

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (11) Middle Penobscot Bay Islands; (12) Somes Sound & Cranberry Isles

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures within Middle Penobscot Bay Islands, and also, Somes Sound and Cranberry Isles in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2019 Spring Scallop survey 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 the Middle Penobscot Bay and Cranberry Isles areas

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 2, 2020

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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.

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

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 southern point of Kehail Point running northeasterly to the most southern point of Barters Island and continuing southeasterly to the most northwestern tip of Sawyer Island.

Eastern boundary: West of a line drawn at the most northern tip of Soldier Point running north to the most southern tip of Westport Island.

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. 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.

8. Moosabec Reach within Chandler Bay/Head Harbor Island Rotational Area

Inside and west of a line starting at the eastern tip of Kelley Point, Jonesport and running southwesterly to the eastern tip of Pig Island; and, continuing southwesterly to the northeastern tip of Great Wass Island.

9. Upper Narraguagus Bay within Narraguagus/Pigeon Hill Bay Rotational Area

North of a line starting at the southern tip of Flint Island and running westerly to the southern tip of Shipstern Island, continuing southwesterly to the southern tip of Jordans Delight, continuing to the southern tip of Bois Bubert Island; and, continuing north along the eastern shore of Bois Bubert Island to the northern tip and running north to Tom Leighton Point, Milbridge.

10. Chandler and Eastern Bay within Chandler Bay/Head Harbor Island Rotational Area

Eastern boundary: West of a line starting at the southern tip of Bonney Point, Roque Island and running southerly to the eastern tip of Mark Island; continuing southerly to the eastern tip of Sequin Island; and, continuing southerly to the shore of Head Harbor Island.

Southern Boundary: North of a line starting at the eastern tip of Mud Hole Point, Great Wass Island running easterly to the western tip of Brim Cove, Steele Harbor Island; continuing along the northern shore to the northern side of Upper Herring Cove, Steele Harbor and running easterly to the southern tip of Man Island; continuing along the eastern shore of Man Island to the northern tip of Man Island and continuing to the southern tip of Head Harbor Island.

11. Middle Penobscot Bay Islands within Middle Penobscot Bay Rotational Area

Western boundary: East of a line starting at the northern tip of Webster Head, North Haven and running northerly to the southern tip of Great Spruce Head Island; continuing along the western shore of Great Spruce Head Island to the eastern tip and running

easterly to the northwestern tip of Bradbury Island; and then running northerly o the western tip of Pickering Island.

Eastern boundary: West of a line starting at the southern prominent point of Marsh Cove, North Haven and running northeasterly to the southern tip of Eagle Island; continuing along the eastern shore of Eagle Island to the northeastern tip and then running easterly to the western tip of Dunham Point, Deer Isle.

12. _____ Somes Sound & Cranberry Isles within Cranberry Isles Rotational Area

North of a line starting at the eastern tip of Seawall Point, Mount Desert Island and running easterly to the western tip of Great Head, Great Cranberry Island; continuing along the southern shore of Great Cranberry Island to Deadman Point; then running easterly to the southern tip of Baker Island and continuing along the southern shore to the eastern tip of Baker Island; and running northerly to Otter Point, Mount Desert Island.

Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08. Targeted Closures will be established in (11) Middle Penobscot Bay Islands and (12) Somes Sound & Cranberry Isles.

Middle Penobscot Bay Islands

On opening day, December 2, 2019, approximately 15 to 20 boats were observed harvesting scallops within the bounds of this proposed closure; between Great Spruce Head Island, Butter Island, Eagle Island and Bradbury Island and up towards Pickering Island. Initial meat count reports indicated 10 to 12 count scallops (per pound) were being landed during the first few weeks of harvest. Harvest was concentrated in and around these islands for most of December and January. Throughout the month of January, there was increased harvest pressure as more scallop vessels entered the area. But effort had remained focused amongst the islands.

DMR science staff conducted two in-season surveys within the Middle Penobscot Bay rotational area, first on January 3, 2020 and a follow-up survey on January 18, 2020 (Figure 1). The initial decline in legal-sized scallop density was estimated at 38% from the first survey, assessed through sampling 22 stations within the area. The subsequent survey results indicated a 59% decline in legal sized scallop density (Figure 2). Additionally, there is no strong recruitment signal being observed with regard to the presence of seed or sublegal scallops. Thus, ensuring a threshold of adult biomass is important.

Routine observations by Marine Patrol have also documented a decline in harvest rate and meat size during January. Vessels boarded opening week in December were reporting 3 to 5 bushels of scallops per 15-minute tow compared to the observations this week (January 30, 2020) that indicated 1 to 2.5 bushels per tow with scallops; also, shellstock required measuring to ensure legal retention, while in December it was easier to select larger legal shellstock. Other observations by patrol documented the increase in active harvesters in the area: 15 to 20 boats during December 2, 2019 to 30-35 boats steadily for the previous three weeks of January. This is approximately double the effort that was observed during the 2016-2017 season, where a peak of 15 boats were documented in January 2017.

Compiled information indicates there has been near 60% decline of legal density at the stations sampled throughout the season, in addition to the observed decline of bushels per tow. Eight additional harvest days have occurred since the last survey. Harvesters have not reported many observations of sublegal or seed product during harvesting which prompts action to reserve the remaining adult biomass for broodstock. The remaining scallop resource requires a conservation closure to allow for recruitment and recovery for the next open rotation (Figure 3).

Somes Sound & Cranberry Isles

There was moderate harvest activity during opening week in December in the upper portion of this rotational area, with the harvesters concentrating on scallops north of Sutton Island. According to the 2019 DMR spring survey, this was the largest density of legal scallops observed during the survey (Figure 4). There were approximately 11 harvesters steadily harvesting in or around this area in December.

Of the eight survey stations represented within this closure area, two stations had no presence of scallops and the remaining five stations, aside from the one north of Sutton Island, had very low densities of legal sized scallops.

Marine Patrol observations indicated that effort peaked around 25 vessels total during the third week of December, with activity very weather dependent. By the end of December, most vessels left the area for better fishing opportunities; those that remained moved further away into Western Bay and south of Great Cranberry Island. Recent reports indicate that less than 5 active vessels were harvesting mid-January with no effort observed during this final week of January. Harvesters also indicated by mid-January that the upper portion of this rotational area was depleted and should be closed so as to restrict new activity on depleted resources.

In summary, a reduction in catch rates have been observed in the Middle Penobscot Bay Islands and Somes Sound and upper Cranberry Isles area. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season will reduce scallop broodstock further, as well as jeopardize sublegal scallop abundance that was observed during the 2019 Spring Scallop survey 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 the Middle Penobscot Bay and Cranberry Isles areas.

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

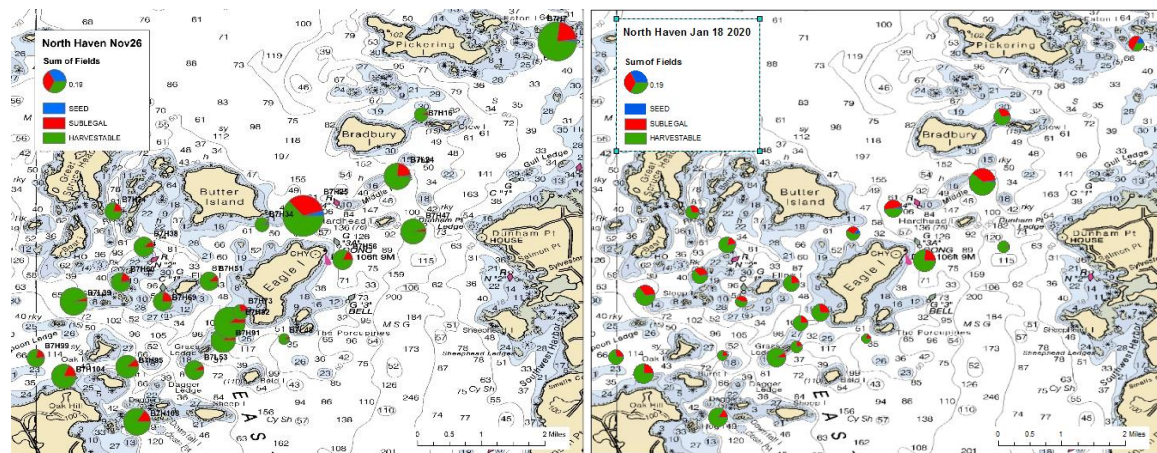


Figure 1: The 2019 pre-season survey (left) observed a large quantity of legal scallops (indicated in green) in addition to smaller portions of sublegal and seed scallops (indicated in red and blue, respectively) in Middle Penobscot Bay Island stations that is sited for closure. During the second in-season survey (right) on January 18, 2020, the observed scallop density is notably diminished.

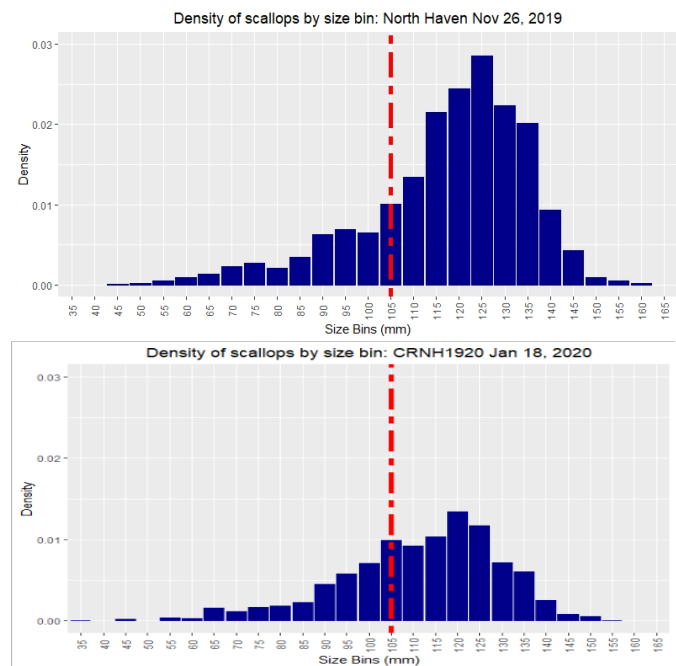


Figure 2: Comparison of scallop density by size frequency observed during the pre-season survey (top) on November 26, 2019 and the most recent in-season survey (bottom) on January 18, 2020 at the 22 stations within Middle Penobscot Bay Islands closure. An estimated 59% decline in legal biomass has been observed at these stations and would account for the reduction in legal sized scallops in the bottom figure.

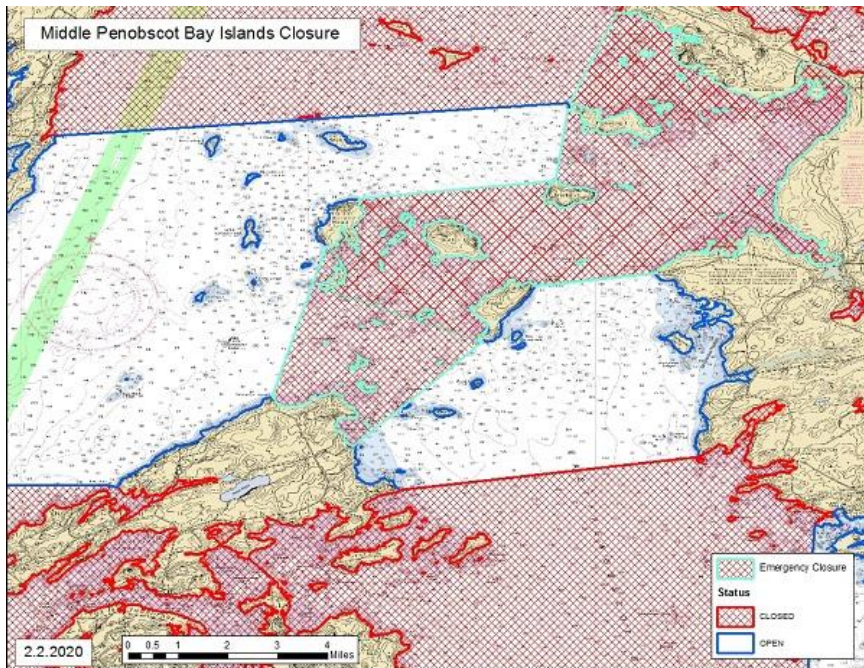


Figure 3: Chart depicts the expanded conservation closures for the scallop resource within the Middle Penobscot Bay Rotational Area. Middle Penobscot Bay Islands closure is effective on Sunday, February 2, 2020.

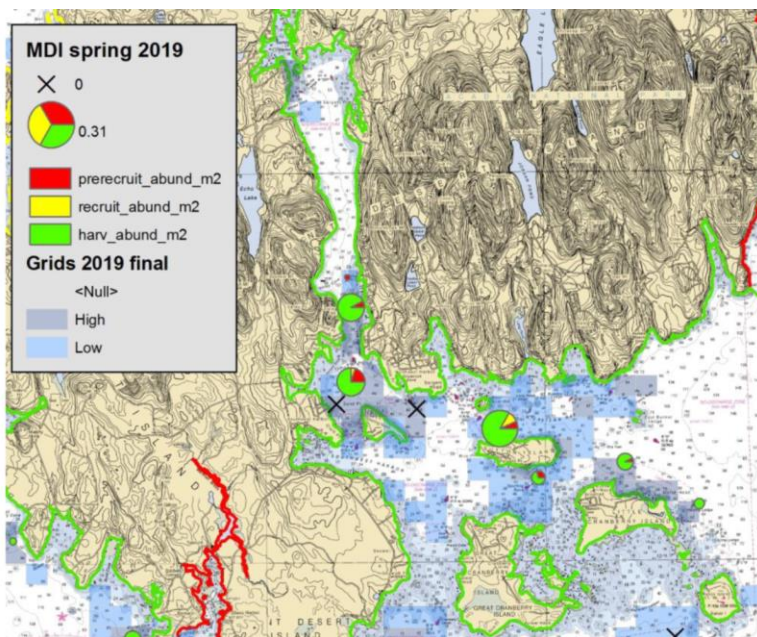


Figure 4: The 2019 Spring Scallop survey observed a moderate quantity of legal scallops (indicated in green) in addition to smaller portions of sublegal and seed scallops (indicated in yellow and red, respectively) in Somes Sound and primarily above Sutton Island within the Cranberry Isles Rotation Area.

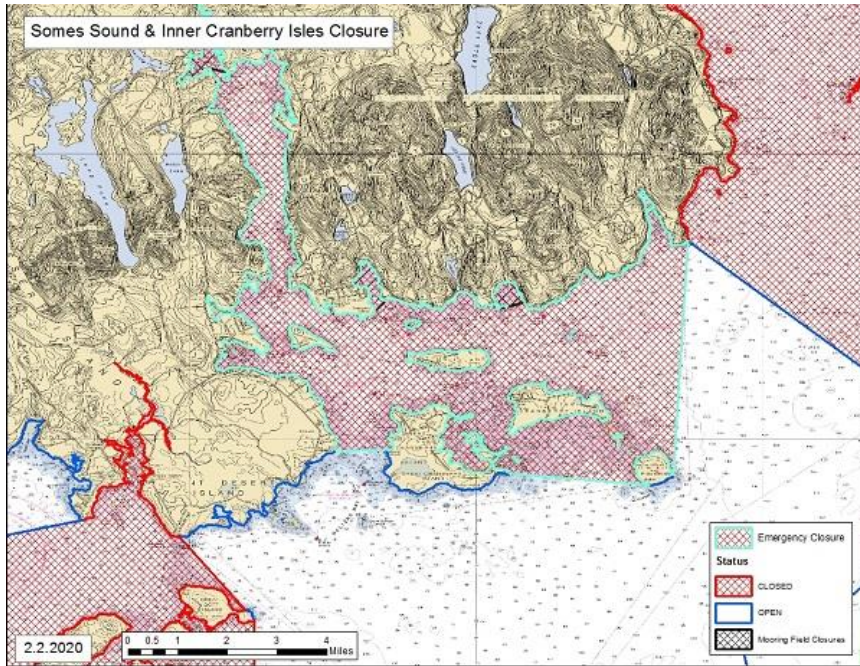


Figure 5: Chart depicts the expanded conservation closures for the scallop resource in the Cranberry Isles Rotational Area. Somes Sound and Cranberry Isles closure is effective on Sunday, February 2, 2020.

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) Middle Penobscot Bay Islands; (12) Somes Sound & Cranberry Isles**

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 establish scallop conservation closures within Middle Penobscot Bay Islands, and also, Somes Sound and Cranberry Isles in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2019 Spring Scallop survey 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 the Middle Penobscot Bay and Cranberry Isles areas

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.