

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 25.65; Lobster and Crab Closure in Penobscot River

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southern most point on Squaw Point on Cape Jellison in the Town of Stockton Springs. In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of the data collected in 2014 through the confirmation work, DMR determined that a consumption advisory is warranted for lobster taken from an expanded area south of the existing closure. Because this remains a discrete area and in order to be health protective, DMR is instead taking immediate action to expand the existing closed area. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in this area as authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192.

EFFECTIVE DATE: 6/21/2016

AGENCY CONTACT PERSON:

AGENCY NAME:

ADDRESS:

WEB SITE:

E-MAIL:

TELEPHONE:

FAX:

TTY:

Hannah Dean

Department of Marine Resources

21 State House Station

Augusta, Maine 04333-0021

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

hannah.dean@maine.gov

(207) 624-6573

(207) 624-6024

(207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

Chapter 25.65 Lobster and Crab Closure in Penobscot River

25.65 Lobster and Crab Closure in Penobscot River

It is unlawful to fish for or take lobsters or crabs by any means from the waters north of a line starting at the ~~most northwestern point of Wilson Point (near the end of Wilson Point Road)~~ western most point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the ~~Fort Point Lighthouse~~ southern most point of Squaw Point on Cape Jellison in the Town of Stockton Springs. This section does not apply to equipment operated by the Department of Marine Resources.

Basis Statement

The Commissioner adopts this emergency rulemaking in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southern most point on Squaw Point on Cape Jellison in the Town of Stockton Springs.

The justification for the expanded boundary of the closed area is based on recent data collected by the Department that shows lobsters in this area may have mercury levels above the Maine Center for Disease Control and Prevention (MECDC) action level. State health agencies use action levels as a guide to determine whether they should issue a consumption advisory warning consumers to limit meals of fish from certain waters. Action levels are defined as concentrations of a contaminant in fish or shellfish tissue below which there should be negligible risk of deleterious health effects, at a consumption rate of one meal per week. An action level takes into account exposure level for a human population, including sensitive subpopulations such as pregnant women and children, body weight, and fish consumption rate.

In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of data collected in 2014 through the confirmation work, DMR determined that a consumption advisory is warranted for lobster taken from an expanded area. Because this remains a very discrete area and in order to be health protective, DMR is instead taking immediate action to expand the existing closed area. DMR will continue to analyze lobster data collected in 2015 and anticipates that additional information would be collected prior to any future regulatory and public health actions. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints.

This emergency rulemaking is necessary to protect the public health. As authorized by 12 M.R.S. § 6171-A(4-A) and 12 M.R.S. §6192, the Commissioner of Marine Resources adopts this emergency regulation. Separate regular rulemaking will be forthcoming to expand this closed area.

Summary of Comments

NA

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Hannah Dean, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; E-mail: hannah.dean@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 25.65

STATUTORY AUTHORITY: **12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192**

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

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

The Commissioner adopts this emergency rulemaking in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the proposed expansion of the existing closed area. Recent confirmation data collected by the Department and analyzed by the Maine Department of Health and Human Services, Center for Disease Control (Maine CDC) indicates that lobsters in this area may have mercury levels above the Maine CDC action level and would warrant a consumption advisory for the most sensitive populations. The Department believes the expansion of the existing closure is warranted. For these reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in the expanded area as authorized by 12 M.R.S. §6171-A(4-A).

As authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192 the Commissioner of Marine Resources adopts this emergency regulation because “immediate action is necessary to protect the public health or public safety or to prevent property damage or serious economic harm to the area in which marine resources are harvested.”

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 protect public health by ensuring that lobsters which may contain levels of mercury above the Maine Center for Disease Control and Prevention action levels for the most sensitive populations are not available for consumption.

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]

The Commissioner adopts this emergency rulemaking in order to protect public health due to the risk of mercury contamination in lobsters and crabs found in the mouth of the Penobscot River north of a line starting at the westernmost point of Perkins Point in the Town of Castine continuing in a northwesterly direction to the southern most point on Squaw Point on Cape Jellison in the Town of Stockton Springs. In 2013, DMR received data warranting the current closure in the mouth of the river, and undertook confirmation work to provide the basis for future management or public health decisions. Based on analysis of the data collected in 2014 through the confirmation work, DMR determined that a consumption advisory is warranted for lobster taken from an expanded area south of the existing closure. Because this remains a discrete area and in order to be health protective, DMR is instead taking immediate action to expand the existing closed area. While the confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs due to enforcement constraints. For these

reasons, the Commissioner hereby adopts an emergency closure to the taking of lobster and crab in this area as authorized by 12 M.R.S. §6171-A(4-A) and 12 M.R.S. §6192.

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

Enforcement of the proposed regulation would not require measurable additional activity in this Agency. Existing enforcement personnel would monitor compliance during their routine patrols.