

# Rule-Making Cover Sheet

TO: Secretary of State  
ATTN: Administrative Procedure Officer,  
State House Station 101, Augusta, Maine 04333.

APR 15 1997

97-125

1. Agency: Department of Marine Resources

2. Agency umbrella and unit number: 13-188A

3. Title of Rule: Bluefish Rules

4. Chapter number assigned to rule: Chapter 43

5. Date(s)/method(s) of notice: Secretary of State Notice of Agency Rule-Making,  
March 5, 1997

6. Date(s)place(s) of hearing(s):

March 24, 1997, 7:00pm, Atrium, Cooks Corner, Brunswick

March 25, 1997, 7:00pm, Samoset Resort, Rockport

March 26, 1997, 7:00pm, Saco Elks Club, Saco

7. Type: ☐ new rule ☒ partial amendment(s) of existing rule  
☐ suspension of existing rule ☐ repeal of rule ☐ emergency rule  
☐ repeal and replace; complete replacement of existing chapter, with former  
version simultaneously repealed.

8. Name/phone of agency contact person: Lewis N. Flagg / Tel: 624-6341

9. Certification Statement: I, Robin Alden,  
hereby certify that the attached is a true copy of the rule(s) described above and  
lawfully adopted by the Department of Marine Resources on April 15, 1997.

Signature: Robin Alden

Printed Name & Title: Robin Alden, Commissioner

10. Approved as to form and legality by the Attorney General on April 15, 1997

Signature: Thomas Harnett

Printed Name & Title: Thomas Harnett, Attorney General's Assistant

Department of Marine Resources

Chapter 43 - Bluefish

43.01 Bluefish Limits

- A. Daily and Possession Limits. Except as provided in 43.01(B) it shall be unlawful for any person to take, catch, kill, or possess more than ~~40~~ 3 bluefish per day.
- B. Exemptions. The daily limit and possession limit shall not apply to persons licensed under 12 M.R.S.A. Sections 6501 and 6421. The possession limit shall not apply to persons licensed under 12 M.R.S.A. 6851 and 6852.

EFFECTIVE DATE: *April 21, 1997*

# Summary of Comments

## BLUEFISH

Three public hearings were held in Brunswick, Saco and Rockport to receive comment on the proposal to reduce the daily bag limit on bluefish from ten (10) fish per day to three (3) fish per day. A total of 272 people attended these three hearings. Of those that spoke on the bluefish proposal, seven spoke in favor and six spoke against. There were numerous questions and comments, neither for nor against. Four letters were received on the bluefish proposal, two of which were in favor, two opposed.

Those in favor felt that three bluefish were more than adequate for a creel limit since the stocks were depressed and the fish average 8-12 lbs each, allowing each fisherman a harvest of 30 lbs per day. A letter from the Maine Chapter Coast Conservation Association, representing 600 Maine members, was in support of the proposal.

There were seven people who spoke in opposition to the proposal as follows:

- The commercial fishery should be cut back rather than impose reduction on the recreational harvest. **DMR response:** 83% of all bluefish harvested annually are taken by recreational fishermen and they have the biggest impact on the stock. The commercial fishery is limited to 20% of the total annual harvest. As the recreational harvest declines due to new creel limits, the commercial harvest will be adjusted downward so as not to exceed 20% of the total annual harvest of bluefish.
- Other states south of Maine should be doing more to conserve bluefish before Maine adopts more restrictive regulations. **DMR response:** Other states are in the process of reviewing options to reduce their bluefish harvest and will be taking action in the near future to address bluefish conservation.
- If the current bluefish limit is 10 outside Maine waters (beyond three miles), how can Maine enforce a three fish limit? **DMR response:** Anyone coming into Maine waters must abide by Maine law and all Maine boats must comply with Maine laws while fishing in the EEZ.
- The reduction in the creel limit would adversely impact the Annual Bluefish Tournament in Bath. **DMR response:** The bluefish stock is in decline and we must consider the biological health of the stock in making management changes.

### LIST OF COMMENTERS:

#### Proponents

Pat Keliher, Freeport  
Stu Libby, York  
Brad Dyer, Cape Porpoise  
Cal Robinson, Saco  
Merrill Robbins, Scarborough  
Dana McLellan, Buxton  
Stephen Elliot, North Monmouth

#### Opponents

Tom Littell  
Carey Strout, Kittery  
Bob Boilard, Biddeford  
Milton Aldridge, Wells  
Roger Marceaux, Ashland  
Bob Booth, Augusta

**ADMINISTRATIVE PROCEDURE ACT  
CHECKLIST**

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 43      Bluefish Rules

1. Was this rule listed on the last regulatory agenda? YES
2. Date of notification of:  
    Anyone on mailing list March 5, 1997  
    Any trade, industry or  
    professional group March 5, 1997  
    Any trade publications March 5, 1997
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: Feb. 24, 1997
4. Date Fact Sheet sent to Executive Director of Legislative Council: Feb. 24, 1997
5. Date of publication in Secretary of State's rule-making ad.: March 5, 1997
6. Date of hearing(s): March 24,25,26, 1997 7. Comment deadline: April 7, 1997
8. Was comment deadline extended or comment period reopened? NO
9. Is adopted rule consistent with what was proposed? YES  
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1, #9)  
authorized to do so as stated in your statutes or in 5 MRSA, c.71? YES
11. Was the rule adopted within 120 days of the comment deadline? YES
12. Was the rule approved and signed by the Office of the  
Attorney General within 150 days of the comment deadline? YES
13. Is a Basis Statement included? YES Is a copy of the Fact Sheet included? YES  
  
Are comments, with names and organizations, and your responses included? YES

# STATE OF MAINE

## Inter-Departmental Memorandum

*To* Sarah Tubbesing *Date* February 24, 1997  
*From* Brian Swan *Dept* Legislative Council #115  
*Subject* Fact Sheet for Agency Rule Making Proposal

Pursuant to Section 7, 5 M.R.S.A., §8057-A I am submitting information regarding a Department of Marine Resources rule proposal. The Department is proposing this regulation under the authority of 12 M.R.S.A., §6171.

1. Rule Title Bluefish Limits

2. Concise Summary of the Proposed Rule

This proposed regulation reduces the daily creel limit on bluefish from 10 fish to 3 fish.

3. Regulatory Goals and Objectives

This proposed regulation is intended to reduce harvest, increase the size of the spawning population, and promote recovery of the stock.

4. Estimated Economic Impact on Small Business

This regulation may have some short term economic impact on small business.

5. Estimated Fiscal Impact of the Proposed Rule

None.

## NOTICE OF AGENCY RULE-MAKING PROPOSAL

AGENCY: Department of Marine Resources

RULE TITLE OR SUBJECT: Bluefish Limits

PROPOSED RULE NUMBER:

CONCISE SUMMARY: (SHOULD BE UNDERSTANDABLE BY AVERAGE CITIZEN)

This proposed regulation amendment reduces the daily creel limit on bluefish from 10 fish to 3 fish. The Atlantic coast stock of bluefish has declined significantly over the past five years. This proposed reduction in the daily creel limit is intended to reduce harvest, increase the size of the spawning population, and promote recovery of the stock.

THIS RULE WILL \_\_\_\_\_ WILL NOT X HAVE A FISCAL IMPACT ON MUNICIPALITIES.

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

PUBLIC HEARINGS: Three public hearings on this proposal will be held at:

- 1) On Monday, March 24, 7p.m. at the Atrium Inn and Convention Center, Cooks Corner, Brunswick.
- 2) On Tuesday, March 25, 7p.m. at the Penobscot Room, Samoset Resort, Rockport.
- 3) On Wednesday, March 26, 7p.m. at the Saco Elks Club, 769 Portland Road, Saco.

DEADLINE FOR COMMENTS: April 7, 1997

AGENCY CONTACT PERSON:

NAME: Lewis N. Flagg  
ADDRESS: Department of Marine Resources  
State House Station #21  
Augusta, Maine 04333

PHONE NUMBER: 624-6340

PLEASE APPROVE BOTTOM PORTION OF THIS FORM AND  
ASSIGN APPROPRIATE MFASIS NUMBER

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
010	13A	A120	102		4946	

## NOTICE OF AGENCY RULE-MAKING ADOPTION

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 43 Bluefish Limits

**ADOPTED RULE NUMBER:** 43.01

(LEAVE BLANK - ASSIGNED BY  
SECRETARY OF STATE)

**CONCISE SUMMARY:** This amended rule restricts recreational fishermen to a daily and possession limit of three (3) bluefish. Commercial fishermen licensed under 12 M.R.S.A. §6501 and §6421 are exempt from the daily and possession limits. Wholesale and retail seafood dealers licensed under 12 M.R.S.A. §6851 and §6852 are exempt from the possession limits.

**EFFECTIVE DATE:** April 21, 1997

(TO BE FILLED IN  
BY SECRETARY OF STATE)

**AGENCY CONTACT PERSON:** Lewis N. Flagg

**AGENCY NAME:** Department of Marine Resources

**ADDRESS:** 21 State House Station  
Augusta, Maine 04333

**TELEPHONE:** 624-6341

---

Please approve bottom portion of this form and  
assign appropriate MFASIS number.

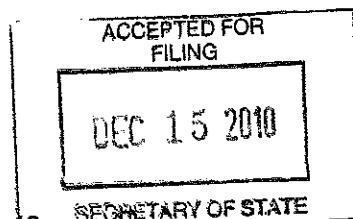
**APPROVED FOR PAYMENT**  **DATE:** 4/15/97

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
010	13A	A100	102		4946	

# Rule-Making Cover Sheet

2010-621

1. **Agency:** Department of Marine Resources
2. **Agency umbrella and unit number:** 13-188A



3. **Title of Rule:** Chapter 43 Bluefish
4. **Chapter number assigned to rule:** Chapter 43

5. **Date(s)/method(s) of notice:** October 27, 2010 edition of the Secretary of State's Notice of Rule Making column
6. **Date(s)place(s) of hearing(s):**  
Nov. 15, 2010, 6pm, State Ferry Terminal (Conf Rm), 517A Main St, Rockland  
Nov. 16, 2010, 7pm, Community Room, Yarmouth Town Hall, 200 Main St, Yarmouth
7. **Type:** ☐ new rule ☒ partial amendment(s) of existing rule  
☐ repeal of rule ☐ emergency rule  
☐ repeal and replace; complete replacement of existing chapter, with former version simultaneously repealed.

8. **Name/phone of agency contact person:** Laurice U. Churchill, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Tel: (207) 633-9584

9. **If a major substantive rule under Title 5 c. 375 sub-c. II-A, check one of the following:**  
☐ Provisional adoption (prior to Legislative review) ☐ Final adoption

10. **Certification Statement:** I, George D. Lapointe, hereby certify that  
(Name of official empowered to adopt rules)  
the electronic text identified as follows: DMR43.doc  
is a true copy of the rule(s) described above. I further certify that all portions of this rule are adopted in compliance with the requirements of the Maine Administrative Procedure Act.

Department of Marine Resources on 15 December 2010  
(Name of agency) (date)

Signature: \_\_\_\_\_

(Original signature, personally signed by the head of agency)

**Printed Name & Title:** George D. Lapointe, Commissioner

11. **Approved as to form and legality by the Attorney General on** 12/15/10  
(date)

Signature: \_\_\_\_\_

(Original signature, personally signed by an Assistant Attorney General)

**Printed Name & Title:** Mark A. Randlett, Assistant Attorney General

File with the APA Office, Secretary of State, 101 State House Station, Augusta, ME 04333

MAPA-1

EFFECTIVE DATE:

DEC 20 2010



# DEPARTMENT OF MARINE RESOURCES

## Chapter 43 - Bluefish

### 43.01 Bluefish Limits

#### 1. Method of Taking

##### A. Daily and Possession Limits.

Except as provided in 43.01(BA)(1) it shall be unlawful for any person to take, catch, kill, or possess more than 3 bluefish per day.

(1)B- Exemptions. The daily limit and possession limit shall not apply to persons licensed under 12 M.R.S.A. §6501 and §6421. The possession limit shall not apply to persons licensed under 12 M.R.S.A. §6851 and §6852.

B. It is unlawful to use multiple (more than two) barbed or barbless treble hooks on any artificial lure or flies while fishing for bluefish.

C. It is unlawful to use treble hook(s) when using bait.

The following becomes effective January 1, 2013:

It is unlawful to use any hook other than a circle hook when using bait. For purposes of this chapter the definition of circle hook means "a non-offset hook with a point that points 90° back toward the shaft of the hook".

D. Any striped bass killed during the take of bluefish becomes part of the daily bag limit in accordance with Chapter 42.02.

# Basis Statement

## Chapter 43 Bluefish

The Department is required to work within the framework provided by the ASMFC Management Plan that limits options when considering state management plan changes and has explored rule changes that could protect bluefish. Fishing for bluefish with bait is an efficient means of catching bluefish during the spring, summer, and fall and a popular method of catching all sizes of bluefish. There are advances in gear types that can enhance the conservation of current bluefish stocks without imposing stricter bag limits, seasons, or closures.

One area where improved conservation could occur is reduction of the discard mortality for bluefish caught and released by recreational anglers. The discard mortality for bluefish is ~69% for bluefish that swallow a baited hook, and/or are hooked in the stomach, and then released. A study conducted to look at the survival of bluefish caught and released by hook and line (Williams, E.H. 1995. Survival of fish captured by hook and released. Masters Thesis, University of Rhode Island, Kingston. Studies conducted separately on striped bass, for comparison to the bluefish studied, indicate that mortality with the use of circle hooks can be as low as 0.08, or less than 1%. One of the best studies conducted may be found online at <http://www.dnr.state.md.us/fisheries/recreational/articles/crsb.html>.

This was a Maryland Coastal Conservation Association (CCA), Maryland Charter Boat Association, and Maryland Saltwater Sportsman Association Study.

Regarding multiple treble hooks; based on angler and staff observations when two or more sets of treble hooks are "impaled" in a bluefish the amount of handling time is greatly increased resulting in injuries that subsequently lead to increased mortality

It is the Department's position that these conservation measures are necessary and takes into consideration requests to allow tackle inventory to be sold (similar to the process used when converting from lead sinkers to less toxic sinker materials that lessen or eliminated the tackle shop's economic impact); and to use the next two seasons as a period for education of the public and guides, plus address the use of bait on treble hooks to reduce deep-hooking mortality, Chapter 43.01(1)(C) would be modified to delay the use of bait on hooks other than circle hooks until January 1, 2013. Plus, during the interim period, as suggested by comment, the use of bait on treble hooks would be prohibited, thus giving an interim period to adjust to the new restrictions. These modifications are not considered substantive changes to the proposed rules as they offer a mechanism to find a balance to the range of comments and suggestions.

A technical correction has been made to Chapter 43.01(1)(B) removing the text 'in territorial waters'. This phrase was removed based upon a question that resulted in a review to find that this should not have been in these rules and was a typo carried over from the similar striped bass rules. Similarly, section D was also found to be unnecessary and removed based on a commenter's question regarding the use of bluefish when fishing for tuna.

As authorized by 12 M.R.S. §6171 and §6312, the Commissioner of Marine Resources, with the advice and consent of the Department's Advisory Council, adopts these regulations in Chapter 43.

In accordance with 5 M.R.S. §8052, sub-§5-A a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

# Summary of Comments

## Chapter 43 Bluefish

Public hearings were held November 15 and 16, 2010 in Rockland and Yarmouth respectively. The summarized comments and Department's responses follow the list of hearing attendees and persons who submitted written comments. In general, several persons who commented at the public hearings and sent written comments indicated they would apply their opinions about striped bass to bluefish as well. The list of written commenter's listed for bluefish include those who specifically indicated bluefish and or generalized for all bait fishing. To review similar comments for the striped bass rulemaking see the separate attached document for the Chapter 42 individual summarized hearing and written comments.

### Hearing attendees, Rockland

Doug Jowett, Brunswick  
George Warren, Edgecomb  
David Allen, Washington  
Barry Gibson, E. Boothbay  
Rep. Jon McKane, District 51  
Sen. Chris Rector, Thomaston, District 22  
Pete Ripley, E. Boothbay  
Bill Spencer, Boothbay Harbor  
Jeff Bellmore, Warren  
DMR: Dep. Comm. David Etnier, Deirdre Gilbert, Pat Keliher, L. Churchill

### Hearing attendees, Yarmouth

Forrest Faulkingham, Alna, Maine Association of Charterboat Captains  
Andrew Mazzitelli, North Berwick  
Don Kleiner, Union  
Doug Jowett, Brunswick  
Steve Heinz, Cumberland Foreside, angler  
David Huntress, (Stantec), angler  
Mac McKeever, (LL Bean), angler  
Dana Eastman, town?  
Mike Jannvil [sp?], town?  
Jerry Rideout, town?  
Matt Boutet, [sp?], town?  
Don Russell, town?  
Duncan Barnes, town?, angler  
DMR: Dep. Comm. David Etnier, Deirdre Gilbert, Pat Keliher, L. Churchill

### Written comments

Doug Jowett, Brunswick  
Maine Association of Charterboat Captains, Capt. Dave Pecci, Fisheries Committee Chair  
Coastal Conservation Association, Maine Board of Directors, Mac McKeever – Maine Pres.  
Maine Professional Guides Association, Don Kleiner, Exec. Dir., Wilton  
Fred Cichocki, PhD, TOWN  
George Watson, Cape Elizabeth  
Greg Renna, Portland  
Larry Grimard, Jefferson  
Oliver Dominick, Phippsburg  
Russell Smith, Phippsburg  
Steven Kundrot, Belmont, MA and Harrison. ME  
Todd Stewart, Saco

## Summarized comments/questions and responses:

### **1. Hooks:**

Education: Circle hook/bait proposals will be difficult to enforce and might either be dropped or delayed in order for DMR to first launch an educational campaign. Versus, DMR has, unfortunately chosen to mandate rather than educate; to use an educational/outreach program regarding the use of circle hooks.

Ban baited treble hook: The use of baited treble hooks for [stripers and] bluefish should be banned as soon as possible to reduce deep-hooking mortality, and we ask DMR to add specific language to that effect in its rule-making proposals. Versus, oppose requiring circle hooks while using bait.

Tackle shop hook inventory: could we have a year to get rid of hook inventory that is in stock? Similar to lead, we had 2 years to get rid of the lead; or have the rules state we can't buy them anymore but may sell out what we've got.

*Response:*

*The Department acknowledges the impact from the restriction of multiple treble hooks (more than 2) however, few lures or flies have more than 3 hooks; and based on angler and staff observations the amount of handling time is clearly increased when 3 hooks or greater are used. This results in increased injury, handling, and subsequent increased mortality. The rules would require that only one of the three treble hooks be removed or modified.*

*It is the Department's position that these conservation measures are necessary and takes into consideration requests to allow tackle inventory to be sold (similar to the process used when converting from lead sinkers to less toxic sinker materials that lessen or eliminated the tackle shop's economic impact); and to use the next two seasons as a period for education of the public and guides, plus address the use of bait on treble hooks to reduce deep-hooking mortality, Chapter 43.01(1)(C) would be modified to delay the use of bait on hooks other than circle hooks until January 1, 2013. Plus, during the interim period, as suggested by comment, the use of bait on treble hooks would be prohibited, thus giving an interim period to adjust to the new restrictions.*

### **2. What is the conservation value of these changes specific to bluefish?**

*Response:*

*Recreational bluefish anglers from Maine to Florida capture 69-74% of the allotted total allowable catch by weight. The proportion of bluefish released by recreational anglers coast wide ranges from 60-70% annually (NMFS). Survival of jaw hooked bluefish is 97% compared to 69% for gut hooked bluefish. Conservation benefits to bluefish by using non-offset circle hooks with a 90-degree bend in the point, and preventing gut hooking, is an estimated increase in survival of 28 fish out of 100 bluefish caught and released.*

### **3. Bluefish and hook injuries:**

Your average fisherman, not the professional, will have more accidents if you don't have a J hook they can grab a hold of. When a circle hook is locked in the hinge of the jaw on a bluefish, you will have some people getting some nasty cuts. Using a J hook you can hold your hand out, inches away and pry it out with some leverage. A circle hook you're not going to have that option unless you're a professional or you have some pliers. You're asking a person to have damage to the public automatically by making that rule.

*Response:*

*Recreational anglers who anticipate the possibility of catching bluefish need to be prepared to remove hooks from bluefish they plan to release alive. This may require fishermen to have a de-hooking device of their choice.*

### **4. Territorial waters**

- This is just for state waters, out to 3 miles?

*Response:*

*Upon review, the text "in territorial waters" in Chapter 43.01(1)(B) should be removed. This was inadvertently copied from the similar striped bass proposed rules.*

- What about the guy that wants to fish bluefish for tuna in state waters? He wants to keep that bluefish alive to run him off balloons or kite. That is something that hasn't been thought of here. You're certainly going to change the perspective on another fishery by regulating this fishery.

*Response:*

*Similar to the question above, upon review of Chapter 43.10(1)(D), this section was also an artifact of the proposed striped bass regulations and upon review determined that it should be removed. "High grading" of bluefish is not occurring at present. There is no prohibition on using bluefish as bait for bluefin tuna and with the removal of this proposed section the rule will not impact the use of bluefish as live bait.*

*Proposed section D has been removed: "Any Bluefish legally taken from the territorial waters shall be immediately released alive into the water from which it was taken, or killed at once."*

#### 5. Limiting access:

The proposed regulations do little to restore the striper and or bluefish fisheries but rather seek to limit recreational access to the fishery.

*Response:*

*Cutting off a hook, modifying a hook, or removing a hook to not allow the use of more than 2 barbed or barbless hooks, does not remove access to the resource.*

#### 6. Is there a scientific basis for these changes?

*Recreational bluefish anglers from Maine to Florida capture 69-74% of the allotted total allowable catch by weight. The proportion of bluefish released by recreational anglers coast wide ranges from 60-70% annually (NMFS). Survival of jaw hooked bluefish is 97% compared to 69% for gut hooked bluefish. Conservation benefits to bluefish by using non-offset circle hooks with a 90-degree bend in the point, and preventing gut hooking, is an estimated increase in survival of 28 fish out of 100 bluefish caught and released.*

*Regarding multiple treble hooks, based on angler and staff observations the amount of handling time is clearly increased when using three or more treble hooks. This results in increased injury and subsequent increases in mortality.*

#### 7. The use of the term 'many' [in reference to the scoping meetings] is deceptive in that it can be interpreted any way one sees fit. How many is many?

*Response:*

*During the month of February 2010 the Maine Department of Marine Resources was publicized then held two striped bass scoping meetings to discuss recreational angler concerns of declining striped bass catches in Maine and most states along the East Coast. At these meetings the majority of the public sentiment was to see the Department move forward with hook restrictions, including the limiting the use of treble hooks for bait fishing and requiring the use of circle hooks.*

#### 8. What is the opinion of Marine Patrol on the enforcement of the hook rules? Their response to these rules is missing.

*Response:*

*The regulations were reviewed by Marine Patrol before going out for rulemaking and they support the rules.*

*We couldn't go forward with a circle hook regulation without including at least Bluefish to make it enforceable. Enforcement personnel understand that somebody could say I'm fishing for codfish. It will have to be a case by case situation and Marine Patrol will have to use their best judgment based on the situation. It is not a perfect regulation, we recognize that.*

#### Questions

#### 9. Commercial License

- I can buy a Maine commercial fishing – single license for \$48 for marine waters and catch all the bluefish I want on a J hook. Is this correct? If there is a loop hole and you're going to choke us down with all this criteria you ought to kill the loop hole as well.

- We challenge the disparity between the allowable daily bag limit of three bluefish for anglers but no possession limit for anyone who buys a \$48 commercial harvester's license from DMR. We think DMR should either put a limit on the commercial bluefish catch and require reported landings, or designate bluefish in Maine waters as game fish.

*Response:*

*No. The possession limit does not apply to persons who hold a commercial fishing license but the gear restrictions still apply no matter what license.*

10. Does this just basically apply to the intent to catch bluefish if you striped bass? In other words somebody who is flounder fishing that catches a striped bass, what happens to that person?

*Response:*

*If an angler is fishing off the bottom for bait, or bouncing a buck tail jig (artificial bait), while fishing off the bottom with bait for groundfish, Marine Patrol considered this a different activity than angling for bluefish or striped bass. They do not see a conflict between those activities and bluefish and striped bass fishing.*

11. Photos

About releasing a fish immediately, released alive into the water, immediately released, does that mean you can't hold it up to take a photo of it?

*Response:*

*Anglers may take pictures of their fish and release it back. Obviously if they were taking pictures and passing it around the boat this would be considered beyond the intent. Take a picture quickly and release the fish quickly overboard.*

### **Individual summarized comments and questions:**

Pat Keliher

It's obvious if we're going to have hook regulations dealing with Striped bass you have to have them for bluefish. That is the intent behind the bluefish rules. You can't have one without the other. [We're] assuming that the comments on hooks for striped bass go with bluefish as well. [Persons in the audience indicated general agreement with this assumption.]

Forrest Faulkingham

Representing the Maine Association of Charterboat Captains (MACC)

43.01 - Bluefish Regulation Changes: We are neither for nor against. [Having bluefish regulations consistent with striped bass regulations will make enforcement easier and limit confusion for the general fishing public. However, we do question the conservation value of these changes specific to bluefish.]

Jeff Bellmore

Question: In the state of Maine for \$40 some dollars I can buy a commercial marine fishing license. And with that commercial license I can catch all the bluefish I want on a J hook. Am I correct in that?

Pat Keliher: Yes.

J. Bellmore: So all you will do is make someone who still wants to fish with J hooks buy a commercial license and he will catch a striper by accident bluefishing.

Pat Keliher: They could. [continued below]

Barry Gibson

Does this just basically apply to the intent to catch bluefish if you striped bass? In other words somebody who is flounder fishing that catches a striped bass, what happens to that person?

Pat Keliher: When we worked through this with Patrol they believe that the enforceability of somebody that was fishing off the bottom for bait or even bouncing a buck tail jig obviously we're talking about artificial's then but fishing off the bottom for bait for groundfish was a much different activity than dealing with angling for bluefish or striped bass. So they didn't feel there was conflict between those activities and bluefish and striped bass fishing.

Jeff Bellmore

The reason I brought this up was yesterday after hearing about this [he said] just buy a commercial license if that is the issue. Continue using the J hooks. If there is a loop hole and you're going to choke us down with all this criteria you ought to kill the loop hole as well.

David Etnier

My initial read on it, and we will be more thorough in the written response, in terms of the bluefish and the definition for gear to be used when fishing for them, that would apply no matter what license you hold. The things that do not apply if you hold a commercial license is the possession limit; it is specific to and has always said the possession limit doesn't apply to persons who hold a commercial license but the gear restrictions still apply no matter what license.

Jeff Bellmore

This was what someone said to me and why I brought it up, to understand. If we all have to play by the same rules I want the same rules to [apply] to everybody.

Bill Spencer

Bluefish and circle hooks: Your average fisherman, not the professional, the average guy fishing circle hooks and catching bluefish, there's going to be more accidents if you don't have a J hook they can grab a hold of. When a circle hook locked in the hinge of the jaw on a bluefish, you will have some people getting some nasty cuts. You're asking the public to take a hit. A J hook you can hold your hand out, inches away and pry it out with some leverage. A circle hook you're not going to have that option unless you're a professional or you have some pliers. You're asking a person to have damage to the public automatically by making that rule.

David Etnier: On Chapter 43.01(1)(D) regarding high grading bluefish, any comments?

George Warren

Are you going to get rid of the gaffing rules with that?

Pat Keliher: There is no gaffing rule for striped bass.

G. Warren: Bluefish there isn't; so why would you release a bluefish you just gaffed?

[Correction to Pat Keliher's comment: There was no gaffing rule proposed for bluefish like there is for striped bass.]

Jeff Belmore

What about the guy that wants to fish bluefish for tuna in state waters? He wants to keep that bluefish alive to run him off balloons or kite? A lot of guys that fish bluefish for tuna that I know they want then alive, at least I do, I want them that big on a kite! That is something that hasn't been thought of here. You're certainly going to change the perspective on another fishery by regulating this fishery.

Pat Keliher

As stated we couldn't move with circle hook regulations without including Bluefish. That is why you see the hook changes for Bluefish as well.

Andrew Mazzitelli: this is just for state waters; 3 miles?

#### Written comments:

Captain Doug Jowett

I approve of the proposed rules as noted below for the November 15 & 16, 2010 Public Hearings.

1. Chapter 85 Saltwater Fishing Registry
2. Chapter 42 Striped Bass
3. Chapter 43 Bluefish
4. Chapter 34.10 Groundfish, Amendment 16 compliance updates

The Maine Association of Charterboat Captains,

Capt. David Pecci, Fisheries Committee Chair

The Maine Association of Charterboat Captains (MACC) represents more than 65% of the Maine for-hire fleet. A recent membership survey reveals that the drastic reduction of striped bass in Maine waters over the past three years has had an increasingly negative economic impact. Anglers are choosing to fish in other places, or not fish at all. There has been a 25-35% reduction in tourism-based angling clientele. Captains who cater to destination anglers (anglers who travel to Maine specifically to fish) find

their businesses have fallen off 50% or more. Many captains have been reduced to part-time operations and some have been forced to take on supplemental employment to survive.

The general fishing public's catch and release mortality will most likely drop due to these new regulations. However, Maine DMR will see negligible benefits from MACC members and their clientele. We are protecting our marine resources without these additional restrictions.

Specific Comments Approved by the MACC Board of Directors:

43.01 - Bluefish Regulation Changes: [Neither for nor against] - Having bluefish regulations consistent with striped bass regulations will make enforcement easier and limit confusion for the general fishing public. However, we do question the conservation value of these changes specific to bluefish.

Additionally - we would like to point out an obvious existing loop hole in the 3 fish daily bag limit for bluefish. 43.01A states that anyone who purchases a \$48.00 commercial harvester's license from the Department can keep an unlimited number of bluefish. If DMR is interested in true conservation measures it should either institute a commercial bluefish catch limit and require reported landings or, make bluefish a game fish in state waters.

#### CCA-Maine Board of Directors

We agree in general with the DMR proposals in this chapter. Specifically, we think mandating the use of circle hooks with bait could help reduce deep-hooking mortality in striped bass and bluefish in Maine waters, but we understand that enforcement of the circle hook/bait proposals will be difficult to enforce and might either be dropped or delayed in order for DMR to first launch an educational campaign.

In either case, we want to make sure that the use of baited treble hooks for stripers and bluefish is banned as soon as possible to reduce deep-hooking mortality, and we ask DMR to add specific language to that effect in its rule-making proposals.

Under 43.01 - Bluefish - Method of Taking -- We challenge the disparity between the allowable daily bag limit of three bluefish for anglers but no possession limit for anyone who buys a \$48 commercial harvester's license from DMR. We think DMR should either put a limit on the commercial bluefish catch and require reported landings, or designate bluefish in Maine waters as game fish.

#### Don Kleiner, Executive Director, Maine Professional Guides Association, Wilton Comments of the Maine Professional Guides Association on Chapter 42 Striped Bass and Chapter 43 Bluefish Rule Proposals

By any measure the striper and bluefish fisheries on the Maine coast have collapsed in the last three years. Our members have seen significant income losses resulting from the decline in these species in Maine waters each summer. Some have abandoned the fishery completely and developed new business lines in other recreational pursuits.

Maine already has some of the most restrictive striper regulations on the east coast. The proposed regulations do little to restore the striper and or bluefish fisheries but rather seek to limit recreational access to the fishery. Maine catches less than two percent of the recreational striper harvest on the Atlantic Coast any conservation measures implemented must be viewed through a lens of effectiveness at protecting populations and clearly even if successful these regulations will have little impact.

As a conservation measure the effectiveness of the removal of an additional treble hook from a lure is of dubious value and has no scientific basis. Circle hooks do have scientific support but even the ASMFC recommended that an extensive education program be undertaken before any regulatory measure is implemented. We maintain that to this point educational efforts have been minimal if they exist at all in Maine.

Increasing the complexity of regulations makes an already difficult business environment more difficult for guides and tackle dealers while doing little to increase the striper population. An added impact may be to further reduce participation in recreational saltwater fishing as rules become ever more complex and difficult to understand.

These regulations will also prove difficult to enforce and implementation of the new saltwater license and striper endorsement will be problematic enough for Marine Patrol in the next few seasons.

We would encourage the council to reject the proposed changes to the existing rules and direct the Department to work with our members and tackle shops on a concerted effort to implement the education suggested by the ASMFC in 2003.

The Maine Professional Guides Association is composed of Registered Maine Guides who strive to enhance the standards of the guiding industry. They are professional guides dedicated to promoting a quality, ethical and legal outdoor experience for all. The Maine Professional Guides Association is an 800 member organization.

Fred Cichocki, PhD



42.01.1C. Would suggest that circle hooks be mandated for flies as well as bait. Any competent flytier can either use commercial circle hooks, or effectively modify most standard hooks into circle hooks according to the proposed definition thereof.

42.01.2 & 42.02. Would also suggest that in the future the size restrictions on taking and possession be changed to prohibit all intentional killing of ("trophy") bass over 40 inches. This would be in accordance with maintaining an old-growth age structure in striped bass subpopulations, a currently favored approach in ecosystem-based fisheries management generally, and would probably go a long way toward rebuilding a truly healthy fishery.

42.02. In agreement with proposed restrictions on personal use vs. prohibited commercial take/sale of wild striped bass whether caught in Maine or not.

Re: Chapter 43 Bluefish, 43.01.1C. Would suggest same as above (42.01.1C) for bluefish.

Otherwise in agreement with proposed changes.

George Watson, Cape Elizabeth

As a lifelong recreational fisherman for striped bass here in Maine and also in Massachusetts, I applaud the proposed rules limiting numbers of treble hooks on artificial lures and flies and mandating the use of circle hooks for bait fishermen. I also am in favor of clarifying the rules regarding high grading. Thanks for doing this for the fishery.

Greg Renna, Portland

As an avid fisherman I wanted to express my strong support for rules that require the use of circle hooks when live or chunk bait fishing for striped bass or bluefish. Fish mortality is an unfortunate part of every fishery. Circle hooks are just one way to reduce the mortality rates without further restricting fishing access. Using treble and j-hooks is no more effective and circle hooks significantly increase mortality especially when combined with improper fish handling practices. Make no mistake the striper population is in decline. Action is the only way to preserve this valuable resource. Please take my opinion into consideration when voting on the proposed rule changes.

Larry Grimard, Jefferson

The basis for the requirement of circle hooks (42.01 .C) when using bait is not accurate, and is misleading. This rule needs be disapproved.

a. 42.01.C. The following statement appears in the Additional information section for the rule: *There was a considerable amount of discussion in the scoping sessions concerning the catch and release mortality of striped bass in Maine. Many attributed this mortality to fishing for striped bass with bait and the use of J-hooks while bait fishing.*

The use of the term 'many' is deceptive in that it can be interpreted any way one sees fit. How many is many? Is it a majority of those present? Does it mean 'a lot'? What is meant by 'considerable'? People that I talked to that were in attendance at the scoping sessions indicated that there were maybe 20 attendees. One estimate by DMR of annual striper anglers is 125,000. DMR representatives have indicated that 4 or 5 people at the scoping sessions were in favor of using circle hooks. Given the uncertainty of the numbers supporting the use of circle hooks, this basis statement is, at best unclear bordering on deceptive.

b. These words also appear: *ASMFC calculates discard mortality as 8% of the total number of striped bass caught and released each year.*

Calculates means estimates and no one can estimate the mortality with any accuracy because of the many variables such as how was the fish handled after the landing? One could also argue that the survival rate was 92%....and that is "many".

c. It is worth of note that one comment made at the scoping sessions suggested an educational/outreach program regarding the use of circle hooks. DMR has, unfortunately chosen to mandate rather than educate. This in spite of the fact that the statute contains the following language:

*10. Collaboration on outreach efforts. The commissioner shall work with fishing and hunting groups and interested parties in the commissioner's efforts to notify and educate the public about the registry.*

d. The added burden to Marine Patrol of enforcement of the circle hook rule has to be self-evident to even the least informed of the angling community. It is incomprehensible that DMR would propose such a rule given the already stressed resources of the Marine Patrol. One can only imagine the response to this proposed rule by the Marine Patrol division which response is missing from consideration.

2. 42.01.D *Any striped bass legally taken from the territorial waters shall be immediately released alive into the water from which it was taken, or killed at once. Any striped bass killed becomes, part of the daily bag limit in accordance with Chapter 42.02.*

Any handling of a landed, quite possibly exhausted, and stressed fish is prohibited by the word immediately. Any guide that unhooks a freshly caught striper and hands it to a customer for a series of photographs is in noncompliance with 42.01.D. Any photos therefore that appear on a guide's website become prima facie evidence of non compliance. Is that what DMR intended?

CHAPTER 43 BLUEFISH 1. My comments regarding Chapter 43 are similar to the comments regarding stripers.

Oliver Dominick, Phippsburg

While Main DMR is evaluating rule-making proposals relating to saltwater fishing in Maine, I want to contribute my strong support to require the use of circle hooks when bait is used for fishing for striped bass and bluefish in Maine waters. The mortality of these species as a result of being hooked deeply, which frequently happens with bait, can be very significantly reduced using circle hooks instead of the traditional J hooks. Research on this matter is conclusive.

To add clarity and effectiveness to this approach, it should be illegal to use bait on treble hooks when fishing for striped bass or bluefish. This combination is simply lethal and the idea that a released fish might survive deep-hooking with such a rig is simply absurd.

Please support this proposed rule for the protection and enhancement of the very valuable and vulnerable fishery that Maine has for these species.

Russell Smith, Phippsburg

I have pursued striped bass and bluefish with rod and reel for 60 years - 45 years as a N.J. resident and 15 as a resident of Maine. Throughout the span of years I have been and continue to this day to oppose the use of treble hooks with bait. I endorse the use of circle hooks for bait fishing. Further I endorse crushing the barb of either style of hook.

Steven Kundrot, Belmont, MA and Harrison, ME

Just a quick note from a concerned fisherman indicating strong support for the new rules that are being suggested. I am pleased that Maine is taking action and setting a good example for other states.

Captain Todd Stewart, Trina Lyn Fishing Charters, Saco

As owner of Trina Lyn Fishing Charters in Saco Maine, I want to submit my strong opposition to requiring circle hooks while using bait.

Plus:

As a charter captain for almost 20 years, I STRONGLY OPPOSE any and all changes to the Striped Bass and Bluefish regulation.

Maine fishermen have been forced to bare the brunt of the commercial fishing trade as well as recreational anglers to our South being allowed much less stringent regulation. Why do we need to bend over and restrict our striped Bass fishing even further when the regulation to our South is so much less restrictive?

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Laurice U. Churchill, Department of Marine Resources, 21 State House Station, Augusta, Maine  
04333-0021 Telephone: (207) 633-9584; E-mail: [laurice.churchill@maine.gov](mailto:laurice.churchill@maine.gov), web address:  
<http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 43 Bluefish

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARING:

November 15, 2010, 6pm, State Ferry Terminal (Conf Rm), 517A Main St, Rockland  
November 16, 2010, 7pm, Community Room, Yarmouth Town Hall, 200 Main St, Yarmouth  
*Public hearings for proposed rulemakings in Chapters 34, 42, 43 and 85 pertaining to groundfish, striped bass, bluefish and the new saltwater fishing registry respectively, will be held each night in chronological order with each hearing to begin immediately upon the conclusion of the previous hearing. See separate rulemaking notices.*  
COMMENT DEADLINE: November 29, 2010

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The proposed rulemaking on Bluefish fishing would restrict use to no more than two barbed or barbless treble hooks on artificial lures or flies, require circle hooks when using bait, and clarify that these rules apply when fishing in Maine territorial waters.

The proposed rulemaking is available online at: <http://www.maine.gov/dmr/rulemaking/>.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

Much more is known about the decline of the striped bass, however since bluefish and striped bass are frequently fished together by recreational anglers the conservation and enforcement measures should be similar. See the separate rulemaking for striped bass regulations.

One area where improved conservation could occur for bluefish along with striped bass is a reduction in the discard mortality of fish caught and released by recreational anglers. Working within the ASMFC guidelines and after listening to the comments at the spring 2010 scoping meetings the Department proposes these regulatory changes pertaining to the number and hook types permitted to fish for bluefish in conjunction with bait and artificial lures. These efforts will conserve bluefish by reducing the hooking mortality of fish caught by anglers fishing for bluefish with baited J-hooks and standardizes the method of gear used for both species. This rule change will reduce the hooking mortality for bluefish released alive, though the exact conservation benefit is unknown.

FISCAL IMPACT OF THE RULE:

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

*Note: If necessary, additional pages may be used.  
(File 20 copies with the Executive Director of Legislative Council, SHS 115 Rm 103, within 1-2 days after filing with SOS.)*

## ADMINISTRATIVE PROCEDURE ACT CHECKLIST

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 43 Bluefish

1. Was this rule listed on the last regulatory agenda? Yes
2. Date of notification of:            Anyone on mailing list: Oct. 27, 2010  
Any trade, industry or professional group Oct. 27, 2010  
Any trade publications Oct. 27, 2010
3. Date Notice of Rulemaking Proposal (MAPA-3) sent to Secretary of State: Oct. 19, 2010
4. Date Fact Sheet sent to Executive Director of Legislative Council: Oct. 19, 2010
5. Date of publication in Secretary of State's rule-making ad: Oct. 27, 2010
6. Date of hearing(s): Nov. 15 & 16, 2010 7. Comment deadline: Nov. 29, 2010
8. Was comment deadline extended or comment period reopened? No
9. Is adopted rule consistent with what was proposed? Yes  
(If not, please address the changes in the comments and responses section of your filing.)
10. Is the person signing the Certification Statement (MAPA-1, #9) authorized to do so as stated in your statutes or in 5 MRS, c.71? Yes
11. Was the rule adopted within 120 days of the comment deadline? Yes
12. Was the rule approved and signed by the Office of the Attorney General within 150 days of the comment deadline? Yes
13. Is a Basis Statement included? Yes Is a copy of the Fact Sheet included? Yes  
Are comments, with names and organizations, and your responses included? Yes

**NOTICE OF AGENCY RULE-MAKING ADOPTION****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 43 Bluefish**ADOPTED RULE NUMBER:** 2010 - 621**CONCISE SUMMARY:**

The adopted rules on bluefish restrict the use to no more than two barbed or barbless treble hooks on artificial lure or flies; section 43.01(1)(C) is modified to delay the use of bait on hooks other than circle hooks until January 1, 2013; and during the interim will prohibit the use of bait on treble hooks. This will allow the next two seasons to be used as a period for education of the public and guides about circle hooks. A technical correction has been made to Chapter 43.01(1)(B) removing the text 'in territorial waters' and the section on high grading removed as this did not apply to bluefish.

**EFFECTIVE DATE:** DEC 20 2010

**AGENCY CONTACT PERSON:** Laurice U. Churchill  
**AGENCY NAME:** Department of Marine Resources  
**ADDRESS:** PO Box 8  
West Boothbay Harbor, Maine 04575-0008  
**WEB SITE:** <http://www.maine.gov/dmr/rulemaking/>  
**E-MAIL:** [laurice.churchill@maine.gov](mailto:laurice.churchill@maine.gov)  
**TELEPHONE:** (207) 633-9584  
**FAX:** (207) 633-9579  
**TTY:** (207) 633-9500 (Deaf/Hard of Hearing)

---

Please approve bottom portion of this form and  
assign appropriate MFASIS number.

**APPROVED FOR PAYMENT** Rochelle Truam **DATE:** 12/9/10  
**FUND** **AGENCY** **S-UNIT** **APP** **OBJT** **AMOUNT**  
Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta  
010 13A 1120 10 4946

# STATE OF MAINE

## Inter-Departmental Memorandum

*Date* December 15, 2010

*To* Don Wismer

*Dept* State # 101

*From* Laurice U. Churchill

*Dept* Marine Resources #21

*Subject* Adopted Rule: Chapter 43 Bluefish

Attached is the adopted regulation in Chapter 43 for publication in the Secretary of State's Notice of Agency Rule Making column, approved by the DMR Advisory Council **December 15, 2010**.

Thank-you.

Encl

