
<b>Filing number:</b>	<b>2020-045</b>
<b>Effective date:</b>	3/15/2020
<b>Type of rule:</b>	Routine Technical
<b>Emergency rule:</b>	No

**Principal reason or purpose for rule:**

This rulemaking amends the reporting of menhaden landings; reporting through an approved electronic option will be required. State and episodic fisheries remain at daily reporting. The Incidental and Small Scale fishery is amended to a weekly reporting requirement. This rulemaking introduces a personal use bait permit that will allow harvesters to use a bait gillnet to take three barrels of menhaden daily, separate from all other menhaden fishery activity. The harvest schedule has been modified; open harvest days are Monday, Tuesday, Thursday, and Friday during the quota allocation fishery programs. Harvester vessels may make multiple transfers of menhaden to no more than two carrier vessels per calendar day. Carrier vessels are defined and effort restrictions for their activity have been described. Carrier vessels are prohibited from making transfers at sea. Carrier vessels are prohibited from participating in the Incidental and Small Scale fishery.

**Basis statement:**

This rulemaking amends the reporting of menhaden landings; reporting through an approved electronic option will be required. The Department will offer reporting online through the LEEDS system and via an application for smart phones and tablets that will operate in offline situations but allow for the upload of landings data once the device reaches an area for wi-fi service. State and episodic fisheries remain at daily reporting. The Incidental and Small Scale fishery is amended to a weekly reporting requirement.

This rulemaking introduces a personal use bait permit that will allow harvesters to use a bait gillnet to take three barrels of menhaden daily, separate from all other menhaden fishery activity. Activity under this permit will count towards the quota during quota fishery operations. As such, daily reporting will be required during quota fishery status.

Harvesters may complete multiple transfers to no more than two carrier vessels per calendar day. The harvest schedule has been amended for the 2020 fishing season, such that Monday, Tuesday, Thursday and Friday will be open harvest days during the quota managed fishery programs. This amendment will assist in balancing the flow of menhaden within the bait system.

Vessels intending to transport fish from the harvester vessel to the final landing location are required to possess a carrier vessel license (12 MRS §6502-B). Carrier vessels are prohibited from making transfers at sea. Carrier vessels are prohibited from participating in the Incidental and Small Scale fishery.

Based on the comments received, the following changes have been made:

- The Department has updated the reporting requirements for the personal use bait permit to daily to align with the quota fisheries schedule for adequate monitoring of landings.
- Effort restrictions within the State and Episodic fishery programs have been amended to allow multiple transfers of menhaden by the harvester vessel to no more than two carrier vessels that match the harvesters daily landing report.
- The harvest schedule has been amended from Monday through Thursday, to Monday and Tuesday, followed by a break on Wednesday and then resume

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

harvesting Thursday and Friday. This maintains the existing opportunity of four harvest days.

- Carrier vessels are prohibited from making transfers at sea.

**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, 2020 to December 31, 2020**  
*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, Menhaden: 41.30, Menhaden Fishery Management Program (re: Menhaden Open Episodic Event Set Aside (EESA) Program)  
**Filing number:** 2020-147  
**Effective date:** 6/27/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2020 was 2,438,696 pounds, which was fully consumed by June 18, 2020. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside program to access an available 4.7 million lbs. of menhaden quota. Beginning Monday, June 29, 2020 at 12:01 a.m., the harvest and landing is permitted on Mondays and Thursdays, 12:01 a.m. to 11:59 p.m. only. Reporting will now be required on the same day as fish are landed. The Commissioner has determined that it is necessary to take emergency action to reduce harvest days and provide more timely reports to prevent unusual damage to the menhaden resource by exceeding available quota.

**Basis statement:**

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2020 was 2,438,696 pounds, which was fully consumed by June 18, 2020. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside (EESA) program to access an available 4.7 million lbs. of menhaden quota. Beginning Monday, June 29, 2020 at 12:01 a.m., the harvest and landing is permitted on Mondays and Thursdays, 12:01 a.m. to 11:59 p.m. only. Reporting will now be required on the same day as fish are landed to ensure that DMR has the most accurate accounting of the catch as possible.

The daily limit remains at 120,000 pounds and the weekly cap remains at 160,000 pounds. These limits apply to both harvester and carrier vessels. 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 Department requested, and received, approval to enter the Episodic Event Set Aside (EESA) fishery on June 25, 2020. However, with over 4.3 million pounds landed during the state fishery, in conjunction with the reduced effort currently within the lobster fishery, the demand for bait has been moderate compared to the supply. As such, the Department was made aware some harvesters whom did not have pre-arranged markets for their harvest, have dumped fish. Also, there have been reports that harvesters have encountered large sets that were beyond their ability to harvest and dead fish have been left behind. These fishing practices are unacceptable and are a misuse of the menhaden resource.

Currently, there are 772 Commercial Pelagic and Anadromous license permits issued with a menhaden endorsement and more than 100 of those individuals actively reported during the State Allocated fishery. The harvest capacity of this fleet is above 1 million pounds daily, and thus requires ample processing time by shore side operations to properly chill, salt and store menhaden as bait products for future use in the lobster fishery. With the large increase of participants in the menhaden fishery for 2020, and to ensure that fish are utilized

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

effectively within the lobster fishery, it is imperative to reduce the harvest schedule during the EESA to slow the rate of menhaden landings to meet the actual demand for bait within the lobster fishery. Further, it is necessary to collect landings information on a more timely basis to ensure that the quota available to Maine through the EESA is not exceeded.

The Commissioner has determined that it is necessary to take emergency action to reduce harvest days and provide more timely reports 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, 2020 to December 31, 2020**  
*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, Menhaden: 41.30(3), Episodic Event Fishery  
**Filing number:** 2020-151  
**Effective date:** 7/2/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

Department of Marine Resources (DMR) was granted approval to participate in the Episodic Event Set Aside (EESA) program to access an available 4.7 million lbs. of menhaden quota. Due to the high rate of effort, it was projected that landings on Monday, June 29 exceeded 2.5 million pounds, and continued fishing would result in an overage of the available EESA. To allow for continued participation in the EESA, the daily landing limit will be reduced to 6,000 lbs. on open harvest days and carriers are prohibited; Mondays and Thursdays. 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.

**Basis statement:**

Department of Marine Resources (DMR) was granted approval to participate in the Episodic Event Set Aside (EESA) program to access an available 4.7 million lbs. of menhaden quota. Due to the high rate of effort, it was projected that landings on Monday, June 29 exceeded 2.5 million pounds, and continued fishing would result in an overage of the available EESA. To allow for continued participation in the EESA, the daily landing limit will be reduced to 6,000 lbs. on open harvest days and carriers are prohibited; Mondays and Thursdays. 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, 2020 to December 31, 2020**  
*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, 6502-C  
**Chapter number/title:** Ch. 41, Menhaden (2021 Program Update)  
**Filing number:** 2020-231  
**Effective date:** 11/9/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

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

**Basis statement:**

This rulemaking establishes separate fishery harvest control rules for harvesting menhaden under a commercial menhaden fishing license and a noncommercial menhaden fishing license. Reporting requirements are amended to reduce the frequency of submission of daily landings reports for noncommercial license holders from daily to weekly. Finally, the chapter has been reorganized for 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.



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

**Agency name:** Department of Marine Resources  
**Umbrella-Unit:** 13-188  
**Statutory authority:** 12 MRS §6171  
**Chapter number/title:** Ch. 42, Striped Bass  
**Filing number:** 2020-046  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This regulation is intended to modify the size limit requirements for striped bass by adding a maximum size limit, above which all striped bass must be released. As a result of this regulation, it will be unlawful for any person to take or possess striped bass which are less than 28 inches in total length as well as striped bass which are equal to, or greater than, 35 inches in total length.

**Basis statement:**

Currently, it is unlawful for any person to take or possess striped bass which are less than 28 inches in total length. This rule modifies the existing regulatory requirement by adding a maximum size limit, such that it is also unlawful for any person to take or possess striped bass which are 35 inches in total length or longer. This rule is needed to come into compliance with the Atlantic States Marine Fisheries Commission's Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan, which is intended to address the overfishing status of the stock.

**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, 2020 to December 31, 2020**  
*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: 42.01, Statewide Striped Bass Size Restrictions, Harvest Methods  
**Filing number:** 2020-248  
**Effective date:** 12/16/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** Yes

**Principal reason or purpose for rule:**

This action is intended to come into compliance with the Atlantic Striped Bass Interstate Fishery Management Plan and broaden the requirement to use circle hooks in the recreational striped bass fishery.

**Basis statement:**

The Commissioner adopts this emergency rulemaking to modify the circle hook requirements for striped bass such that it is unlawful to use any hook other than a circle hook when fishing for striped bass with bait. This emergency rulemaking removes the exception that previously exempted those fishing for striped bass with baited latex and rubber tube rigs from having to use circle hooks. This action is necessary to come into compliance with the Atlantic States Marine Fisheries Commission's (ASMFC) Atlantic Striped Bass Interstate Fishery Management Plan.

Striped Bass is 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; this requirement goes into effect January 1, 2021. At its October 2020 meeting, the Atlantic Striped Bass Management Board reviewed state regulatory language for the circle hook requirement. As a part of this review, ME DMR submitted existing regulatory language which requires the use of circle hooks when fishing for striped bass with bait; however, this regulation also provided an exception to the circle hook requirement for those who were fishing with baited latex and rubber tube rigs. Maine was one of two states which included an exception to the circle hook requirement for a portion of the striped bass recreational fishery. Ultimately, the Atlantic Striped Bass Management Board voted to disapprove any exceptions to the requirement to use circle hooks when recreationally fishing for striped bass with bait.

ME DMR must modify its striped bass regulation in order to come into compliance with the ASMFC Striped Bass Interstate Fishery Management Plan. Further, broadening the requirement to use of circle hooks in the recreational striped bass fishery has the potential to have positive benefits for the stock given the use of circle hooks has been shown to reduce discard mortality rates. 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).

**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, 2020 to December 31, 2020**  
*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, Spiny Dogfish and Coastal Sharks  
**Filing number:** 2020-195  
**Effective date:** 8/26/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The regulation is intended to add North Atlantic shortfin mako sharks to the definition of 'Coastal Sharks' in ch. 50. As a result, the taking of North Atlantic shortfin mako sharks will be prohibited in Maine's territorial waters.

**Basis statement:**

A 2017 assessment found the North Atlantic shortfin mako shark stock to be overfished and experiencing overfishing. In response, NOAA Fisheries implemented measures which aim to achieve at least a 75% reduction in US shortfin mako shark landings. Currently, North Atlantic shortfin mako sharks are not included in the definition of 'Coastal Sharks' in the Department's ch. 50 regulations. As a result, the regulations are silent on the retention of this species. This rule adds North Atlantic shortfin mako sharks to the list of species included under 'Coastal Sharks'. Given ch. 50 prohibits the take of species defined as 'Coastal Sharks', this rule prohibits the taking of North Atlantic shortfin mako sharks in Maine's territorial waters.

**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, 2020 to December 31, 2020**  
*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. 55, Gear Restrictions  
**Filing number:** 2020-047  
**Effective date:** 3/15/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

This rulemaking strikes the requirement to seek a permit authorized by the Commissioner of Marine Resources to use purse seine gear targeting Atlantic menhaden in the Damariscotta and Saint George Rivers.

**Basis statement:**

This rule strikes the requirement to seek a permit authorized by the Commissioner of Marine Resources to use purse seine gear targeting Atlantic menhaden in the Damariscotta and Saint George Rivers. Due to vessel length restrictions on harvest operations for menhaden as described in ch. 41, there is no longer a concern regarding conflict between overlapping fisheries that occur within these two rivers. Additionally, an updated menhaden permit under the commercial pelagic and anadromous license fully defines the population of menhaden harvesters.

**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, 2020 to December 31, 2020**  
*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 (Gear Marking Exception)  
**Filing number:** 2020-097  
**Effective date:** 4/21/2020  
**Type of rule:** Routine Technical  
**Emergency rule:** No

**Principal reason or purpose for rule:**

The Department has received input from lobster fishermen that the current gear marking requirements are too onerous for gear being fished in shallow coastal waters or up in rivers. The Department has determined that two marks is reasonable for vertical lines 100 feet or less in length.

**Basis statement:**

This rule creates an exception to current requirements to mark the buoy lines for trap/pot gear with either three or four purple marks, depending on where the gear is fished. Buoy lines of 100 feet or less in length would be required to have only two purple marks, one of 36 inches in the top two fathom of the line, and one of 12 inches at the bottom of the line. This modification of the existing rule is intended to reduce the impact of the gear marking requirements on fishermen fishing in depths where the likelihood of whales interacting with lobster gear is extremely low.

**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.