

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 10 Clams and Quahogs

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This rule 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 rule also reorganizes sections of the chapter for improved clarity.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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

APPROVED FOR PAYMENT _____				DATE: _____	
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
<i>Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta</i>					
010	13A	1120	10	4946	regulations

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 east of Rt. 24 and north of a line drawn from the northwestern tip of Indian Point, southeasterly to the 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 31st, 2020. After December 31st, 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 31st until ½ hour before sunrise, as defined in [12 M.R.S. §6001\(45\)](#), on April 1st.
- (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:

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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

Basis Statement:

This rule 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 rule also reorganizes sections of the chapter for improved clarity.

Summary of Comments:

Notice of this proposed rulemaking appeared on September 16, 2020 in the five major daily newspapers as published by the Secretary of State. On September 16, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Due to the pandemic, no public hearing was scheduled. The comment period closed October 16, 2020.

Written Comments:**Peter Francisco, received via email, September 17, 2020**

Maybe I'm reading this wrong, but shouldn't it say east of rt 24 rather than west of rt 24 to define the area where they can't drag for quahogs?

DMR Response:

DMR has corrected this discrepancy, so that the rule now correctly reads "east" instead of "west."

Ivy Frignoca, Friends of Casco Bay, received via email, September 22, 2020

For over 30 years, Friends of Casco Bay has worked to improve the health of Casco Bay. We monitor water quality and use our data to inform and effect change through community outreach and advocacy. In order to protect the environmental health of marine habitat, we support the Routine Technical rule change proposed to Chapter 10 Clams and Quahogs. The proposed rule change removes an existing sunset of December 1, 2020, pertaining to a prohibition on dredging quahogs in the New Meadows River. Removing the sunset date leaves the prohibition in place.

We request the Department go a step further and ban all dredge fishing for quahogs in Casco Bay. We have concerns regarding the impacts this type of fishing has on benthic habitats including eelgrass beds. We have reviewed your web page and could find no studies that support how this type of fishing could be done in the Bay without deleterious impacts. Until such time as the Department has completed such studies, dredge fishing should be banned.

Daniel Devereaux, Coastal Resource Manager, Town of Brunswick, received via email, October 13, 2020

I am contacting you in support of removing the sunset provision on dredging quahogs in the New Meadows River, making the regulation permanent. The towns of Brunswick, Harpswell, and West Bath have robust municipal shellfish programs that employ over 140 local harvesters that

produce millions of dollars of shellfish each year. This can be witnessed by your own shellfish landing reports.

By prohibiting near shore quahog dredging you are providing an opportunity to those hand harvesters and promoting a more diverse and sustainable near shore shellfishery. **I would urge DMR to consider banning all dredging and dragging practices in these sensitive shallow water marine habitats.**

Over the last decade the quahog populations in the New Meadows River has rebounded significantly, much of which can be attributed to the many efforts deployed by municipal shellfish conservation programs in the intertidal areas. There has been a distinct correlation between the health of the sub tidal and intertidal shellfish resources. It is no secret that 25 years ago the New Meadows River was abundant with shellfish resources. It wasn't long after those shellfish resources were exploited by drag fishermen that there was a significant decrease within the intertidal areas. Which in turn caused a decrease in local shellfish licenses issues to hand harvesters, leading to a major loss of jobs and economic revenue during those years. Had dragging never occurred I'm convinced the local shellfish industry would be in a much better position today.

DMR response to comments submitted by representatives of Friends of Casco Bay and the Town of Brunswick:

The rule only contemplates a quahog dredging prohibition in the area described in Chapter 10.01(C) of this adopted regulation. DMR cannot extend prohibitions to quahog dredging to other areas not contemplated in this rulemaking.

To clarify, DMR has been monitoring the quahog resource in the New Meadows Lakes since 2012 and has documented a decline in the population. These declines occurred in areas where harvest was limited to hand harvest only. In November 2018, the documented decline prompted DMR to adopt a variety of limitations on the subtidal resource, including a winter closure and prohibition on Sunday harvest to reduce effort. The prohibition on dredging was also implemented as a limitation during the November 2018 rulemaking.

In 2018, the area under the prohibition had not been surveyed, but DMR believed that the greater efficiency of harvest by dredging/dragging would likely continue to negatively impact the quahog resource. To avoid any potential damage to the quahog resource, DMR adopted the rule, but included the December 31, 2020 sunset. The sunset was intended to provide DMR with time to conduct a survey of the area, which would help inform whether the 2018 dredge prohibition would persist beyond the sunset, be modified, or allowed to expire. Due to the pandemic, DMR was unable to conduct further survey work, during spring 2020, as previously anticipated. Therefore, the sunset is removed, and harvest limitations related to dredge harvest will continue. This regulation is not permanent and may be modified through future rulemakings.