

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 10; Clams and Quahogs

CONCISE SUMMARY:

This rulemaking implements conservation measures regarding razor clams in order to protect the razor clam resource and to prevent the use of certain harvest methods that have been shown to have possibly detrimental effects on razor clam resources and fishermen. Specifically, this rulemaking puts in place size restrictions on razor clams and to prohibit the use of harvesting techniques that use electricity or electrical fields. Electricity based harvest methods have been shown to cause injury to razor clams of sublegal size by exposing them to greater predation threats. In addition, the impacts and risks posed to human divers that typically work alongside electricity based harvesting equipment is unknown. Finally, the rule adds clarifying sections on minimum size tolerance for Quahogs under Section 10.04.

EFFECTIVE DATE: TBD

(TO BE FILLED IN BY SECRETARY OF STATE)

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DEPARTMENT OF MARINE RESOURCES - SHELLFISH HARVESTING

CHAPTER 10

CLAMS AND QUAHOGS
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DEPARTMENT OF MARINE RESOURCES

Chapter 10 Clams and Quahogs

10.01 Taking of quahogs in Maquoit Bay

It shall be unlawful to dredge or to take quahogs by any means, except the usual manner of hand digging with a so-called clam hoe, or by hand raking and hand tonging, or by picking quahogs out of the mud by hand, from the waters or flats of Maquoit Bay, Cumberland County, namely, all of the territory north and northeast of a line drawn from the most southerly end of Mere Point in the Town of Brunswick to the northeasterly end of Little Flying Point in the town of Freeport. This section shall not apply to equipment operated by the Department of Marine Resources.

10.02 Taking of quahogs in Middle Bay

It shall be unlawful to dredge or to take quahogs by any means, except by the usual manner of hand digging with a so-called clam hoe or by hand raking and hand tonging, or by picking quahogs out of the mud by hand from the waters or flats of Middle Bay, Cumberland County, namely all of the territory north and northeasterly of a line drawn from a red marker, on the eastern shore of Mere Point and located at Blackstone Rock on the south shore of Win Smith Cove, so-called, then in an easterly direction to and including the northern shore of Birch Island and continuing in the same general direction to a red painted wood post placed on the northern point of Wilson Cove, so-called, located in the western shore of Harpswell Neck. This section shall not apply to equipment operated by the Department of Marine Resources.

10.03 Method of taking Surf, Hen Clams or Quahogs

It shall be unlawful to fish for or take any surf, hen clams or quahogs by any method of dredging or dragging with any combination of dredge or drag with any cutter bar that exceeds 36" in overall

width except that in the area between the Spurwink River in Scarborough and Fletcher's Neck in Biddeford Pool, the cutter bar shall not exceed 24" in overall width.

10.04 Quahog Size Restrictions

A. Definitions

1. Quahog

Quahog means *Mercenaria mercenaria*, commonly referred to as hard shelled clams.

2. Hinge width

Hinge width means the thickness of a quahog as measured between the convex apex of the right shell and the convex apex of the left shell.

B. Minimum Size

It shall be unlawful to take, possess, ship, transport, buy or sell quahogs that are less than one inch in thickness as measured across the hinge width.

1. Tolerance

Any person may possess quahogs that are less than one inch if they comprise less than 5% of any bulk pile. The tolerance is determined by numerical count of not less than one peck nor more than 4 pecks taken at random from various parts of the bulk pile or by a count of the entire pile if it contains less than one peck.

2. 1. Exemption

Quahogs of smaller size may be taken or possessed by persons holding an aquaculture lease issued under 12 M.R.S.A. §6072, §6072-A or §6072-B, as provided in §6073-A, or by persons holding a limited-purpose aquaculture (LPA) license issued pursuant to 12 M.R.S.A. §6072-C, or under Municipal shellfish aquaculture permits issued under §6673. Transportation, buying, selling and sanitation must all be in compliance with Chapters 9 and 15-20 and 21-24. This exception shall only apply to quahogs cultivated in the leased or licensed areas.

C. Compliance

Persons must comply with DMR regulations in Chapters 9 and 15 through 20 established in accordance with the National Shellfish Sanitation Program Model Ordinance (NSSP/MO) for the sanitary control of shellfish, which includes tagging requirements, and with DMR regulations in Chapters 21-24.

10.05 Taking of quahogs in the sub-tidal waters of New Meadows Lake, Brunswick and West Bath

A. New Meadows Lake: The area bounded by the Old Bath Road and the Brunswick Road.

B. Methods of harvest prohibited

It shall be unlawful to fish for or take quahogs by towing any dredge, drag or other implement by watercraft; by diver/diving (SCUBA or snorkel*); or by pump, suction or any type of mechanical suction device. Hand digging with a so-called clam hoe or bull rake, hand-raking, hand tonging, or picking quahogs out of the mud by hand are allowed. Harvest by cutting through or breaking the ice is prohibited; harvest may take place only through open water.

*Any artificial breathing device that allows a person to breathe underwater.

This subsection does not apply to the holder of a lease issued under 12 M.R.S. §§6072, 6072-A or 6072-B when fishing for or taking quahogs cultivated on the leased area within the waters of New Meadows Lake, nor does it apply to the holder of a Municipal shellfish aquaculture permit issued under §6673. .

C. Night prohibition

It shall be unlawful to fish for or take quahogs during the period ½ hour after sunset, as defined in [12 M.R.S. §6001\(46\)](#), until ½ hour before sunrise, as defined in [12 M.R.S. §6001\(45\)](#).

10.06 Taking of razor clams

A. Definitions

Razor Clam means *Ensis directus*, commonly known as the Atlantic Jackknife.

B. Size Restrictions

It shall be unlawful to take, possess, ship, transport, buy or sell razor clams that are less than 4 inches.

C. Methods of harvest prohibited

It shall be unlawful to fish for or take razor clams by using electrical fields emitted by any kind of device including electrodes.

Basis Statement

Razor clams have great potential as a commercially harvested species in Maine. In order to conserve the species in a way that will make harvest sustainable given increased fishing pressures, the Department has determined that size and gear restrictions are needed. Size restrictions were determined based on a survey of current literature on razor clam populations in Maine and also in other countries where razor clams are harvested for commercial purposes. Gear restrictions were based on current analysis of known and reported detrimental effects via a literature review demonstrating that there are detrimental impacts associated with electrical field based fishing techniques. This includes the impacts of electrical fields on the razor clam resource. In addition, there may be impacts to non-target species (such as fish), and also a danger posed to divers and draggers who work in close proximity to the electrical harvesting equipment. While more research on the impacts are needed, the threats posed to the benthic habitat represents a substantial threat to the trophic structure that supports not just razor clam but all commercial fisheries in Maine, indicating that the risk this gear type poses is unjustified until further research can be conducted. Therefore, the Department will simultaneously pursue a study to test and assess the impacts of electrically based harvesting techniques. Tolerance levels for Quahogs were determined based on the Department's understanding of current practices in Maine, a survey of the literature on sustainable harvest sizes, and after receiving feedback from Marine Resource Officers.

Summary of Comments

Written comments were received prior to the hearing and were reviewed by DMR staff and experts. On Wednesday April 20, 2016, Virginia Olsen of Oceanville Seafood submitted a comment suggesting that DMR establish soft shell clam measurements for the state. Ms. Olsen noted that some towns have already adopted size limits in response to a recognized decline of the harvest. DMR acknowledged this comment, but the issue was outside of the purpose of this particular rulemaking. The Maine Aquaculture Association submitted comments requesting that certain language be added to Chapter 10, 10.06 clarifying that aquaculturists culturing Razor Clams would be exempt from minimum size requirements so that they could raise juvenile razor clams. This addition would be in line with exemptions for other shellfish species. DMR acknowledged the comment, but noted that this exemption is already included within the law itself under 12 M.R.S. 6073-A. Therefore, the Department declined to duplicate language in the rule that is already in statute.

During the hearing on May 11, 2016, written comment was submitted by the Town of Brunswick, Maine, Marine Resources, and Harbor Management, represented by Paul Plummer, Deputy Marine Resources Officer, and Deputy Harbormaster. The comment was in favor of the tolerance for quahogs and provided detail on a recognized decline in the resource as a result of the prior lack of tolerance standards for quahogs in DMR regulations. Deputy Plummer further noted that the town would be in favor of tolerance levels for other shellfish harvested from the intertidal zone, as it is a valuable conservation tool and would help prevent declines in shellfish resources. Scott Moody, a buyer and fishermen from Harpswell, Maine provided oral comment during the public hearing. He expressed support for the quahog tolerance levels. Mr. Moody also noted that, in addition to prohibitions on electrofishing, it could be a good idea for the Department to consider prohibitions on bleaching - another technique used to harvest shellfish from the intertidal zone. Mr. Moody noted that this harvest technique is currently being used in Massachusetts and has detrimental impacts on the intertidal habitat. Mr. Moody was not aware of the technique being used in Maine. The Department agrees that bleach should not be used for harvesting. There is an existing law (12 MRS 6951) that prohibits fishing with poison or other stupefying substances, and at this time the Department feels that is sufficient to prohibit that practice. Francis Berry, a fisherman from Brunswick, Maine also attended the hearing but did not provide any written or oral comment.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 10

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

DATE AND PLACE OF PUBLIC HEARING: May 11, 2016 at 5:30 PM, DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: 5/21/2016

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

The Commissioner has become aware of fishermen using electricity based harvesting practices to target razor clams along the Maine Coast, but the impacts of this gear type have not been tested and are not well understood. Existing research indicates that these harvesting methods cause harm to razor clam populations, and may pose real danger to the divers and fishermen who need to be in close proximity to the electrical equipment during the harvesting process. Therefore, the Commissioner finds it prudent to propose this rule while simultaneously exploring the harvest technique on an experimental basis using Department resources in order to determine if the Department can safely regulate these techniques.

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

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

The proposed rule seeks to add size and harvest method conservation methods in order to protect the Maine razor clam resource, and fishermen themselves from potentially detrimental harvest practices.

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 rulemaking implements conservation measures regarding razor clams in order to protect the razor clam resource and to prevent the use of certain harvest methods that have been shown to have possibly detrimental effects on razor clam resources and fishermen. Specifically, this rulemaking puts in place size restrictions on razor clams and to prohibit the use of harvesting techniques that use electricity or electrical fields. Electricity based harvest methods have been shown to cause injury to razor clams of sublegal size by exposing them to greater predation threats. In addition, the impacts and risks posed to human divers that typically work alongside electricity based harvesting equipment is unknown. Finally, the rule adds clarifying sections on minimum size tolerance for Quahogs under Section 10.04.

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

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