

**Notice of Agency Rule-making Proposal**

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 10 Clams and Quahogs

TYPE OF RULE (*check one*):  Routine Technical  Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

**BRIEF SUMMARY:**

This proposed rulemaking removes an existing sunset of December 31, 2020, pertaining to a prohibition on dredging quahogs in the New Meadows River. By removing the sunset, the existing prohibition will remain. The proposed rule also reorganizes sections of the chapter for improved clarity.

Date, time and location of PUBLIC HEARING (*if any*): N/A

COMMENT DEADLINE: October 16, 2020

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

NAME: Amanda Ellis

MAILING ADDRESS: 21 State House Station, Augusta, Maine 04333-0021

E-MAIL: dmr.rulemaking@maine.gov

TELEPHONE: 207-624-6573

FAX: 207-624-6024

TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

\* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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

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

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

## DEPARTMENT OF MARINE RESOURCES

### Chapter 10 Clams and Quahogs

#### 10.01 ~~Taking of quahogs in Maquoit Bay~~ Prohibitions on dredging for quahogs

It is 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 following locations. This prohibition shall not apply to equipment operated by the Department of Marine Resources.

- ~~A. 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~~ 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~~

- ~~B. 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~~ 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.

- ~~C. New Meadows River. The waters or flats of the subtidal area of the New Meadows River west of Rt. 24 and north of a line drawn from the northwestern tip of Indian Point, southeasterly to northern tip of Bragdon Island, continuing east to Bragdon Rock, and then continuing in a northeasterly direction to the point of land at the end of Close Reach Rd, West Bath, 43°51'21"/069°52'1".~~

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

~~The limitations specified in 10.05 (B)(C) and (D) apply to the area described in (A) until December 31<sup>st</sup>, 2020. After December 31<sup>st</sup>, 2020, the limitations specified in 10.05 (B) (C) and (D) apply to the subtidal area of the New Meadows Lakes north of Bath/State Rd in Brunswick and West Bath.~~

The following limitations apply to the subtidal area of the New Meadows Lakes north of Bath/State Rd in Brunswick and West Bath.

- ~~A. New Meadows: The subtidal area of the New Meadows Lakes and River west of Rt. 24 and north of a line drawn from the northwestern tip of Indian Point, southeasterly to northern tip of Bragdon Island, continuing east to Bragdon Rock, and then continuing in a northeasterly direction to the point of land at the end of Close Reach Rd, West Bath, 43°51'21"/069°52'1".~~

#### AB. 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 the New Meadows Lakes, nor does it apply to the holder of a Municipal shellfish aquaculture permit issued under §6673.

BC. 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\(45\)](#).

CD. Closed periods

It is unlawful to fish for or take quahogs from the New Meadows Lakes:

- (1) Winter. During the period ½ hour after sunset, as defined in [12 M.R.S. §6001\(46\)](#), on December 31<sup>st</sup> until ½ hour before sunrise, as defined in [12 M.R.S. §6001\(45\)](#), on April 1<sup>st</sup>.
- (2) Sundays: During the period ½ hour after sunset, as defined in [12 M.R.S. §6001\(46\)](#), on Saturday until ½ hour before sunrise, as defined in [12 M.R.S. §6001\(45\)](#), on Monday.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- 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: Chapter 10 Clams and Quahogs

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): N/A

COMMENT DEADLINE: October 16, 2020

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

This proposed rulemaking reorganizes sections of the chapter for greater clarity. All prohibitions on dredging for quahogs are grouped under the same section. An existing December 31, 2020 sunset on a rule prohibiting dredging for quahogs in the New Meadows River is repealed, resulting in a continuation of the existing prohibition.

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 would continue an existing prohibition on dredging for quahogs in the New Meadows River.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

In developing the proposed rule the Department considered the information that led to the creation of the prohibition. The Department was unable to conduct further survey work in the spring of 2020 as previously anticipated.

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*