

Department of Marine Resources
NOTICE OF AGENCY EMERGENCY RULE-MAKING

CHAPTER # & TITLE: Chapter 24.10(D)(6) Maine – Restricted area for American oyster

CONCISE SUMMARY: This emergency rulemaking adds the territorial waters between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol to the list of restricted areas for the movement of the American oyster (*Crassostrea virginica*) when the size of the oyster is greater than 3 mm due to the confirmed presence of MSX. Members of the Damariscotta river area shellfish aquaculture industry have requested this emergency rulemaking and the Department found that emergency rulemaking is appropriate and necessary to prevent the spread of this disease. Separate regular rulemaking will be forthcoming to address the long term impact of this situation. A public hearing will be held in the affected area if requested of the Commissioner in writing by 5 persons. The hearing will be held within 30 days of the Commissioner receiving the written requests. For more information see online information listed or contact below.

EFFECTIVE DATE: October 11, 2010
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Adopted emergency regulations:

Chapter 24 - Importation of Live Marine Organisms

24.10 Permit Issuance Criteria For Shellfish

D. The following geographical areas shall be considered restricted areas for the particular species listed:

- 6. Maine. All coastal waters within the State of Maine shall be a restricted area for the European Oyster, (*Ostrea edulis*). All territorial waters between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol shall be a restricted area for the American oyster, (*Crassostrea virginica*) greater than 3 mm in size.**

Basis Statement

This emergency rulemaking adds the territorial waters between Ocean Point, Linekin Neck, Boothbay to Pemaquid Point, Bristol to the list of restricted areas for the movement of the American oyster (*Crassostrea virginica*) when the size of the oyster is greater than 3 mm.

The Department finds that there is a need for this emergency rule based upon the following information provided to the Department by members of the shellfish industry:

1. Historic pathology testing of market size [American] oysters sent to Rutgers University has had negligible scores for MSX
2. Somewhat higher mortality was observed in spring, 2010, a few percent, but source of mortality was unknown.
3. 3-4% mortality was seen in harvested oysters during wet storage in July and August this year (2010) attributed to post spawning mortality.
4. Pathology test sent to Rutgers University in late August, confirmed MSX (35% systemic infections).
5. Pathology reports received 10/7/10 from Rutgers Lab and MicroTechnologies, Richmond, Maine and held conference call with Dr. Dave Bushek, Dr. Susan Ford and Ms. Emily Scarpa of the Haskins Shellfish Research Laboratory.

In conclusion members of the Damariscotta river area shellfish aquaculture industry have requested this emergency rulemaking to require no movement of oysters greater than 3mm out of the Damariscotta River estuary to any other water bodies. The Department agrees and finds that this emergency rule is necessary and appropriate to prevent the spread of MSX infection outside of the currently affected area. Separate regular rulemaking will be forthcoming to address the long term impact of this situation.

This emergency rulemaking is necessary to protect the American oyster resources (aquaculture and wild) from unusual damage and or imminent depletion that would be caused by continued uncontrolled movement of infected oysters throughout Maine's waters. As authorized by 12 M.R.S. §§6071 and 6171(3) the Commissioner of Marine Resources adopts this emergency regulation.