

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 24 - Importation of Live Marine Organisms**CONCISE SUMMARY:**

Routine health surveillance has 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 emergency rulemaking creates an American oyster restricted area within Quahog Bay and Ridley Cove in Harpswell, Maine. The movement or transfer of American oysters greater than 3 mm in size, from the newly established restricted area to other waters of the state, is prohibited without a permit from the Maine Department of Resources (DMR). 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. This emergency rulemaking is necessary to protect the American oyster resource (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of oysters infected by MSX throughout Maine's waters. As authorized by 12 M.R.S. §6171(3)(A), the Commissioner of DMR adopts this emergency regulation.

EFFECTIVE DATE: February 14, 2021

AGENCY CONTACT PERSON:	Marcy Nelson (207-441-4681)
AGENCY NAME:	Department of Marine Resources
ADDRESS:	State House Station 21 Augusta, Maine 04333-0021
WEB SITE:	http://www.maine.gov/dmr/rulemaking/
E-MAIL:	marcy.nelson@maine.gov
FAX:	(207) 624-6024
TTY:	(888) 577-6690 (Deaf/Hard of Hearing)

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 Oysters₇ (*Ostrea edulis*). All territorial waters in the areas listed below shall be a restricted area for ~~the~~ American oysters₇ (*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).

Basis Statement

Routine health surveillance has 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 emergency rulemaking creates an American oyster restricted area within Quahog Bay and Ridley Cove in Harpswell, Maine. The movement or transfer of American oysters greater than 3 mm in size, from the newly established restricted area to other waters of the state, is prohibited without a permit from the Maine Department of Resources (DMR). 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. This emergency rulemaking is necessary to protect the American oyster resource (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of oysters infected by MSX throughout Maine's waters. As authorized by 12 M.R.S. §6171(3)(A), the Commissioner of DMR adopts this emergency regulation.

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; E-mail: amanda.ellis@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

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

STATUTORY AUTHORITY: 12 M.R.S. §6171(3)(A)

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

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.

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)]

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. The Department will pursue regular concurrent rulemaking to make this emergency regulation permanent.

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.