

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 8 Landings Program Aquaculture Reporting

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
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.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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DEPARTMENT OF MARINE RESOURCES
Chapter 8 Landings Program

8.20 Harvester Reporting

- A. Green Crabs (repealed)
- B. Sea Cucumber (previously Chapter 27.03(F))

Each holder of a sea cucumber endorsement is required to report fishing activity and landings on forms supplied by the Department. Reporting is required on a daily basis and must be mailed to the Department weekly. No fishing activity will be reported as "did not fish" on the forms. The reports must include the following information:

1. Location or locations of fishing activity by longitude and latitude
2. Date(s) fished
3. Time at sea
4. Time fished
5. Catch in pounds or totes
6. Number of tows
7. Port of landings
8. Name of buyer and date of sale
9. Price in pounds or totes
10. Approximate depth(s) where fishing occurred
11. Length of tows in minutes

- C. Seaweed (previously Chapter 29.10)

Each seaweed harvester required to be licensed under 12 MRS §6803 must report harvesting activity for all seaweed species on forms supplied by the Department. Records must be kept on a daily basis, and the report must be mailed to the Department monthly. Reports for each month's activity shall be mailed to the Department within 10 days of the end of the month. The report must include the following information for each day that harvesting occurs:

1. Name, permit number and phone number of licensed harvester;
2. Date(s) harvested;
3. Harvest area (sector # - where applicable, bay, cove, river, ledge and or island);
4. County and town (use town codes provided, per instructions);
5. Harvesting methods (hand, knife, rake, mechanical, diver);
6. Total harvest time (number of hours);
7. Seaweed species; and
8. Pounds landed (wet).

- D. Horseshoe Crabs (previously Chapter 31.05(A))

Holders of a horseshoe crab permit must report annually by November 1 to the Department on the total number of horseshoe crabs harvested, along with such other information as the Commissioner deems necessary for the conservation and management of the horseshoe crab resource.

- E. Eel Harvest (previously Chapter 32.04)

Any person holding an eel harvesting license is required to report fishing activity and landings on forms supplied by the Department. Reporting is required on a daily basis and must be mailed to the Department monthly. No fishing activity will be reported as "did not fish" on the forms. The reports must include the following information:

1. Harvester name, year of harvest, license number, and phone number;
2. Date(s) harvested;
3. Gear type and quantity;
4. Set time (hours);
5. Species
6. Total weight (pounds or kilograms) of harvested eels for the set time;
7. Disposition of catch (food or bait);
8. Port landed;
9. Dealer sold to; and
10. Area fished (river; embayment; offshore bycatch)

The data will be summarized by the Department and will be made available on request to the public 45 days after the receipt of the data forms in accordance with the confidentiality provision of 12 M.R.S. §6173.

F. Atlantic halibut (previously in Chapter 34.10(1)(B)(4)(b)(vi))

Persons who obtain an Atlantic halibut endorsement will be required to maintain a log. The log must include the following information:

1. Harvester name & landings number
2. Boat name and hull ID
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain)
6. Gear type & quantity
7. Number of sets
8. Set time (hours gear fished)
- 8-A. Total number of hooks fished
9. Depth (in fathoms)
10. Area fished (Latitude/Longitude)
11. Sea time (including steaming time)
12. Species caught including bycatch and sub-legal halibut, quantity & unit of measurement
13. Total length of halibut retained or released
14. Research tag number of halibut released or recaptured
15. Landings number of dealer sold to or if not sold to a licensed dealer, disposition of catch.
16. Port landed
17. Signature written or electronic

G. Intentionally blank

H. Intentionally blank

I. Shrimp (previously Chapter 45.24)

All Maine licensed shrimp harvesters must report daily fishing information for shrimp that are landed in Maine, to the Department, according to written instructions on forms provided by the Department. Fishing vessel trip reports must include the following information:

1. vessel name;
2. vessel state registration number (or United States Coast Guard Documentation Number);
3. vessel permit number;
4. date/time sailed;
5. trip type;
6. number of crew;

7. gear fished;
8. mesh size;
9. quantity and size of gear;
10. chart area fished;
11. average depth;
12. latitude/longitude;
13. total hauls per area fished;
14. average tow/soak time;
15. pounds by species of all species landed or discarded;
16. dealer permit number;
17. dealer name;
18. date sold;
19. port and state landed;
20. date/time landed;
21. vessel operator's name;
22. signature;
23. shrimp license number; and
24. any other information or instructions deemed necessary.

J. Shellfish Bait Permit (previously in Chapter 49)

All shellfish bait permit holders are required to provide the Department the following information on forms supplied by the Department:

1. Daily record of sales;
2. Record of closed areas fished;
3. Ports landed; and
4. Daily record of clams harvested by shucked weight.

K. Intentionally blank

L. Elver Harvest

Any person holding an elver harvesting license is required to report fishing activity and landings on forms supplied by the Department. Reporting is required on a daily basis and must be mailed to the Department monthly. No fishing activity will be reported as "did not fish" on the forms. The reports must include the following information:

1. Harvester name, year of harvest, license number, and phone number;
2. Date(s) harvested;
3. Gear type and quantity;
4. Set time (hours);
5. Species;
6. Total weight (pounds or kilograms) of harvested eels for the set time;
7. Port landed;
8. Dealer sold to; and
9. Area fished (river; embayment; offshore bycatch).

M. Intentionally blank

N. Lobster Harvest

- A. Ten percent of the lobster and crab fishing license holders, except lobster apprentices, during a given calendar year will be randomly selected to report the listed data elements for the following calendar year with the exception that all (100%) of lobster and crab fishing license holders, except lobster apprentices, of the Monhegan Island Lobster Conservation Area must

report each year. With the exception of lobster and crab fishing license holders of the Monhegan Island Lobster Conservation Area, no individual can be selected to report in two consecutive years.

Any person that holds a Class I, II, or III, student or noncommercial lobster and crab fishing license issued under 12 M.R.S §6421(A, B, C, E, F and G) and is selected for reporting must report trip level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and license number
2. Boat name and hull ID
3. Designate negative report period if no harvesting activity occurred
4. Date fished
5. Number of crew
6. Gear type and number of traps hauled
7. Set time (hours the gear soaked)
8. Total gear in water
9. Depth
10. Primary Statistical area, lobster zone and 10-minute square where gear hauled this trip was fished
11. Sea time (including travel)
12. Pounds of species landed
13. License of dealer sold to or if not sold to a licensed dealer, disposition of catch and whether catch was carried
14. Port landed
15. Signature, written or electronic
16. Number of strings hauled. For purposes of this section, a string means a single trap or multiple traps connected by a groundline.
17. Number of endlines-Count of total endlines in the water

B. All data sent to DMR must be legible, coherent and in conformance with DMR specified standards.

O. Scallop Harvest

Any person that holds a scallop (hand fishing) license, scallop boat license, or noncommercial scallop license issued under 12 M.R.S §6701, §6702 or §6703 must report trip level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and license number
2. Boat name and hull ID
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain)
6. Gear type and quantity
7. Number of sets/tows/dives
8. Set time (average time fished per set/tow or average dive time)
9. Average depth
10. Latitude/longitude
11. Sea time (including travel)
12. Pounds of species landed
13. License of dealer sold to, or if not sold to a licensed dealer, disposition of catch and whether catch was carried
14. Port landed
15. Signature, written or electronic

P. Urchin Harvest

Any person that holds a handfishing sea urchin license, sea urchin hand-raking and trapping license or sea urchin dragger license (12 M.R.S. §6748, §6748-A or §6748-D) must report detailed trip and area level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and license number
2. Boat name and hull ID
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain and all divers)
6. Gear type
7. Number of sets/tows/dives
8. Set time (average time fished per set/tow or average dive time)
9. Type of habitat
10. Average depth
11. Latitude/longitude
12. Sea time (including travel)
13. Pounds of urchins landed
14. License number of dealer sold to
15. Port landed
16. Signature, written or electronic

Q. Pelagic and Anadromous Fishing Harvest

Any person who holds a Commercial Pelagic and Anadromous Fishing License issued under 12 M.R.S. §6502-A must report trip level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and landings number
2. Boat name and state vessel registration number or Coast Guard number (if a boat was used)
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain)
6. Gear type and quantity
7. Number of sets/tows
8. Set time (the average time your gear fished)
9. Average depth
10. Latitude and longitude
11. Sea time (including travel)
12. Pounds by species of all species caught (including discards)
13. Landings number of dealer sold to, or if not sold to a licensed dealer, disposition of catch and whether catch was carried
14. Port landed
15. Signature written or electronic

R. Herring Harvester

Any person that holds a Commercial Pelagic and Anadromous Fishing License issued under 12 M.R.S. §6502-A and a Herring Harvester Permit under that license must submit weekly catch reports. Catches from fixed gear must be included in these reports. Any person that holds more than one Commercial Pelagic and Anadromous Fishing License with the IVR Herring Harvester

Permit must report for each license they hold. Reports are required even if the herring caught during the week have not been landed. The report shall include the following data elements:

1. Reporting week number
2. Negative reporting period if no harvesting activity occurred
3. Total pounds kept
4. Total pounds discarded
5. Federal fishery management area where the fish were caught

The reporting week begins Sunday at 0001 hrs (12:01 am) and ends Saturday at 2400 hrs (midnight). Weekly Atlantic herring catch reports must be submitted by midnight Tuesday for the previous week. The weekly report does not exempt the license holder from their Commercial Pelagic and Anadromous Fishing license report (in section P above). Atlantic herring reports are not required from Atlantic herring carrier vessels.

S. Aquaculture License Holder

Effective January 1, 2021 any person that holds an Aquaculture License issued under 12 MRS 6810-B and is authorized to grow any species other than finfish on a lease issued under 12 MRS 6072, 6072-A or 6072-B or a license issued under 12 MRS 6072-C must report harvesting activity to the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the aquaculture license)
2. Landings number
3. Designate negative report period if no harvesting activity occurred
4. Year of report
5. Month of report
6. LPA or Site ID
7. Species
8. Quantity
9. Quantity Unit
10. Price (Average)
11. Price Unit
12. Landings number of dealer sold to, or if not sold to a licensed dealer, the disposition of the harvest
13. Port landed
14. Signature, written or electronic

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.

Summary of Comments:

Notice of this proposed rulemaking appeared on December 25, 2019 in the five major daily newspapers as published by the Secretary of State. On December 20, 2019, the rule was posted on the DMR website. On December 25, 2019 electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: January 13, 2020 5:30 pm, DMR Offices, RM 118 Marquardt Building, 32 Blossom Lane, Augusta ME; January 15, 2020 5:30 pm, Ellsworth City Hall, Ellsworth ME; Snow date scheduled (but not utilized) for January 17, 2020 2:30 pm, DMR Offices, RM 118 Marquardt Building, 32 Blossom Lane, Augusta ME. The comment period closed January 27, 2020.

I. Augusta Public Hearing

Members of the Public	DMR Staff
Dana Morse, Stephen Mace, and Sebastian Belle	Deirdre Gilbert, Les White, and Amanda Ellis

II. Ellsworth Public Hearing

Members of the Public	DMR Staff
Sarah Redmond and Trey Angera	Deirdre Gilbert and Amanda Ellis

Tom Klodenski, received via email, December 26, 2019

Maine Ocean Farms LLC, currently cultivating Eastern Oysters in Casco Bay, is opposed to "[Chapter 8 Landings Program Aquaculture Reporting](#)" rule changes requiring aquaculture license holders to report landings monthly.

Our rationale:

Species currently reported under section 8.20 are all wild-caught. These species naturally vary in range and size and deserve monthly reporting. Our seed of known quantity are grown entirely in bags from start to finish in one location and should not require monthly reporting.

As seasonal producers closed for several months per year, monthly reporting would be a new clerical burden with new legal implications.

This rule change, when applied to a our farming practices, interferes with our productivity.

Jordan Kramer, received via email, January 6, 2020

I'm writing to voice my opposition to the proposed rule change requiring monthly landings reports for aquaculture producers. I believe this rule change is arbitrary and places an extra undue burden on farmers. Unlike wild fisheries, where landings data informs quotas and wild-

stock management, sea farms are controlled systems- independent of wild populations. What is harvested on a farm effects a farmer's stocking plan and does not indicate the health/size of a wild fishery. Without wild-fishery management implications there is little use for the more granular (monthly) data. I believe the current "growing season" reporting provides adequate data and makes the most sense for farmed crops. Aside from the extra reporting burden, I believe this rule indirectly forces farmers to share details of their stocking practices - giving highly valuable farm-management information to direct competitors.

Stephen Mace, Augusta Public Hearing, January 13, 2020

Elements of other landings information should be considered. I think halibut and shrimp are more in-line with the type of cultivation that is going on. With the explosion in aquaculture to ask every lease and license holder to start a process as soon as May is asking more than people are willing to adopt. I would suggest that roll out happens during LPA renewal. Do it on the calendar year for a January 1, 2020 roll out. I think that the aquaculture industry is getting targeted for having to report values. Reporting should be more consistent with other fisheries.

Sebastian Belle, Maine Aquaculture Association, submitted via email, January 27, 2020

On behalf of the Maine Aquaculture Association (MAA), please consider the following comments in Opposition to the proposed Chapter 8 Aquaculture Reporting Requirements under the Landings Program. To be clear MAA understands the need for accurate landings data on the aquaculture sector. We support your departments continued efforts to increase the efficiency of data collection and free up aquaculture staff to focus more on management and less on administrative functions. To that end MAA supports in principle the intent of the proposed rules. We do however have significant concerns about the proposal and as such oppose them in their current draft form. Specifically, MAA opposes the proposed rule change on the following basis.

1. All current landings data requirements under chapter 8 apply to wild capture fisheries and are designed to help the department manage fishing effort and impacts on wild stocks in a timely manner. Aquaculture is not a wild fishery and aside from aquatic animal health issues and any potential impacts on wild populations DMR does not have any responsibility for managing either the aquaculture "resource" (i.e. the farm stock on the farm) or the harvest effort of this privately held property.
2. With one exception (Sea Cucumber) no other landings under chapter 8 require the disclosure of price as part of the landings reports. Prices paid to growers represent business proprietary, confidential information. The proposed rule provides no requirement that the department shield this information as confidential information. MAA does not believe that the departments current more general safeguards around data submitted by license or lease holders provide adequate protection for this specific information. While MAA supports the need to accurately track total harvest and total value on a species by species basis, MAA would like a

specific provision added to the rule that makes clear that price and landings data for individual growers would never be released publicly.

3. The requirement to report landings and price data on a trip basis provides an additional challenge. Growers may make multiple “harvest” trips in one day and the ultimate fate of product harvested on those multiple trips or even within one trip on the day may be various different customers at various different prices. Unlike most commercial fisheries, aquaculture growers typically deliver to multiple customers on any given day and from any given harvest trip. The level of individualized tracking and reporting as outlined is prohibitively complicated and will not add any data that helps the department “manage” the “resource” per se.

4. The proposed rule will not eliminate any tracking as is currently required if growers are licensed dealers and reporting and tracking required under the NSSP system. Thus the proposed rules will, in many instances, require duplicative reporting and data tracking both on the farm and in reports to the department.

5. It is not clear why the department needs data on the number of crew on a trip. As noted earlier growers often make multiple trips to the same lease site or multiple trips to multiple lease sites on the same day. Additionally aquaculture companies often employ multiple people shoreside, as part of the same company and harvest operations. Tracking the number of crew on trips will not provide any accurate data on number of employees in the sector or CPUE in the harvest of a nonpublic resource.

6. As in point 5 above aquaculturalists often harvest from different gear types and different sites on the same trip. The department already has data on total gear and type as part of lease applications. Tracking gear type and quantity data on a trip basis While relevant for CPUE tracking in commercial fisheries will provide no data to the department useful in the management of this nonpublic resource.

MAA recognizes that the current reporting system of aquaculture data on an annual basis has had issues. MAA would respectfully suggest that the department has tried to apply a wild fisheries data management model to a sector that has entirely different challenges and needs. That perspective was expressed to the department at the most recent aquaculture advisory council meeting. At that meeting the advisory council offered to work with the department to develop a reporting system that helps the department increase the accuracy of data on the aquaculture sector while protecting confidential business information and reducing, NOT increasing the reporting burden on the grower community and administrative burden on DMR aquaculture division staff. MAA respectfully suggests the department has achieved the latter but not the former. MAA stands ready to discuss with the department how to achieve a more balanced approach.

**Andrea “Trey” Angera, Maine Seaweed Exchange, submitted via email, January 27, 2020
(also provided comment at the Ellsworth Public hearing)**

1. Comments primarily directed to effects on seaweed aquaculture, although may apply to other aquaculture activities.
2. Issues with the Notice:
 - a. Seaweed is not subject to management as a fishery. In *Ross v. Acadian Seaplants*, 2019 ME 45, Maine Supreme Court has decided that:
 - i. “Rockweed is the common name for several species of brown seaweed, or macroalga. The most abundant of the species is known by the scientific name *Ascophyllum nodosum* and is often found on rocks and ledges in the intertidal portions of Maine’s seacoast. Rockweed is a plant.” Emphasis added. This reasoning applies equally to the majority of the aquacultured seaweeds including, but not limited to, sugar kelp (*saccharina latissima*).
 - b. FDA definition of fishery does not include seaweed.
 - c. USDA has defined seaweed as an agricultural product.
 - d. Aquaculture, at least as relates to seaweed, is not a fishery and must be regulated under Aquaculture rules not fishery rules.
3. There is no rational justification to treat finfish aquaculture differently to other aquaculture activities.
4. Annual reports provide essentially the same information to be collected by this proposed regulation without additional burdens on farmers.
5. While no Small Business Impact Statement has been completed yet, arguably in violation of Maine law, we have calculated that the time to complete the required reporting required by this rule is thirteen (13) times that of the current reporting. This imposes an additional burden at \$15 per hour of nearly \$1,000 per year. This is an unreasonable burden on an industry dominated by small operators.
6. This data is confidential is pursuant to section 6173, so why require monthly reporting when an annual report would provide the equivalent data?
7. Pursuant to sections 6173 and 6191(c) this proposed regulation requires that requires the “advice and consent” of the advisory council. This requirement has not been met.
8. The Estimated Fiscal Impact of the Rule (Section 8057-A(1)(c)) is suspect. There are currently 278 active aquaculture leases reflecting roughly 36 finfish aquaculture sites and 242 non-fish sites. There are also roughly 951 LPA sites that are covered by this proposed regulation. Thus, the agency could potentially be collecting and reviewing 14,316 monthly reports. It is inconceivable that the collection and analysis of over 14,000 additional harvest reports will not have a fiscal impact on the agency.
9. The Proposed Rule places an undue burden on certain aquaculture operations and should be amended to address the issues raised herein, including:
 - a. Seaweed aquaculture should not be subject to this regulation.
 - b. Non-shellfish aquaculture, such as urchin aquaculture, should not be subject to this regulation.

c. Shellfish aquaculture should only be required to collect the NSSP required data and report it annually. This data collection should be limited to the specific requirements of the NSSP.

Department Response to Comments

Use of Information Collected for Management:

Commenters questioned how the information collected would be used to inform the management of the aquaculture sector. The rule does not purport that the information collected would be used to manage aquaculture operations. The intent of the rule is to improve and streamline the reporting process to ensure that the Department can accurately represent the amount and value of aquaculture in Maine. Currently, the Landings Program manages dealer reporting while the Aquaculture Program manages harvester reporting. These disparate streams of data collection make it difficult to accurately report the value of the aquaculture sector to Maine.

Moving AQ Reporting to the Landings Program:

Some commenters noted that aquaculture operations are different from wild fisheries and how wild fisheries are managed. Based on these differences, some commenters suggested keeping aquaculture reporting within the Aquaculture Program.

DMR recognizes that aquaculture operations are different from wild fisheries and their associated management. The intent of moving aquaculture reporting to the Landings Program is not to create parity between the aquaculture sector and how wild fisheries are managed. Reporting requirements for the Landings Program are specified in Chapter 8 of DMR's regulations. Aquaculture harvesters will report to the Landings Program, so it makes sense to move the reporting requirements to Chapter 8.

DMR believes that directing all reporting to one program within the Department will lead to better data collection. The aquaculture industry and other stakeholders will be able to better demonstrate the economic value of aquaculture, track growth of the industry, and monitor any trends within various sectors of the industry. Such information may be helpful in a variety of contexts related to planning, funding, research, and development. Other benefits of moving aquaculture reporting to the Landings Program are as follows:

- The Aquaculture Division is the only DMR program responsible for collecting and managing annual reports related to harvesting activity. Resources that could be utilized in other areas of the Aquaculture Program are focused on managing annual reports. The Landings Program already manages required reporting and the management of any associated data for all other programs.

- Moving reporting to the Landings Program helps streamline workloads within the Aquaculture Program, so that resources previously allocated for the management of annual reporting can be redirected to other aspects of Division programming.
- The change is also intended to provide consistency across DMR, so that the Landings Program is responsible for all data collection and data management related to any reporting that falls under their jurisdiction.

Exemptions for Marine Algae and Non-Shellfish:

One commenter suggested that marine algae and non-shellfish (i.e. sea urchins) should not be subject to this regulation. However, the reporting requirements apply to aquaculture license holders (see 12 M.R.S.A. § 6810-B), who are cultivating any species other than finfish on an aquaculture lease or license site. Therefore, the rule applies to aquaculture license holders regardless of how a species cultivated on an aquaculture lease or license site may be described or characterized in other contexts.

One commenter also felt that finfish aquaculture should not be treated differently from other aquaculture related activities. The Department determined that it was appropriate to leave only finfish reporting within the Aquaculture Division because there are pieces of information that are collected through this process that are meaningful to staff within the Program for oversight of finfish aquaculture that could not be collected on forms used by the Landings Program.

DMR's Responsibility to Manage Stock:

One commenter questioned DMR's responsibility to manage the stock on aquaculture sites or harvest efforts. This rule does not require specific management actions related to stock or harvest efforts. DMR has the authority to collect information related to harvest activities on aquaculture sites. This authority is specified in relevant statutes governing aquaculture harvesting reports and is consistent with other relevant provisions of law, which govern elements of the harvest and management of stock on aquaculture sites, which are leased from the State of Maine.

Confidentiality of Statistics:

Some commenters were concerned that the information collected would disclose sensitive information about aquaculture operations. One commenter wanted a specific provision added to the rule that makes clear that price and landings data for individual growers would never be released publicly.

The information collected as part of this reporting is kept confidential as required by applicable statute (12 MRS 6173 Confidentiality of Statistics) and regulation (Chapter 5). DMR cannot disclose to the public any statistics unless they are in aggregate or summary form as specified in Chapter 5. The data is combined so as not to reveal the identity of any harvester, business, or

person. The disclosure of price and landings data for individual growers is already prohibited in other sections of law and does not need to be reiterated here.

Disclosure of Price:

Some commenters took exception to having price as a required reporting element, especially considering it is not a required reporting element for most fisheries listed in Chapter 8. Most fisheries listed in Chapter 8 sell their product to a licensed dealer or other authorized license holder, who are required to report price. This is not always the case in the aquaculture sector as harvesters may sell product directly to various markets (i.e. restaurants, stores, consumers, etc.). Price reporting is intended to capture the value of sales across all possible markets (i.e. restaurants, consumers, stores, etc.) in order to better demonstrate the economic value of the aquaculture sector. Because the rule has been altered to no longer require trip level reporting, the price information requested is the average for the month.

Impact of the Proposed Rule to DMR:

Based on the number of active aquaculture leases and licenses, one commenter noted that DMR could potentially be collecting and reviewing 14,316 monthly reports. The commenter felt that these additional monthly reports would present a fiscal burden to DMR.

However, the reporting requirements apply to aquaculture license holders (see 12 M.R.S.A. § 6810-B), who are cultivating any species other than finfish on an aquaculture lease or license site. In 2019, DMR issued 129 aquaculture licenses. Based on the number of 2019 aquaculture license holders there would be ~129 monthly reports at any given time. The number of monthly reports may be less, because harvest is seasonal for some operations.

DMR consulted with staff in the Landings Program prior to developing this rule. Staff in the Landings Program are prepared to process the monthly reporting requirements associated with the rule. With online and other forms of electronic reporting available or in development, DMR does not anticipate a significant increase in workload. DMR does not need to expend additional resources to implement the change.

Small Impact Business Statement:

One commenter indicated that the Small Business Impact Statement had not been completed, which the commenter alleged was a violation of Maine law. However, DMR completed a Small Impact Business Statement for the proposed rule and made it available to the commenter upon request. The Small Business Impact Statement reflected the proposed rule.

When adopting a rule, DMR is required to file a “statement of impact on small business.” This final statement reflects the adopted rule, which is informed by the feedback received during the public comment period. DMR explained to the commenter that the small business impact

statement that accompanied the proposed rule may change, based on feedback received, during the comment period.

Fiscal Impact of the Proposed Rule to Industry:

One commenter questioned the fiscal impact of the rule to industry and claimed that it would increase costs to aquaculture operators.

Prior to this rule change, aquaculture lease and LPA license holders were required to report harvesting activities for each of their respective sites on an annual basis. Although the reports were filed once a year, they required LPA license and lease holders to report activities over a 12-month period. Given previous reporting requirements, the industry would already need to be tracking this information at regular frequencies throughout the year in order to complete annual reporting requirements.

This rule changes the overall frequency of reporting to once per month. Filing a report once a month versus once a year may increase administrative costs to some aquaculture businesses. However, the rule does not change the overall requirement to report, which has always necessitated the collection of relevant information related to harvesting activities over a 12-month period in order to report harvesting activities for the year. The reporting elements required in this rule are very similar to the reporting elements contained in 2019 annual reports.

The change to monthly reporting may have some fiscal impacts to small business. However, based on a review of all comments received these impacts appear to be minor. Out of the five individuals who provided comments only one commenter specifically referenced increased costs associated with monthly reporting.

Finally, in response to the feedback received, DMR has removed the trip level reporting requirement, removed some reporting elements, and included an implementation date of January 1, 2021. These measures may further mitigate any identified impacts to small business by reducing required reporting elements, and the need to collect data for each trip. The January 1, 2021 implementation date will also provide industry additional time to prepare for the rule change.

Advice and Consent of DMR Advisory Council:

Referencing 12 MRSA §6173 and §6191(C), one commenter alleged that DMR had not sought the advice and consent of the DMR Advisory Council.

The provisions of 12 MRSA §6191(C) specify that a rule may not be *adopted or amended* (emphasis added) without the advice and consent of the DMR Advisory Council. Proposed rules

are not subject to the advice and consent provision. Rather, this section of law applies to final rules that DMR wishes to advance to adoption. In accordance with applicable law, the DMR Advisory Council considers and votes on rules DMR wishes to adopt prior to the final rule being filed with the Secretary of State.

Although proposed rules are not subject to the advice and consent provision, DMR presented this proposal to the DMR Advisory Council at their November 2019 meeting. DMR also sought input from the Aquaculture Advisory Council at their September 2019 meeting.

The provisions of 12 MRSA §6173, give the Commissioner the authority, with the advice and consent of the DMR Advisory Council, to *adopt* (emphasis added) rules relevant to the collection and reporting of statistics. The Commissioner has advanced this rule-making under the authority provided in 12 MRSA §6173. As noted above, the DMR Advisory Council will consider and vote on any rule that DMR wishes to adopt prior to the final rule being filed with the Secretary of State.

“Off-Season” Reporting:

Some commenters noted that their operations are seasonal, so there may be periods of time when harvesting does not occur on a site. The commenter indicated that having to file reports in the “off-season” would be burdensome. However, license holders could file a single monthly report, in advance of non-harvest periods, noting that harvest will not occur on the site during specified month(s).

National Shellfish Sanitation Program (NSSP) Reporting and DMR Reporting:

One commenter noted that the proposed rule would not eliminate any tracking as is currently required if growers are licensed dealers and reporting and tracking required under the NSSP system. The commenter felt that this will result in duplicative reporting and data tracking.

The reporting requirement is specific to the license type. Therefore, an aquaculture license holder who also holds a dealer license, would be subject to any reporting requirements required of the respective license type. These license reporting requirements are consistent across all licenses DMR administers. For example, a licensed lobster dealer who is also a licensed harvester is required to report activities under the licenses he/she holds.

Each license type has different reporting elements, which reflect the activity authorized by the license and the data elements DMR is required or needs to collect for that specific activity.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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

CHAPTER NUMBER AND RULE: Chapter 8 Landings Program

STATUTORY AUTHORITY: 12 MRS 6173

DATE AND PLACE OF PUBLIC HEARING(S):

January 13, 2020 5:30 pm, DMR Offices, RM 118 Marquardt Building, 32 Blossom Lane, Augusta ME

January 15, 2020 5:30 pm, Ellsworth City Hall, Ellsworth ME

Snow date scheduled for January 17, 2020 2:30 pm, DMR Offices, RM 118 Marquardt Building, 32 Blossom Lane, Augusta ME

COMMENT DEADLINE: January 27, 2020

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

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.

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

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

The rule is expected to result in persons holding aquaculture licenses reporting trip level harvesting activity on a monthly basis for all species other than finfish.

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]: Input from Department staff from the Aquaculture Division, the Landings Program, and the Aquaculture Advisory Council.

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

Enforcement of these proposed amendments will not require additional activity in this agency. Existing Landings Program staff will process the reports collected.

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)]