

Department of Marine Resources
NOTICE OF AGENCY RULE-MAKING PROPOSAL

The following is a revised notice for Ch 11 Scallops previously published Sept. 17, 2008 with a hearing added in Rockland and new comment deadline:

RULE TITLE OR SUBJECT:

Chapter 11.09 Atlantic Sea Scallop Harvesting Season (New)
Chapter 11.10(F) Atlantic Sea Scallops, Daily Possession Limit (New)
Chapter 11.10(G) Atlantic Sea Scallops Harvested Seaward of Maine's Territorial Waters (New)
Chapter 11.10 (H) Closed Areas (New – contains proposed sunset 8-31-11)
(Renumbering of entire chapter at time of adoption)

CONCISE SUMMARY: The proposed amendments would establish a season to start no earlier than December 1 and end no later than March 31, not to exceed 52 days. The proposed recommended days "on" would be Monday, Tuesday, Wednesday and Saturday in the months of December, January and February. The Department is accepting comments on changes to the proposed open days provided they do not exceed 52 days, with no dates prior to December 1 and no later than March 31. The proposed rules would also match the federal daily possession limit of 200 pounds of scallop meats; and create six closed areas coastwide that would sunset after 3 seasons. A provision would also be added to clarify scallops taken by federal scallop permit holders may be landed in Maine. If adopted the numbering format for the entire chapter would be reordered for consistency throughout.

STATUTORY AUTHORITY: 12 M.R.S.A. §6171

PUBLIC HEARINGS:

October 6, 2008, 6:00pm, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth
October 8, 2008, 6:00pm, High School Cafeteria, Durant Drive (formerly 11 Municipal Drive), (The High School is located behind the Municipal Building located at 259 Route 1), Scarborough
October 9, 2008, 6:00pm, UMM, Science Lecture Hall (Rm 102), 9 O'Brien Ave., Machias

October 20, 2008, 6:00 pm*, State Ferry Terminal (Conf Rm), 517A Main Street, Rockland

**Public hearings for 3 separate rulemakings will be held with each hearing to start immediately upon the conclusion of the previous hearing. The order will be Chapter 25.93 for Zone D, next Chapter 25.93 for Zone E, then the hearing on Chapter 11 Scallops. See separate rulemaking notices for rules not listed in this notice.*

DEADLINE FOR COMMENTS: October 31, 2008

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSONS: Togue Brawn (207-624-6558)

Mail written comments to:

AGENCY NAME:	Department of Marine Resources, attn: L. Churchill
ADDRESS:	PO Box 8, West Boothbay Harbor, Maine 04575-0008
WEB SITE:	http://www.maine.gov/dmr/rulemaking/
E-MAIL:	laurice.churchill@maine.gov
TELEPHONE:	(207) 633-9584
FAX:	(207) 633-9579
TTY:	(207) 633-9500 (Deaf/Hard of Hearing)
Hearing facilities:	If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

See previous mailing for proposed text of the regulations. Or, electronic copies with the proposed text may be obtained from the web site listed above; copies will be available at the hearings; or to request hard copies to be mailed please use the contact information listed.

The proposed "season" rules have taken into consideration the Port Sampling and Landings Data, the season days recommendation made by the Scallop Advisory Council (SAC), consideration of the comments given at the SAC meeting(s) including benefits of a Christmas market, benefits of a prolonged season as opposed to having all days on and a quicker end date; consideration of the likely impacts of other proposed rules; the need to be precautionary this year due to the chance of effort being increased in the "open areas"; the need to ensure Cobscook Bay isn't overharvested; and possible interaction with other fisheries. The proposed rules are intended to have a long-term positive impact on commercial and recreational scallop harvesters and the wholesale and retail seafood industry.

These regulations are also intended to address the legislative directive for the "Development of a strategic plan to rebuild and manage Maine's scallop resource" in accordance with Chapter 607, Part A, Section A-14. For the contents of LD 2071 they are available online at: <http://janus.state.me.us/legis/ros/lom/LOM123rd/123S1/PUBLIC607.asp>. Section A-14 reads in-part as follows:

"The Scallop Advisory Council, referred to in this section as "the council," and the Department of Marine Resources, referred to in this section as "the department," shall develop a comprehensive strategic plan that will rebuild Maine's scallop resource and create a sustainable scallop fishery. Maine's scallop stocks are in sharp decline, and the plan must propose steps that are commensurate with the dire status of the fishery. The plan must provide short-term and long-term bench marks for measuring progress in rebuilding the scallop stock over the entire coastline of the state. The council and the department shall use the following as a guide for discussion in the development of the strategic plan:

1. *Entry restrictions to reduce fishing efforts, including, but not limited to, limited entry or a moratorium on the issuance of scallop licenses;*
2. *Management options for consideration, including, but not limited to:*
 - A. *The complete closure of the scallop fishery to allow the resource to recover;*
 - B. *Closure of the scallop fishery except for Cobscook Bay to allow for resource recovery outside of Cobscook Bay with measures to protect scallops in Cobscook Bay from overfishing;*
 - C. *Rotational management in which a significant portion of the coast is closed on a 3-year or 4-year rotation until a biological target is achieved;*
 - D. *Management of the scallop and urchin fishery, together with potential for using the current sea urchin assessment zones;*
 - E. *Creation of scallop seed conservation areas to allow scallops to mature and spawn for the benefit of the entire coast, taking into consideration all cable areas and the size of the areas needed to be effective and enforceable;*
 - F. *Size restrictions, including a maximum and minimum shell size that will enhance fecundity rates; and*
 - G. *Gear restrictions that include but are not limited to changes in drag configuration to minimize impacts on habitat and damage to undersized and oversized scallops, reduction in drag cable size and ring size and larger minimum mesh size for the upper bag; and*
3. *Other options for consideration, including, but not limited to, adjustments to the scallop fishing season, a ban on Sunday fishing or weekend fishing and daily catch and possession limits for commercial and noncommercial fisheries.*

Proposed rulemaking – see underlined or ~~deleted~~ text below:

Chapter 11 Scallops

11.09 Atlantic Sea Scallop Harvesting Season

The Atlantic Sea Scallop Harvesting Season in Maine's Territorial waters is open Mondays, Tuesdays, Wednesdays and Saturdays in the months of December, January, and February.

11.10 Atlantic Sea Scallops; Limitations

1. Size, Harvesting and Conservation Zone Regulations

F. Atlantic Sea Scallops, Daily Possession Limit

It is unlawful to fish for, take or possess more than 200 pounds of scallop meats per day per vessel in Maine's territorial waters. It is unlawful to unload any portion of a day's catch and return to fishing in Maine's territorial waters.

G. Atlantic Sea Scallops Harvested Seaward of Maine's Territorial Waters

A vessel may possess or land more than 200 pounds of scallop meats per day within Maine's territorial waters only if it meets each of the following requirements:

- (1) The scallop meats were harvested seaward of Maine's territorial waters.

- (2) The vessel holds a valid current Federal Permit (Title 50(A) §648.4) that authorizes possession of more than 200 pounds of scallop meats per day.
- (3) The amount of scallop meats on board does not exceed the maximum amount authorized by the vessel's Federal Permit.
- (4) The vessel has all fishing gear (dredges, drags) securely stowed when transiting Maine's territorial waters. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

H. Closed Areas

It shall be unlawful to fish for or take scallops by any method within any of the following areas.

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Southern Closure:

Western Boundary: The Maine/New Hampshire Border to the 3-mile limit, as identified on National Oceanographic and Atmospheric Administration nautical charts, hereafter referred to as the 3-mile limit.
Eastern Boundary: A line drawn from Wood Island Light 180° magnetic south to the three-mile limit.

(2) Casco Bay Closure:

Western Boundary: A straight line from Active Light Two Lights Cape Elizabeth through C "1" East Hue & Cry (43°31.9N Latitude, 70°08.8W Longitude), continuing due south 180° magnetic to the three mile limit.
Eastern Boundary: Beginning at Newbury Point in Small Point Harbor, Phippsburg, then proceeding SSW to N"2", then proceeding SSE to "2BH", then proceeding due south 180° magnetic to the 3 mile limit.

(3) Western Penobscot Closure:

Western Boundary: Beginning at Marshall Point, Port Clyde, due south 180° magnetic to the three-mile limit.
Eastern Boundary: Tip of the Cape, Cape Rosier, thence SW to the PB (Penobscot Bay) Buoy, thence southerly to the TB1 whistle southwest of Junken Ledge, thence southeasterly to Red Nun #10 buoy at Foster Ledges, thence due south 180° magnetic to the 3-mile limit.

(4) Mt. Desert Closure:

Western Boundary: Beginning at Bass Harbor Head thence due SE to the southernmost end of Great Duck Island, then due south 180° magnetic to the three-mile limit.
Eastern Boundary: Beginning at Schoodic Point thence due south 180° magnetic to the three-mile limit.

(5) Jonesport/Beals Closure:

Western Boundary: Beginning at the following location on Moose Neck (44°29.82N Lat., 67°43.08W Lon.) thence due south 180° magnetic to the three-mile limit.
Eastern boundary: Beginning at the most eastern point on Kelly Point to the most NW Point of Head Harbor Island, thence southerly to Brim Cove Point located on Steele Harbor Island, thence continuing south to Moose Peak Light, then due south 180° magnetic to the three-mile limit.

(6) Eastern Closure:

Western boundary: Beginning at Western Head thence due south 180° magnetic to the three-mile limit.
Eastern boundary: Beginning at the International Bridge, Lubec, thence south following the International Boundary Line Canada and U.S. (Maine) to the three mile limit.

This regulation, Chapter 11.10(H), expires August 31, 2011.