

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 26 Sea Urchin Regulations and Targeted Closure

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

This rule establishes a targeted closure in the Cat Ledges Area in order to facilitate an industry-led Pilot Sea Urchin Restoration Project in the area. The area will be closed for three years and will expire on May 1, 2018 when the project is anticipated to be complete. The goal of the project is to evaluate success of transplanting wild sea urchins and the out planting of hatchery raised juvenile sea urchins as a means to reestablish a colony of commercially viable urchins in an area that once supported wild harvest, where they are now commercially extinct. This effort has been developed through the Sea Urchin Zone Council (SUZC) and is an industry-led project with harvesters conducting the majority of the work with the support of the SUZC's scientists. In addition, this regulation removes the restriction that Zone 2 divers may not possess, fish or take urchins with a bag having a mesh opening of less than 2 ¼ inches between knots, as Zone 2 divers are now required to cull undersized urchins on bottom.

As authorized by 12 M.R.S. § 6171, the Commissioner of Marine Resources adopts this regulation.

EFFECTIVE DATE: October 26, 2015

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DEPARTMENT OF MARINE RESOURCES

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CHAPTER 26 - SEA URCHIN

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Chapter 26 - Sea Urchin Regulations

~~26.06 Sea Urchin Catch Bag Mesh Regulation for Zone 2~~

~~1. Catch Bag Mesh Size for Zone 2~~

~~It shall be unlawful for a sea urchin diver or raker to fish for or take sea urchins in Zone 2 using a bag having a mesh opening of less than 2 ¼ inches between knots. It shall also be unlawful to possess a bag having a mesh opening of less than 2 ¼ inches between knots on board any vessel which is fishing for or taking sea urchins in Zone 2, or which is engaged in the transfer or transport of sea urchins taken by Zone 2 divers or rakers.~~

~~2. Mesh Measurement~~

~~Mesh sizes are to be measured by a flat wedged-shaped gauge having a taper of 4 cm. in 20 cm. and having a thickness of 2.3 mm., inserted into the meshes under a pressure or pull of 1.90 kg. The mesh size of a net shall be the average of the measurements at least 10 meshes, each at least 1 mesh away from any seam or lacing.~~

26.20 Targeted Closures

It shall be unlawful to fish for, take, or possess urchins taken by any method within any of the following closed areas. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing urchins onboard, may transit these targeted closures, only if the vessel has all fishing gear (dredges, drags, regulators, buoyancy compensators, fins, tanks, weight belts) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at the block or on the winch for draggers, while regulators, buoyancy compensators and tanks should be disconnected with fins and weight belts removed for divers.

(1) Cat Ledges Area:

It shall be unlawful to fish for, take, or possess urchins inside a line drawn from the southern tip of Hendricks Head, Southport Island, to Red Nun "6", then south to Red Gong "4CL", then southeast to Red Nun "2", then northeast to the southwestern tip of Cape Newagen.

This section Chapter 26.20 (1) sunsets May 1, 2018.

Basis Statement

Chapter 26 Sea Urchin Regulations and Targeted Closures

This rule would establish a targeted closure in the Cat Ledges Area in order to facilitate an industry-led Pilot Sea Urchin Restoration Project in the area. The closure is proposed for three years and will expire on May 1, 2018 when the project is anticipated to be complete. The goal of the project is to evaluate success of transplanting wild sea urchins and the out planting of hatchery raised juvenile sea urchins as a means to reestablish a colony of commercially viable urchins in an area that once supported wild harvest, where they are now commercially extinct. This effort has been developed through the Sea Urchin Zone Council (SUZC) and is an industry-led project with harvesters conducting the majority of the work with the support of the SUZC's scientists. In addition, this regulation would remove the restriction that Zone 2 divers may not possess, fish or take urchins with a bag having a mesh opening of less than 2 ¼ inches between knots, as Zone 2 divers are now required to cull undersized urchins on bottom.

Summary of Comments

Chapter 26 Sea Urchin Regulations and Targeted Closures

A public hearing was held in Augusta on September 15, 2015. Notice of this proposed rulemaking was given on August 26, 2015 on the following: the DMR website, the DMR rulemaking interested parties e-mail list, the DMR Advisory Council via e-mail, the Secretary of State's proposed rulemaking website, five daily newspapers, and via postcard and GovDelivery to all Maine licensed urchin harvesters, buyers and processors. The summarized comments received either at the public hearing, via e-mail or by letter are sorted by topics with Department responses at the end of each section.

Comments on the Cat Ledges Closure

Opposed

Brian Preney, Zone 1 urchin diver, past Sea Urchin Zone Council (SUZC) chairman, and past SUZC vice chairman, West Bath; comment submitted at Augusta public hearing: I speak tonight in opposition to proposed regulation. I am opposed because of:

1) The scope of closure far exceeds the requirements for the study that is being done. The proposed area is roughly five times larger than the entire Cat Ledges area. The Cat Ledges are an immense piece of varied urchin bottom. The area within the Cat ledges is easily large enough for the small amount of urchins for the proposed study. The reasons stated by the DMR for the large areas are ease of enforcement. This reason does not have validity since the entire Cat Ledges area is visible from a road on the Southport shore. Needlessly closing such a large area put harvesters at risk of losing too much bottom should the project be extended beyond the stated sunset date.

DMR Response: Although the islands in the region may be visible from Southport, the study sites will be on submerged ledges that are not visible. The Department must define the closed area in terms of easily identifiable boundaries some distance from the study sites to aid with enforceability of the area by Marine Patrol. There must be a sufficient buffer around the study sites so that a diver could not swim underwater (and undetected) to the study site from a boat waiting outside the closed area. We do not anticipate that closing an area in a bay that the commenter agrees is "challenged" will remove much useful, fishable bottom from harvester access.

2) Taking live urchins from anywhere nearby for this projects put an already challenged bay at risk. All documented attempts at moving urchins have failed. Much time and money has already been wasted. One participant in this projects claims to have had success moving urchins. His attempts have been ones where urchins are already thriving. The Sheepscot has experienced a die off recently and no evidence of regrowth, especially in the Cat Ledges, has been witnessed.

DMR Response: The project will include harvesting and transplanting about 720 lbs of urchins, slightly more than one day's typical catch for one commercial Zone 1 diver. Taking live urchins from anywhere in Zone 1 is currently legal, for licensed harvesters fishing in season.

There have been successful sea urchin translocations in eastern Maine, in other parts of the world, and by at least one of the divers involved in this project. Documented Maine translocation projects that were not successful have either involved urchins dragged from very deep sites, or urchins moved during years of relatively high rock and Jonah crab abundance (sea urchin predators). Urchins in this project will not be dragged, and will not be from deep sites. Crabs are much less abundant today than they were during past failed attempts, and the project is timed to correspond with annual low crab observations to further negate this potential negative interaction.

We are not sure what the commenter meant when he referenced a die-off. Perhaps he was suggesting that the transplanted urchins will not thrive at the proposed study site. We know (from harvester interviews) that the site was highly prolific for urchins for many years in the past. The site was surveyed in July 2015, and a few sea urchins were found there, so at least a few survived or have repopulated the site.

3) Part of study is the out plant of hatchery urchins. No studies have proven that these urchins can survive in the wild and possibly this could results in unanticipated health problems for the remaining wild urchins attempting to make a comeback elsewhere in the river. This is one of main reasons to keep study area small.

DMR Response: You can't prove whether something will work unless you try it. Out-planting hatchery seed for similar sea urchin species has been conducted in Japan for many years. Local hatchery-raised urchins were out-planted in 2010 at two sites in Penobscot Bay, and at least a few were still surviving two years later at both sites. More growth and higher recovery rates were seen at the site with greater water currents (more abundance of drift algae), a mixed cobble/shell substrate (refuges for a greater size range of urchins), and the presence of adult urchins and macroalgae. Similar habitat will be chosen at Cat Ledges for the translocation and reseeding locations. The hatchery urchins will be raised in Maine from brood stock collected from the wild in Maine, so the risk of introducing new diseases or genetically different urchins is insignificant.

The approximate area of the study plots will be about 900 square meters, a small area within the closed area.

4) The effort required to make this project work far outweighs any commercial payback and will only burden tax payers with continued efforts to make it work.

DMR Response: Most of the effort to make this project work is being provided by fishermen volunteers whose previous experience suggests to them that it will work. It is a pilot project to test a concept. The concept we hope to test is the idea that a few small patches of transplanted and seeded urchins in carefully chosen locations, if left alone, will grow, spread, and create an area that is hospitable to settlement by other wild urchins. If so, a larger area could be returned to commercial fishing status with relatively little effort by individual fishermen working alone or in small groups. Otherwise, vast areas of our coast, that used to support a commercial urchin fishery, will remain as depleted as they have been for more than ten years.

Brian Soper, Zone 1 diver, Harpswell; comment submitted at Augusta public hearing: I'm familiar with project, I know what they are doing. They have enough space. They do not need any more space. They don't need to do this. I hate to say it, I have been involved in studies moving urchins ever since I can remember and every project has been unsuccessful. All the sea urchins do is die. I have been involved in many projects. I have worked with the DMR trying to move sea urchins before. It doesn't work. Enlarging this area is not needed to be done. They have a large enough study area, that way it is not impinging on the free right for people to dive out there.

DMR Response: The divers who are volunteering for this project believe it can work. Some of them have also moved urchins in the past with more success than the commenter. The area of the project closure will probably not impinge on anyone's fishing location choices because no-one has fished in this area in the past 2 years and only 2 divers, other than those participating in this project, fished there in 2010 or 2011.

Comments on the Mesh Size Requirement removal

In Support

Jollette Rossi-West, Noel Marine Supplies, Milbridge; comment submitted via email: I would like to comment on the upcoming Sea Urchin Regulation Proposals regarding the urchin dive bags with a mesh opening of less than 2 1/4 inches between knots for Zone 2 harvesters. I have a retail marine store in Milbridge and have not been able to purchase the regulation mesh bags in the past two years. I am not familiar with anyone who has the bags in stock so it is virtually impossible for me to purchase the bags to sell to the local harvesters. As a business owner I would like to see the regulation changed to eliminate the large mesh bags.

Please let me know if I should forward this email to another source for the public comment regarding this regulation. Thank you.

DMR Response: We agree with the commenter and are removing the requirement from the regulation.

Rule-Making Fact Sheet

(5 M.R.S.A., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 26 Sea Urchin Regulations and Targeted Closure

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARINGS:

September 15, 2015, 6:00 PM, DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta

DEADLINE FOR COMMENTS: **September 27, 2015**

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

For purposes of conservation, pursuant to 12 M.R.S. §6171 and §6749, this proposed rule seeks to conserve the sea urchin resource for utilization in the future, and therefore should have a positive impact on Maine's fishing industry in the long term. This rule would establish a targeted closure in the Cat Ledges Area in order to facilitate an industry-ledge Pilot Sea Urchin Restoration Project in the area. The closure is proposed for three years and will expire on May 1, 2018 when the project is anticipated to be complete. The goal of the project is to evaluate success of transplanting wild sea urchins and the out planting of hatchery raised juvenile sea urchins as a means to reestablish a colony of commercially viable urchins in an area that once supported wild harvest, where they are now commercially extinct. This effort has been developed through the Sea Urchin Zone Council (SUZC) and is an industry-led project with harvesters conducting the majority of the work with the support of the SUZC's scientists. In addition, this regulation would remove the restriction that Zone 2 divers may not possess, fish or take urchins with a bag having a mesh opening of less than 2 ¼ inches between knots, as Zone 2 divers are now required to cull undersized urchins on bottom.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

This proposed rule seeks to conserve the sea urchin resource for utilization in the future; if it is successful in doing so it will have a positive impact on small business (sea urchin harvesters) in the long term. The Department worked with the Sea Urchin Zone Council to develop this combination of proposed rule changes.

FISCAL IMPACT OF THE RULE:

Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.