

# Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 10 Clams and Quahogs

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

## BRIEF SUMMARY:

The Commissioner proposes this rulemaking for the implementation of 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 proposes to put 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 proposed rule adds clarifying sections on minimum size tolerance for Quahogs under Section 10.04.

Date, time and location of PUBLIC HEARING (*if any*): 5/11/2016 May 11, 2016 at 5:30 PM, DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: 5/21/2016

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

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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, 6171-A

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

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

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DEPARTMENT OF MARINE RESOURCES - SHELLFISH HARVESTING

CHAPTER 10

CLAMS AND QUAHOGS  
TITLE INDEX

- 10.01 Taking of quahogs in Maquoit Bay
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- 10.06 Taking of razor clams

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.

## Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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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: 5/11/2016 Wednesday, 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]

The Commissioner proposes this rulemaking for the implementation of 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 proposes to put 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 proposed 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.