

Department of Marine Resources
NOTICE OF AGENCY RULE-MAKING PROPOSAL

RULE TITLE OR SUBJECT: Chapter 13 Whelks, Updates

CONCISE SUMMARY: The proposed amendments to Chapter 13 include clarification to the whelk permit requirement; replacement of the closure permit with the option for processors and harvesters to request targeted localized testing for an exception to closed areas due to red tide/ PSP to harvest whelks instead of a permit; the repeal of the optional harvester reporting; and renumbering throughout the entire chapter.

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

PUBLIC HEARING: ***March 3, 2009, 6:00pm**, Department of Marine Resources, Large Conference Room, 200 McKown Point Road, West Boothbay Harbor

**The public hearings for four proposed rules will be held in numerical order starting with Chapter 13, followed by Chapters 25, 49 and 90. Each separate hearing will be held immediately upon the conclusion of the previous hearing. See separate rulemaking notices for rules not listed in this notice.*

DEADLINE FOR COMMENTS: **March 13, 2009**

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSONS: **Pete Thayer (207-633-9539) or Laurice Churchill (207) 633-9584**

AGENCY NAME: Department of Marine Resources, attn: L. Churchill

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TEL.: (207) 633-9584 **FAX:** (207) 633-9579 **TTY:** (207) 633-9500 (Deaf/Hard of Hearing) **Hearing facilities:** If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

The proposed amendments would impact commercial fishing license holders with the whelk permit endorsement who wish to harvest whelks during a red tide/ PSP closure and provide clarifications to the license and permit requirements by updating section E with the correct license names, renumbering and removal of the optional harvester reporting.

Replacement of the "closure harvesting" option for processors and harvesters with an option to request targeted localized testing for an exception to published closed areas to the harvest of carnivorous snails (whelks). This would address the public health and safety concerns due to the increased prevalence of paralytic shellfish toxins in recent years and provide consistency with similar situations. For example we do not allow whole scallops to be landed for processing or sale due to the presence of marine biotoxins. However, lease holders or other shellfish industries located on or near a closure line have requested targeted localized testing. Provided the Department has the time and resources, and the person requesting this provides the necessary samples, smaller exception areas have been incorporated into the larger red tide/PSP closure regulations.

Reporting of whelks landed by dealers is required as of 2008. This currently replaces the "optional" harvester reporting in section H.

Proposed rulemaking – see underlined or ~~deleted~~ text below:

CHAPTER 13 - Whelks

13.01 Harvesting of Waved Whelk

1A. Definition: Whelk refers to waved whelk (*Buccinum undatum*).

2B. It shall be unlawful to fish for or take whelk by any means other than a trap.

A4. No more than three traps may be fished on a single line and buoy.

B2. Each buoy and trap must be clearly marked with the Whelk Permit number followed by the letter "W".

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C3. Each whelk trap must have an escape vent located in the bottom half of the trap. The vent shall measure not less than 1 1/2 inches x 1 1/2 inches square or 1 1/2 Inches in diameter, if circular.

Exception: A person who harvests whelks as a by-catch from lobster traps is exempt from the 3-trap limit, the marking requirement and the vent requirement of this regulation.

3C. It shall be unlawful to raise, haul, or transfer any whelk trap from any coastal waters during the following time:

A4. Night. During the period 1/2 hour after sunset until 1/2 hour before sunrise from June 1st to October 31st, both days inclusive.

B2. Weekends. During the period from 4 PM, Eastern Daylight Savings Time, Saturday, to 1/2 hour before sunrise the following Monday morning from June 1st to August 31st, both days inclusive. Exception: During the period of a Hurricane Warning issued by the National Weather Service in effect for any coastal waters of the state.

4D. It shall be unlawful to possess any whelk with an overall shell length of less than 2 1/2 inches.

5E. ~~It shall be unlawful to harvest, or assist in the harvest of whelks unless the harvester is the holder of a commercial fishing license or is covered by a commercial fishing license. In addition it shall be unlawful for the operator of a boat used to harvest whelks to engage in the harvest of whelks without being the holder of a Whelk Permit as issued by the Commissioner of the Department of Marine Resources.~~

It shall be unlawful to harvest whelks unless the harvester holds a Commercial Fishing – Single license with the Whelk Permit endorsement or a Commercial Fishing – Crew license with the Whelk Permit endorsement*. Any person may take up to 1/2 bushel of whelks for personal use per day without a license or permit.

*<http://www.maine.gov/dmr/license/index.htm>

6F. During red tide or PSP (paralytic shellfish poison) closures* for carnivorous snails, processors or harvesters of whelks may contact the Department of Marine Resources (DMR), Biotxin Monitoring Program Director to request targeted testing of an area to determine if an exception area for the harvest of whelks may be created. Contact information: telephone (207) 633-9500, fax (207) 633-9579 or write DMR, Biotxin Monitoring Program Director, P.O. Box 8, West Boothbay Harbor, Maine 04575.

* http://www.maine.gov/dmr/rm/public_health/closures/pspclosures.htm

Product harvested from areas which are closed for the harvest of soft-shell clams due to marine biotoxins, must be processed in the State of Maine and shall be tagged by the harvester at the time of harvest.

~~G. Tags: (to be used only on containers of whelks harvested from areas described in F)~~

~~1. Tags will be provided by the processor and will contain the following information:~~

~~Processor~~

~~Processor address and phone number~~

~~Dealer~~

~~Dealer address and phone number~~

~~Harvester~~

~~Harvester Whelk Permit Number~~

~~Harvest Date~~

~~Harvest Area~~

~~Quantity of shell stock.~~

~~2. Each container will be tagged~~

~~3. Processors will keep records of the issuance of tags and the number of containers tagged for each harvest/shipment lot.~~

~~H. The Commissioner of the Department of Marine Resources may require mandatory reporting of data relevant to the harvest and processing of whelks.~~

If you are unable to attend the hearing persons are encouraged to submit written comments from the receipt or posting of this notice through close of business on the deadline listed.