

**NOTICE OF AGENCY RULE-MAKING ADOPTION**

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 42: Striped Bass

**CONCISE SUMMARY:**

On June 1, 2021 the Department of Marine Resources adopted an emergency rulemaking to come into compliance with the Atlantic States Marine Fisheries Commission. The Department incorporated these emergency changes via this regular rulemaking. The rulemaking implements a definition of bait as it pertains to the required use of circle hooks in the recreational striped bass fishery. It also specifies what happens if a striped bass is incidentally caught while targeting other species with a non-circle hook with bait. Further, it maintains the circle hook exemption for rubber and latex tube rigs and expands the exemption to include willow leaf spinner rigs. In addition to incorporating changes from the emergency rule, this rule also clarifies language in Section 42.01(C). Specifically, it removes language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait. Greater definition on the required use of circle hooks will provide clarity to anglers and Marine Patrol.

**ADOPTED RULE NUMBER:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**EFFECTIVE DATE:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**AGENCY CONTACT PERSON:** Amanda Ellis (207) 624-6573  
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*Please approve bottom portion of this form and assign appropriate MFASIS number.*

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# DEPARTMENT OF MARINE RESOURCES

## CHAPTER 42: STRIPED BASS

### 42.01 Statewide Striped Bass Size Restrictions, Harvest Methods

#### 1. Method of Taking

- A. It is unlawful to fish for or take striped bass in territorial waters, except by hook and line. It is unlawful to use a gaff to land any striped bass.
- B. It is unlawful to use multiple (more than two) barbed or barbless treble hooks on any artificial lure or flies while fishing for striped bass in territorial waters.
- C. ~~It is unlawful to use treble hooks 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". Striped bass incidentally caught on any unapproved hook type must be returned to the water immediately without unnecessary injury.~~

~~For the purposes of this section, bait is defined as any marine or freshwater organism live or dead, whole or parts thereof, and earthworms, including but not limited to, night crawlers (*Lumbricus terrestris*).~~

~~**Exception:** Rubber or latex tube rigs will be exempt from the circle hook restriction as long as they conform with the following: the lure must consist of a minimum of 8" of latex or rubber tubing with a single hook protruding from the end portion of the tubing where bait may be attached. Willow leaf spinner rigs will also be exempt from the circle hook restriction as long as they are fished with no more than two barbless hooks. A willow leaf spinner rig is comprised of leaf-shaped attractor blades which are longer than they are wide. Use of treble hooks is not allowed with any of these exempted rigs.~~

- 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.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: 42, Striped bass

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

DATE AND PLACE OF PUBLIC HEARING(S): June 24, 2021, hearing held remotely via Microsoft Teams

COMMENT DEADLINE: July 6, 2021

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

This rule provides greater detail on the required use of circle hooks in the striped bass recreational fishery, as outlined by the Atlantic States Marine Fisheries Commission. It ensures compliance with the Atlantic Striped Bass Fishery Management Plan.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

This rule clarifies situations in which the use of circle hooks is required in the striped bass recreational fishery. This rule will provide clarity to both anglers and Marine Patrol.

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]:

This rule considered Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan as well as the meeting of the Atlantic Striped Bass Management Board on March 16, 2021.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

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

**FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:**

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*  
[see §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [see §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [see §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*

## **Basis Statement**

On June 1, 2021 the Department of Marine Resources adopted an emergency rulemaking to come into compliance with the Atlantic States Marine Fisheries Commission. The Department incorporated these emergency changes via this regular rulemaking. The rulemaking implements a definition of bait as it pertains to the required use of circle hooks in the recreational striped bass fishery. It also specifies what happens if a striped bass is incidentally caught while targeting other species with a non-circle hook with bait. Further, it maintains the circle hook exemption for rubber and latex tube rigs and expands the exemption to include willow leaf spinner rigs. In addition to incorporating changes from the emergency rule, this rule also clarifies language in Section 42.01(C). Specifically, it removes language prohibiting the use of treble hooks with bait given subsequent language supersedes this prohibition by only allowing for the use of circle hooks with bait. Greater definition on the required use of circle hooks will provide clarity to anglers and Marine Patrol.

In consideration of the comments received, the Department has made the following changes:

- Added willow leaf spinner rigs to the list of terminal tackle which are exempt from the circle hook requirement when fishing with bait

## **Summary of Comments**

Notice of the proposed rulemaking appeared on June 2, 2021 in the five major daily newspapers as published by the Secretary of State. On June 1, 2021, the rule was posted on the DMR website, and on June 2, 2021 electronic messages were sent to individuals who subscribe to DMR notices. A remote public hearing was held on June 24, 2021. The comment period closed July 6, 2021.

Attendance at the public hearing:

<b>Name</b>	<b>Affiliation</b>
Megan Ware and Amanda Ellis	DMR staff
Barry Gibson	Charter fisherman and guide

## **Comments Received:**

### **Opposed (1)**

#### **Barry Gibson, remote public hearing, June 24, 2021:**

I am Captain Barry Gibson, I've run a charter boat out of Boothbay Harbor for the last 50 years. I am also the New England director for the Recreational Fishing Alliance (RFA), and I am also the vice chair of the New England Council's Recreational Advisory Panel. But I am speaking for myself and on behalf of RFA right now on this particular subject. I've been part of this process

for the last year and a half or so and I have supported everything that the Atlantic States Marine Fishery Commission (ASMFC) has come up with as far as reducing mortality on striped bass. I have no problem with that. What I do have a problem with is the that the State of Maine has apparently now arbitrarily decided that they're not going to support or implement the ASMFC recommendation of using bait with trolled or cast artificial lures.

This was aired out along the entire east coast a number of months ago. There was a tremendous amount of comment from New Jersey all the way up to Maine, or even farther south than New Jersey about different traditional artificial lures, jigs, and whatever spinner rigs that are cast or trolled and have almost zero incidences of catching striped bass anywhere but the jaw or lip. There was a tremendous number of people that spoke on this and I am extremely concerned that the State of Maine, for some reason, has arbitrarily decided that this isn't going to happen here when it was recommended by ASMFC.

I think that bait fishermen in general, in the State of Maine, have been persecuted by the DMR for 25 to 30 years. In my experience this is just one more instance of the State of Maine going against the people that are using bait. We're not supportive of restricting bait on artificial lures that are given motion by trolling or reeling in from casting, which have no significant detrimental impact on striped bass. There's no evidence to prove that using bait with artificial lures that are cast or trolled are associated with release mortality. I am extremely disturbed by this and I am going to continue to work on this.

I think the State of Maine should back up and take a look at the comments that were provided some months back on this particular issue. I would like some explanation of why the State of Maine has decided that this recommendation by ASMFC is somehow inappropriate in Maine. Something happened here that the public was not aware of. If the public had been aware of this there would be 50 people on this call tonight. There's going to be a problem when this gets out on Facebook in about 15 minutes. I'd like to at least have the benefit of a clear explanation of why this particular issue was scotched here in the State of Maine. Just because I want to be sure when this thing gets out.

I am pretty well involved in fisheries management at the state and federal levels and I didn't know the artificial lure thing wasn't part of the package. Then I find out at 5:20 p.m. that it's not part of the package and I don't have an explanation as to why. The fact that you're preserving the latex tube thing is no interest to me. Have other states gotten rid of the artificial lure thing? I'll bet they haven't. All I am saying is if I didn't know about this and I am one of the guys that actually probably knows more, that does this on a daily basis. I am baffled, why am I the only person here? Was this specific measure cited in the notice, or was this sprung-on people at the last minute, which is what it appears to me? Who made the decision not to have bait with artificial lures? What's the rationale? My constituents are going to want to know that. What were the reasons that people decided against the measure that was recommended by ASMFC? If this a proposed rule people have the right to know what the rationale is for the change. I understand the process and just finding out about this at five o' clock on a Thursday. I am really disappointed that no one can give me a solid reason.

You folks have already heard about people supporting this, months and months ago, when this stuff was all brought up and you've got all the comment that is on record from ASMFC. You know the comments were overwhelming to include cast and trolled artificial lures that use bait because they did not have a significant detrimental impact. The Maine DMR has always deferred to ASMFC. When we tried to get the bait prohibition in the Kennebec River reversed, whoever the commissioner was from George LaPointe to Pat Keliher all the way back to Billy Brennan, or whatever. They all said the same thing, "Well we can't do anything because of ASMFC. This was a recommendation of ASMFC so we can't do anything. You know we can't remove it; you know." Here we are with another ASMFC recommendation, it's actually less restrictive, yet the State of Maine is now saying we don't want to do it. Pick one. You're going to go with ASMFC or you're not.

I think it's up to you people to get the word out about this proposal. I don't think the word got out. I think that what needs to be done is a clear and concise email that goes out to the list of people, clearly stating that this is what we were going and this is what isn't going to be, and this isn't going to be included in the proposal that was recommended by ASMFC. I think it's incumbent upon you folks to get that specific issue out to the public. I think everybody felt that this was just a formality to go through for the State of Maine for everything that had been discussed and decided upon in the past and that's why you don't have anyone here. I am telling you, if people really knew what happened here, it would be a different story.

**Barry Gibson, received via email, June 29, 2021**

A number of us would like to use traditional trolled willow-leaf spinner rigs (that have been around since the 1930s) with j-hooks and bait (normally sandworms). These have been proven to hook striped bass in the lip or jaw nearly 100% of the time and thus have an extremely low release mortality rate, likely commensurate with tube-and-worm rigs. Willow leaf spinners are entirely ineffective with circle hooks

I support the circle-hook exemption for tube and worm rigs that is being proposed in the Emergency Rulemaking, and also strongly support the adoption of the same exemption for the traditional willow-leaf spinner rig. Most of the other East Coast states have adopted the ASMFC circle hook exemption for a wide range of artificial lures including the spinner rig, so we see little reason not to adopt if for spinner rigs here in Maine. I also support the bait definition and incidental catch restriction contained in the Rulemaking.

**DMR's Response:**

**Questions and Feedback Concerning Notice of the Proposed Rulemaking:**

The commenter asked questions and raised concerns related to the public notice of this proposal. Notice of the proposed rulemaking appeared on June 2, 2021 in the five major daily newspapers (i.e. *Bangor Daily New*, *Kennebec Journal*, *Portland Press Herald*, *Lewiston Sun-Journal* and the *Central Maine Morning Sentinel*) as published by the Secretary of State.

On June 1, 2021, the rule proposal was posted on the DMR website, and on June 2, 2021 electronic messages were sent to individuals who subscribe to DMR notices. This included subscribers of recreational fishing notices, regulation and hearing notices, and other recreational

fishing lists that DMR maintains. In total, the notice was delivered to 3,833 subscribers via email or text message (the format depends on the preference of each subscriber). The notice contained the summary of the proposed rulemaking, the deadline for written comments, information about the public hearing, and it included an attachment with a copy of the complete rule filing. According to DMR records, a copy of the June 2, 2021 notice was delivered to the commenter's email address.

In addition to the above notices regarding the publishing of a proposed rulemaking, DMR also took steps this spring to raise awareness about the upcoming rulemaking. On an April 21 striped bass informational meeting with stakeholders in Maine, DMR staff included in its presentation information on the Atlantic States Marine Fisheries Commission's recent actions regarding the circle hook requirement and provided an overview of what would be contained in subsequent rulemaking. Further, in a notice sent on May 18, DMR provided advanced notice to interested parties that the Department would be pursuing concurrent emergency and regular rulemakings to consider changes to the striped bass regulations. This notice was sent to subscribers of general recreational fishing notices, notices regarding regulations and hearings, and subscribers of occasional recreational fishing notices; in total, the notice was delivered to 3,665 recipients.

The commenter also felt that DMR should clearly articulate the intent of the proposal and the reason for the proposed rule change. Agency rulemaking is governed, in part, by the Maine Administrative Procedures Act, which specifies the type of information an agency must provide to the public when proposing a rule. Specifically, agencies are required to provide a general summary of the of the proposed rule, the reason or purpose for proposing the rule, and the relevant information considered in developing the proposed changes among other requirements. The proposal must demonstrate how the text of the existing rule would be modified.

All this information was included as part of the proposal. As previously noted, on June 2, 2021 (22 days prior to the public hearing), the proposal was distributed to 3,803 subscribers of DMR notices and posted to DMR's website. DMR also elected to hold a public hearing on this proposal, which was held at 5:00 p.m. on June 24, 2021. DMR decided to hold a public hearing, so that interested persons could ask clarifying questions and have another option for providing feedback. DMR provided the public with requisite information about the proposal and did not receive any other submissions or feedback to suggest that stakeholders were unaware of this rulemaking.

### **Difference Between ASMFC Action and DMR Proposed Rulemaking**

The commenter raised concerns about DMR diverting from the vote of the Atlantic Striped Bass Management Board (Board) at the Atlantic States Marine Fisheries Commission (ASMFC) by not broadly exempting all artificial lures with bait from the circle hook requirement.

Since 2013, Maine has required circle hooks in the striped bass recreational fishery when using bait. A part of Maine's regulation was an exemption for rubber and latex tube rigs (often referred to as tube-and-worm fishing). The use of circle hooks only became a requirement by ASMFC within the last year and was largely in response to the latest stock assessment, which found that striped bass are overfished with a significant source of mortality being recreational release mortality. Thus, Maine has a history of being more conservative than the requirements specified

by the Board. This is permitted by ASMFC – a state can always be more conservative than the requirements in a species’ fishery management plan.

When the Board originally discussed the adoption of a circle hook requirement, the Board signaled that there would be no exceptions to the rule. In response, DMR heard from many Maine stakeholders expressing concern that the exemption for tube-and-worm fishing would be removed, impacting their ability to use this terminal tackle. DMR did not hear comments more broadly about impacts to the use of artificial lures with bait. In response, DMR relayed these concerns regarding impacts to traditional tube-and-worm fishing to the Board. This ultimately led the Board to vote on a broader exemption for all artificial lures with bait.

Given DMR had received comments specific to the use of rubber and latex tube rigs and had not received complaints that the existing circle hook exemption was too narrow, DMR proposed maintaining the exemption for rubber and latex tube rigs rather than expand this to all artificial lures.

In response to comments received on this proposed rulemaking, DMR has expanded the exemption to include one other specific type of artificial lure – willow leaf spinner rigs. DMR feels this strikes a balance between the range of comments received; it adds a specific artificial lure identified in several comments to the exemption list while also acknowledging those comments which highlight the importance of maintaining conservative management of striped bass in Maine.

### **Question on Other States Regulations**

The commenter asked if other states have adopted a circle hook exemption for all artificial lures with bait. At present, DMR staff does not have a comprehensive guide to all Atlantic coast states’ new regulations given the annual Fishery Management Plan Review for the 2020 fishery has not been presented nor have compliance reports for the 2021 fishing year been submitted to the Board. DMR staff did investigate current regulations as presented on the websites of different marine resource state agencies and it appear several states such as Massachusetts, Connecticut, and New York are proposing or have implemented a circle hook exemption for all artificial lures with bait. On the other hand, it appears Virginia has not implemented an exemption for artificial lures and is therefore requiring all recreational anglers to use circle hooks when fishing with bait.

### **Support (9)**

#### **Dave Pecci, received via email, June 28, 2021**

I support the proposed Chapter 42 routine technical rule changes as presented on June 1, 2021. I would like to see the proposal adopted as written as soon as possible. I do understand there are folks who would like the proposal modified. Those modifications (if warranted) can be addressed By Maine during the upcoming Striped Bass Management plan Amendment process. Delaying or modifying this proposal mis fishing season is not a practical option.

#### **Marco Lamothe, Keeper Charters, received via email, June 28, 2021**

I support the proposed rule change allowing J hooks on surgical tubes. Use of J hooks speeds the release process and minimizes damage to the lips of released striped bass.



**John Nowinski, North Creek Guide Service, received via email, June 29, 2021**

I support the proposed Chapter 42 routine technical rule changes as presented on June 1, 2021. I would like to see the proposal adopted as written as soon as possible. I do understand there are folks who would like the proposal modified. Those modifications (if warranted) can be addressed By Maine during the upcoming Striped Bass Management plan Amendment process.

**Forrest Faulkingham, Maine Saltwater Outfitters and Guide Service, received via email, June 29, 2021**

I support the minor changes with regard to the use of “J” hooks with tube and worm. Changing this to no “J” hooks just as the season gets underway wouldn’t do much to change the outcome overall this year. If the change is seen as necessary, then next season would be the time to start.

**Luis Tirado, Diamond Pass Outfitters, received via email, June 29, 2021**

I am in support of the Rule 42 technical change proposed by the committee. I would like to see this written and put into action as soon as possible.

**Jeffrey Pendleton, received via email, June 29, 2021**

Regarding the emergency rule making for chapter 42 - Striped Bass. I strongly support the exception from circle hooks for traditional willow leaf spinner rigs with bait as well as tube and worm rigs.

**Larry Grimard, received via email, July 2, 2021**

Regarding the exemption from circle hooks with trolled lures such as Tube and Worm rigs and Willow-leaf Spinner Rigs for Striped Bass: I support the proposed exemption from the use of Circle hooks for both of these lures. These rigs do not require circle hooks to reduce release mortality because the use J-hooks result in jaw hooking every single time. I have fished these trolled rigs with bait for over 17 years in Maine waters; have landed hundreds of bass, and every single bass caught was jaw hooked and able to be quickly released, with no gut-hooking injuries. When the bass are chasing a trolled lure, they are in competition with the other bass in the pod and have to quickly grab the lure, turn out and take off....that action causes jaw hooking every time.

**Norman DeRuiter, Marsh River Charters, received via email, July 4, 2021**

I support the proposed Chapter 42 routine technical rule changes as presented on June 1, 2021. I would like to see the proposal adopted as written as soon as possible. I do understand there are folks who would like the proposal modified. Those modifications (if warranted) can be addressed By Maine during the upcoming Striped Bass Management plan Amendment process.

**Peter Fallon, Gillies and Fallon Guide Service, received via email, July 6, 2021**

I'm writing to support the Department's proposed rule RE circle hook requirements for anglers targeting striped bass. Given all of the current concerns about the current state of this fishery, we should proceed cautiously with any exception to provisions designed to reduce post-release mortality. As you may recall, in my role as president of the Maine Association of Charterboat Captains I lobbied the Department and the ASMFC Striped Bass Board in favor of maintaining

an exemption to the circle hook requirement for tube & worm rigs. This was the only gear method that Maine recreational anglers, for-hire operators, and tackle shop owners brought to my attention before and after the winter Board meeting.

Maine has a long history of leading efforts at ASMFC for more responsible striped bass management. This was never more clear than at the recent spring meeting. With a track record of a more conservative approach to regulating the striped bass fishery in Maine, the state is in a unique position to continue to push other members for more appropriate actions. The impending new Amendment to the striped bass management plan has the potential to be a turning point in ASMFC's stewardship of this species. Maine must maintain the weight of its influence and should limit the circle hook exemption to allow J-hooks with tube & worm rigs only at this time.