

Department of Marine Resources
NOTICE OF AGENCY EMERGENCY RULE-MAKING

CHAPTER # & TITLE: Chapter 11.10(H)(1) Atlantic Sea Scallop Limitations, Closed Areas

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to modify four of six emergency closures to protect Maine's scallop resource due to the risk of unusual damage or imminent depletion of the scallop resource. In Casco Bay the closure was split into a western and an eastern closed area; Western Penobscot Bay; in Mount Desert the closure was split in both Frenchman and Blue Hill bays; and the Eastern closure is also modified. An updated copy of the rules is available online at <http://www.maine.gov/dmr/rulemaking/> or to receive a copy by mail see agency contact information below.

A public hearing will be held in the affected area if requested of the Commissioner in writing by 5 persons. The hearing will be held within 30 days of the Commissioner receiving the written requests.

EFFECTIVE DATE: February 21, 2009

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.

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Adopted emergency regulations: Chapter 11 Scallops

11.10 Atlantic Sea Scallops Limitations

1. Size, Harvesting and Conservation Zone Regulations

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 Closures:

Western Casco Bay Closure: All territorial waters located between:

Western Boundary: A straight line from Adams Head, Richmond Island, east to RW "P" Horn (43 degrees 31.60' N Latitude, 70 degrees 05.49' W Longitude).

Eastern Boundary: A straight line from Portland Head Light, SSE to RW "P" Horn (43 degrees 31.60' N Latitude, 70 degrees 05.49' W Longitude).

Eastern Casco Bay Closure: All territorial waters located between:

Western Boundary: A straight line from the southern end of Jaquish Island SW to RW "P" Horn (43 degrees 31.60' N Latitude, 70 degrees 05.49' W Longitude).

Eastern Boundary: A straight line from Outer Head Griffith Head in the mouth of the Sheepscot River to R "20ML" Bell (43 degrees 41.45' N Latitude, 069 degrees 45.29' W Longitude) then proceeding due south 180 degrees magnetic to the three mile limit.

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 Owls Head Light due southeast to the most eastern tip of Monroe's Island, thence southeast to the R N #10 nun buoy at Foster Ledges.

Eastern Boundary: From Head of the Cape at Cape Rosier due southwest to the western side of Stand-in-Point, North Haven. Thence due south to the R N #10 nun buoy at Foster Ledges.

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 Closures: Note: Open areas are included in this section for clarity.

Blue Hill Bay Area:

Closed: North of a line beginning at Lopaus Point, Tremont, due west to the most southern point of Pond Island, thence northwesterly to the end of Naskeag Point, Brooklin.

Open: West of a line beginning a Bass Harbor Head thence due SE to the southernmost end of Great Duck Island, thence due south 180 degrees magnetic to the three mile limit.

Frenchman Bay Area:

Closed:

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.

Northern Boundary: Beginning at the western tip of Hancock Point following a line to the northern tip of Ironbound Island, thence southeast to the most western tip of Grindstone Neck, Winter Harbor.

Open: North of a line beginning at the western tip of Hancock Point following a line to the northern tip of Ironbound Island, thence southeast to the most western tip of Grindstone Neck, Winter Harbor.

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:

Includes all the coastal waters northerly and inshore of the international bridge that connects Lubec to Campobello Island, New Brunswick, including the St. Croix River.

Western boundary: Beginning at Western Head thence due south 180° magnetic to the three-mile limit.

Eastern boundary: The United States/Canada Border to the 3-mile limit, as identified on National-Oceanographic and Atmospheric Administration nautical charts, including all of Cobscook Bay.

This regulation, Chapter 11.10(H), expires May 1, 2009.

Basis Statement

Chapter 11.10(H)(1) Atlantic Sea Scallop Limitations, Closed Areas, Emergency regulations

Background:

In accordance with 12 M.R.S.A. §6192 of the Department of Marine Resources laws a public hearing was held regarding Chapter 11.10(H)(1) Atlantic Sea Scallop Limitations, Closed Areas, Emergency regulations. Notice of the hearing was published February 7, 2009 in the Portland Press Herald and the Bangor Daily News, 5 days in advance of the hearing. Notices were also mailed or emailed to industry members, the DMR Advisory Council members and others who request copies.

The hearing was requested by the user groups (scallop harvesters and general public) to be held to

take comments on the emergency closures that became effective February 4, 2009 for the remainder of the scallop season, which is open from February 25 through March 31, 2009. The public notice stated: In an effort to reach middle ground and to address some of the concerns that have been raised in an earlier announcement by the Department that we were going forward with a state-wide closure of the scallop fishery, the Department modified its approach and instead established six conservation closures to protect Maine's scallop resource due to the risk of unusual damage or imminent depletion of the scallop resource. The closures are the same scallop fishery closure areas that were proposed in October 2008, with the addition of all near shore waters east of Western Head, including Cobscook Bay.

The hearing record for this emergency rulemaking was held open to receive written comments through the close of business, February 17, 2009. Summarized comments received during the hearing or in writing are [available by clicking here](#).

Comments at the February 12, 2009 public hearing were opposed to the closures. Opposition fell largely into the following categories, with Department responses following each:

1. Questioning the data supporting the need for an emergency closure

The Department based its decision to enact an emergency closure on statewide survey data, port sampling data, landings data and industry input indicating the resource had declined precipitously and was at risk of unusual damage or imminent depletion. The Basis Statement for the emergency closure shows some of these data and describes the decision in more detail.

2. The closures are too large

The original proposal was to close the entire state. The six area closures were enacted to afford fishing opportunities in the second half of the season. They were based on the closures recommended by the SAC last fall, which were designed to be large enough to be enforceable and to increase the likelihood of resource benefits. This is an emergency closure designed to prevent unusual damage and imminent depletion. The SAC and the Department will be working together to design smaller closures for long-term management.

3. Economics: people need to work – don't take away their livelihood

The Department strives to strike an appropriate balance between the needs of the industry and health of the resource. In the end, the future of the resource cannot be sacrificed for short-term industry gains. The goal of this closure is to facilitate the recovery of Maine's scallop resource, a feat that will ultimately result in long-term economic benefits.

4. If you close an area, a derby fishery will result upon reopening

The Department believes a 35-day difference between open and closed areas will not create a derby fishery when the closed areas are re-opened.

A Scallop Advisory Council (SAC) meeting was held on Friday, February 13, 2009 at the Ellsworth City Hall. This public meeting was publicized on the DMR website as well as via an "interested parties" e-mail list (118 names), and was announced at the February 12, 2009 public hearing. It was announced that at this meeting the SAC would entertain alternatives to the proposed closures and then develop their own recommendation to submit to the Commissioner. Approximately 50 fishermen attended the SAC meeting (not including SAC members), and several fishermen offered alternatives to the proposed closures. The SAC then debated the alternatives and came up with their own recommendation. The SAC recommended the following changes to the Commissioner (see changes in text of the regulation):

Casco Bay: The Casco Bay closure was divided into an eastern and western closure, leaving an open area in the center. This was proposed due to the large width of the original Casco Bay Closure. The open area in the center will allow Casco Bay fishermen an opportunity to fish in the second half of the season without having to steam great distances to unfamiliar territory.

Western Penobscot: The Western Penobscot closure was shifted slightly to the west to close an area that has received substantial effort and leave open an area that has received little recent effort.

Mt. Desert Closure: The upper portion of Blue Hill Bay was closed and the eastern portion of Frenchman's Bay was opened. This was done to allow fishermen access to a portion of Frenchman's Bay and to protect juvenile scallops in Blue Hill Bay.

Eastern Closure: The Eastern Closure was amended so that the area south of the International Bridge shall remain open. This was done to prevent an influx of effort in the Cutler area from the large number of fishermen residing within the original proposed closure.

After considering all public input, the Department has chosen to accept the SAC's proposed closures. The Department feels they strike an appropriate balance between the needs of the fishermen and the health of the resource, and present protection equal to that of the original proposed closures.

The Commissioner hereby adopts an emergency closure of Maine's scallop fishery due to the risk of unusual damage or imminent depletion of the scallop resource. As authorized by 12 M.R.S.A. §§6171, 6171(3) and 6192(4) the Commissioner of Marine Resources adopts this emergency regulation.