

## NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (14) Harrington & Pleasant Rivers in Addison RA; (15) Upper Frenchman Bay RA

**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to implement conservation closures in the Harrington and Pleasant Rivers, Addison Rotational Area and the upper portion of Frenchman 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 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the Harrington and Pleasant Rivers and the upper portion of Frenchman Bay. 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 18, 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 drawn 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 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.

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

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.

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.

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.

## **Basis Statement**

Amendment to Chapter 11.08 Targeted Closures for partial area closures of (14) Harrington & Pleasant Rivers within Addison Rotational Area, as well as (13) Upper Frenchman Bay Rotational Area.

### Justification:

The Department is taking emergency rulemaking action to implement targeted conservation closures in the following areas: Harrington & Pleasant Rivers within Addison Rotational Area (Zone 2) and Upper Frenchman Bay Rotational Area (Zone 2).

### **Harrington & Pleasant Rivers within Addison Rotational Area**

This area has been open to harvest for 46 days. Effort in both the Harrington and Pleasant Rivers was most notable during the month of December with upwards of ten vessels harvesting in the area. Boats were actively avoiding the seed spots and began spreading out in this rotational area by the third week of December and as weather allowed, harvesters would tow further outside of the Bay. By January, less than 5 boats were harvesting in the lower port of this Rotational Area. Several industry reports confirmed the already suspected levels of seed scallops observed during the DMR Spring Scallop survey.

During the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017; Figure 2) and highlighted the abundance of seed scallop resources observed in the Harrington River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. This was exactly how effort was observed in this area by Marine Patrol at the beginning of the season. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

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).

### **Upper Frenchman Bay Rotational Area**

This area has been open to harvest for 46 days. Effort in both the Skillings River and adjacent areas was most notable during the month of December and into January with upwards of five vessels harvesting in the area with the primary focus on the Skillings River. Boats that did harvest in the Skillings River also found seed as predicted by the DMR Spring Scallop survey and actively avoided seed spots until spreading out in this rotational area. Resource was patchily distributed in the area with average to high meat counts being reported by industry.

As mentioned above, during the June 2017 Scallop Advisory Council (SAC) meeting, DMR Science staff provided the results of the Scallop Spring Survey (conducted April 2017; Figure 4) and highlighted the abundance of seed scallop resources observed in the Skillings River. DMR Management staff proposed this area as a limited access zone to allow for reduced effort to protect ongoing recruitment during the SAC June meeting. However, industry input to the SAC highlighted the desire to harvest the legal biomass quickly and then move on to other areas. Harvest in this area lasted into the middle of January, as bad weather made it difficult to access other areas. However, with closures occurring during the 2017-18 scallop season prompting mobility within the fleet, this area cannot withstand new effort covering areas that have already been harvested.

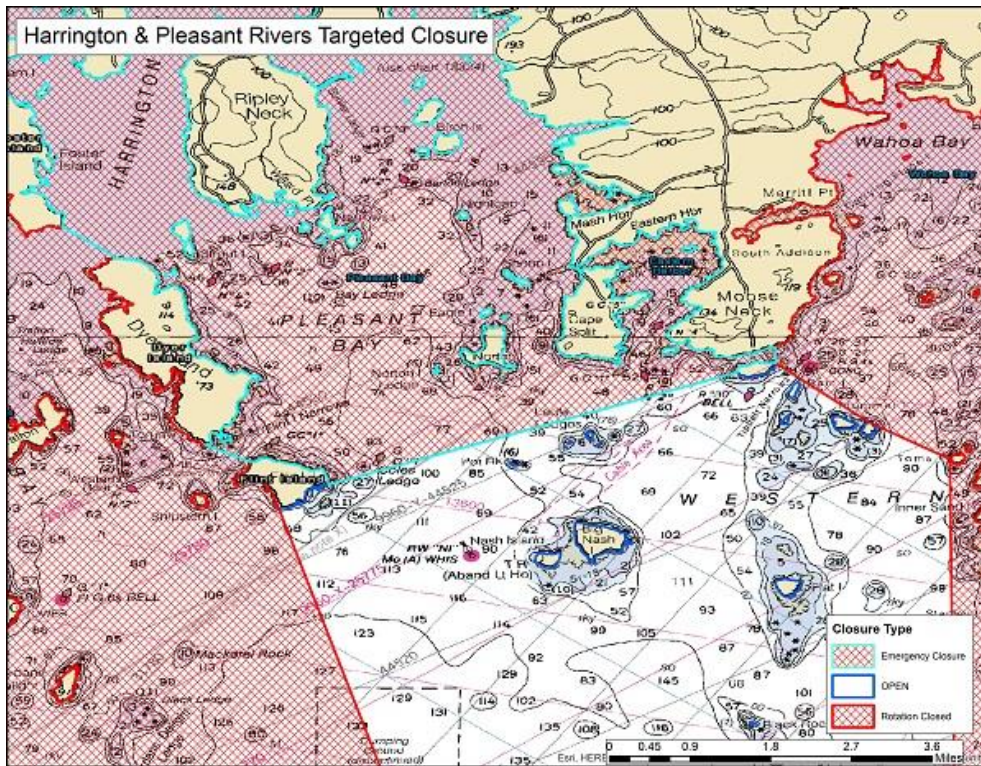
Available legal product has been extracted from this area and continued harvest will cause unnecessary damage to the habitat and the scallop resource. It is necessary to protect the seed scallop resource and the remaining legal scallop resource as broodstock for subsequent fishing years (Figure 1).

In summary, the Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in the upper portions of both Addison and Frenchman Bay 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

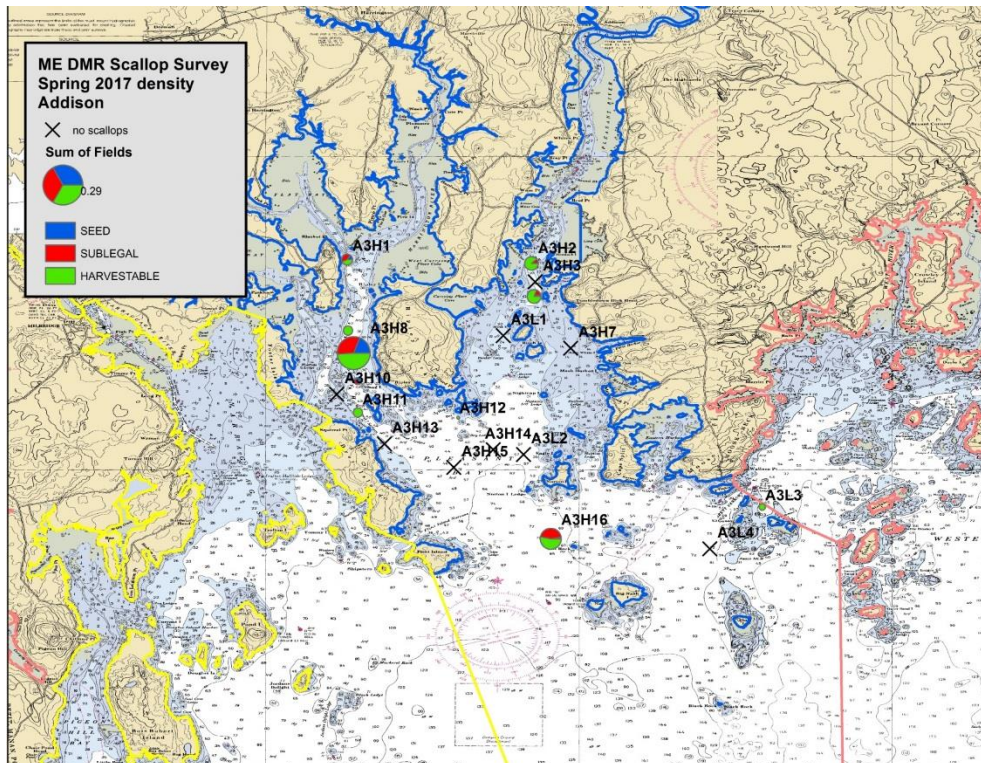
reduce the risk of unusual damage and imminent depletion of the scallop resource in both Harrington and Pleasant Rivers within the Addison Rotational Area and upper Frenchman Bay which includes the Skillings River and Taunton Bay. For these reasons, the Commissioner hereby adopts an emergency closure 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.

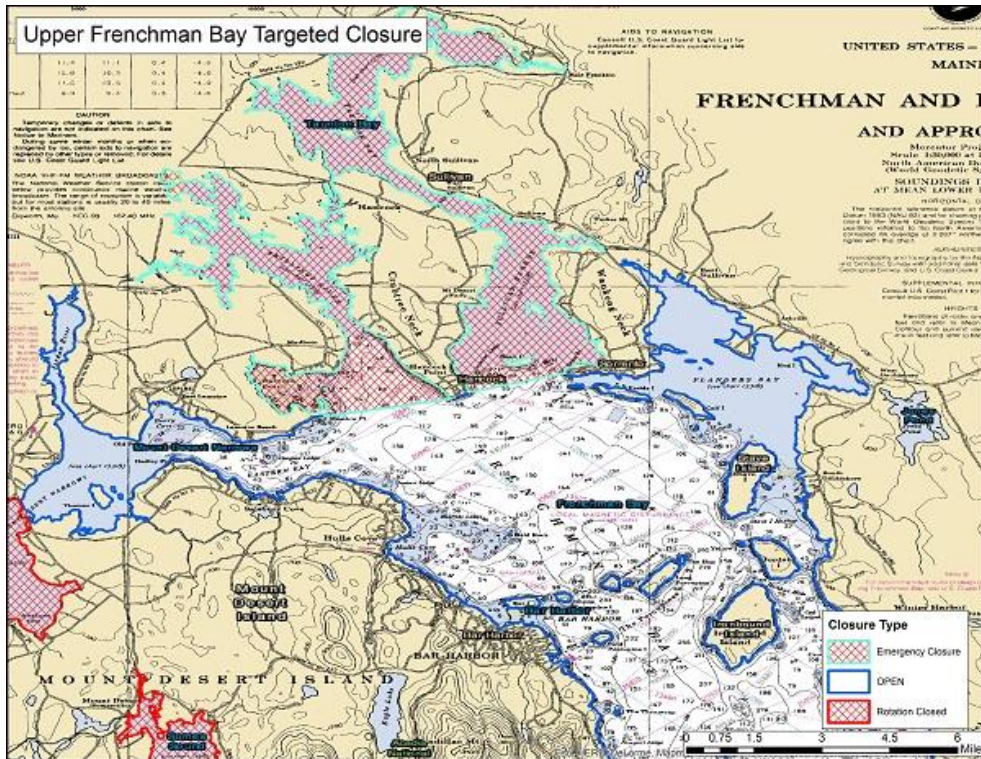
**Figures & Tables**



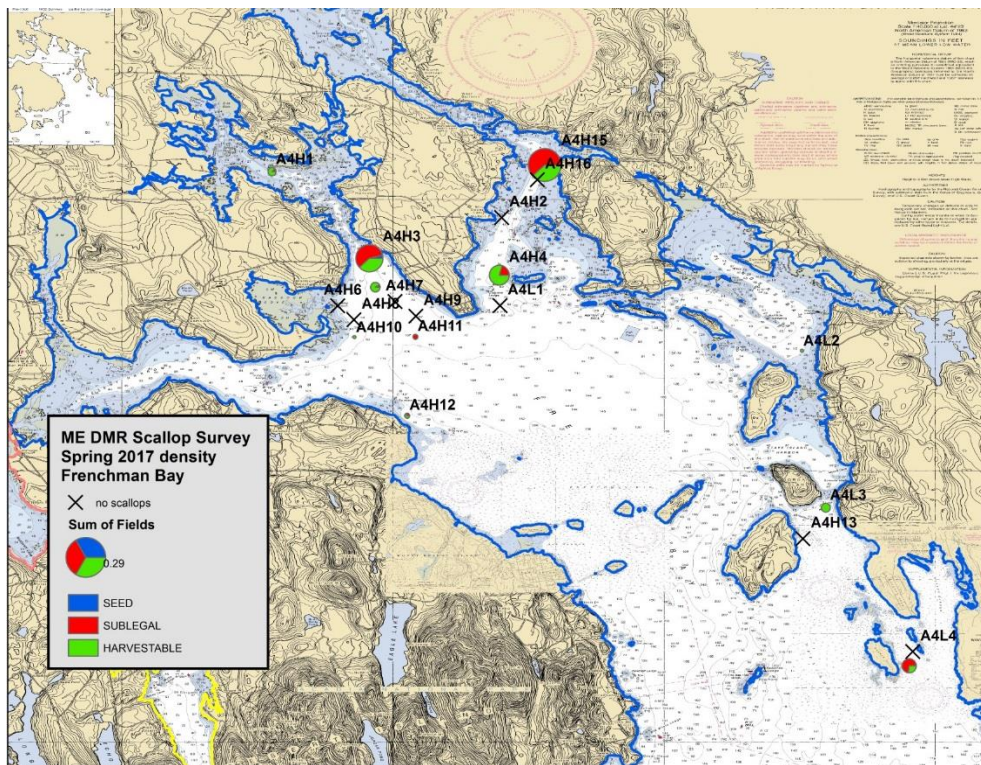
**Figure 1:** Chart of the Harrington & Pleasant Rivers Targeted Closure, within the Addison Rotational Area, implemented on February 18, 2018.



**Figure 2:** Bubble plots of scallop resource observations during the ME DMR Spring Scallop Survey conducted in April 2017 at 19 survey sites in the Addison Rotational Area. Station A3H8 indicated a large population of seed scallops. Fishermen observed sublegal product just south of this station during fall/winter harvesting.



**Figure 3:** Chart of Frenchman Bay Targeted Closure, implemented on February 18, 2018.



**Figure 4:** Bubble plots of scallop resource observations during the ME DMR Spring Scallop Survey conducted in April 2017 at 20 survey sites in the Frenchman Bay Rotational Area. Station A4H3 indicated a large population of seed scallops.



# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: **Chapter 11.08, Targeted Closures: (14) Harrington & Pleasant Rivers in Addison RA; (15) Upper Frenchman Bay 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 Harrington and Pleasant Rivers, Addison Rotational Area and the upper portion of Frenchman 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 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. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource within the Harrington and Pleasant Rivers and the upper portion of Frenchman Bay.

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.*