

Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

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

BRIEF SUMMARY:

The Commissioner proposes this 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 (also known as Rocky 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 in early 2014, 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 would be 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 action to expand the existing closed area. The Department expanded the closed area through an emergency rule-making effective June 21, 2016. This rule-making would make that emergency rule-making permanent. While the 2014 confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs until further analysis can be conducted and management options analyzed.

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

COMMENT DEADLINE: 8/12/2016

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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.

(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 25.65

STATUTORY AUTHORITY: **§12 M.R.S. §6171-A**

DATE AND PLACE OF PUBLIC HEARING: None Scheduled

COMMENT DEADLINE: **8/12/2016**

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

The Commissioner proposes this 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.

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)]

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]

In 2013, DMR received data warranting the current closure in the mouth of the river in early 2014, 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 would be 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 action to expand the existing closed area. While the 2014 confirmation work did not show levels of concern for crabs, the area will remain closed to the harvest of crabs until further analysis can be conducted and management options analyzed.

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.