

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (13) St. Croix River; (14) Addison RA; (16) Fox Islands Thorofare in E. Vinalhaven RA

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to implement conservation closures in the St. Croix River, Addison Rotational Area and the Fox Islands Thorofare within the E. Vinalhaven 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 2017-18 fishing season in these areas will remove 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the St. Croix River, Addison and Fox Island Thorofare. 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: March 4, 2018

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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, 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 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.

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 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.

5. Upper Sheepscoot 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. Machias & Sand Bays within Lower Englishman Bay Rotational Area.

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. Whiting, Denny's and Cobscook Bays; and, St. Croix River

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- the International Bridge between Calais, Maine and St. Stephen, New Brunswick, Canada.

Eastern boundary: West of the international maritime boundary line.

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

14. ~~Harrington & Pleasant Rivers within Addison Rotational Area~~

~~Southern boundary: North of a line beginning at the eastern tip of Flint Island, then running in a northeasterly direction to the western tip of Tibbet Island, South Addison.~~

Eastern boundary: South and West of a line starting at the most eastern end of Tibbett Island going due North to the closest point of land on Moose Neck and southeast to the most northern tip of eastern Plummer Island then the most western tip of Toms Island then True South to the three mile limit.

Western boundary: East and South of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then the most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

15. Upper Frenchman Bay Rotational Area

Southern boundary: North of a line from the southeastern tip of Meadow Point, running northeasterly to the southwest tip of Hancock Point, following the shoreline to the northeast tip of Hancock Point and running northeasterly to Bean Point, Sorrento.

16. Fox Islands Thorofare within East Vinalhaven Rotational Area

Eastern boundary: West of a line from the eastern tip of Mullen Head, North Haven, running southeasterly to the northeastern tip of Babbidge Island and continuing south along the shoreline to the eastern tip of Babbidge Island, then running southeasterly to the RN "2A" buoy; then running southwesterly to the eastern tip of Calderwood Neck, Vinalhaven.

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for closures of (13) St. Croix River; (14) Addison RA; (16) Fox Islands Thorofare in E. Vinalhaven RA

Justification:

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Fox Islands Thorofare in E. Vinalhaven Rotational area (Zone 2); Addison Rotational Area (Zone 2); and, St. Croix River (Zone 3).

St. Croix River

This area has been open to harvest for 43 days, within Zone 3, but the primary focus of effort has been in the most recent 12 days of the calendar after Cobscook Bay closed (Figure 1). Beginning February 4, 2018, upwards of 40 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed large meat counts and moderate densities of scallops over variable depth ranges. In the previous season, this area was targeted for 8 days after Cobscook closed. Observations this year indicated harvest rates were not as great as the year prior, but meat size of harvested product meant less animals were needed to reach the daily limit. Initially, daily limits were being reached between 9 and 10, with tide cycles impacting harvesting behavior. In the last 2 open weeks, individual harvesters were taking longer to reach limits, if at all. There were reports of seed near St. Croix Island, as well. So, based on lower catch per unit effort as conveyed by both harvesters in the area and Marine Patrol, and potential for sublegal growth for the following season, it was recommended to close the fishery to reduce repeated effort.

Addison Rotational Area

This area has been open to harvest for 54 days. A partial closure of this area affecting both the Harrington and Pleasant Rivers including Pleasant Bay was implemented on February 18, 2018 due to reports of seed scallops in the rivers, along with both harvester and marine patrol reports observing new effort in areas that were already harvested in the early part of the season. Now that effort has shifted to the outer islands, catch rates remain low. Additional reports by harvesters in the area as well as Marine Patrol indicate that it is no longer possible to reach daily limits within this rotational area. Additionally, separate from the DMR Science Survey, harvesters indicate there are sublegal scallop resources in deeper water around Big Nash Island.

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 2).

Fox Islands Thorofare within E. Vinalhaven Rotational Area

This area has been open to harvest for 54 days (Figure 3). During the opening of the scallop season, an estimated 30 boats were harvesting in the upper portion of the zone, and focusing on the large meat counts found within the Fox Islands Thorofare area. Effort wavered between 10 to 20 boats during the latter half of December and into January. Also, due to poor weather throughout the season, this area maintained effort sporadically, as a sheltered area to harvest throughout the months of December and January. By the second week of January, harvesters were indicating it took longer to reach daily limits. Both harvesters and marine patrol observations indicate minimal effort by approximately 5 vessel during the month of February on poor weather days.

DMR science staff has completed three surveys in the area, covering the same 22 stations each time (Figure 4). Overall biomass has decreased slightly in the area; however, results indicate that the 5 stations associated with the Fox Islands Thorofare have seed and sublegal scallop resources in greater proportion than harvestable biomass. Direct observations from both industry participants in the area as well as marine patrol also confirm the presence of sublegal resources, with the station near Goose Rocks having the highest concentrations.

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas 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 the St. Croix River, the Addison Rotational Area and Fox Islands Thorofare within E. Vinalhaven 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

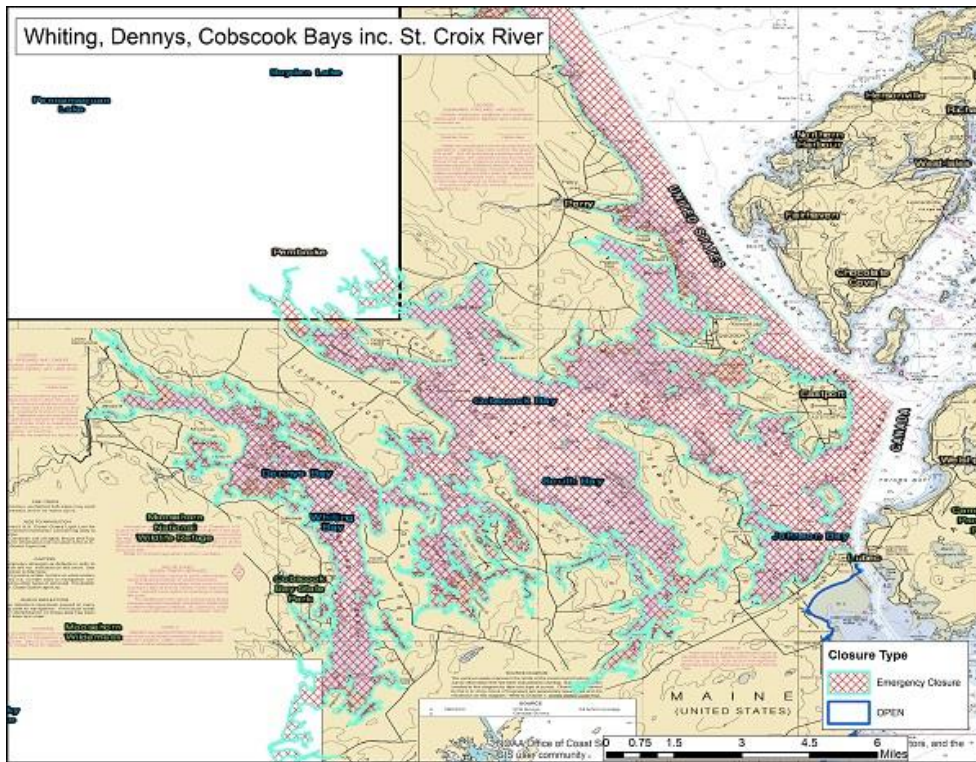


Figure 1: Chart of the St. Croix River Targeted Conservation Closure, within Zone 3, implemented on March 4, 2018.

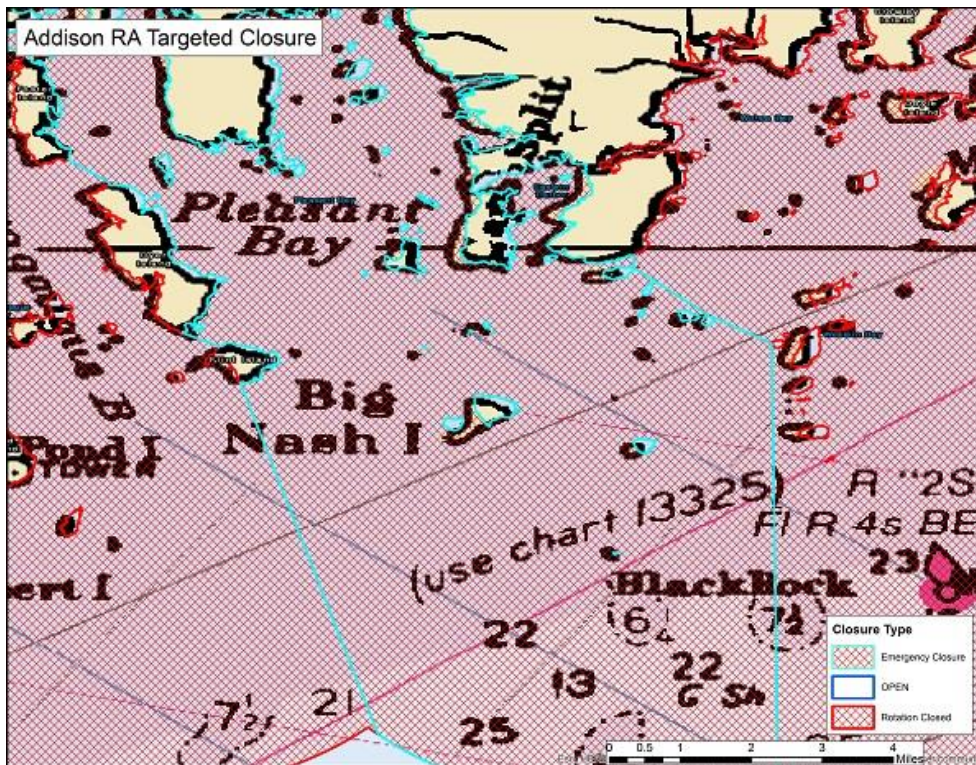


Figure 2: Chart of Addison Rotational Area Targeted Conservation Closure, implemented on March 4, 2018.

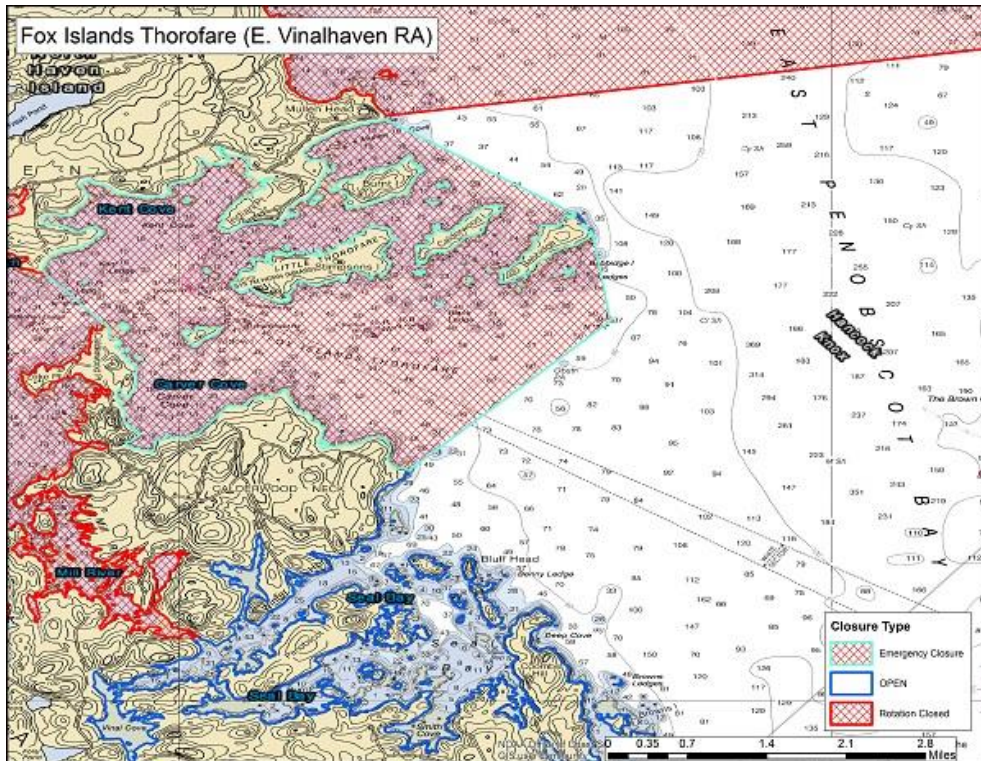


Figure 3: Chart of Fox Islands Thorofare Targeted Conservation Closure within the E. Vinalhaven Rotational Area, implemented on March 4, 2018.

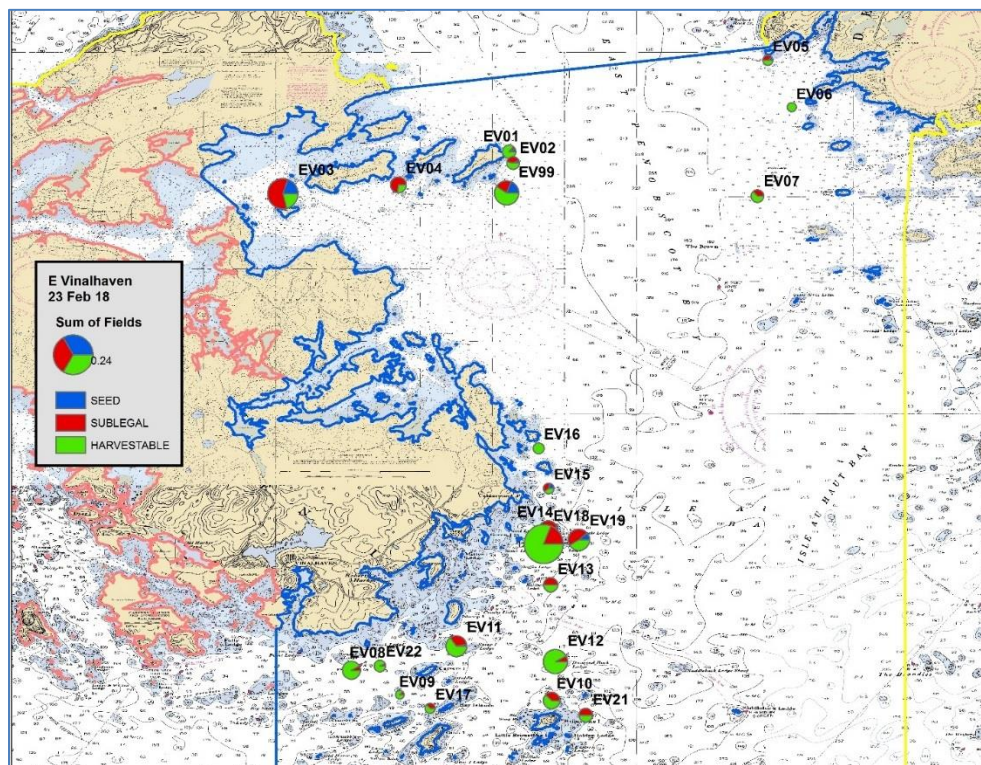


Figure 4: Bubble plots of scallop resource observations during the ME DMR Spring Scallop Survey conducted Friday, February 23, 2018 at 22 survey sites in the E. Vinalhaven Rotational Area. Station EV03 and EV99 indicated a large population of seed scallops.

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: (13) St. Croix River; (14) Addison RA; (16) Fox Islands Thorofare in E. Vinalhaven RA**

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 conservation closures in the St. Croix River, Addison Rotational Area and the Fox Islands Thorofare within the E. Vinalhaven 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 2017-18 fishing season in these areas will remove 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the St. Croix River, Addison and Fox Island Thorofare.

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.