

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (8) Machias and Little Machias Bays**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to implement a conservation closure in Machias and Little Machias Bays within the Machias Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in a portion of the Machias 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).

EFFECTIVE DATE: December 30, 2018

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| AGENCY NAME: | Department of Marine Resources |
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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.

Unless excepted, it shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas.

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. 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 Graffam 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.

2. 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 draw 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.

3. 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.

4. 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).

5. 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.

6. 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.

7. Gouldsboro and Dyers Bays within the Gouldsboro/Dyer Bay Rotational Area

North of a line starting at the eastern most tip of Youngs Point, Corea, continuing to the western most tip of Sheep Island and following the southern shoreline to the eastern most tip of Sheep Island; and then running easterly to the southern tip of Petit Manan Pt.

Hand harvest exception:

Scallops may be taken on Wednesday, December 19, 2018, by hand harvest only.

8. Machias and Little Machias Bays within the Machias Bay Rotational Area

Inside and north of a line starting at the most eastern point of Scotch Island and running northeasterly to the southwestern tip of Cape Wash Island, continuing easterly to the southeastern tip of Cape Wash Island, then running northeasterly to the southwestern tip of Deer Island, continuing along the northern shoreline to the most northeastern tip of Deer Island and then running in a northerly direction to the mainland shore.

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for closure of (8) Machias and Little Machias Bays within the Machias Bay Rotational Area.

Justification:

The Department is taking emergency rulemaking action to implement a targeted conservation closure in Machias and Little Machias Bays to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding (Figure 1). These areal closures are within Zone 2.

Machias and Little Machias Bays

This area opened for harvest on December 3rd, 2018 with approximately 15 boats concentrated within Little Machias Bay. This rate of effort in Little Machias remained steady during the second week, with several boats venturing outside of the bay on good weather days. By week three, less than 5 boats remained in Little Machias. Vessels either left the rotational area or have moved outside to harvest in deeper waters as additional tows were needed to reach the daily limit inside the bay. By week four, the few boats that remain have been unable to reach the daily limit. Effort within Machias Bay was very low, a reported 3 boats were in the area within the first week of harvesting before leaving in search of better resource.

Survey stations observed in April 2018 indicated no presence of scallops during the study in Machias Bay, but healthy resource south of Little Machias Bay (Figure 2). However, there was sublegal and seed scallop resource observed in the Cross Island Narrows. There was an increase in available legal product as noted in Figure 3 during the closed years.

Most of the harvestable biomass was located outside of the Machias and Little Machias Bays. This closure would protect areas that have experienced removals of harvestable biomass.

In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in a portion of the Machias 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

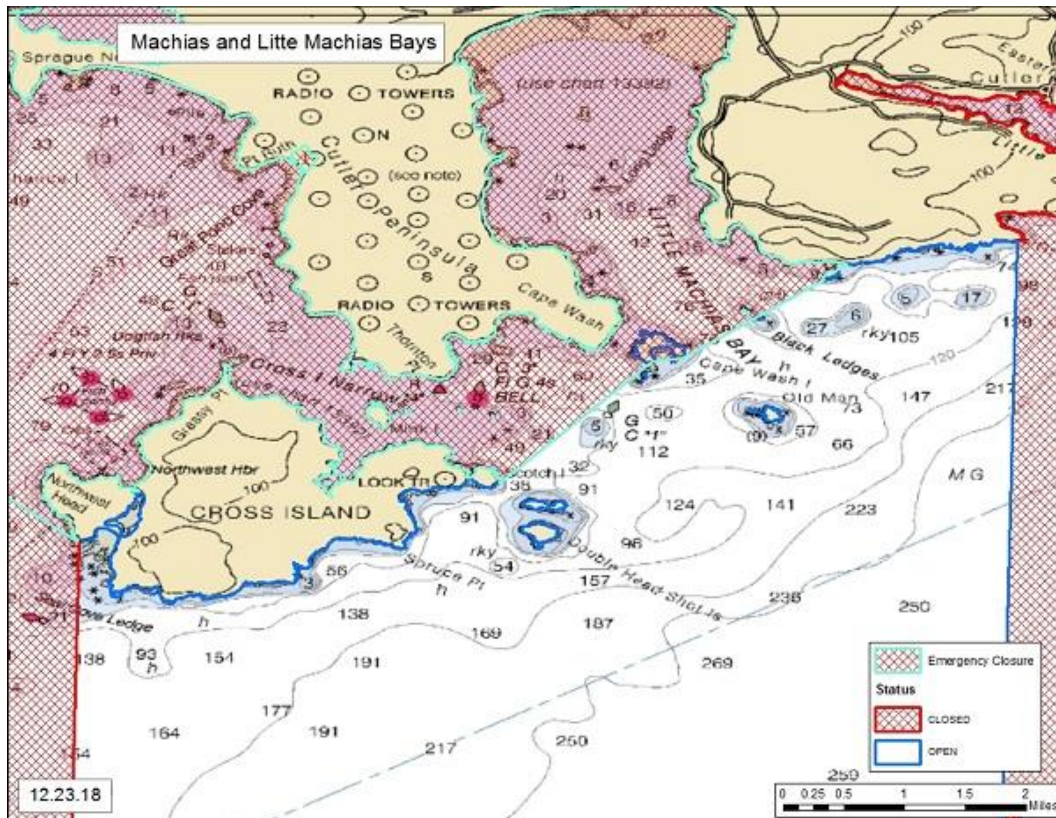


Figure 1: Chart of the Machias and Little Machias Bays targeted Conservation Closure, within Zone 2, implemented on December 30, 2018.

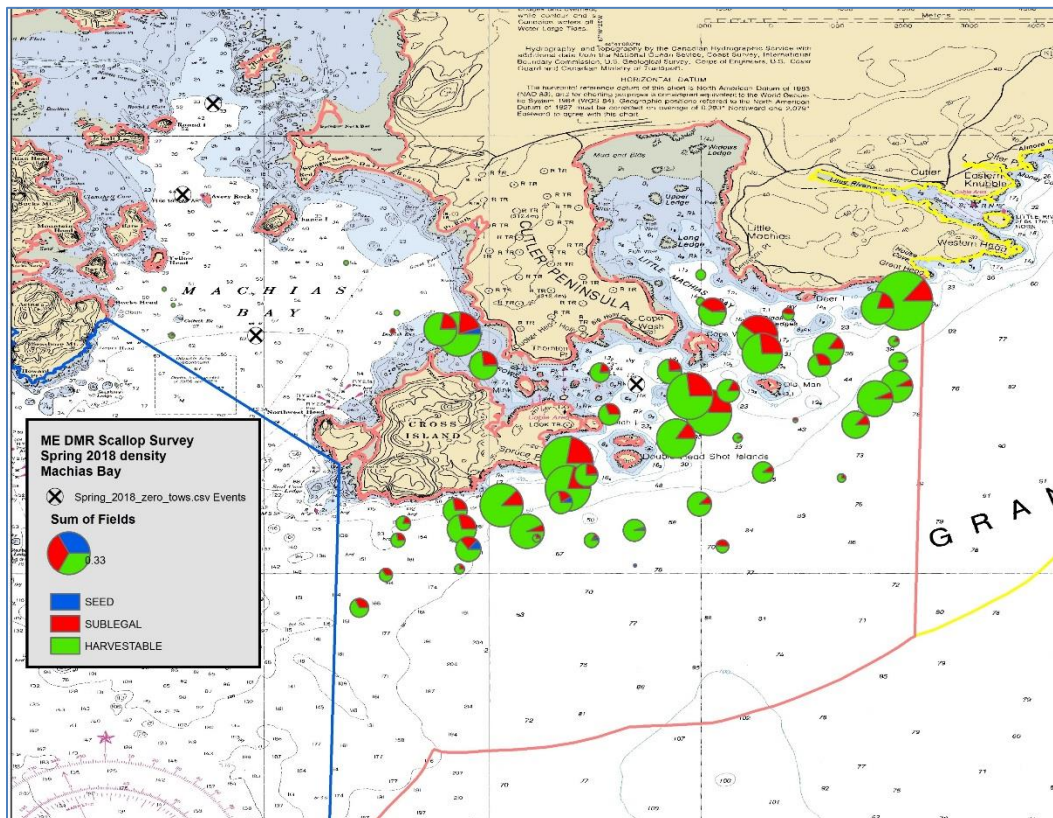


Figure 2: Bubble plots of scallop resource observations during the ME DMR Spring Scallop Survey conducted April 2018 at 59 survey sites in the Machias Bay Rotational Area. The largest observation of seed resource was reported in the Cross Island narrows (northeast of Cross Island).

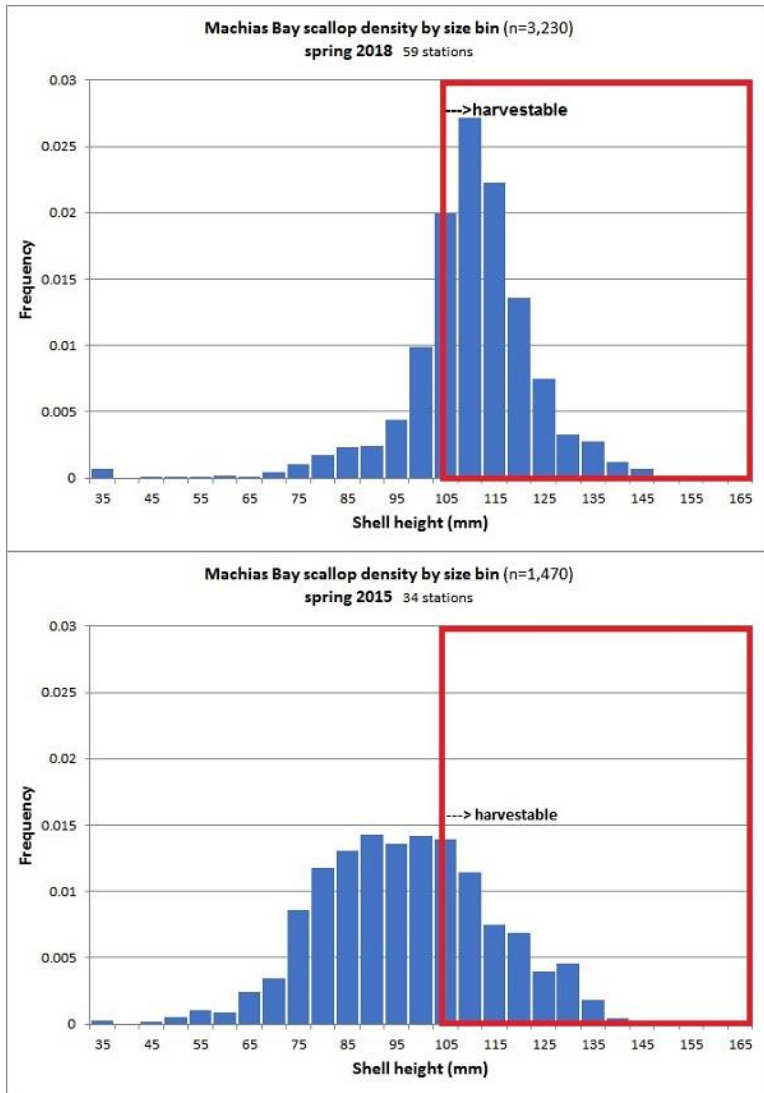


Figure 3: Size frequency plots of scallop resource observations during the ME DMR Spring Scallop Survey in the Gouldsboro & Dyers Bays Rotational Area. The top figure was conducted April 2018 at 59 survey sites and the bottom was conducted at similar 34 survey sites in April 2015. The sublegal resource observed in 2015 can be seen within the legal biomass red square.

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: (8) Machias and Little Machias Bays**

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 a conservation closure in Machias and Little Machias Bays within the Machias Bay Rotational Area to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in this small area will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in a portion of the Machias Bay Rotational Area.

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 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.