

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 10.05: Taking of quahogs in the sub-tidal waters of New Meadows Lakes, Brunswick and West Bath.

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

CONCISE SUMMARY:
This rule establishes Sunday closed periods and a seasonal closed period for the taking of quahogs in the New Meadows Lakes. Harvesters would be prohibited from fishing or taking quahogs in the New Meadows Lakes on Sundays, and winter months from sunset on December 31 through sunrise on April 1. The winter closed period sunsets April 1, 2019. Recent surveys of the New Meadows Lakes conducted by the Maine Department of Marine Resources indicate a decline in the quahog population. These effort control measures were proposed at meetings with industry members held in the spring of 2017, and are intended to reduce fishing pressure on the quahog resource, and to minimize the mortality associated with winter fishing.

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

AGENCY CONTACT PERSON: Amanda Ellis (207) 624-6573
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
 Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6573
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

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

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DEPARTMENT OF M-ARINE RESOURCES

Chapter 10 Clams and Quahogs

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

A. ~~New Meadows Lakes: The area bounded by the Old Bath Road and the Brunswick Road of the New Meadows River north of Bath/State Rd in Brunswick and West Bath.~~

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 the New Meadows Lakes, 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\(45\)](#).

D. 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.

10.05 D(1), the winter closed period, sunsets April 1, 2019.

Basis Statement

This rule establishes Sunday closed periods and a seasonal closed period for the taking of quahogs in the New Meadows Lakes. Harvesters are prohibited from fishing or taking quahogs in the New Meadows Lakes on Sundays, and winter months from sunset on December 31 through sunrise on April 1. The winter closed period sunsets April 1, 2019. Recent surveys of the New Meadows Lakes conducted by the Maine Department of Marine Resources indicate a decline in the quahog population. These effort control measures were proposed at meetings with industry members held in the spring of 2017, and are intended to reduce fishing pressure on the quahog resource, and to minimize the mortality associated with winter fishing. During the comment period, industry expressed concern that a weekend closed period would concentrate harvesting efforts Monday through Friday. To address these concerns, the Department has reduced the weekend closed period to Sundays only.

Summary of Comments

Notice of this proposed rulemaking appeared on September 13, 2017 in the five major daily newspapers as published by the Secretary of State. On September 13, 2017, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held on October 4, 2017 at 6pm at the Bath Parks and Recreation Center, Bath. The comment period closed October 16, 2017.

Public Hearing

Bath Parks and Recreation Center

October 4, 2017

6pm

Attendance:

Members of the Public (23)	DMR Staff (3)
Tony Delano, Scott Goodell, Ray Trombley, Greg Goodenow, Joey Bown, Stephen Goodenow, Juliette Lakka, Jared Martin, Chris Stapleton, Derek Corliss, Harrison Kemp, Jon Prior, Darell Naam, Alex King, Adrian Dehaan, Andy Johnson, Aaron Davis, Craig Bryant, Adam Sheton, Robert Gayton, Jr., Malcolm McIntosh, Ron Trundy, James Rowe, William Dimock, and Jon Prior, Jr.	Deirdre Gilbert, Kohl Kanwit, and Amanda Ellis

I. Hearing Testimony

Total individuals who testified: 12

Oppose the proposed regulation: 9

Support the proposed regulation: 3

Neutral towards the proposed regulation: 0

Opposed (9):

Chris Stapleton, Maine Maritime Products

There are a lot of people that make their living in the winter time. What about those guys? That's all I have to say. Well, the weekends won't make a dent in anything. The pond will just be crowded Monday through Friday. Some people only go on weekends. With the winter closure the survey guy said those numbers were what he would expect to see for a tidal area not the pond and tidal areas are not closed for winter.

Andrew Johnson, Harvester

I really don't think that it will conserve the resources. It will focus everyone at the same time on the pond and they will have huge days. I think it is a bad idea. I know you are trying to conserve but if you looked at the number of people who go on the weekends there is not many people effecting it on the weekends.

Malcolm McIntosh, Harvester

I think it is a bad idea for some of us because we can only get a ride out there on the weekend. That's going to hurt us. Also, the winter time is a lot of time for it to be closed-down. I oppose it.

Aaron Davis, Harvester

I agree with what has been said before. People are going to hit it hard Monday through Friday. I don't think it is going to make a difference and winter fishing that's how some of those guys make their living.

Alex King, Harvester

I oppose the weekends. Everyone will be there sunrise to sunset. The landing is getting bad enough and having everyone crammed down there at the same time. I don't see it going well.

Jon Prior, Harvester

Closing on weekends and shutting down for winter is too much. We are self-employed and we all make our own schedules. I understand closing down in the winter because of everything getting killed, but weekends is too much because there are just too many people out there.

James Rowe, Harvester

Weekends off could possibly work out until we get shut down for rain overages for the whole week. Then it could open up on a Friday and then get shut down again on Saturday. We could be another a whole week before we could possibly work. All of us would be hurting with two weeks without work. For that reason, I opposed the weekend thing. In the summertime, we could shut down for four weeks or five weeks in a row.

Craig Bryant, Culler

Basically, I agree with what everyone has said, but if you shut off the weekends everyone is going to crowd in Monday through Friday.

Harrison Kemp, No affiliation

It seems like this is bureaucratic overreach trying to take money out of self-employed people's hands. You want to close in winter because of stuff dying, fine. But a weekend closure won't solve anything. You're just digging deeper into people's lives.

Support (3)

Ray Trombley, Casco Bay Shellfish

We need conservation. There is no conservation when you are digging seven days a week. In the last ten years' things, have declined. It needs to rest. I know the guys don't like it, but this is an industry where if we don't stop now we're going to destroy it. We have quahogs in Brunswick and we do conservation. We shut it down from December 1 through April 15 and it holds the seed in there and it does not take away from livelihoods. They don't live in the wintertime they get cold and they freeze. I just think this is a great plan. I know a lot of guys need the work, but there are other jobs.

Stephen Goodenow, Harvester

I started harvesting the pond seven years ago, and you could get 2,000 or 3,000 a day. Now if you look at the scores you are lucky to get 1,000 a day. I have seen it decline a lot and the pond needs some kind of conservation. I don't know if it is a weekend thing or a Sunday/Monday thing, I don't know. I am not sure I am in favor of the winter closure, because people need to make a living in the winter, but something needs to be done. Quahogs are not there anymore.

Tony Delano, Harvester

I agree with closing it on the weekend. I have been out for six years and a lot of guys don't do this because they have not been out there as long. But you could go out there for four hours and make twice as much as we are making in eight hours. Every year we have seen a decline. We have been saying we need to do something for the past three years and every year we see an influx of harvesters. It is just being hammered day after day after day. I think weekends will give it a rest. It also gives people who live around the pond a break from the steady traffic. A lot of people have houses there. I am indifferent on the winter. It doesn't matter to me I guess. I don't think there are a lot of guys that make their living out there in the winter. When they do they have to break the ice to do it.

II. Written Comments

Support (1)

Tony Delano, Harvester, submitted via email on October 15, 2017

My name is Tony Delano. I am a quahog harvester who has relied upon the Upper New Meadows Lakes to earn a full time living for the past 6 years. I'd like to express my SUPPORT for the proposed weekend closure of harvesting quahogs.

When I first started bull raking this area, the initial boom had subsided and the number of full time harvesters had leveled off at approximately 15-20. The harvest was quite consistent and provided a good living from mid April (ice out) till late December, when it froze again. Approximately 3 years ago the Lakes experienced a huge influx of new rakers (in excess of 20 additional full time harvesters). The long term effect has been devastating. Annual crops simply don't grow fast enough to keep up with the increased number of man hours. Individual landings of experienced bull rakers have seen landings consistently decline in each of the past 3 years. (My personal landings for this year are at least 1/2 in comparison to 4 years ago).

Individual work days are being lengthened in an attempt to offset the lesser harvests. Unfortunately these factors have also led to consecutively shorter seasons of equitable harvest. Most harvesters were forced to seek alternative jobs by late October last year and as early as mid September this year.

I attended the public hearing on this issue and believe it's noteworthy that all those opposed to the weekend closure fell into one of the following categories:

- 1) Part time summer rakers who show up only when good harvesting is available*
- 2) Harvesters who have temporarily dropped out due to the extreme decline*

3) Guys who are still raking, but not concerned with restoring the Lakes to a healthy sustainable level because they haven't been there long enough to recognize the decline or receive other means of subsidized income.

In summary, I believe temporarily eliminating weekend harvesting is "step one" of the recovery process. This action, combined with better law enforcement of illegal activities as well as a reseeded effort, will result in an increase of marketable crop and create a more stable harvest area for "ALL" interested State license holders. It should also help provide more reliable numbers to the marketplace and reduce the extreme lows of the early and late seasons.

As for the winter closure:

I am indifferent and not familiar with the data related to the detrimental affects. However, I think it's worth mentioning that it has historically contributed to the activity of illegally relocating clams (during the Autumn months) in preparation of creating a more productive winter harvest in areas that don't ice over as quickly.

Thank you

Opposed (1)

Chad Coffin, President, Maine Clammers Association, submitted via email on October 16, 2017

The Maine Clammers Associate (MCA) would like to go on record as being opposed to the implementation of significant and additional closures for the taking of shellfish from the New Meadows Lake Estuary. Concerns and questions about the scientific reasoning for the closures posed to DMR Shellfish Management staff have not received satisfactory answers.

The MCA's goal is to create and sustain healthy shellfish resources that Maine harvesters and seafood businesses can depend on. In order to achieve that goal, "shellfish management" must be grounded in science and focused on measures that sustain and enhance production. Closed periods in the New Meadows Lakes will not do either and instead are measures ground in "hope" and "myth" that will decrease production of shellfish.

At a recent industry workshop, DMR presented the results of stock assessment is has conducted in the New Meadows Lake. The MCA questions if DMR's stock assessment produced results that are representative of the quahog population in the New Meadows Lakes. DMR assessed approximately 15 sq. ft. out of more than 5,000,000 sq. ft. of sub tidal habitat. Is that enough? We don't know but one thing is for certain-neither does the DMR.

Oddly, the results of DMR's survey doesn't point to a depleted population. In fact, high numbers of sublegal quahogs appear to be present. This, in conjunction with anecdotal observations from harvesters that effort per unit harvested has risen, indicates that a large percentage of the annual standing crop is being harvested. Closing the New Meadows Lakes will likely reduce the percentage of the annual standing crop being harvested while providing no biological or economic benefit to the resource and industry it supports.

1. Department response to weekend closures:

Based on harvester concerns that a weekend closure will concentrate effort Monday through Friday, the Department will limit weekend closed periods to Sundays only. The Sunday closure will help conserve the resource, while providing harvesters the opportunity to harvest one weekend day.

2. Department response to the seasonal closure:

A review of the scientific literature indicates that quahogs stop actively feeding and mobility is impaired in water temperatures below 48° F (8° C). Quahogs also go into a hibernative state between 41° - 43° F (5° - 6° C). Under these temperatures, which are common during the winter months, juvenile or adult quahogs removed from the sediment will not reburrow making them susceptible to predation. Furthermore, any quahogs exposed to air temperatures below 28° F (-2° C) will suffer tissue damage. If greater than 60% of the tissue is frozen mortality will occur. The winter closure is intended to reduce mortality and ease pressure on the resource, so that the fishery has viable stock. The seasonal closure will sunset on April 1, 2019.

3. Department response to survey methods:

Department staff reviewed the scientific literature on shellfish survey methodology and adopted an approach that was conducive to the geographical constraints of the Upper New Meadows Lake (UNML). The selected sampling methodology utilizes a benthic core approach to evaluate the quahog seed resource. A total of 180 core samples are collected and quahogs are enumerated, measured, and recorded. Annual seed surveys have been conducted in 2011, 2012, and 2013. The Department decided to survey every other year beginning in 2015. In 2017, the Lower New Meadows Lake (LNML) was incorporated into the UNML survey.

Although the 2017 survey of the UNML indicates a rebound in the 7mm to 14mm size range, the calculated numbers of quahogs are still lower and not as wide ranging as surveys conducted in 2011 and 2012. The 2017 survey of the LNML indicated that there were very low densities of the seed resource. Department staff have recommended management actions to rebuild the resource.

Pursuant to 12 MRSA §6021 a significant part of the Department's mission is to conserve and develop marine and estuarine resources. This regulation provides conservation measures for the resource via Sunday closed periods and winter closed periods when mortality is high. These conservation measures are necessary to ensure the economic viability of the resource into the future.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

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

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): October 4, 2017, 6 PM, Bath Parks and Recreation Center, Bath ME

COMMENT DEADLINE: October 16, 2017

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

This rule would establish closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion. The proposed closed periods were developed in consultation with industry.

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 regulations would apply to persons engaged in the harvesting of quahogs from the New Meadows Lakes.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

This proposed rule would establish weekend closed periods and a seasonal closed period for the taking of quahogs in the New Meadows Lakes. Harvesters would be prohibited from fishing or taking quahogs in the New Meadows Lakes during weekends, and winter months from sunset on December 31 through sunrise on April 1. The winter closed period sunsets April 1, 2019. Recent surveys of the New Meadows Lakes conducted by the Maine Department of Marine Resources indicate a decline in the quahog population. These particular effort control measures were proposed at meetings with industry members held in the spring of 2017, and are intended to reduce fishing pressure on the quahog resource, and to minimize the mortality associated with winter fishing.

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