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Director

Commonwealth of Massachusetts

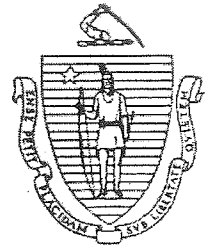
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August 8, 2019

Fall 2019 Fisheries Public Hearing Notice

Under the provisions of M.G.L. c. 30A and pursuant to the authority found at M.G.L. c. 130 §§ 2, 17A, 80 and 104, the Division of Marine Fisheries (DMF) is proposing the draft regulatory amendments to 322 CMR §§5.00, 6.00 and 7.00 listed below.

1. **Commercial Tautog Permitting and Tagging Program (322 CMR 6.40 and 7.00)**. DMF is proposing to implement a commercial point-of-harvest tagging program affecting commercial fishermen and seafood purveyors for 2020. This tagging program is mandatory to comply with Amendment 1 to the Atlantic States Marine Fisheries Commission's Interstate Tautog Fishery Management Plan. To administer this program, DMF is also proposing to limit entry into this fishery and reduce the number of commercial tautog permits through the use of the control date and eligibility criteria. DMF has published a detailed tautog tagging proposal document on its website to further explain this proposal.
2. **Lobster Control Date for LCMA1 (322 CMR 7.04)** DMF is proposing to establish an April 29, 2019 control date for the LCMA1 lobster trap fishery. This serves to notify current and future permit holders that their participation in this fishery may be affected by their ability to document prior landings, effort and gear configuration. This is consistent with action taken by the Atlantic States Marine Fisheries Commission's Lobster Board in response to ongoing deliberations by the Board and the federal Atlantic Large Whale Take Reduction Team.
3. **Coastal Sharks**. DMF is proposing a suite of regulations to comply with recent amendments to the Interstate Coastal Shark Fishery Management Plan and federal regulations. This includes minimum size adjustments for mako sharks, mandating the use of inline corrodible circle hooks, and adopting constraints on the retention of other shark species.
4. **Period I Fluke Trip Limits (322 CMR 6.22)**. DMF is proposing to increase the Period I (February 1 – April 22) fluke trip limits from 500 pounds to 1,000 pounds per trip, and to potentially allow the possession and landing of fluke at this 1,000 pound limit during the month of January.
5. **Ocean Quahog Trip Limit (322 CMR 6.08)**. DMF is proposing to take public comment on a public petition to reduce the state-waters ocean quahog trip limit from 26 cages to 8 cages.
6. **Retail Farmer's Market Permit (322 CMR 7.01)**. DMF is proposing to establish a new category of retail dealer permits to better accommodate the retail sale of seafood at farmer's markets. This will not result in a new fee.
7. **Housekeeping (322 CMR 5.00, 6.33, 6.34 and 6.35)**. DMF is proposing technical changes to improve the state's regulatory code. This includes codifying the moratorium on the commercial harvest of northern shrimp, restrictions on the harvest of horseshoe crabs in Pleasant Bay; and the 6,000 lb spiny dogfish trip limit. DMF also proposes to adopt consistent terminology throughout the state's lobster regulations.

Public Hearing Schedule

The Division of Marine Fisheries has scheduled one public hearing to take comment on these proposals.

The public hearing is scheduled for:

**6 PM
September 11, 2019
Admiral's Hall
MA Maritime Academy
101 Academy Drive
Buzzards Bay, MA 02532**

Public Comment Instructions

The Division of Marine Fisheries will accept written public comment through 5PM on Thursday, September 12, 2019. Please address all written comments to Director Pierce and submit to DMF by e-mail at marine.fish@state.ma.us or by post to 251 Causeway Street, Suite 400, Boston, MA 02114.

For a copy of the strikethrough regulatory text or the detailed tautog tagging proposal document, please visit our [website](#) or contact Jared Silva (jared.silva@state.ma.us; 617-626-1534).

Initial Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

CMR No: 322 CMR 5.00, 6.00 & 7.00

Estimate of the Number of Small Businesses Impacted by the Regulation: In 2018, DMF issued 5,001 commercial fisherman permits. Each of these permit holders may be affected by these regulations depending on their specific fishing activities. The subset of affected permit holders is difficult to estimate, however, it is likely to be only a fraction of the total number of permit holders.

Select Yes or No and Briefly Explain

Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p>Will small businesses have to create, file, or issue additional reports?</p> <p>The proposed commercial tautog tagging regulations will require commercial tautog permit holders to tag fish at sea and file an annual tagging report with DMF. This is necessary to comply with the federal law 16 U.S.C. 5100. All other proposed do not impact the existing reporting requirements established pursuant to G.L. c. 130 s. 21.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p>Will small businesses have to implement additional recordkeeping procedures?</p> <p>The proposed commercial tautog tagging regulations will require commercial tautog permit holders to tag fish at sea and file an annual tagging report with DMF. This is necessary to comply with the federal law 16 U.S.C. 5100. All other proposed do not impact the existing record keeping requirements.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p>Will small businesses have to provide additional administrative oversight?</p> <p>The proposed commercial tautog tagging regulations will require commercial tautog permit holders to tag fish at sea. This is necessary to comply with the federal law 16 U.S.C. 5100. All other proposed do not address administrative oversight.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</p> <p>DMF does not anticipate the proposed regulations create an additional burden that would then require the affected small businesses to hire additional employees to comply with these new requirements.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</p> <p>DMF does not anticipate the proposed regulations create an additional burden that would then require the affected small businesses to hire professional services to comply with these new requirements.</p>
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<p>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</p> <p>The proposed commercial tautog tagging regulations will require commercial tautog permit holders who seek to fisher commercial for tautog to tag tautog at-sea. These businesses will also be required to purchase a tag applicator at an estimated cost of less than \$30. This is necessary to comply with the federal law 16 U.S.C. 5100. All other proposed rules do not require capital investment.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective?</p> <p>(Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards specify exactly what actions regulated parties must take.)</p> <p>DMF regulations control the harvest of marine species to comply with federal law, manage state-quotas and protect the environment. Performance standards are not appropriate without individual transferable</p>

		quotas allocated to individual fishermen. Managing state-waters fisheries with individual quotas would have negative economic impacts across the seafood industry.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Do any other regulations duplicate or conflict with the proposed regulation? No duplicative or conflicting regulations are being filed.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities? The proposed commercial tautog tagging regulations will require commercial tautog permit holders to tag fish at sea and limits the ability for dealers to receive untagged fish. This is necessary to comply with the federal law 16 U.S.C. 5100. All other proposed do not address administrative oversight.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements? The proposed regulations affect the times, places, and means of catching fish, the quantities of fish to be taken, as well as fisheries permitting. These regulations do not require these small businesses to provide educational services to keep up to date with regulatory requirements.
Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts? Yes. DMF is limiting the number of potential commercial tautog fishing businesses in order to effectively administer the tautog tagging program and comply with the federal law 16 U.S.C. 5100. All other proposed regulations are not expected to impact the formation of small businesses in Massachusetts. Other factors, such as permit and vessel availability and cost, are the constraining factors in the formation of new businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts? The regulation liberalizes adjusts commercial fishing regulations; addresses issues of public interest; insures compliance with federal law; and improves conservation management. Doing so will have no impact on the formation of small businesses in Massachusetts. Other factors, such as permit and vessel availability and cost, are the constraining factors in the formation of new businesses.
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation provide for less stringent compliance or reporting requirements for small businesses? No. The tagging and reporting criteria set forth in tautog tagging program are necessary to comply with the federal law 16 U.S.C. 5100. DMF is afforded some opportunity to determine: (1) whether tags need to be applied at retention on prior to the conclusion of commercial fishing; (2) whether or not to require tagging reports be submitted to DMF before 90-days after the end of the commercial fishing season; and (3) if dealers should be required to not hold MA caught product after a certain period after the end of the season. All other proposed regulations do not address compliance or reporting requirements.
Yes <input checked="" type="checkbox"/>	No <input checked="" type="checkbox"/>	Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses? No. The tagging and reporting criteria set forth in tautog tagging program are necessary to comply with the federal law 16 U.S.C. 5100. DMF is afforded some opportunity to determine: (1) whether tags need to be applied at retention on prior to the conclusion of commercial fishing; (2) whether or not to require tagging reports be submitted to DMF before 90-days after the end of the commercial fishing season; and (3) if dealers should be required to not hold MA caught product after a certain period after the end of the season. All other proposed regulations do not address compliance or reporting requirements.
Yes	No	Did the agency consolidate or simplify compliance or reporting requirements for small

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>businesses? Yes. DMF is afforded some opportunity to determine: (1) whether tags need to be applied at retention on prior to the conclusion of commercial fishing; (2) whether or not to require tagging reports be submitted to DMF before 90-days after the end of the commercial fishing season; and (3) if dealers should be required to liquidate their supply of MA caught tautog after a certain period following the end of the commercial season. All other proposed regulations do not address compliance or reporting requirements. Public comment will inform DMF's final decision making on these issues.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective? No, operational standards are needed.</p>
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	<p>Are there alternative regulatory methods that would minimize the adverse impact on small businesses? No. These regulations are necessary to comply with federal law, manage state-quotas, address compliance with fishery limits and ensure the sustainable management of marine fisheries. These rules are critical components to successful fisheries and resource management. Adjusting these long-standing requirements would likely negatively impact small businesses because it could reduce availability of fish species and create conflicts between various user groups.</p>