

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 24 - Importation of Live Marine Organisms

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

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

BRIEF SUMMARY:

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

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

COMMENT DEADLINE: May 7, 2021

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

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

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

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

STATUTORY AUTHORITY FOR THIS RULE: 6071

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

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

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* Check one of the following two boxes.

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

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

DEPARTMENT OF MARINE RESOURCES

CHAPTER 24.10 - Permit Issuance Criteria for Shellfish

4. The following geographical areas shall be considered restricted areas for the particular species listed:

F. Maine. All coastal waters within the State of Maine shall be a restricted area for ~~the~~ European Oysters_s, (*Ostrea edulis*). All territorial waters in the areas listed below shall be a restricted area for ~~the~~ American oysters_s, (*Crassostrea virginica*) greater than 3 mm in size:

- 1) Between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol
- 2) North of a line beginning at the southernmost point on Linekin Neck, Boothbay and continuing southwest to the southern tip of Kennebec Point, Georgetown, including the Sheepscot, Back, and Cross Rivers, and all tributaries.
- 3) East of the Route 127 bridge between Arrowsic and Georgetown (Back River).
- 4) East of the Route 127 bridge between Sasanoa Point, Woolwich and Preble Point, Arrowsic (Sasanoa River).
- 5) North of a line beginning at the southernmost point of Oak Island, south of Gun Point, Harpswell and continuing northeast to the southernmost tip of W Cundy Point, Harpswell (Quahog Bay and Ridley Cove).

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 24 - Importation of Live Marine Organisms

STATUTORY AUTHORITY: 12 M.R.S. § 6071

DATE AND PLACE OF PUBLIC HEARING: None scheduled

COMMENT DEADLINE: May 7, 2021

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

Polymerase Chain Reaction (PCR) results received on January 22, 2021 from Kennebec River Biosciences in Richmond, Maine confirmed the presence of MSX (*Haplosporidium nelsoni*) in wild American oysters in Quahog Bay. MSX was detected at a low level in 2 of 24 oysters sampled, one of which also displayed thin tissues. MSX is an oyster disease caused by a microscopic parasite. It is a health and mortality problem for American oysters but does not affect human health or consumption. DMR implemented an emergency rule on February 14, 2021, which created a restricted area. The Department is pursuing a regular concurrent rulemaking to make this emergency regulation permanent.

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

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

Persons will be required to obtain a permit for the movement, but not harvest, of shellfish from restricted areas to ensure a reasonable degree of certainty that the movement will not endanger the indigenous marine life or its environment in accordance with Chapter 24.05. Permits require pathological examination, satisfactory to the Department, demonstrating the shellfish to be free of the disease(s) found in the restricted area.

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

Routine health surveillance and the Polymerase Chain Reaction (PCR) results received on January 22, 2021 from Kennebec River Biosciences in Richmond, Maine, which confirmed the presence of MSX (*Haplosporidium nelsoni*) in wild American oysters in Quahog Bay.

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

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

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

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

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

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

Note: If necessary, additional pages may be used.