

**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 maintains the winter closed period for the harvest of quahogs from the New Meadows Lakes, which ended on April 1, 2019. The sunset provision has been removed from the regulation, so that the winter closed period remains in effect. Maintaining the winter closed period is intended to reduce fishing pressure on the quahog resource and to minimize 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  
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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
010	13A	1120	10	4946	regulations

*Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta*

## DEPARTMENT OF MARINE RESOURCES

### Chapter 10 Clams and Quahogs

#### 10.05 Taking of quahogs in the sub-tidal waters of the New Meadows, 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.

- 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".

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:

- (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.

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

## 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 1, 2019, 5PM, West Bath Fire Station, 192 State Road, West Bath, 04530.

COMMENT DEADLINE: October 11, 2019

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

This rule would maintain closed periods for the taking of quahogs in the New Meadows Lakes to protect the resource from depletion.

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 (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(C) & 8063-B]:

This proposed rule would maintain 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 the winter months from sunset on December 31 through sunrise on April 1. This particular effort control measure is 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.

**Basis Statement:**

This rule maintains the winter closed period for the harvest of quahogs from the New Meadows Lakes, which ended on April 1, 2019. The sunset provision has been removed from the regulation, so that the winter closed period remains in effect. Maintaining the winter closed period is intended to reduce fishing pressure on the quahog resource and to minimize mortality associated with winter fishing.

**Summary of Comments:**

Notice of this proposed rulemaking appeared on September 11, 2019 in the five major daily newspapers as published by the Secretary of State. On September 11, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. The public hearing was held as follows: October 1, 2019, 5:00 PM West Bath Fire Station, 192 State Road, West Bath. The comment period closed October 11, 2019.

Attendance at the Public Hearing:

<b>Members of the Public</b>	<b>Department Staff</b>
Jefferson Oranellas	Kohl Kanwit, Ari Leach, and Amanda Ellis

No one offered comment at the public hearing.

**Daniel Devereaux, Town of Brunswick Coastal Resource Manager, submitted via email, October 10, 2019**

We express our support of the concept of the proposed rules. The quahog population in the New Meadows River has increased exponentially in the last decade. It is of opinion that the increased pressure put on subtidal quahog resources negatively impacts the resource replenishment of quahogs in the abutting intertidal areas, which are actively managed by the Towns of Brunswick, Harpswell and West Bath through their MEDMR approved shellfish management programs. As you are aware the municipal shellfish programs around the lower parts of the New Meadows River license over a 150 commercial harvesters, who are regulated to hand implements only. Regulations, such as those proposed by the department, align with the municipalities goals of shellfish propagation, conservation, sustainability, and maximum harvest opportunities. With this said I submit the following comments:

Sunset Clause: The department is encouraged to remove the sunset clause and make these harvest rules permanent. Portions of Maquoit and Middle Bay (highly productive shellfish growing areas) have been restricted to hand implement for decades. Antidotal evidence suggests that these restrictions; hand harvest, winter closures, and conservation day closures result in a more sustainable population, which provides a more consistent commercial harvest from year to year.

Winter harvest prohibition: The Brunswick Marine Resources Committee has also deployed a winter harvest prohibition for several years. The decision to deploy such a prohibition is based on scientific quahog temperature tolerances and the corresponding winter harvest mortality rates observed locally. Knowing the winter temperatures are unpredictable in Maine the Department is encouraged to consider an earlier time frame than December 31st if the air temperatures drop below 3 degrees Celsius.

Hand implement only: It has been suggested, but never proven, that the subtidal quahog resources are continually replenishing the intertidal areas. There is antidotal evidence that may suggest this. When the subtidal mussel populations were harvested by drag boats there was a corresponding decrease in population in nearby mudflats. Therefor supporting hand implement only restrictions within a certain proximity to productive shellfish growing areas is highly supported.

Night & Sunday Harvesting Restrictions: The Town of Brunswick has implemented a twilight harvesting and Sunday prohibition for decades. These restrictions are part of a larger sustainability plan and it is believed that they have been successful. The town of Brunswick has noticed increases in harvest since their inception, whereas abutting towns without those restrictions have witnessed declines. In closing we support the efforts to bolster, conserve and protect this economically and ecologically important sustainable resource.