

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 10105
Chapter number/title: Ch. 27 (New), Animal Damage Control Agent Certificate
Filing number: 2019-028
Effective date: 2/5/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department has developed rules to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

Basis statement:

This rule is the result of an extensive review over the past year to modernize the Department's policy governing the ADC program. This review involved Department staff representing multiple Bureaus. During the review, Department staff examined other states' ADC programs to evaluate consistency, guidance, and administration. This review also involved consultation with several ADC agents certified under the current standards.

In the process of modernizing the policy that governs the Animal Damage Control (ADC) Program, the Department developed the new rule (Ch. 27) to govern how IFW staff utilize Animal Damage Control agents and how the agents function when dealing with human-wildlife conflicts. Increased demand for services on Departmental staff and ADC agents that deal with nuisance wildlife issues necessitate these rules. The rule establishes a standard application, operating standards, and eligibility requirements. As part of the application process, prospective ADC agents must meet minimum experience and training requirements as well as submit to a background check. The combination of expectations established in this new rule should provide consistent, safe, and reliable services to Maine's citizens when resolving human-wildlife conflicts.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 4, Hunting and Trapping (*Repeal*)
Ch. 4, Falconry (*New*)
Ch. 16, Hunting (*New*)
Ch. 17, Trapping (*New*)
Filing number: 2019-033 thru 036
Effective date: 2/12/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The repeal and replace of Ch. 4, which included hunting, trapping and falconry related rules, takes the rule and breaks it into three separate chapters: Ch. 16, Hunting Rule; Ch. 17, Trapping Rule; and a Falconry rule chapter which will remain as Ch. 4. The primary focus of the repeal and replace was to address outdated information, inconsistencies between the rule and current statutory language, and formatting. All wildlife management district boundaries were reviewed for road name accuracy and updates were made accordingly. Due to the nature of the presentation of a repeal and replace document, a supplemental summary document was provided to the public to demonstrate substantive changes.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104; PL 2019-ch. 9
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (Ice Fishing Season Extension)
Filing number: 2019-056
Effective date: 4/1/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

Extend the 2019 recreational ice fishing season by emergency rule on waters currently open to ice fishing in the North Region designated by a special season code of “B”.

Basis statement:

The Commissioner of Inland Fisheries and Wildlife, in accordance with emergency Legislation passed by the 129th Legislature (LD 1298), has amended the *Open Water and Ice Fishing Regulations* to allow bodies of water that are currently open to ice fishing in the North Region designated by a special season code of “B” to continue to be open April 1 through April 21, 2019. All rules and regulations for those waters that are already open to ice fishing in the North Region will remain in effect. The extension does not apply to tribal waters. Based on unusually cold weather conditions and lack of open water availability in the North Region, the Commissioner has determined that an extension of the ice fishing season is necessary to enhance fishing opportunities for anglers in that region.

Currently, waters in the south zone are open year round to both ice fishing and open water season unless closed by special rule. This provides those in the south with fishing opportunity no matter if there is an early or delayed spring. Extending the ice fishing season in Northern Maine provides similar opportunity for areas that would normally be free and clear of ice for open water fishing but are still ice covered. This will allow waters that are currently open to ice fishing to be ice fished while still protected under current regulations.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 12909, 12910, 12913
Chapter number/title: Ch. 14, Commercial Whitewater Rafting
Filing number: 2019-058
Effective date: 4/2/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The following changes to the commercial whitewater rafting rules have been adopted: Every whitewater guide applicant, currently licensed whitewater guide and trip leaders must be certified in First Aid and C.P.R. The rule will now allow online certifications. It reduces the minimum length of a whitewater craft from at least 15 feet to 13 feet. This allows the removal of the exceptions to having the minimum craft length of 15 feet on the West Branch of the Penobscot River (there are 5 rivers which are current exceptions). This also repeals the language requiring a whitewater outfitter to request authorization to run a whitewater craft that is less than 15 feet in length. The way in which allocation review will be conducted has been modified to allow more flexibility to for the outfitters to be able to keep their allocations even if the they are having difficulty in getting the number of allocated river runs required within the 5-year rating period. There is added language that allows the commissioner the option not to take administrative action on an outfitter due to low industry use during any five-year review of allocations. This also allows increased flexibility for outfitters when the commissioner determines it is necessary to help viability for the industry. The launch order has been removed from rule so that it can be changed as necessary and with a quicker response than it has in the past.

Basis statement:

This rule was initiated by the commercial industry. Staff met with industry representatives in crafting the language for the rule. Commercial outfitters were having difficulty meeting their allocation system that was currently under state law. Currently, there were allocations for trips on the Kennebec River and we had not been able to sell them for over 6 years. The way in which allocation review will be conducted has been modified to allow more flexibility to for the outfitters to be able to keep their allocations even if the they are having difficulty in getting the number of allocated river runs required within the 5-year rating period. There is added language that allows the commissioner the option not to take administrative action on an outfitter due to low industry use during any five-year review of allocations. This also allows increased flexibility for outfitters when the commissioner determines it is necessary to help viability for the industry. The rule also will allow online certifications for First Aid and CPR. It reduces the minimum length of a whitewater craft from at least 15 feet to 13 feet. This allows the removal of the exceptions to having the minimum craft length of 15 feet on the West Branch of the Penobscot River (there are 5 rivers which are current exceptions). This also repeals the language requiring a whitewater outfitter to request authorization to run a whitewater craft that is less than 15 feet in length. The launch order has been removed from rule so that it can be changed as necessary and with a quicker response than it has in the past.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 11855
Chapter number/title: Ch. 16, Hunting: 16.11, Migratory Game Bird Hunting
Filing number: 2019-073
Effective date: 5/12/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the *Federal Migratory Bird Treaty Act* which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. This rule will protect migratory game birds from over-harvest by setting these limitations. Adjustments to the migratory bird hunting seasons are based on a collaborative effort to collect and analyze data by the USFWS and state agencies.

Basis statement:

These rules are adopted for the purpose of implementing the *Federal Migratory Bird Treaty Act*, which establishes the general guidelines within which the States are permitted to regulate the hunting of migratory game birds. The policy behind the Federal Act and, therefore, behind these rules, is to protect the migratory game birds from over-harvest by hunters.

After receiving the framework from the United States Fish and Wildlife Service (USFWS), the Department's rule implements Maine's 2019/20 migratory bird hunting seasons by selecting season dates and bag limits for ducks, coots, mergansers, geese, crows and woodcock. Based on population trends, there is a reduction in the daily bag limit for mallards from 4 per day to 2 per day with a 1 hen restriction and a reduction in the daily bag limit for Northern pintails from 2 per day to 1 per day. The Coastal Zone regular goose season is proposed to be increased by 10 days for a 70-day season, while North and South Zone regular goose season will remain at 60 days.

A public hearing was held on March 6, 2019 with 5 members of the Waterfowl Council present, and 25 citizens in attendance. The Department presented the proposal and discussed the season frameworks and bag and possession limits. Testimony was limited but seemed to be overall in favor of the proposal. Some had questions on how the dates were set and the timing of the seasons. The Department also received two (2) written comments. The comments were acknowledged and forwarded to appropriate Department staff as well as the Commissioner's Advisory Council. One of the written comments was submitted by the Maine Professional Guides about the woodcock season. There was legislation going through the process that would open the grouse season in September rather than October 1, and they proposed the woodcock season be set the same. The Department responded that under federal guidelines, we did not have the ability to set the opening date any sooner than October 1 for woodcock.

There were two changes from the original proposal. To correct an error in the original proposal pintail was removed from the 2-bird bag limit. Also, survey results received after the proposal had been advertised indicated population estimates for brant were below the liberal threshold so based on federal guidelines we had to go from a 60-day season and limit of 2 to a 30-day season and limit of 2. Based on a comment made at the public hearing on the coastal zone of when the brant were more likely to be there, the Department modified the brant season dates. December 3 to Jan. 6 was 30-days counting backwards from the end of the coastal zone season.

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After reviewing the comments and discussion with staff and the Waterfowl Council, the Commissioner moved forward with the amended proposal. The Commissioner's Advisory Council met on April 30, 2019 and voted unanimously to accept the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12260
Chapter number/title: Ch. 17, Trapping: 17.03, Definitions; 17.06(1), Bear Trapping
Filing number: 2019-074
Effective date: 5/12/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife has amended bear trapping rules that were identified in the Department's Big Game Management Plan, to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. This rule is necessary to comply with Incidental Take Permit Number TE48539B-0 issued by the United States Fish and Wildlife Service. The Department promulgated an emergency rule to address this issue in August, 2018, however, that rule expired after 90 days. The rule will address the issue long-term by requiring trap design and placement standards that prevent access by lynx.

Basis statement:

The Department of Inland Fisheries and Wildlife has amended bear trapping rules that were identified in the Department's Big Game Management Plan, to limit bear traps and bear trapping methods that may accidentally capture the federally threatened Canada Lynx. This rule is necessary to comply with Incidental Take Permit Number TE48539B-0 issued by the United States Fish and Wildlife Service. The Department promulgated an emergency rule to address this issue in August, 2018, however, that rule expired after 90 days. The rule will address the issue long-term by requiring trap design and placement standards that prevent access by lynx, and ensure that all bear trappers are using devices and methods that meet the highest standards for humaneness and selectivity.

A public hearing was held on March 5, 2019 with 22 citizens in attendance. Twelve people provided testimony and/or asked questions regarding the proposal. The use of drags and the desire to reinstate the use of drags when trapping for bear was expressed, as well as concern for placement of an anchor for the trap. When using a tree as an anchor point many felt this would be harmful to the trees and may create issues with landowners. Trigger depth and bait placement was also discussed.

There were four written comments received on the proposal. Comments were acknowledged and forwarded to appropriate staff and the Commissioner's Advisory Council. Comments from the Humane Society of the U.S. stated their position that trapping of bears should be eliminated. The remaining comments were in favor with questions around the depth of the trigger for the trap, the opening and inside diameter for certain types of traps and the use drags.

After reviewing the comments and discussion with staff, the Commissioner moved forward with an amended proposal. There was a slight change made to language in 17.06, 1.B.(4)vii. to clarify that a tree used as an anchor could be within the area of the catch circle, and the word "small" was removed when describing stepping guide materials.

The Commissioner's Advisory Council met on April 30, 2019 and of the 10 members participating, 9 voted in favor and 1 (Mr. Sage) opposed to the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11551, 11552
Chapter number/title: Ch. 16, Hunting: 16.08, Moose Hunting
Filing number: 2019-088
Effective date: 6/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Moose permit areas are adjusted on an annual basis in response to moose population estimates and population goals in each Wildlife Management District (WMD). Department biologists use moose harvest levels, aerial surveys, and biological data to evaluate the status of moose within each WMD. This information is compared to publicly derived goals outlined in the moose management system to determine whether the population in an individual WMD should be stabilized, increased, or decreased. Moose permit recommendations are based on removal rates of antlered and cow moose that will achieve the population goal for a particular WMD, while also maintaining desired numbers of mature antlered moose for viewing by the general public.

Basis statement:

This rule is being adopted to establish the number of moose hunting permits to be issued for each Wildlife Management District (WMD) for the 2019 season. The Department advertised a proposal on March 27, 2019 with a recommended total of 2,820 permits be issued in order to meet moose harvest objectives. This is an increase of 320 permits from 2018. Permits may be valid for either antlered moose, antlerless moose, or a moose of either sex, depending on the WMD and specific season in which the permit authorizes hunting. For the 2019 moose season the majority of WMDs open to moose hunting showed a stable population and for most of the core moose range (WMDs 1-9) an incremental increase in antlerless permits was recommended. The rule was also amended to reflect a statutory change which reduced the amount of permits available to nonresidents from 10% of the total permits issued to 8%. The 2% reduction of permits to nonresidents was used to make permits available to qualifying hunting lodges (12 MRS Section 11154 §14).

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §11701
Chapter number/title: Ch. 16, Hunting: 16.10, Wild Turkey Hunting
Filing number: 2019-089
Effective date: 6/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To implement the rule making process which establishes the general guidelines within which the State is permitted to regulate the hunting of wild turkeys.

Basis statement:

This rule will open the spring wild turkey hunting season in Wildlife Management Districts 1 through 6 to all hunters for the entirety of the season by eliminating the split A/B season based on even and odd birth years. Originally, when these districts were open to a spring wild turkey hunting season, the season was split by birth year to reduce the number of hunters on the landscape at any given time and minimize conflicts with landowners. Since then, landowner conflicts have been minimal. Now that the spring season is established and landowners are used to it, we expect landowner conflicts will remain minimal. The fall wild turkey hunting season was modified by changing the start of the season to the Monday closest to the 17th of September and running to November 7; establishing a youth only wild turkey hunting day in the fall and increasing the fall wild turkey hunting season bag limit in Wildlife Management Districts 15, 16, 17, 20, 21, 22, 23, 24 and 25 from two to five birds and from one to three birds in Wildlife Management District 26. The number of wild turkeys appears to be reaching, and in some areas exceeding social tolerance. Through a recent process of developing wild turkey goals and objectives involving public input through survey and committee work, the wild turkey population in these districts was identified as needing stabilization. One management tool to stabilize a wild turkey population is through liberalization of fall wild turkey hunting, where females are legal to harvest. Non-toxic, denser than lead shot size options are becoming more available in various shotgun shell gauges that are effective in killing wild turkeys. The use of these methods has been requested by members of the public in the past. Expanding the options for shotgun gauges and shot size legal for wild turkey hunting will include shotgun gauges 10 through 28, and .410 with the use of shot sizes 7 through 9 in Tungsten Super Shot (TSS).

No public hearing was held, and 18 written comments were received on the proposal (attached). Comments were acknowledged and forwarded to Department staff and the Commissioner's Advisory Council for review. Five of the comments were in favor of all or parts of the proposal and 13 comments were received either opposed to or having concern with parts of the proposal. The majority of concerns focused on the increased bag limit and the ability to potentially harvest all five birds in one day. Flock shooting was a concern. There was also concern regarding the shotgun gauges and shot sizes. Some felt there was potential for hunter fatalities and the increased chance of wounding or injuring wild turkeys when hunting them with smaller gauge shotguns.

The Commissioner reviewed the comments and after discussion with staff and the Advisory Council recommended several changes from the original proposal as follows: The addition of shotgun gauges 10 through 28, including .410 would be limited to using shot sizes 7 through 9 in Tungsten Super Shot (TSS) instead of shot sizes 2 through 9 as originally proposed; limited the daily turkey harvest to two birds per day with the increased season limit

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of five birds during the fall season and removed the date references from the fall turkey hunting season chart to eliminate the need for rulemaking to reflect the change in the calendar dates each year. The Advisory Council met on May 21, 2019 and of the 8 members participating 7 voted in favor and 1 opposed (Mr. Smith) to adopt the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §12952
Chapter number/title: Ch. 20, Taxidermy License
Filing number: 2019-090
Effective date: 6/3/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule creates two new classifications to modernize the Department's Taxidermy rules, by including a "Freeze-Dried" and a "Reptile and Amphibian" Classification to the taxidermy license process. These classifications further clarify authorities permitted by a licensed taxidermist in the preservation of wildlife, skins of fish or parts thereof. These classifications directly relate to the Department's current definition of "taxidermy," which is defined as the art of preparing, stuffing and/or mounting of skins of fish, wildlife or parts thereof, so as to make them appear lifelike. Applicants that are successful in the Freeze-Dried Classification, that do not already hold the Bird or General Classification, will be able to apply for the federal "Taxidermy Permit," through the US Fish and Wildlife Service, which is required to perform taxidermy services on migratory birds or their parts, nests, or eggs.

Basis statement:

This rule will provide the Department a clear direction for the certification of taxidermists in the preservation process, as well as providing applicants with a clear outline of the requirements that need to be met, to become certified in one or more of the Department's taxidermy license classifications. The rule creates two new classifications to modernize the Department's Taxidermy rules, by including a "Freeze-Dried" and a "Reptile and Amphibian" Classification to the taxidermy license process. These classifications further clarify authorities permitted by a licensed taxidermist in the preservation of wildlife, skins of fish or parts thereof. These classifications directly relate to the Department's current definition of "taxidermy," which is defined as the art of preparing, stuffing and/or mounting of skins of fish, wildlife or parts thereof, so as to make them appear lifelike. Applicants that are successful in the Freeze-Dried Classification, that do not already hold the Bird or General Classification, will be able to apply for the federal "Taxidermy Permit," through the US Fish and Wildlife Service, which is required to perform taxidermy services on migratory birds or their parts, nests, or eggs.

The rule complies with the Department's taxidermy competency standards, which require applicants and licensed taxidermists to provide the Department and the public with specimens that are professional in quality, lifelike and realistic in appearance. Taxidermists already licensed under the General Classification will be able to obtain their Reptile and Amphibian Classification, by presenting one native reptile or amphibian to the Taxidermy Board without further testing requirements.

No public hearing was held, and no written comments were received on the proposal. During discussion of the proposal at the March 21, 2019 Advisory Council meeting, Council member Jeff Lewis commented on the rule language in 20.05 (3. vi.) and recommended the language be changed from "bleached and sealed." Bleaching and sealing tended to yellow the mounts.

The Commissioner did recommend a change from the original proposal, and modified the language in 20.05 (3. vi.) to change the word "bleached" to "whitened". There were no other

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modifications to the proposal. The Advisory Council met on May 21, 2019 and of the 8 members participating voted unanimously to adopt the amended proposal.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 10954, 12301-A
Chapter number/title: Ch. 16, Hunting (16.06, 16.12, 16.13)
Filing number: 2019-128
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife has amended hunting laws as they apply to submission of tooth and tissue samples when registering a bobcat. To standardize requirements across species all bobcat harvested by hunting must be registered within 10 days. An amendment to furbearing animal possession, transportation and registration requirements will allow someone the ability to gift unregistered coyote pelts to someone else for registration and utilization of the pelt. To comply with newly enacted legislation, season dates for upland game hunting of certain species has been modified to begin on the last Saturday in September.

Basis statement:

Otter and bobcat are governed by the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES) and must be registered and tagged by Department staff. To simplify regulations and standardize requirements across species, we will require that all bobcats harvested by hunting be registered within 10 days, instead of 3 days as in the past. Currently, people that want to tan and/or sell a coyote pelt are required to register each coyote they harvest. We will now allow unregistered coyotes to be gifted to people wanting to utilize these pelts. In order to comply with LD 265 (*An Act To Increase Opportunities for Hunters, Anglers and Sporting Camps by Extending the Seasons on Upland Game*) hunting seasons for snowshoe hare, gray squirrel, ruffed grouse, and bobwhite quail will begin on the last Saturday in September, rather than October 1st. Ring necked pheasant will also be included in the season date change.

A public hearing was held on the proposal on May 29, 2019 (minutes attached) and 4 citizens were present. The president of the Maine Trappers Association testified in favor of the proposal, but did express that some had concerns about making contact with Department staff in order to register otter or bobcat. Wildlife director Nate Webb explained the procedure and how to find contact information for Department regional offices. There were no written comments received on the proposal.

The Commissioner's Advisory Council met on July 10, 2019 and of the 9 members participating voted unanimously in favor of the proposal as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12251
Chapter number/title: Ch. 17, Trapping; 17.03, Definitions; 17.06(2), Beaver Trapping, 17.06(3), Muskrat Trapping; 17.07, Registration of Furbearing Animals
Filing number: 2019-129
Effective date: 7/23/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has amended trapping rules to include the following: amendment to the definition of a covered float, extension of the beaver trapping season in southern Maine by 15 days, the addition of property in Fort Fairfield to the beaver closures in WMD 6, and an adjustment to the muskrat trapping season to coincide with beaver trapping. In an effort to standardize requirements across species all bobcat harvested by hunting and otter taken in beaver traps from January 1 to April 30 must be registered by Department staff within 10 days of harvest. A lower canine may be submitted when presenting a bobcat for registration. An amendment to possession of pelts without fur registration tag requirements will allow someone the ability to gift unregistered coyote pelts to someone else for registration and utilization of the pelt.

Fiscal impact of rule:

No fiscal impact anticipated.

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Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 11152, 11401
Chapter number/title: Ch. 16, Hunting: 16.07, Deer Hunting
Filing number: 2019-135
Effective date: 7/24/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Any-deer permits (ADP) are adjusted by MDIFW on an annual basis in response to deer population estimates and population goals in each WMD. Department biologists use deer harvest levels and biological data, including estimates of winter severity, to evaluate the status of deer within each WMD. ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities, according to the publicly derived goals in the deer management system. The winter of 2018-19 was mild to moderate in central, southern, and coastal Maine and severe to very severe in northern Maine and the western mountains. This resulted in average to above-average estimated survival rates in central, southern, and coastal Maine and below-average survival rates in northern and western Maine. In addition to annual ADP recommendations, we are also recommending issuance of bonus antlerless deer permits in two sub-units. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions, and public complaints about deer.

Basis statement:

The Department allocates any-deer permits by Wildlife Management Districts (WMDs) to limit the number of antlerless deer taken by hunters in each WMD. Allocations vary across the state, reflecting the different quality of deer habitat and potential to support and grow deer populations in each WMD. ADP recommendations are based on removal rates of adult does that will stabilize, increase, or decrease deer densities, according to the publicly derived goals in the deer management system. The winter of 2018-19 was mild to moderate in central, southern, and coastal Maine and severe to very severe in northern Maine and the western mountains. This resulted in average to above-average estimated survival rates in central, southern, and coastal Maine and below-average survival rates in northern and western Maine. In addition to annual ADP recommendations, we are also implementing issuance of bonus antlerless deer permits in two sub-units. These permits will allow hunters additional opportunity to harvest deer in areas experiencing elevated levels of Lyme disease, deer-vehicle collisions, and public complaints about deer.

For 2019, the Department will issue a total of 68,145 ADP to be issued across 20 WMDs, including 470 bonus antlerless permits in two deer management subunits, to meet our doe harvest objective of 7,966 does. This is a decrease in permits of 19.6% from 2018 (84,745 ADP). Subjected to severe winter conditions and/or with deer populations below goal, WMDs 1, 4, 5, 7, 10-13, and 19 will be restricted to bucks-only harvest. Having achieved an increased doe harvest in 2018, we will not be compensating for under-harvest of does in 2019, which has led to a decreased recommendation in many of our central and southern WMDs. We continue to try to maximize doe harvest in WMD 29 to target difficult-to-hunt coastal and island deer populations. Two deer management subunits have been implemented for 2019 in WMDs 25 and 26. Deer management subunit 25a will consist of the towns of Arrowsic and Georgetown and offer 270 bonus permits. Deer management subunit 26a will consist of portions of the towns of Brewer, Bucksport, Castine, Dedham, Holden, Orland, Orrington, Penobscot, and Verona and we are recommending 200 bonus permits.

Fiscal impact of rule:

No fiscal impact anticipated.

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

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051, 13068-A
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-138
Effective date: 7/31/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department has adopted rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A(10).

The rule will point to the national standards, SAE J2005 – JUN2018, for stationary sound level measurement procedure, and SAE J34 – JUN2018, for exterior operational sound level measurement procedure for recreational motorboats. A copy of these standards may be purchased by the public and will be used by law enforcement to test and determine at what decibel level the watercraft is operating at. The standards will provide specific guidelines for testing marine engines as well as prescribe the testing devices and outline critical training and certifications required to test for decibel output.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-139
Effective date: 7/26/2019
Type of rule: Routine Technical
Emergency rule: Yes

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife is adopting an emergency rule to remove the scope of rule previously adopted in a rulemaking notice that was advertised on May 15, 2019. This scope of rule is being removed so that Ch. 13, *Watercraft Rules*, may be enforced not only on Maine inland waters, but also in coastal waters. In accordance with Title 12 MRS §13051, §§3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon all waters of the State to insure safety of persons and property.

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department, in a rulemaking notice advertised May 15, 2019, proposed rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A (10).

The Commissioner's Advisory Council gave consent to the proposed rulemaking on July 10, 2019. Prior to the filing of the adoption notice for the rule, an error was discovered in Section 13.01, Scope of Rules. The statement, "These rules shall apply to the legal and safe operation of all watercraft on Maine's inland waters." would have restricted Ch. 13 rules to be enforced on inland waters only. These rules are also necessary for safe use and operation in all of the State's waters, including tidal waters and are being adopted on an emergency basis as necessary to avoid an imminent threat to public safety and welfare.

In accordance with Title 12 MRS §13051 §§ 3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon the waters of the State to insure safety of persons and property. The authority as described in statute makes the scope of rule in Ch. 13 unnecessary. With the exception of section numbering, the remainder of the rule remains unchanged from what the Council gave consent on July 10, 2019.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12453, 12454
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations (North Zone General Law)
Filing number: 2019-155
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is intended to discourage introductions of fish, including baitfish that compete with wild native brook trout and charr and to increase public awareness regarding unintended adverse consequences to wild trout and charr that can result from unintentionally introducing the contents of the bait bucket. The rule will change the General Law in the North Region (Franklin, Somerset, Piscataquis, Aroostook, and northern portions of Oxford and Penobscot Counties) to further protect wild trout waters, including tributaries and outlets of heritage ponds in the North Region.

Basis statement:

This rule will change the General Law in the North Region (Franklin, Somerset, Piscataquis, Aroostook, and northern portions of Oxford and Penobscot Counties) to further protect wild trout waters, including tributaries and outlets of heritage ponds in the North Region. The rule is an amended version of a previous proposal advertised on February 27, 2019. Based on public comment received during the previous comment period, the rule was re-advertised with a refined list of exceptions. The rule will prohibit use and possession of live fish as bait, except where designated by special rule, reducing the chance of new introductions of baitfish and other fish in the vast majority of flowing waters, dead-waters, and small ponds in the North Region. Waters currently open to ice fishing with the use of live fish as bait will remain open "as is" during the ice and open water seasons. Additional waters with a tradition of fishing with live baitfish during the open water season will also retain use of live baitfish/live smelts (these waters were the focus of the review conducted by the Department following public comments received on a previous proposal advertised on February 27, 2019). All waters that retain use of live baitfish/live smelts will be assigned a special regulation allowing the use and possession of live fish as bait, "**S-11**: The use or possession of live baitfish/live smelts is permitted". The General Law change will allow the removal of most North Region "**S-4**: Use or possession of live fish as bait is prohibited" regulations from the law book. On most waters, deletion of "**S-4**" will result in no change to tackle restrictions due to the proposed General Law; therefore, a list of these waters is not included. On rivers, streams, and brooks where "**S-4**" will be deleted, a change in terminal tackle restrictions will occur due to the current "artificial lures and flies only" restriction that applies from August 16 - September 30; therefore, a list of these waters is included. Lists of affected waters include lakes, ponds, rivers, streams, and brooks where the use and possession of live fish as bait will be retained as an exception to the proposed General Law change in the N011h Region (**S-11**) and flowing waters and sections where the removal of "**S-4**" is proposed. These rules will become effective January 1, 2020.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §10104
Chapter number/title: Ch. 1, Open Water and Fishing Regulations (Conroy Lake Petition)
Filing number: 2019-156
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department of Inland Fisheries and Wildlife received a valid petition of 150 or more signatures to consider fishing rule changes on Conroy Lake in Monticello. The petitioner requested the Department open the body of water to ice fishing for smelt and trout with bag limits and season at the discretion of the Department.

Basis statement:

The Department received a valid public petition from Monticello Fish and Game Club to open Conroy Lake to ice fishing for smelt and brook trout. Conroy Lake is a small 25-acre lake. A public hearing was held on June 13, 2019 and there were 13 public members in attendance. All the public members in attendance were supportive of moving forward with the petition. Parking along the pond was an issue that was raised. There were a lot of private roads around the pond and in the winter time snow plowing was challenging to accommodate public use. It is also a very well-developed pond. One of the property owners has a business on the pond and has offered to plow an area for parking for the public and provide access to the pond resolving the issue. The Department initially had reservations about opening the small pond to ice fishing. Increased fishing pressure could mean the open water season would be compromised.

One written comment was received in support of the proposal. No comments in opposition were received. After considering all public comment and discussion with staff, the Commissioner moved forward in support of the petitioner's request to open the water to ice fishing. The water would be opened under the "B" season of January 1 - March 31. Based on comment at the hearing and regional biologist input, an amendment to the original proposal was adopted that would establish a two-line limit (S-8). Generally, ice fishing is open to the use of five lines through the ice and the reduction to two lines will help distribute the catch for the ice and open water fishing seasons. Fish in the pond, aside from the smelt, are stocked (brook trout and splake). There is no wild reproduction there. Due to a limited number of waters in the region open to ice fishing, the new rule will provide additional opportunity to fish during the winter.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 13051, 13068-A
Chapter number/title: Ch. 13, Watercraft Rules
Filing number: 2019-177
Effective date: 10/12/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

The Department of Inland Fisheries and Wildlife has received complaints from waterfront property owners and visitors throughout the years regarding excessive watercraft noise. In an effort to deal with increasing complaints the Department, in a rulemaking notice advertised May 15, 2019, proposed rules for testing guidelines and devices to determine whether or not watercraft are operating at acceptable decibel levels or exceeding the threshold set in statute, Title 12 MRS §10368-A (10).

The Commissioner's Advisory Council gave consent to the proposed rulemaking on July 10, 2019. Prior to the filing of the adoption notice for the rule, an error was discovered in Section 13.01, "Scope of Rules". The statement, "These rules shall apply to the legal and safe operation of all watercraft on Maine's inland waters." would have restricted ch. 13 rules to be enforced on inland waters only. These rules are also necessary for safe use and operation in all of the State's waters, including tidal waters and in a notice filed July 26, 2019 (2019-139) a change striking the scope of rules was adopted on an emergency basis as necessary to avoid an imminent threat to public safety and welfare.

In accordance with Title 12 MRS §13051 sub-§3, watercraft rules adopted by the Commissioner govern the use and operation of watercraft upon the waters of the State to insure safety of persons and property. The authority as described in statute made the scope of rule in Ch. 13 which the Council gave consent on July 10, 2019 unnecessary.

In a notice advertised August 21, 2019 the Department proposed the final adoption of Ch. 13 watercraft rules without the Scope of Rules. No public hearing was held, and no public comment was received on the proposal.

The Commissioner's Advisory Council met on October 1, 2019 and the eight (8) members participating voted unanimously in favor to adopt the rule as presented.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12452, 12461
Chapter number/title: Ch. 1, Open Water and Ice Fishing Regulations
Ch. 1-A, State Heritage Fish Waters
Filing number: 2019-179, 180
Effective date: 1/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The rule is designed to provide for the effective conservation of game fish throughout the state and provide for a variety of fishing opportunities. The rule sets specific season dates, bag limits, length limits, tackle restrictions, and other special regulations designed to accomplish fisheries management objectives.

Basis statement:

The Department of Inland Fisheries and Wildlife has adopted rules pertaining to the 2020 ice fishing and open water seasons. The State Heritage Fish Waters list has also been amended with the addition and removal of certain waters. These rules are necessary for the sound management and proper utilization of the State's inland fishery resource; this is, to provide for the fullest level of use of the resource without adversely affecting species distribution and abundance, thus ensuring that all benefits are retained.

The Department, in a notice advertised July 10, 2019, proposed changes to open water and ice fishing regulations and modifications to State Heritage fish waters as follows: Addition of five (5) waters to the State Heritage Fish Waters list and removal of three (3) waters from the State Heritage Fish Waters list; Addition of "S-4" to tributaries of nineteen (19) south region State Heritage Fish Waters; Extending the end date of the "B." ice fishing season to eliminate the need for emergency rule changes (including creating special language on two (2) waters to address harvest concerns); Amending eighteen (18) water specific regulations to address management changes, public requests, and to correct a law book error. Rule changes for each body of water and their explanations is attached separately.

The proposed changes were advertised with one public hearing held in Augusta (minutes attached) with 4 citizens in attendance. The Department also received 19 comments in writing both for and against various proposals (comment summary with justifications attached). Written comments were acknowledged and forwarded to the Commissioner's Advisory Council as well as appropriate staff for consideration.

On October 1, 2019, the Commissioner brought forward the original proposal for adoption by the Advisory Council. Of the eight (8) member present seven (7) voted in favor and one (1) opposed (Mr. Farrington) to adopt the fishing regulations package for 2020 as presented.

Copies of the publication will be available from license agents, on the Department's website or from the Department of Inland Fisheries and Wildlife, 284 State Street, Augusta, ME 04333-0041. This body of rules is posted in its entirety on the Department's website and in a hard copy publication entitled *Open Water & Ice Fishing Laws and Rules* (January 1, 2020 – December 31, 2020) and by authority of 12 MRS §12452, is an official consolidation of the open water and ice fishing rules as maintained by the Department in an electronic version and distributed through electronic means.

Fiscal impact of rule:

No fiscal impact anticipated as a result of this rule.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-137
Statutory authority: 12 MRS §§ 10104, 12701
Chapter number/title: Ch. 5, State Owned Wildlife Management Areas, Shooting Ranges and Boat Launch Facilities
Filing number: 2019-242
Effective date: 12/22/2019
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To create a set of rules to guide safe use of the Department's water access facilities as authorized in 12 MRS §12701 sub-§5. These rules will clarify what types of uses are allowed at the Department's facilities and provide the Department and law enforcement the ability to ensure public safety.

Basis statement:

The Department has clear rules in Ch. 5 for the use of its Wildlife Management Areas and Shooting Ranges, but there were currently no formal rules for the use of its 147 Water Access Sites. The adopted rule will provide the Department and public clear guidance on how the water access facilities can be utilized.

There were 23 written comments received on the proposal. Twenty-two (22) of those comments were regarding the portion of the proposal specific to the Mere Point, Brunswick access site, Section 5.05. There were two specific rules in the proposal that applied to Mere Point and there was a lot of history there. At Mere Point, boats over 24 feet were not allowed at the facility and overnight parking was not allowed at the facility. This was based on a previous agreement and discussions with the City of Brunswick prior to construction of the site. Enforcement was currently under the jurisdiction of local and state law enforcement. The inclusion of rules in Chapter 5 specific to Mere Point would give agents of DIFW clear authority to provide enforcement at the launch.

The public comment came from two different perspectives, there were some that did commercial work at the facility and they would like to see the restriction on the use of commercial boats at the facility removed so they could use the facility without any impediment and the length limit be removed. There was another group that lived near Mere Point that had serious concerns about boats over 24 feet and about commercial use at the facility in general. Many of the comments also expressed concern over watercraft noise issues at the launch, but those were not germane to the proposal.

A public hearing was also held on the proposal with 13 citizens in attendance. The majority in attendance were residents of Brunswick and came to give testimony regarding the Mere Point launch portion of the rule proposal. As with the written comments, testimony was given regarding commercial use of the facility, concerns with use by boats larger than 24 feet, overnight parking and watercraft noise.

Given the complexity of the issue and the public comments the Commissioner removed the Mere Point component (Section 5.05) from the proposal. A series of meetings would be held with the town and community to develop the best path forward at the Mere Point access site. The remainder of the proposal was put forward with no further changes.

The Commissioner's Advisory Council met on December 10, 2019 and of the 9 members participating, voted unanimously in favor of the proposal as amended.

Fiscal impact of rule:

No fiscal impact anticipated.

Annual List of Rulemaking Activity
Rules Adopted January 1, 2019 to December 31, 2019
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Inland Fisheries and Wildlife (IFW)
Umbrella-Unit: 09-585
Statutory authority: 12 MRS §10308
Chapter number/title: Ch. 25, Maine Outdoor Heritage Fund: Strategic Plan
Filing number: 2019-214
Effective date: 12/2/2019
Type of rule: Routine Technical
Emergency rule: No

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

Basis statement:

To provide a six-year review of the plan. The strategic plan is the guiding document governing the types of projects that may be funded by the Maine Outdoor Heritage Fund.

Fiscal impact of rule:

No adverse economic impact anticipated.