

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (11) Machias and Sand Bays in Lower Englishman Bay RA; (13) Cobscook Bay including Whiting/Denny's Bay**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to implement the expansion of targeted conservation closures within the Englishman Bay Rotational Area to include Sand Bay over to Machias Bay within the inner portion of the Englishmen Bay and a closure of Cobscook Bay including Whiting & Denny's Bay Limited Access Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the inner portion of the Englishman Bay as well as Cobscook Bay including Whiting & Denny's Bay. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §6171(3)(A).

EFFECTIVE DATE:**February 4, 2018****AGENCY CONTACT PERSON:****Melissa Smith (207-624-6558)****AGENCY NAME:****Department of Marine Resources****ADDRESS:****State House Station 21
Augusta, Maine 04333-0021****WEB SITE:**<http://www.maine.gov/dmr/rulemaking/>**E-MAIL:**Melissa.Smith@maine.gov**FAX:****(207) 624-6024****TTY:****(888) 577-6690 (Deaf/Hard of Hearing)**

Chapter 11 Scallops

11.08 Targeted Scallop Conservation Closures

Targeted closures are imposed as conservation measures to assist in rebuilding specific areas of the state. Targeted closures may be implemented based on depletion, seed, the presence of spat-producing scallops, and other conservation factors as determined by the Commissioner. Targeted closures are not seasonal closures and are implemented in order to improve and enhance the conservation and rebuilding of the resource in these specific areas.

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Muscle Ridge (1) which shall be open to diving on Thursdays and shall be open to dragging on Tuesdays, on calendar dates specified in section 11.11. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these targeted closures only if the vessel has all fishing gear (dredges, drags, regulators, buoyancy compensators, fins, tanks, weight belts) 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 for draggers, while regulators, buoyancy compensators and tanks should be disconnected with fins and weight belts removed for divers.

1. Muscle Ridge (Open Tuesdays to draggers. Open Thursdays to divers.)

Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44° 02.805 N Longitude 069° 04.393 W to RW "PA" Mo (A) GONG; then continuing southwest to the northern tip of Two Bush Island.

Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.

2. Lower Muscle Ridge

Northern boundary: East and South of a line beginning at the most eastern tip of Whitehead Island, St. George, to the southern tip of Seal Island (Hay Ledges) continuing to the most southwestern point of Graftam Island, then continuing to the southwestern point of Pleasant Island and continuing in a southeasterly direction to the northeastern tip of Two Bush Island.

Southern boundary: North of a line starting at the most southern point of Whitehead Island, St. George, to the southern end of Two Bush Island.

3. Ocean Point

West of a line drawn from Emerson Point, at the southernmost tip of Ocean Point, Boothbay at Latitude 43° 48.852 N Longitude 069° 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N "8"; and, east of a line drawn from R N "8" to the most southwestern tip of Ocean Point at Latitude 43° 48.874 N Longitude 069° 36.332 W.

4. Eastern Casco Bay

Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "2" at Eastern Drunkers Ledge.

Western boundary: East and North of a line drawn from R N "2" at Eastern Drunkers Ledge to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip

of Jaquish Island at Latitude 43° 42.950N Longitude 70° 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43° 43.043N Longitude 70° 00.128W.

5. Upper Sheepscot River

Eastern boundary: West and North of the Townsend Gut Bridge connecting Southport Island and West Boothbay Harbor.

Western boundary: East of a line drawn from the most southern tip of Hockomock Point, Woolwich to the most northern tip of Mill Point, Arrowsic Island, and following the shoreline to the Arrowsic Island-Georgetown Island bridge, and then continuing along the northern coastline to the northeast tip of Dry Point, Georgetown Island.

Southern boundary: North of a line drawn from the most northeastern point of Dogfish Head to the most northeastern point of Macmahan Island, and south of a line drawn from the most northwestern point of Macmahan Island to the most northeastern tip of Soldier Point and south and east of the Southport Island Bridge.

6. Damariscotta River

North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

7. New Meadows River

Southeast boundary: North of a line drawn from the southernmost tip of Birch Point, Phippsburg, to the southernmost tip of Long Island, Harpswell, then continuing along the western coastline to the northern tip of Long Island, Harpswell, then a line drawn due west to the nearest point of land on Sebascodegan Island, Harpswell.

Southwestern boundary: North of the Route 24 Gurnet Bridge (Harpswell).

8. Card Cove

West of a line drawn from the southeastern most tip of Pinkham Point, Harpswell, in a southwesterly direction to the nearest point of land and to include all of Card Cove, Harpswell.

9. Beals-Jonesport Bridge

Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.

Western boundary: East of the Jonesport-Beals Bridge.

10. Hussey Sound

North and west of a line drawn from the most northern tip of Long Island to the most southern tip of Little Chebeague Island; following the shoreline to the most western tip of Little Chebeague Island and continuing in a southwest direction to the most northern tip of Cow Island; continuing along the northern shoreline to the southwestern tip of Cow Island and proceeding to the most northern tip of Great Diamond Island, Portland; following the eastern shoreline of Great Diamond Island to the most northern tip of the southern shore of Diamond Cove; and, continuing in a southeast direction to the most southwestern tip of Pumpkin Nob and along the eastern shoreline to the most eastern tip of Pumpkin Nob; continuing to the most western tip of College Island; and then following the north shore of College Island to the most eastern tip and continuing in a northeast direction to the nearest point of land on Long Island.

11. Rogue Island Harbor (Sand Bay) Machias & Sand Bays within Lower Englishman Bay Rotational Area.

~~Within the following boundary line: A line beginning at the southern tip of Shoppee Point, Roque Bluffs and then running to the northeastern point of Great Head, Roque Island, then following the high water mark in a clockwise direction along the Roque Island shoreline until reaching the northern entrance of the thoroughfare between Roque and Great Spruce Islands, then running in a southeasterly direction to the nearest prominence on the northwest tip of Great Spruce Island, then following the high water mark along the northern shore to its' eastern tip, then running to the western tip of Double Shot Island and continuing along its' western shoreline until reaching the northeast tip, then running to the western tip of Anguilla Island and following the shoreline in a clockwise direction until reaching its' eastern tip, then running to the southwest tip of Halifax Island and following the northern shoreline to its' northern tip, and then in a northerly direction to Cow Point, Roque Bluffs.~~

All waters inside and shoreward of the following boundary line: A line beginning at the nearest prominence on the northwest tip of Great Spruce Island, then southeasterly to the western tip of Pulpit Rock and along its' western shore to the eastern tip, then running to the western tip of The Brothers Island and continuing along the northern shore to the eastern most tip, then running to the southwestern tip of Libby Island and continuing along the northern shore to the most northeastern tip; and then in an easterly direction (90° True) until it intersects the Western boundary of the Machias Area Rotational Closure (as identified in CHPT. 11.12 (1) C (1)), and then following that western boundary in a Northerly direction to its' point of origin at Bucks Head, Machiasport.

12. Casco Passage within Swan's Island Rotational Area

Western boundary: East and south of a line from the southern most tip of Lopaus Point, Bass Harbor to the northern most point of Black Island, and continuing along the northern coastline to the western most tip of Black Island, and then to the northern most tip of Swans Island Head, Swans Island.

Eastern boundary: West and north of a line from the southern most tip of Lopaus Point, Bass Harbor to the northern most tip of North Point, Swans Island, and continuing along the northern coastline to the northern tip of Swans Island Head and to include Mackerel Cove, Casco Passage and Seal Cove.

13. Johnson Bay & Eastport Breakwater (Cobscook Bay) Whiting, Denny's and Cobscook Bays

Northern boundary: South and west of a line drawn from the northern tip of Kendall Head, Eastport to the southern tip of Cummings Cove, Deer Island, Canada.

Eastern boundary: West of the international maritime boundary line.

~~Western boundary: East and south of a line from the northeastern most tip of Comstock Point, North Lubec to the southeastern most point of Shackford Head, Eastport.~~

Southern boundary: North and west of the International Bridge between Lubec and Campobello Island.

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for the expansion of (11) Rogue Island Harbor (Sand Bay) to now include both Machias and Sand Bays within Lower Englishman Bay Rotational Area, as well as the expansion of (13) Johnson Bay and Eastport Breakwater to include all of Cobscook Bay and the Whiting and Denny's Bay Limited Access Area.

Justification:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Sand Bay and Machias Bay within the Lower Englishman's Bay Rotational Area (Zone 2) and Cobscook Bay including the Whiting & Denny's Bay Limited Access Area (Zone 3).

Machias & Sand Bay within Lower Englishman Bay Rotational Area.

This is an expansion of an existing targeted closure within the Little Kennebec/Englishman Bay Rotational Area (Figure 1). The initial closure targeted Roque Island Harbor (Sand Bay) which had received the most amount of effort at the beginning of the season; and, considered to be premier grounds for legal scallops. Prior to the closure, there was some mobility of the fleet spreading to other shoal areas along the inside shores of The Brothers Island and Libby Island. Upwards of 25 boats continued to harvest within the area during the 2nd week of December. This effort was maintained throughout December, with weather being a limiting factor.

By the third week of January, harvest rates were slowing down, and the remaining boats, estimated at 15 total by Marine Patrol, were exploring areas further offshore from the other side of the lower islands within the rotational area. Scallop product has been readily available, but the meat counts smaller in deeper waters.

Data from the pre-season scallop survey conducted by DMR science staff on December 1, 2017 indicated high levels of harvestable resource (Figure 2). However, a follow up survey, conducted on January 19, 2018 indicate harvestable biomass has been depleted at areas surveyed (Figure 3). There were also observations of additional seed stock present northeast of Libby Island at two survey stations.

Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years (Figure 1).

Cobscook Bay

This is an expansion of an existing targeted closure within Cobscook Bay (Figure 4). At the opening of the scallop season, on December 4, 2017, 75-85 active scallop drag vessels were observed harvesting within Cobscook Bay (Zone 3) with most effort taking place in the lower area of Johnson Bay and along Eastport shore. During the last two weeks, observed vessels as counted by marine patrol ranged from 100 to 110 boats harvesting daily.

Two follow-up in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on January 11-14, 2018 and second survey on January 27-28, 2018. Results from the first survey promulgated an emergency action for the Johnson Bay and Eastport Breakwater areas due to removals exceeding target levels. This closure was effective January 21, 2018.

The most recent survey indicates the removal target has been exceeded in Whiting/Denny's Bay with a 45% decrease in harvestable biomass (from 6.29 g/m² to 3.44 g/m²). Additionally, 31 stations were sampled in the East and South Bays and the removal rate was calculated at 27% (4.19 g/m² to 3.06 g/m²). These two areas outside of Whiting/Denny's Bay experienced three additional days of harvest post-survey with 100-110 active vessels removing an estimated 9,900 lbs from the area. While this small portion of Cobscook Bay has not exceeded its target, it would still require a closure; the survey observed over two thirds of the sampling stations have seed and sublegal presence of resource, and the area cannot sustain the additional impact of 100 plus boats harvesting. These center bays have high proportions of both seed and sublegal product that would incur damage if harvest continued.

Qualitative information from both marine patrol and active harvesters in the area concur that rate of catch has decreased, and vessels are now expanding their search into areas not normally fished. General anecdotes from harvesters suggest that last season was extended too long and had possible negative impact to the size and quantity of scallops available for this 2017-18 season. Their collective insight indicated a closure would result in positive benefits next year rather than prolong harm.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the inside portion of Englishman Bay area will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both Sand Bay and Machias Bays within the Little Kennebec/Englishman Bay Rotational Area. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §6171(3)(A).

In accordance with 5 M.R.S. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

Figures & Tables

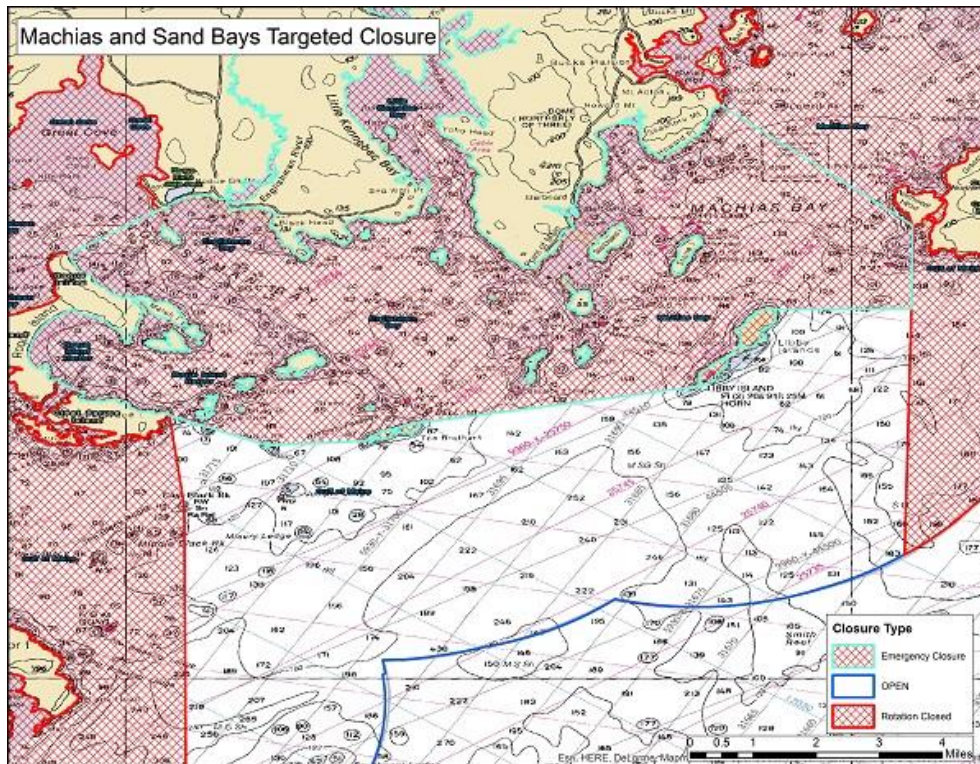


Figure 1: Chart of the Sand Bay and Machias Bay Targeted Closure within the upper portion of the Little Kennebec/Englishman Bay Area Rotational Area, implemented on February 4, 2018.

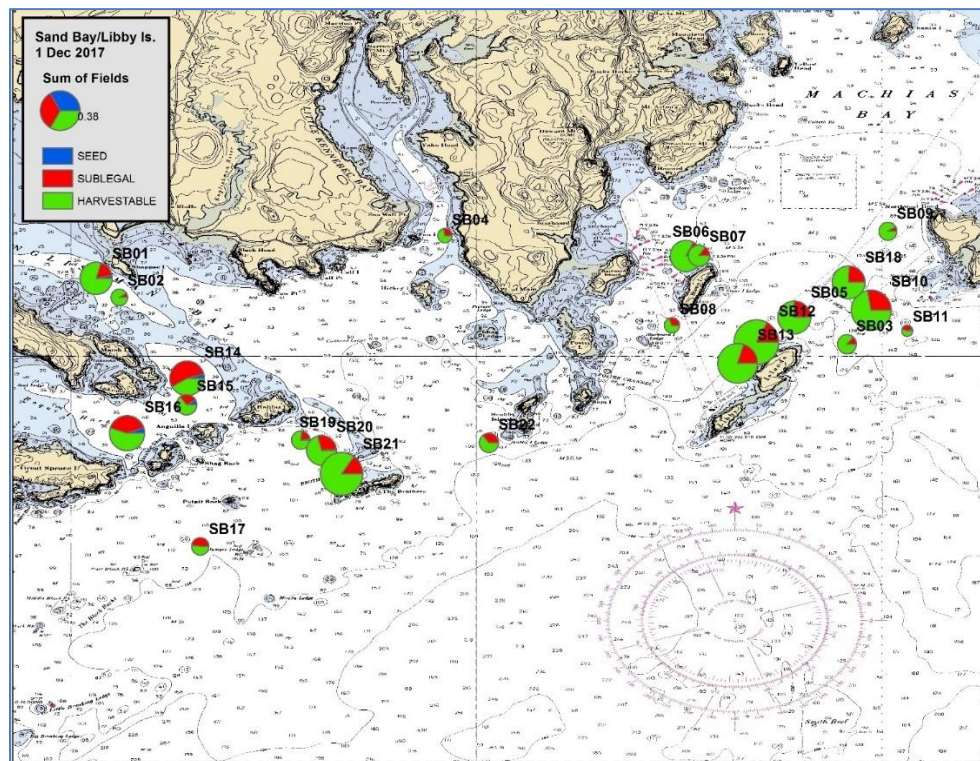


Figure 2: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted December 1, 2017 at 22 survey sites in the Englishman Bay Rotational Area. Density was estimated at 2.61 g/m² on opening day of the 2017-18 Scallop Season.

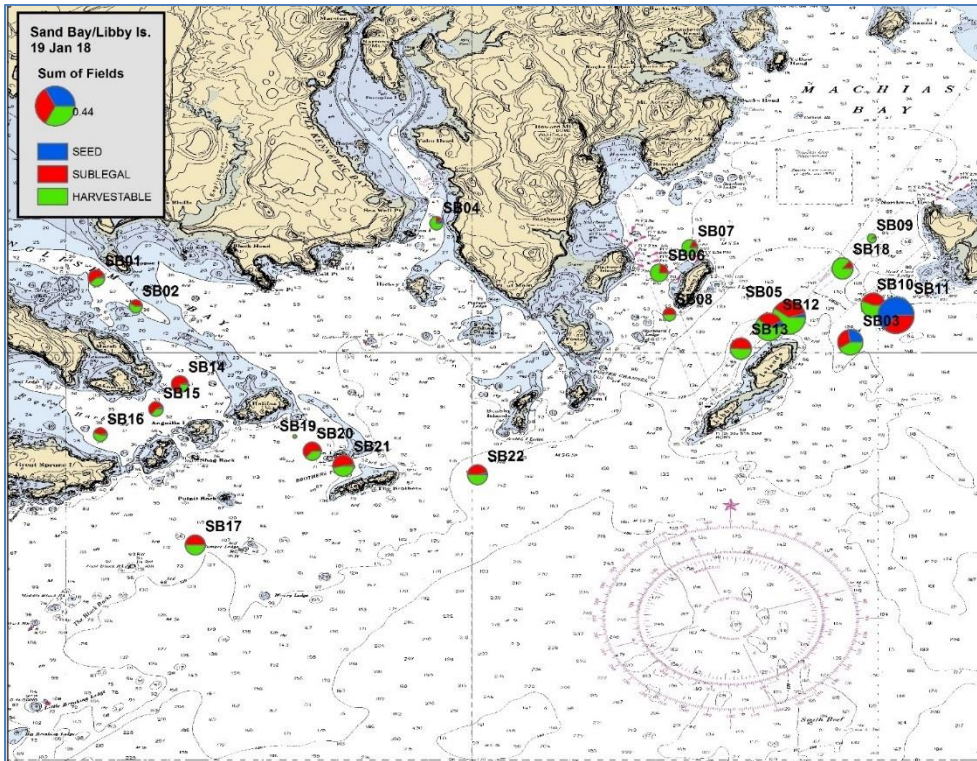


Figure 3: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted January 19, 2018 at 22 survey sites in the Englishman Bay Rotational Area. Density was calculated for the 17 survey stations still in open waters at 1.06 g/m².

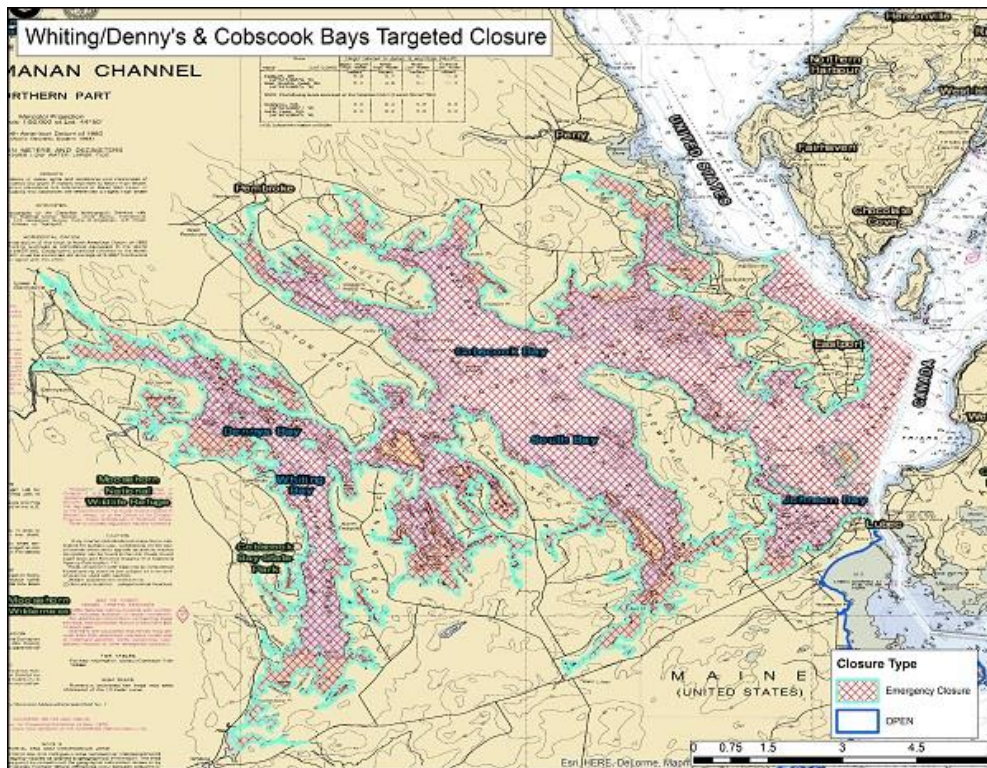


Figure 4: Chart of Cobscook Bay Targeted Closure, implemented on February 4, 2018.

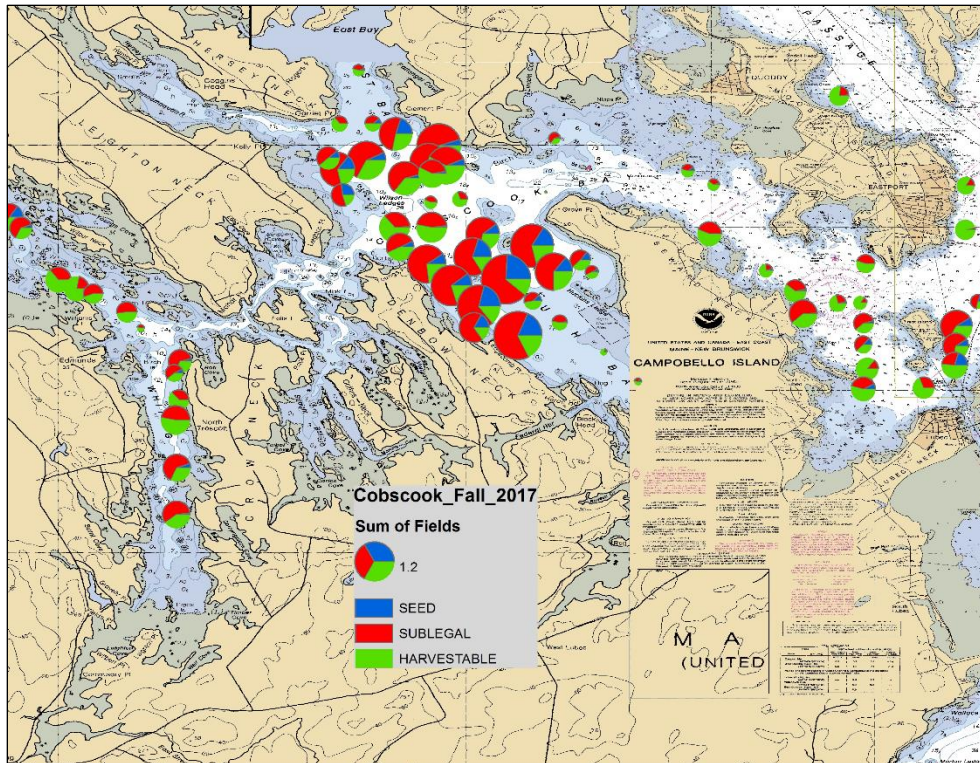


Figure 5: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Fall 2017 in Cobscook Bay. The sites in East and South Bays (center) represented 4.19 g/m² of harvestable biomass, while Whiting/Denny's Bays (left) started the season at 6.29 g/m².

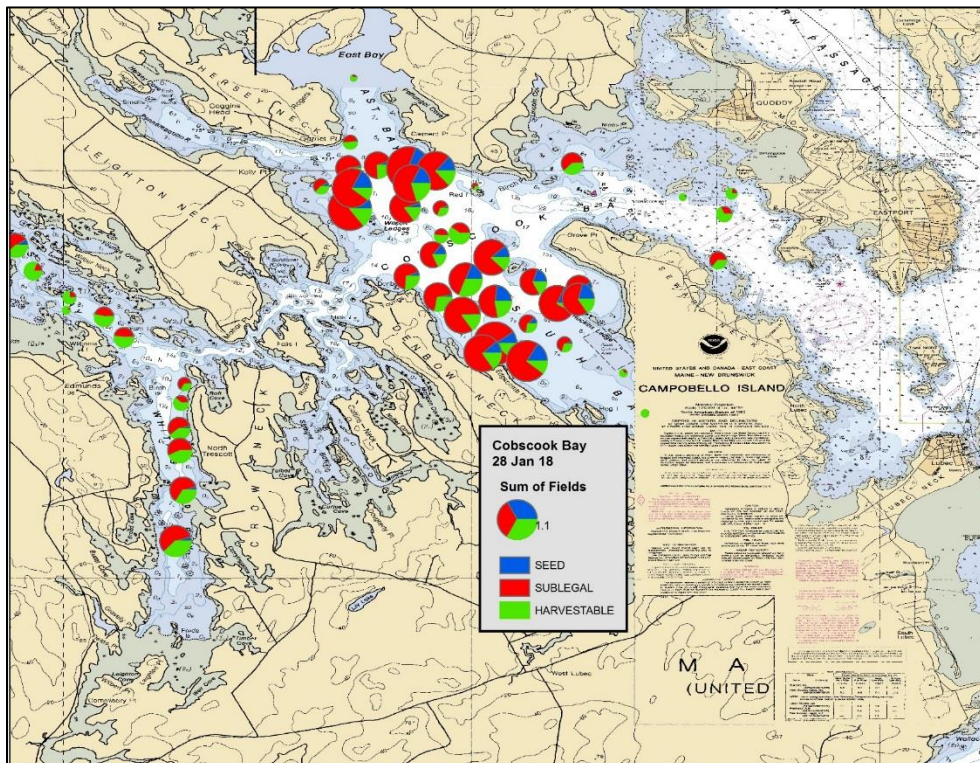


Figure 6: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted January 27-28, 2018 in Cobscook Bay. The sites in East and South Bays (center) indicate large proportion of both seed and sublegal scallops (3.06 g/m²), while Whiting/Denny's Bay (left) shows a decline (3.44 g/m²).

Table 1: Estimates of harvestable scallop biomass for two discrete locations within Englishman Bay Rotational Area. There are 22 stations overall sampled; 17 stations represent the remaining open waters. The "Closure" refers to the Roque Island Harbor (Sand Bay) targeted closure initiated January 1,2018. Both areas indicate a decline in harvestable biomass greater than 30% target.

date	Non-closure (17 stations)	Closure (5 stations)				
12/01/17	2.66	2.43				
01/19/18	1.06	0.50				
% change	60%	79%				
	>40%					
	between 30-40%					
	<30%					

Table 2: Estimates of harvestable scallop biomass for two discrete locations within Cobscook Bay (Zone 2). The second in-season survey assessed 43 stations in the remaining open waters within Cobscook Bay. Whiting/Denny's Bays indicates the target removals have been reached. At the time of sampling, East and South Bay was still below the target, prior to an additional 3 days of harvest.

date	Cobscook Bay (non-Whiting, 65,63 stations)	Johnson Bay (15,15 stations)	Breakwater (2,5 stations)	South Bay (32,31,31 stations)	Whiting (13,8,12 stations)
Fall 2017	4.46	8.06	9.17	4.19	6.29
1/14/2018	2.95	2.74	1.97	4.12	4.14
1/28/2018				3.06	3.44
% change	34%	66%	79%	27%	45%
		= increase (negative value = increase)			
	>40%				
	between 30-40%				
	<30%				

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: **Chapter 11.08, Targeted Closures: (11) Machias and Sand Bays in Lower Englishman Bay RA; (13) Cobscook Bay including Whiting/Denny's Bay**

STATUTORY AUTHORITY: **12 M.R.S. §6171(3)**

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

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

The Commissioner adopts this emergency rulemaking to implement the expansion of targeted conservation closures within the Englishman Bay Rotational Area to include Sand Bay over to Machias Bay within the inner portion of the Englishmen Bay and a closure of Cobscook Bay including Whiting & Denny's Bay Limited Access Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the inner portion of the Englishman Bay as well as Cobscook Bay including Whiting & Denny's Bay.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seek to maintain the recovery of the scallop resource within the State of Maine. The rule is intended to have a long-term positive impact on the scallop fishery.

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]

Input from DMR science staff, Maine Marine Patrol, and scallop industry members.

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

Enforcement of this amendment would 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.