

Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

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

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

BRIEF SUMMARY: 12 M.R.S. §6706(3) directs the Commissioner of Marine Resources to develop a limited entry system through which a person who did not hold a commercial scallop license in the previous calendar year may become eligible for a license. This regulation proposes the development of two annual lotteries (one for drag licenses, one for dive licences) for the issuance of new scallop licenses. The number of new licenses available would be calculated by applying an exit ratio to the number of licenses retired by each gear sector in the previous calendar year. The proposed regulation also establishes the eligibility criteria to enter the lottery, as well as factors that would give an individual additional chances in the lottery.

Date, time and location of PUBLIC HEARING (*if any*):

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: October 23, 2017

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

AGENCY CONTACT PERSON: Amanda Ellis (tel: 207-624-6573)

Mail Written Comments to: Department of Marine Resources, attn Rulemaking

ADDRESS: 21 State House Station, Augusta, ME 04333-0021

WEB SITE: <http://www.maine.gov/dmr/laws-regulations/proposed-rulemaking.html>

E-MAIL: dmr.rulemaking@maine.gov

FAX: (207) 624-6024

TTY: (207) 624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson, at (207) 624-6553.

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. §6706

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

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

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: DMR.rulemaking@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME 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 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 great 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; and,
 - (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; and
 - (3) Does not have any fishing violations 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) Applicants who meet the following criteria shall be granted additional draws in the lottery for a license issued under 12 M.R.S. §6702:
 - (a) One additional draw shall be allotted for each year from 2009 to 2018, inclusive, in which the applicant has crewed onboard an active commercial scallop drag vessel;
 - (b) One additional draw shall be allotted for each year from 1995 to 2009, inclusive, in which the applicant previously held a Maine commercial scallop drag license;
 - (c) One additional draw shall be allotted if the applicant currently holds a Federal General Category Northern Gulf of Maine permit;
 - (d) One additional draw shall be allotted if the applicant currently holds a Limited Access Groundfish permit;
 - (e) One additional draw shall be allotted if the applicant currently owns a vessel (state or federally registered) that was identified on a scallop dragging license in the prior calendar year;
 - (f) One additional draw shall be allotted if the applicant has participated in collaborative research projects;
 - (g) One additional draw shall be allotted if the applicant was a non-winner in the lottery in a previous calendar year.
 - (3) Applicants who meet the following criteria shall be granted additional draws in the lottery for a license issue under 12 M.R.S. §6701:

- (a) One additional draw shall be allotted for each year from 2009 to 2018, inclusive, in which the applicant tendered for an active commercial scallop diver;
 - (b) One additional draw shall be allotted for each year from 1995 to 2009, inclusive, in which the applicant previously held a Maine commercial scallop handfishing or handfishing with tender license;
 - (c) One additional draw shall be allotted if the applicant has participated in collaborative research projects; and
 - (d) One additional draw shall be allotted if the applicant was a non-winner in the lottery in a previous calendar year.
- 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. 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.

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/laws-regulations/proposed-rulemaking.html>

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:

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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.