

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11; 11.14 Atlantic Sea Scallop Limited Entry Program

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

CONCISE SUMMARY:

This regulation establishes two annual lotteries (one for drag licenses, one for dive licenses) for the issuance of new scallop licenses. The number of new licenses available is calculated by applying an exit ratio to the number of licenses retired by each gear sector in the previous calendar year. The regulation also establishes the eligibility criteria to enter the lottery and factors that would give an individual additional chances in the lottery.

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

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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.01 Definitions

8. Commercial Scallop License. A handfishing scallop or handfishing with tender license issued under 12 M.R.S §6701 or a scallop dragging license issued under 12 M.R.S. §6702.

11.14 Commercial Scallop License Limited Entry System

1. Limited Entry Procedure:

- A. The Department shall hold two annual lotteries for commercial scallop licenses, provided that the number of licenses to be awarded as determined by the respective exit ratios is greater than zero. One lottery will be held for scallop dragging licenses issued under 12 M.R.S. §6702 and one lottery will be held for handfishing scallop or handfishing with tender license issued under 12 M.R.S §6701.
- B. Eligible individuals wishing to enter either lottery must submit a lottery application that must be received by the Department by the date specified by the Department, for licenses to be issued in the following calendar year.
- C. An individual is eligible to enter either lottery if they meet the following criteria:
 - (1) Is a Maine resident and 18 years of age or older;
 - (2) Held in any previous calendar year or currently holds any commercial license issued under 12 M.R.S Part 9, or has in the past or currently is crewing onboard an active commercial scallop vessel;
 - (3) Has not been convicted or adjudicated of a marine resources offense that resulted in a license suspension within the last 7 years; and,
 - (4) Does not currently possess a license issued under 12 M.R.S. §6701 or §6702.
- D. The number of draws (chances) allotted to each eligible applicant shall be calculated by the Department.
 - (1) Each eligible applicant shall be awarded a minimum of one draw.
 - (2) Each eligible applicant shall be awarded one additional draw for every consecutive year they enter each lottery.
- E. Before the lotteries are held the Department shall calculate the number of licenses to be awarded for that calendar year, if any.
- F. The Department shall choose individuals to whom licenses will be awarded through a random selection process. The drawing will continue until all available licenses have been awarded.
- G. The Department will verify an applicant's eligibility for the lottery and any additional chances claimed at the time the individual is drawn. If it is determined that the individual misrepresented or falsified any information on their lottery application that drawing shall be void and the Department will draw another individual.
- H. Once a list of winners has been determined, drawing will continue to establish an ordered list of alternates the same length as the list of winners.

2. Exit Ratios

- A. Drag Exit/Entry Ratio. Two individuals will be awarded license eligibility for every three individuals who held a commercial scallop drag license in the year prior to the previous calendar year but who did not renew that license in the previous calendar year. One of the licenses issued will go to an individual over the age of 18 and under the age of 31, and one of the licenses will go to an individual 31 years of age or older. If the number of persons who did not renew is greater than, but not evenly divisible by three, it shall be rounded down to the nearest number evenly divisible by three. If the number is rounded down, the non-renewed licenses in excess of that number evenly divisible by

three shall be carried over to the next calendar year for consideration in that year's calculation. If the number is either one or two, the number of licenses awarded shall be zero and the one or two non-renewed license shall be carried over to the next year for consideration in that year's calculation. If the number is zero, the number of licenses awarded shall be zero.

- B. Handfishing Exit/Entry Ratio. One person will be awarded license eligibility for every one person who held a commercial scallop dive license in the year prior to the previous calendar year but who did not renew that license in the previous calendar year. If the number is zero, the number of licenses awarded shall be zero.

3. Issuing the Awarded Licenses

- A. Lottery winners will be informed in writing and mailed a license application form by the Department by registered mail. In addition, lottery winners and alternates will be announced on the Department website.
- B. Lottery winners must submit their license application, correctly completed with the correct fees and documentation to the Department within 30 days of receipt of notice, or the winner will lose their license eligibility.
- C. Any license awarded through misrepresentation or misstatement on the license lottery application shall be void.
- D. If the winner has not complied with the requirements within 30 days, the next alternate on the list of alternates will be sent a license application and have 30 days to comply in the same manner.

4. Exit/Entry Ratio Review

- A. At a minimum of every two years, the Department shall consult the Scallop Advisory Council concerning potential adjustments to the lottery system.

Basis Statement

This regulation creates a limited entry system for the issuance of new scallop licenses, as required by 12 MRS §6706(3). It establishes two annual lotteries (one for drag licenses, one for dive licenses). The number of new licenses available is calculated by applying an exit ratio to the number of licenses retired by each gear sector in the previous calendar year. The regulation also establishes the eligibility criteria to enter the lottery and factors that would give an individual additional chances in the lottery. In developing the limited entry system, the Department consulted with the Scallop Advisory Council. The Council recommended that eligibility for the lottery be limited to individuals 18 years of age or older. The purpose of this requirement is to ensure that new licenses are awarded to individuals that have a good probability of being able to use the license. The scallop fishery occurs over the winter and spring, so would present a conflict for individuals still in high school. The SAC also felt that the fishery is a dangerous one, and that individuals should be a minimum of 18 years of age in order to safely participate as a captain in the fishery. Finally, the SAC recommended designing the lottery for drag licenses to ensure that there is opportunity for both younger (18-31 years of age) and older (31 years of age and older) fishermen.

Based on the comments received during the rulemaking process, the Department made the following changes:

- Amended the eligibility criteria pertaining to fishing violations to clarify that an individual is not eligible for the lottery if they have been convicted or adjudicated of a marine resource violation that resulted in the suspension of their license within the past seven years.
- Reduced the number of weighting criteria for extra draws in the drag lottery to being a primary crew member onboard an active commercial scallop drag vessel and/or having previously held a Maine commercial scallop drag license.
- Reduced the number of weighting criteria for extra draws in the dive lottery to being a primary crew tender for an active commercial scallop diver and/or having previously held a Maine commercial scallop dive license.

This regulation was submitted to the Legislature for review, pursuant to 5 MRS chapter 375, subchapter 2-A as LD 1767 during the second session of the 128th Legislature. The Legislature authorized the adoption of the rule only if the Department removed the additional weighting criteria that were provided for past participation as a license holder or crew member in the fishery. Instead, the Legislature required the inclusion of a method to increase the number of draws an applicant would receive based on the applicant's unsuccessful attempts in the lottery in consecutive years immediately preceding the lottery in which the applicant has submitted a lottery application. See P.L 2018, Chapter 43.

Summary of Comments

Notice of this proposed rulemaking appeared on September 20, 2017 in the five major daily newspapers as published by the Secretary of State. On September 20, 2017, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. On September 20, 2017 postcards outlining the proposed rulemaking were mailed to industry members. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: October 10, 2017, 6:30 PM, University of Maine at Machias, Rm 102, 116 O'Brien Avenue Machias; October 11, 2017, 6:30 PM, Ellsworth City Hall Auditorium, One City Hall Plaza, Ellsworth; October 12, 2017, 6:30 PM, DMR – Augusta, 32 Blossom Lane, Augusta. The comment period closed October 23, 2017.

I. Machias Public Hearing

October 10, 2017

Limited Entry Program Proposals

Attendance

Members of the Public (35)	DMR Staff (4)/State Representatives (2)
Ernest Kelley Jr., Colon Alley, Mark Patryn, Alan Crowley, James Ackley, Mike Porter, Sarah Dedru, Owen Moody, Lukas Johnson, Gary Wood, Ed Guptill, Mike Murphy II, Rocky Alley, Rick Guptill, Ben Crocker Jr., Shaun Moody, Avery Kelley, Billy Moore, Joseph Moore, Elihu Beal, Johanna Billings, Curtis Haycock, Allen Leighton, Raymond Alley, George Bamford, Travis Preston, Daniel Albee, Rodney Dame, Danny Jodway, William Feltner Jr., Dallas Huckins, James Smith, Franklin Smith, and David Morang	Deirdre Gilbert, Melissa Smith, Amanda Ellis, and Specialist Mark Murray Representative Robert W. Alley and Representative William R. Tuell

Opposed (1)

Jesse Moody, Dragger

I believe there should be a way to get in, eventually. I would make it around 500 licenses we actually start letting people in so that it is not such a big ratio and so much effort. I do believe there will be more effort. I do like the exit and entry ratio. On the dive licenses, I think the 1:1 ratio is too aggressive. Even though there are not a lot of fishermen in there it seems like there is a lot of latent effort per ratio. I like the age ratio, but I don't like how people would have more entries based on years on the water. Seems like it would be hard to regulate and a lot of effort.

Support (6)

Franklin Smith, Dragger

I think the 3:2 entry, exit ratio is an excellent idea. I understand peoples' concerns about the influx of more boats but the average age of a scallop fishermen is pretty high and at some point we have to consider letting a few new people in. You're always going to have people born in 1956 and get all the licenses for free and they didn't have to worry about it then and they don't want anyone new. That is just not fair. I agree with Jesse Moody about the all extra chances and stuff it's going to be hard to prove that stuff. I think anyone eligible should get one chance because it is simple.

Travis Preston, Lobster fisherman

When I first got into the apprentice program it said that when you finished with the apprentice program you would get your lobster license. I couldn't afford the lobster license and my scallop license, so I sold my drag and let my scallop license go. I have my lobster license now and I am currently fishing. I'd like to have my scallop license back, so I can drag for scallops. I am 100% in favor of a license program. I agree with what one of these guys said that if these guys didn't have a license they wouldn't be standing up here opposing it. They would be saying they want their license back. I was born and raised in this area and I have been fishing all my life. I love fishing, period. That's my life and that's what it is.

David Morang, Diver

I am a commercial diver and started in 2010 and I would greatly appreciate the opportunity to have a scallop license.

James Smith, Dragger

I think the idea of letting two draggers in for three out is a good idea before it becomes a very few number of people in the fishery. As far as whether it is weighted or not, it doesn't make much sense to me to weight it, but I will let other people have that discussion. I am for the two in for the three out.

George Bamford, Dragger

I like the ratio and everything. I have a son and I would like to see him get a license. What I do disagree with is if you have one limited access license you should not be in the lottery. I think if you have a lobster license that is what you do. If you have a scallop license that is what you get.

James Ackley, Dragger

I am in favor of the limited entry program for divers and draggers. I don't think you are going to have the problems everyone is thinking, but time will tell. We do need to let new people in. When I started 28 years ago I was a stern man for a while then I started running my own boat and that was my entry into the industry. I was pretty much self-taught and I am sure most of these guys were too. I think everybody deserves a chance and hopefully this will get some of them into it.

Neutral (1)

Maurice Alley, Dragger

I think that people who have worked on a boat should have more opportunity to get a license than the ones who put their name in and do nothing.

II. Ellsworth Public Hearing

October 11, 2017

Limited Entry Program Proposal

Attendance:

Members of the Public (49)	DMR Staff (6)
Chris Sawyer, Isaiah Sawyer, Michael Eaton, Charles MacDonald, Ben MacDonald, Frank Jones, Derek Jones, Paul Gray, George Lowen, Daniel Bachman, Fred Bachman, Forrest Dow, Joel Harper, Jake Mitchell, John Mitchell, David Tarr, Tabor Horton, Tim Robinson, Brian Schwartz, Eugene Lymburner, Richard Quinn, James McMillan, Kurt Ciomei, Scott Keenan, William Soukup, Shirley Soukup, Jesse Gilley, Brandon Bunker, Alston Walls, Jon Bunker, Alton Pinkham, Curtis Haycock, Warren Dorr, Travis Perry, Chris Gross, Cecil Holden, Frank Thompson, Brian Goldius, Robbie Gray, Dean Barrett, Roy Whalen, Roy Whalen Jr., James West, Steve Carter, James Thurlow, Victor Doyle, Dave Horner, Gary Hatch, and James West.	Deirdre Gilbert, Jeff Nichols, Melissa Smith, and Amanda Ellis. Marine Patrol Officers: Jeff Turcotte and Brent Chasse.

Opposed (9)

Gary Hatch, Dragger

Opposed the whole rule as written. We haven't got a fishery that we ever had before, so why are we even discussing it? We've written a law that does not provide opportunity for a whole season, yet we discuss a full season and shut it down in a few days. That's not a full fishery. If we go to Magnuson you're going to be in big trouble.

Frank Thompson, Dragger

I am opposed in the fact I don't agree with the exit and entry ratio. Someone in western Maine might never see one. They all might go to someone in eastern Maine. I think the number should be higher than that. Maybe give them 15 licenses a year. There is no way you can get a license at two a year. I can't see the greed behind folks not wanting the younger generation in there.

Robbie Gray, Dragger

I am against this whole proposal. I'd like to see an apprentice program for the elderly and all. If the younger men have to do it, make the older men do it too. You have to work for it. You got people with general category permits that cannot go scalloping so there might be some input there. Until you fix the season and give us our 70 days let us go fishing. There are a lot of dead scallops in the places you have closed and you won't let us fish them. The rotation is way too long. You need to fix the season before you let more licenses in. But I would like to see the younger generation in there too. This proposal is bogus as far as I am concerned.

Steve Carter, Dragger

I have a lot of problems with this. Young kids need to get in. The coast of Maine has always been dependent on the ocean and we are losing that. We are not getting our 70 day season, so that needs to be remedied. At the same time, you need to make it fair for everyone. Another problem I have is that the entry requirement about not having a blemish on your record for seven years is a double-jeopardy. You are punishing people again for something they have already been punished for.

David Horner, Dragger

I would be against anything that includes the possibility a young person may never go, or get a chance to do it. Letting young people in has been considered sacred in the lobster industry and the state has agreed with that all along. The fact that you are only going to let a couple licenses in each year is ridiculous. But this is all new and I am going to submit a lot more in writing.

Cecil Holden, Dragger

70 days you gave us, but you closed down in 30. How about you close it for two years instead of three and open up more areas and maybe we can fish 50 days or something? I like the idea of young people coming in and I think it is good if you can do that.

Paul Gray, Dragger

I'd like to see some sort of apprenticeship instead of what you have. I think that would be the way to go.

Victor Doyle

I don't see why you should get an extra draw for NGOM limited access and groundfish. They already got something, why give them another chance? A NGOM can be sold. Someone had a license identified to the boat should be counted as crewing. You shouldn't get an extra draw for owning a boat. An additional draw for collaborative research, everyone will do that. You guys will be out of a job with people coming forward to collaborate. No fishing violation within the last seven years-I think license holders should be held to the same standard. You can't renew a license if you have had a violation in the last seven years.

Support (1)**David Tarr, Dragger and Diver**

I am not entirely for it, but it is a good mechanism. I would say 1:1 on all the licenses and it would be capped where it is now. It makes more sense to me. I serve on the lobster advisory council for Zone C. We don't really have a waiting list, but other zones do. If you have an apprentice program and you are only issuing one, two, or three licenses a year pretty soon we are going to hear about waiting lists. It's going to be a catastrophe. How

you have it proposed is kind of like an apprentice program where you have time on boat is apprenticing someone. If a captain signs off they put their stamp of approval on someone getting their license. I agree that when we don't get a whole season it is hard to be talking about this, but we need to be talking about this because if we wait the fishery dies. It's a club right now and there needs to be a way for people to get in.

III. Augusta Public Hearing

October 12, 2017

Limited Entry Program Proposal

Attendance

Members of the Public (7)	DMR Staff (3)
Pete Gasperini, Vance McMahan, Joe Nickerson, Emmanuel Kourinos, Doug McLennan, Kyle Godi, and Travis Fogg	Deirdre Gilbert, Amanda Ellis, and Melissa Smith.

Opposed (1)

Travis Fogg, Dragger

I believe that the exit ratio should be an active license 1:1 and the active license should have been used within the past five years. It should be issued to someone new instead of having a latent license given to someone that would clearly use it because a new license would get used.

Support (1)

Kyle Godi

I was one of those guys that had a license and that one year let it go. Ever since then I wished I had it back. For the last 10 to 12 years I have been going on deck with people in the area and every day I go I think I used to do this. When I was in high school there were no scallops and it wasn't a money making thing. I didn't renew my license because I could go buy groceries instead. I am in favor of letting people have licenses and crewed for numerous years. They should have a higher chance of getting license than someone who has never gone. I know we need young guys. I would like to get my license back.

Written Comments

Comment period closed October 23, 2017

Support (5)

Craig Sproul, Southport, letter received via mail, dated October 5, 2017

I am in favor of establishing a limited entry lottery!!! (check out moose lottery). Anyone holding a commercial marine fishery license of any kind should be eligible to apply!! (Reason being restrictions have eliminated many from others like shrimping). A limited # of at large people should be able to apply also!! One other consideration that should be addressed the swapping of licenses drag for dive and dive for drag reason being health issues easily can restrict a persons ability to dive!! Lack of a large boat might trigger a desire for a dive license. Thank you.

Gary Libby, received via email on October 14, 2017

I'm in favor of the season as written, I'm also in favor of the limited reentry, I think there should be a priority for captain's that once held a Maine scallop license and has landing history during the qualifying years. My biggest problem is that I have a boat that has lost value because of problem's in management for ground fish, I made the dissension to sell the federal permit and was hoping to sell the boat which has proven difficult. If I had the opportunity to state waters scallop or shrimp during winters that would help.

I'm currently lobstering out of my small boat, if I could sell the bigger ground fish boat and get a boat that smaller than my current drag boat but larger than my lobster boat so I could work off one boat not two. But I really need to be able to scallop and shrimp to go along with the lobstering. As of now I have two boats one I can use and one that doesn't do anything except drain my saving during the winter months. This reentry to scallop is very important to me and will do what is required to obtain the privilege again. Thank you for the time you spend protecting our marine resources.

Marc Coffey, Searsmont, received via email on October 18, 2017

I just wanted to voice my opinion that these proposed changes are the first sensible thing I have heard in a long time. There is no reason to extend the mafia style system used for lobster licenses whereby a fisherman can apprentice a son, daughter, nephew etc. but anyone else has little (no) chance to ever get a license. Also the idea that anyone who has had a license would be able to sell it is insane, the thought that a current holder who has been buying a license for 300.00 dollars could sell his right to have one for tens of thousands of dollars is unjust, and the Idea that a license could be kept in a family is un-American. A limited lottery is the only fair and equitable system that I have heard. Thank you.

W. William Anderson, Trescott, letter received via fax on October 19, 2017

I was unable to make you public hearing on Limited Entry for the Maine Atlantic Sea Scallop Fishery. I do support you plans to hold a lottery to allow some new entry into the fishery while at the same time planning to reduce the number of licenses. I know there was talk of having an apprentice program similar to the apprentice program used prior to entry to the lobster fishery. This system is flawed because you are training all these fishermen some of whom may never receive a license. I believe this has created a problem when it comes time to manage effort in the lobster fishery. You have all these who have spend years in training expecting to get a license. They should know that they will receive a license before they even begin their training. So only people who win a license in the lottery should be required to go through a training program. Those without license would be better off to peruse some other career while he waits and hope to win a license at the lottery. After they win a license then it is time to be trained.

Togue Brawn, Downeast Day Boat, received via email, October 23, 2017

Limited Entry Program: kudos to the Department for constructing a fair and reasonable system. I have concerns about the amount of time required to conduct the lottery each year, as well as the potentially arbitrary decision making concerning eligibility for additional draws due to participation in collaborative research and serving as crew on a scallop vessel. But if the Department believes they have the capacity to administer this system then more power to them. I also understand this program will be debated and likely tweaked at the Legislature so it's not worth getting too far into the weeds right now.

Opposed (4)

Roy Lee Whalen III, received via email October 11, 2017

Hello my name is Roy Lee Whalen the third and I am writing the department of marine resources today about maine scalloping apprenticeship program. I have been on the water since I could walk scalloping halibut lobstering I have done everything on the water I could with my father. And this year I got my hours for the lobstering apprenticeship program and I have been looking into getting the rest of the licences that I have fished for scalloping shrimping everything and they all have one thing in common kids aren't aloud to get licences for them anymore . This makes me scared for my family and all the other fishing family's heritage because if are state keeps shutting out the younger guys then are practices will just be a memory.

Now I went to the scallop meeting at Ellsworth city hall and I am appreciative of your guys effort to start lettin us young kids but the system you are trying to put in place is gonna make it next to impossible for us to ever get a license. And I have a few suggestions that could fix the system maybe you will take them in consideration maybe you won't but I want to save my family's heritage and preserve the future me and the next generations.

We all want them same thing for Maine to not only survive but thrive. My first idea is to have there be an apprenticeship program like lobstering so the people who do get in have experience in the fishery. This way everyone has an equal chance to get a license not just the young guys or the old guys everyone can do it. Thank you to whoever is reading this and have a great day

Chris Sawyer, Lobsterman, received via email October 13, 2017

I'm not for this rule maken under 12 MRS 6702 for the reasons below

There are two things about being eligible to get the lic. The fist being " if you have worked on a scallope vessel you can put in for the lic. " For one I have talked to the marine pat role and they don't like how this is wrote up it leaves it to wide open for anyone that just ups on a boat for a day to put in and that isn't right for others that worked day in and day out to have to maybe get pick be four them. Next " if someone has any violations for the past 7 years they can't put in . " This isn't right by a long shot . If someone that has a scallope lic. Get a voilation they don't loose there lic. So why should it be put on the guy that want to get in to scalloping . And there are some violations that are not anything that is going to be hurting the scalloping fishery that could be excluded from this if you wanted to look deeper . I no of one guy that has a rope voilation how is that hurting anything. I have one to do with hauling to early in the morning. I was sorry for doing it and I have payed my fine and I make sure that I haven't done it again . It would be one thing if someone was doing it time and time again then yes I would understand . I no there has been a lot of people think that the guys that held a lic. In the pass shouldn't be able to get one because they didn't keep up on it . Some might have but at least me I had a different reason for not renewing back then. I was on an outer island at the time and head two kids born in the same year . I also had been in the hospital dew to my back and I know the lic. Where not much at the time but \$89 .00 went a long ways on formula and disperse. I had called and talked to marine portol and they had said it was ok and I should be fine to get that I could get my lic back. Well they went back to a date in witch I didn't have one so I lost it. Right now I have four kids and I'm the only person in my family that works . I have a 45 foot boat and I would like to use it to work and support my family . I lobster fish year round but fishing off shore is change Ing to away I would like to stay up inside and do something els in the winter with my boat.

Alton Pinkham, received via email, October 20, 2017

I am a scallop boat owner who is affected by the owner operators law.5 yrs ago I started scalloping from my boat with another lisc holder. After attending many mettings and being told our partner ship would be grandfathered I invested thousands of dollars in gear for my boat. I am strongly opposed for my ability to fishTo be taken away and thrown into some One in a million chance at a lottery lisc. Even with all the chances I would get in the lottery it could be decades before my chance came to use the boat I have already invested so much into. And still no talk about latent lisc??? This bill needs alot of work. And should help those who are already deeply involved in the fishery. Not take away from those involved.

Steve Carter, received via email, October 22, 2017

I have been a active participant in the scallop industry for several years now. My god-father has had his license on my boat and we have been able to make a reasonable winter income by scalloping. I was excited to hear about a new limited entry system in hopes that I could get my own license and continue in the fishery that my family has traditionally participated in. However, there are many problems with the current wording and some of the individual rules. One big problem that most people don't see as a problem is the eligibility requirement of having no violations in the last seven years. It is not right to keep re-punishing someone for something they have already paid their dept to society for. In fact I believe the constitution calls it double jeopardy and forbids it. Next is there should be a way to ensure that young fishermen can get a license once they have the knowledge they need though apprenticing.

I also believe that a one to one exit ratio for draggers would be more reasonable, its the only way that enough licenses can be given out so that any one person has a chance of getting one in his/her lifetime. In order to make sure that everyone that enters the lottery is serious about using their license, there should be a one-time fee of \$500. This would help cut down on people that are getting a license just so they have one. Honestly I would rather see a apprenticeship program than a lottery. It would both help make sure that the people that should have a license will get one, and that those fortunate enough to get one knows what they are doing in this dangerous industry. Thank you for your hard work and I hope you listen to some of my input.

Neutral (1)

Tabor Horton, Lobsterman & Scallop Tender, Blue Hill, letter received via mail on October 23, 2017

My name is Tabor Horton, I am 29 years old and a Lobster Fisherman out of South Blue Hill, Maine. I have been a certified scuba diver since I was about 15 years old, and have been scallop urchin tending for the last 6 or 7 years for David Tarr out of Brooklin, Maine. When I first became a certified diver I was in High School and at the time was unable to get a scallop license, and didn't even know about scallop diving as a way to make a living. I believe it is time to start letting some more divers into the industry. There are very few dive licenses in the state of Maine and even fewer active licenses. Diving is the most univalave way to harvest scallops. Also, I believe a lot of the specialty seafood dealers as well as the high end restaurants that purchase the scallops are looking for a sustainable harvested product and the "Diver Scallop" is just that. It is true that a great deal of dragger scallops get sold to the same restaurants as diver scallops. If you don't start letting some new people into the industry soon there won't be this diver scallop market.

Also, the age of the divers is getting up there. Many times my boss who's about 50 has looked at me and said "you should be the one jumping into the water, not me." I also feel there should be some preference to the people that have been working in the industry such as tenders, over some random people off the street hearing about a scallop lottery thinking its an easy way to make money. That goes for draggers too. Whether it be an apprenticeship of a captain signing his name attesting to the fact a person has indeed spent some time in the industry. It is a dangerous industry both diving and dragging no place for a novice.

Finally, I would like to sat it's a great idea to make diver limits go with the person who holds the license and not per boat. 3 buckets is hard for one diver to get, but if 2 divers work that same 3 buckets then someone gets cut short. So you see a lot of boats with just one diver making it possible for more than one diver to get his limit on a boat will cut down on expenses and make a better living for everyone involved.

In closing I would like to say that there is a large group of people my age and even younger who were to young to know about scalloping back when licenses were available. A lot of people like me who have their own boa the drive to out and earn a living off the sea. However currently lobstering is our only option or working on the stern of a boat. Finding a good way to slowly let some new blood into the scalloping is the only way this industry will continue into the future.

Department Response:

By law (12 MRS 6706), the Department is tasked with developing a limited entry system through which an individual who did not hold a scallop drag or dive license in the prior calendar year can become eligible to hold a license. In developing the proposed system, the Department sought to balance the opportunity for entry into the fishery with the ongoing rebuilding of the scallop resource. The Department consulted with the Scallop Advisory Council (SAC) for many of the details of the proposal.

This is a major-substantive rule, which means that following provisional adoption by the DMR Advisory Council, it will be submitted for Legislative review during the winter of 2018. The Legislature may adopt the rule as provisionally adopted, or may make further changes based on any additional public input they may receive.

Apprenticeship Program

Several commenters suggested that the Department administer an apprenticeship program for the issuance of new scallop licenses, similar to that which is currently used in the lobster fishery. This concept was discussed with the SAC, and the Department explained that it does not currently have the resources to administer another apprenticeship program. The apprenticeship program for the lobster fishery is administered by a staff person whose time is already fully dedicated to that program, as well as other responsibilities. To administer another apprenticeship program, DMR would need to add additional administrative staff.

Based on the comments received, the benefits of an apprenticeship program are proposed to be that an individual would gain experience in the scallop fishery before obtaining a license. In lieu of a formal program with documentation of fishing time through log sheets, the Department is proposing to limit eligibility in the license lottery to those individuals who have held a commercial fishing license, or who have crewed or tended for a scallop license holder. Extra chances in the lottery would be provided for every year an individual held a scallop license in the past, and for every year an individual has crewed or tended a scallop license holder. In this way, individuals with the most experience in the fishery will have the greatest chance of getting a license. This approach also has the advantage of allowing the entry system to begin immediately after legislative approval, rather than having prospective applicants first have to log fishing time over multiple years in order to even become eligible.

Some commenters envisioned an apprenticeship program similar to that for the lobster fishery, where individuals below a certain age (“students”) would be eligible to obtain a license without going on the waiting list. Others above a certain age would go onto a waiting list upon completion of the apprenticeship program. The scallop resource is still rebuilding, and current participants have expressed concern regarding the potential impacts of a large number of new entrants, as could occur with uncontrolled student access. The waiting lists in the lobster fishery have grown in most Zones so lengthy that those on the bottom of the waiting list now expect to wait decades before receiving a license. The Department does not want to replicate that situation. For these reasons, the Department does not believe that an apprenticeship model is appropriate at this time, but is advancing the lottery as a way to issue a controlled number of licenses, as fairly as possible. The SAC recommended that for the drag licenses, the Department divided the available licenses between individuals 18-31 years of age, and individuals 32 and above. In this way, opportunity is provided to the younger generation, as well as individuals who may previously have participated in the fishery and want to get back in.

Eligibility

Among the proposed eligibility criteria was a requirement that the individual not have received a violation for any offense of marine resources laws in the past 7 years. The SAC proposed this criterion to ensure that future participants were likely to adhere to the laws and regulations going forward. Several commenters suggested that this was too high a standard, and that minor violations should not make someone ineligible. In response to these comments, and to preserve the intent of the SAC, the rule was modified to prohibit someone who was suspended for a marine resource violation within the last seven years from entering the license lottery.

Weighting Criteria

As described above, the proposed rule provided extra chances in the lottery for each year the applicant crew or tended another license holder. It also proposed extra chances for a variety of other criteria, including having participated in collaborative research, holding a Northern Gulf of Maine permit, holding a Limited Access Groundfish permit, etc. Several commenters suggested that the multiple weighting criteria were too complex, and that anyone who was eligible to enter the lottery should have the same number of chances as anyone else. In response to these comments, the rule was amended to limit the extra chances to those regarding past experience in the fishery. Several commenters expressed concern that there is no reliable way to ensure that individuals are accurately representing their experience crewing or tending (i.e. that individuals may lie to get extra chances). When someone enters the lottery, they will need to affirm that the information they provide is

accurate. If they are selected, the Department will review the information and will confirm with the license holder that they crewed or tended and that the information is accurate. That individual will be asked to sign an affidavit. If the Department determines that the individual misrepresented information on the license lottery application their license will be void. The Department believes it is better to go through such a process to try to ensure that individuals who have significant time invested in the fishery have a greater likelihood of someday receiving a license.

Eligibility of Current License Holders for Limited Entry Fisheries

Some commenters suggested that individuals who currently hold a license in a limited entry fishery (e.g. lobster, urchin, etc.) should be prohibited from entering the license lottery. One of the Department's priorities is to work to diversify Maine's commercial fishing industry. Having individuals with multiple permits harvesting a variety of species benefits local communities and the State. The Department does not support prohibiting individuals who hold an existing limited entry fishing license from participating in the proposed lottery for a commercial scallop license.

Ratios for Exit/Entry

Based on a conversation at the SAC, one commenter suggested counting only licenses that had been active within the past 5 years when calculating the number of licenses retired. While the SAC discussed this, they did not ultimately recommend using only active licenses in the calculation. Based on the number of licenses retired in the past several years, the number of drag licenses expected to be made available is approximately three, or fewer. Using only active licenses would make an already small number even smaller. Further, it is very common for an individual who holds a limited entry license to continue to hold the license long after they stop using the license, to preserve their future opportunity. Just because a license was not active in recent years, does not mean it was never an active license. Given the limited opportunity the proposed system provides, the Department does not support limiting access further by counting only active licenses for the purpose of the entry/exit ratio.

Some commenters suggested modifying the entry/exit ratios for divers to further limit their effort. However, the dive sector of the Maine Scallop fishery represents approximately 3% of total landings. The average age of the dive sector is 51 years old, and the probability that latent effort will reactivate is low. The Department supports an exit ratio of 1:1 for commercial scallop dive license lottery as proposed by the Scallop Advisory Council.

Request for Full Season and Increase of Daily Trip Limits Prior to New Entrants

Some commenters suggested delaying any new entry until such time as current participants are able to fish a full 70-day season without any emergency closures, or until such time as current participants see an increase in their daily trip limit. They expressed concern that any number of new entrants will limit their own opportunity. The fishery has been closed to any new licenses since 2009, when the fishery was worth less than \$600,000. In 2016, the landed value was nearly \$7 million. The fishery is administered using rotational management principles, whereby locations are opened and closed to harvest. The rotational scheme is designed to take advantage of the relatively fast growth and low natural mortality of scallops. This management approach will continue, despite a modest number of new entrants. This level of entry (again, anticipated to be 3 or fewer drag licenses per year) is very minor as compared to the existing number of drag license holders of over 500 licenses. It is appropriate at this time to establish a method to distribute new licenses to maintain a future for Maine's coastal communities in the scallop fishery.

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 11; 11.14 Atlantic Sea Scallop Limited Entry Program

STATUTORY AUTHORITY: 12 M.R.S. §6706(3)

DATE AND PLACE OF PUBLIC HEARING:

October 10, 2017, 6:30 PM, University of Maine at Machias, Rm 102, 116 O'Brien Avenue Machias, ME
October 11, 2017, 6:30 PM, Ellsworth City Hall Auditorium, One City Hall Plaza, Ellsworth, ME
October 12, 2017, 6:30 PM, DMR – Augusta, 32 Blossom Lane, Augusta, ME

COMMENT DEADLINE: **10/23/2017**

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

The statute requires the Department to develop a limited entry system for the issuance of scallop licenses.

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)]

This rule specifies how a limited entry system for scallop licenses would be administered, including eligibility criteria, weighting criteria, and proposed entry exit ratios.

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]

Recommendations from the Scallop Advisory Council, past lottery systems administered by the Department.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of this rule will not require additional activity in this agency.

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