

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 37 Freshwater Fish Regulations

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

CONCISE SUMMARY:
This rule makes it unlawful to take or possess brown trout which are greater than 25 inches in total length, from the coastal waters of the State of Maine. The rule mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

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

AGENCY CONTACT PERSON: Amanda Ellis (207) 624-6573
AGENCY NAME: Department of Marine Resources
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 Augusta, Maine 04333
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Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____	DATE: _____				
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
010	13A	1120	10	4946	regulations

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

Chapter 37 - Freshwater Fish Regulations

37.01 Method of Taking

It shall be unlawful to fish for or take freshwater fish as defined in 12 M.R.S.A. §6001 (17-A) by any means other than hook and line.

- A. Exception: A person lawfully engaged in the aquaculture of any freshwater fish as defined in 12 M.R.S.A. § 6001 (17-A), shall be exempt from this section provided that that person holds a special license, if required, under 12 M.R.S.A. § 6074.

37.02 Prohibitions on the Taking or Possession of Landlocked Salmon, Brown Trout, and Rainbow Trout

- A. It shall be unlawful to take or possess landlocked salmon, brown trout, or rainbow trout, which are less than 14 inches in total length from the coastal waters of the State of Maine. It shall be unlawful to take or possess landlocked salmon, or brown trout which are greater than 25 inches total length, from the coastal waters of the State of Maine.
- B. Penobscot River: It shall be unlawful to take or possess landlocked salmon, brown trout, or rainbow trout from tidal waters upstream and North of the Penobscot Narrows Bridge and north of the Verona Island Bridge.
- C. A person lawfully engaged in the aquaculture of landlocked salmon, brown trout, or rainbow trout shall be exempt from Chapter 37.02(A) provided that person holds a lease or special license, if required, pursuant to 12 M.R.S. §§6072, 6072-A, 6073-A, 6073-D or 6074.

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 37 Freshwater Fish Regulations

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARING(S): September 10, 2018, 1:00pm, DMR Offices, 32 Blossom Lane, Augusta, conference room 118.

COMMENT DEADLINE: September 21, 2018

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

The proposal mirrors the 25" maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the proposed rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

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 proposed rule will create a maximum length for brown trout.

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 Department considered feedback from industry and conservation organizations. Marine Patrol was also consulted.

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 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.

Basis Statement:

This rule makes it unlawful to take or possess brown trout which are greater than 25 inches in total length, from the coastal waters of the State of Maine. The rule mirrors the 25” maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife. The intent of the rule is to provide brown trout fishermen with a consistent maximum size across waterbodies.

Summary of Comments:

Notice of this proposed rulemaking appeared on August 22, 2018 in the five major daily newspapers as published by the Secretary of State. On August 22, 2018, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. A public hearing was advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and was held as follows: September 10, 2018, 1:00 PM, DMR. The comment period closed September 21, 2018.

Augusta Public Hearing:

Attendance:

Name	Affiliation (If specified)
Jeff Levesque	Native Fish Coalition
Deirdre Gilbert, Sean Ledwin, and Amanda Ellis	DMR Staff

Support (2)

Emily Bastian, Maine State Chair, Native Fish Coalition, submitted via email, September 6, 2018

I am writing on behalf of Native Fish Coalition. Our intent is to provide comments on the proposed rule change, 12 M.R.S. §6171, 37.02, to make it unlawful to take or possess brown trout which are greater than 25 inches in total length from the coastal waters of the State of Maine. Native Fish Coalition (NFC) is a non-profit conservation organization whose mission is to protect, preserve and restore native fish. We are a 501(c)(3) national organization incorporated in Maine. The Maine chapter has a Board of Directors and Advisory Council as well as members, partners and volunteers. Native Atlantic salmon are a focal species for Maine NFC. This proposed rule would make it unlawful to take or possess brown trout which are greater than 25 inches in total length from the coastal waters of the State of Maine. The proposal mirrors the 25-inch maximum for brown trout as established by the Maine Department of Inland Fisheries and Wildlife (DIFW) for all inland waters.

NFC supports the proposed rule change for the following reasons:

- This rule change addresses an inconsistency between how DMR and DIFW were managing brown trout in coastal waters. Specifically, while DIFW has a 25-inch maximum length limit on brown

trout in rivers, streams and brooks, DMR does not currently have a maximum length limit on coastal waters.

- While applied to brown trout, this regulation is intended to protect adult federally endangered Atlantic salmon where the two species overlap. The lack of a 25-inch maximum length limit puts biologically important adult Atlantic salmon at risk of accidental harvest due to species misidentification.
- Adult Atlantic salmon are very difficult to distinguish from adult brown trout in the field. Any Atlantic salmon accidentally hooked cannot be removed from the water and must be released alive at once, making it legally impossible for a fish to be examined closely to attempt to identify the species.
- While brown trout are rare or non-existent in the Penobscot drainage and Downeast rivers and streams, they are common in the Kennebec River watershed and present in the Saco River watershed. Therefore, while somewhat limited geographically, the opportunity for misidentification is possible.

Maine's Atlantic salmon are a Federally Endangered Species and a Maine Tier 1 Species of Greatest Conservation Need. At this point in the recovery process every fish is critically important, especially breeding age adults. We must do everything we can to protect these iconic fish. Adding a 25-inch maximum length limit of brown trout would help protect biologically important adult Atlantic salmon from accidental harvest due to species misidentification, while gaining consistency with DIFW regarding regulations on brown trout on coastal streams to help with law enforcement. Thank you for the opportunity to discuss this matter at the hearing in Augusta on September 10.

Jeff Levesque, Vice Chair, Native Fish Coalition, Public Hearing, September 10, 2018

I am speaking on behalf of Native Fish Coalition. Our intent is to provide comments on the proposed rule change to make it unlawful to take or possess brown trout which are greater than 25 inches in total length from the coastal waters of the State of Maine. NFC supports the proposed rule change for the following reasons: This rule change addresses an inconsistency between how DMR and DIFW were managing brown trout in coastal waters. Specifically, while DIFW has a 25-inch maximum length limit on brown trout in rivers, streams and brooks, DMR does not currently have a maximum length limit on coastal waters. While applied to brown trout, this regulation is intended to protect adult federally endangered Atlantic salmon where the two species overlap. The lack of a 25-inch maximum length limit puts biologically important adult Atlantic salmon at risk of accidental harvest due to species misidentification. Adult Atlantic salmon are very difficult to distinguish from adult brown trout in the field. Any Atlantic salmon accidentally hooked cannot be removed from the water and must be released

alive at once, making it legally impossible for a fish to be examined closely to attempt to identify the species. While brown trout are rare or non-existent in the Penobscot drainage and Downeast rivers and streams, they are common in the Kennebec River watershed and present in the Saco River watershed.

Therefore, while somewhat limited geographically, the opportunity for misidentification is possible. While brown trout are rare or non-existent in the Penobscot drainage and Downeast rivers and streams, they are common in the Kennebec River watershed and present in the Saco River watershed. Therefore, while somewhat limited geographically, the opportunity for misidentification is possible. Maine's Atlantic salmon are a Federally Endangered Species and a Maine Tier 1 Species of Greatest Conservation Need. At this point in the recovery process every fish is critically important, especially breeding age adults. We must do everything we can to protect these iconic fish. Adding a 25-inch maximum length limit of brown trout would help protect biologically important adult Atlantic salmon from accidental harvest due to species misidentification, while gaining consistency with DIFW regarding regulations on brown trout on coastal streams to help with law enforcement.

Department Response to Comments:

In consideration of these comments, the Department will modify the rule as originally proposed. Both commenters indicated that the rule will protect the federally endangered Atlantic salmon. As a matter of clarity, the intent of the rule change is to provide brown trout fishermen with a consistent maximum size across waterbodies. The intent of the rule change was specified in the original filing (see the "Rule Making Fact Sheet"). Any benefits to Atlantic salmon, described by the commenters, are an indirect effect of the rule change.