

## NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (12) Casco Passage (Swan's Island); (13) Johnson Bay (Cobscook Bay)

**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Johnson Bay, inside Cobscook Bay area and Casco Passage of the Swan's Island Rotational 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 in both the Johnson Bay and Casco Passage 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:** January 21, 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 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 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. Rogue Island Harbor (Sand Bay)

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.

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)

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 of the International Bridge between Lubec and Campobello Island.

## **Basis Statement**

Amendment to Chapter 11.08 Targeted Closures for the inclusion of (12) Casco Passage within the Swan's Island Rotational Area and (13) Johnson Bay & Eastport Breakwater in Cobscook Bay.

### Justification:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Passage in Swan's Island Rotational Area (Zone 2) and Johnson Bay and Eastport Breakwater within Cobscook Bay (Zone 3).

### **Casco Passage within Swan's Island Rotational Area**

At the opening of the scallop season, on December 5, 2017, 15 active scallop drag vessels were observed harvesting within the Casco Passage area by Marine Patrol. The number of total vessels harvesting within this area was reported to have reached upwards of 30 vessels as determined by individual harvester interviews during the first 5-day week of the season. Meats were large in this area, with a meat count ranging from 10 to 14 scallops per pound. Daily harvest limits were reached as quickly as four 20 minute tows but increased to twelve tows during the end of the first five days of harvesting.

By the third week of scallop season, updated reports by industry and marine patrol indicated most vessels had moved on to other more productive areas, as weather permitted.

However, recent information indicated that on poor weather days, 1-3 boats still harvest within Casco Passage but have been unable to reach their daily limit in the area. At best, they were able to harvest 8 gallons of the available 15 gallon daily limit.

Data from the spring scallop survey conducted by DMR science staff indicated presence of seed stock within the Casco Passage area (Figure 2). 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).

### **Johnson Bay & Eastport Breakwater (Cobscook Bay)**

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. Initial reports of harvest rates indicated vessels were reaching their daily limit by noon, with landings being comprised of medium sized (15-20 count per pound) scallops. It was noted that this size range was smaller than usual during the beginning the season for Johnson Bay.

By the third week of the scallop season, Marine Patrol were observing lower catch rates and vessels were taking longer to reach their daily limit. This was considered atypical for this area so early in the season. Vessels were working more into the late afternoon to reach daily limit of 10 gallons.

ME DMR science staff completed a 68 station survey of Cobscook between January 11-14, 2018 which focused on 12 stations within Johnson Bay and 4 stations around Eastport Breakwater. Results from this in-season survey indicated a stark decrease in harvestable biomass for both these areas (Table 1). Harvestable biomass in Johnson Bay dropped from 8.06 g/m<sup>2</sup> observed during the fall survey to 2.74 g/m<sup>2</sup>. Eastport Breakwater had a harvestable biomass of 9.17 g/m<sup>2</sup> prior to the season opening and it is now observed at 1.97 g/m<sup>2</sup>. These data points far exceed the 30% target removal threshold.

During pre-season science survey, observations of seed or sublegal product was present around Treat Island in Johnson Bay (Figure 4). Available legal product has been extracted from this area and it is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years (Figure 3).

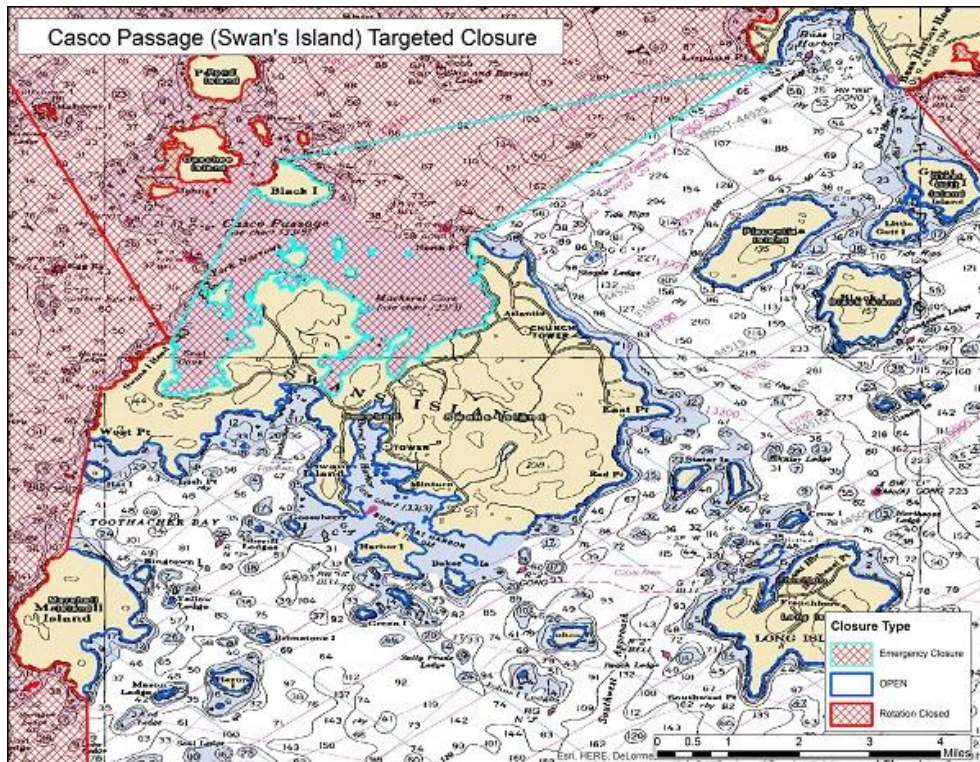
In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in

these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in both the Casco Passage and Johnson Bay & Eastport Breakwater 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).

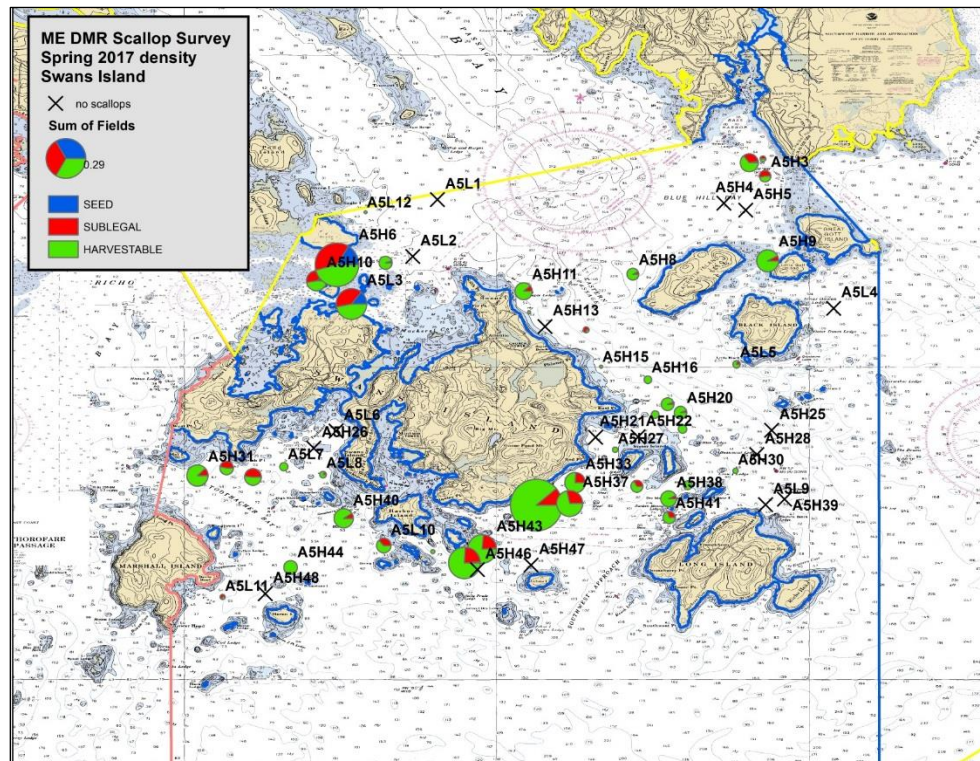
In accordance with 5 M.R.S. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.



## Figures & Tables

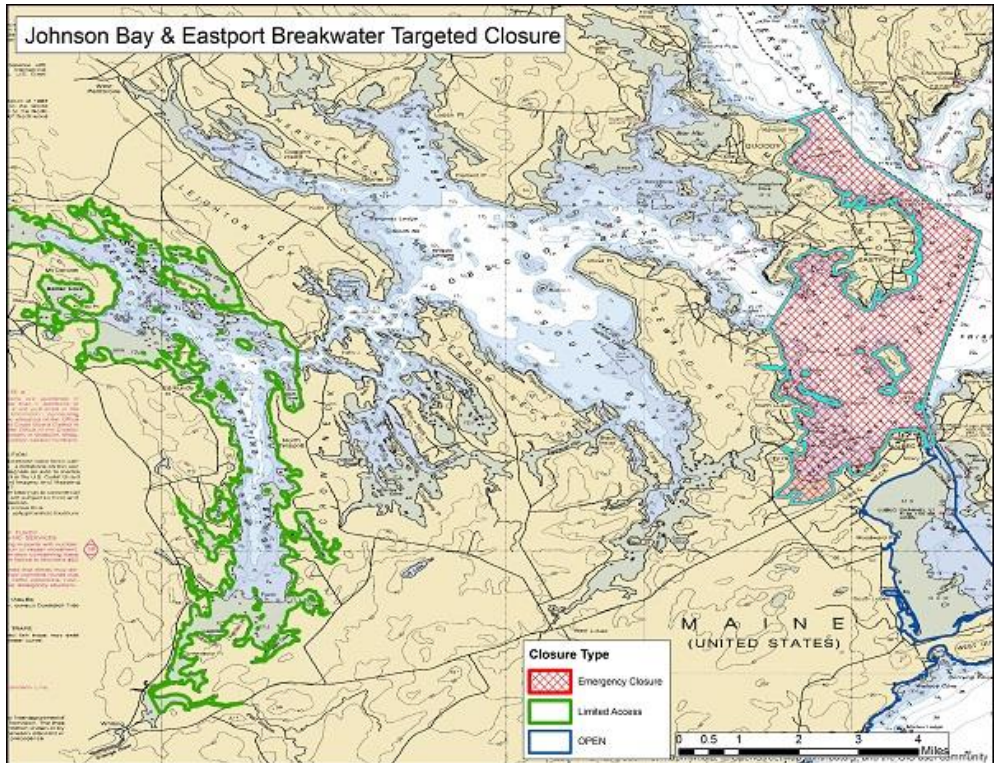


**Figure 1:** Chart of the Casco Passage emergency targeted closure within the Swan's Island Rotational Area, implemented on January 21, 2018.

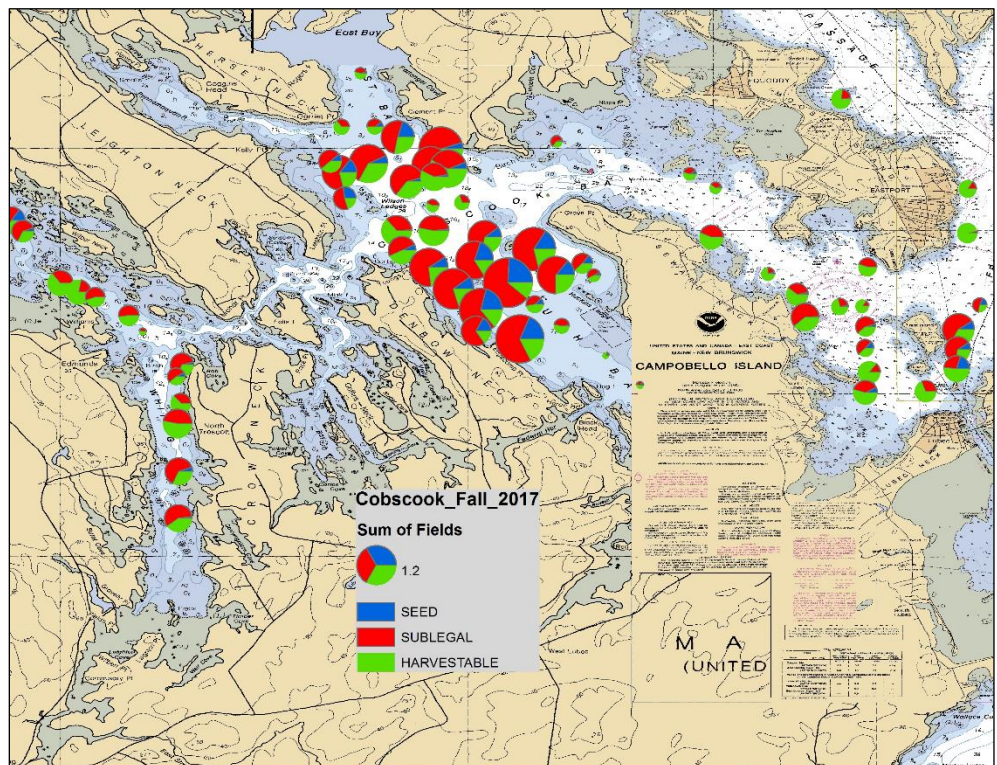


**Figure 2:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2017. The site around A5H10 indicates a good source of seed scallops within the Casco Passage area.





**Figure 3:** Chart of the Johnson Bay & Eastport Breakwater emergency targeted closure, implemented on January 21, 2018.



**Figure 4:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Fall 2017 in Cobscook Bay. The sites around Treat Island (far east) indicates a good source of seed scallops within the Johnson Bay & Eastport Breakwater area.



**Table 1:** Estimates of harvestable scallop biomass for discrete locations within Cobscook Bay. While overall, Cobscook Bay has not experienced a 30% decline, stations within Johnson Bay and Eastport Breakwater have far exceeded the target removal of 30%.

<b>Estimates of harvestable scallop biomass density (g/m<sup>2</sup>) for Cobscook Bay/Whiting Bay</b>					
date	Cobscook Bay (non-Whiting, 65/63 stations)	Johnson Bay (12/12 stations)	Breakwater (4/5 stations)	South Bay (23/22 stations)	Whiting (13/8 stations)
Fall 2017	4.46	8.06	9.17	5.33	6.29
1/14/2018	3.48	2.74	1.97	5.19	4.73
% change	22%	66%	79%	3%	25%
		= 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**

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 for the implementation of targeted conservation closures located in Johnson Bay, inside Cobscook Bay area and Casco Passage of the Swan's Island Rotational 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 in both the Johnson Bay and Casco Passage areas.

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.*