

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (7) Gouldsboro/Dyers Bays Rotational Area, (8) Upper Machias Bay Rotational Area, and (9) Vinalhaven Islands in the Lower Penobscot Bay Rotational Area

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to implement conservation closures in Gouldsboro Dyers Bay Rotational Area, Upper Machias Rotational Area and Vinalhaven Islands in the Lower Penobscot Bay Rotational Area. These closures are required 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 2018-19 fishing season will further reduce the abundance of remaining broodstock that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource.

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 10, 2019

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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.

Unless excepted, 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 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.

3. 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.

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. ~~Gouldsboro and Dyers Bays within the~~ Gouldsboro/Dyer Bay Rotational Area

~~North of a line starting at the eastern most tip of Youngs Point, Corea, continuing to the western most tip of Sheep Island and following the southern shoreline to the eastern most tip of Sheep Island; and then running easterly to the southern tip of Petit Manan Pt.~~

~~Hand harvest exception:~~

~~Scallops may be taken on Wednesday, December 19, 2018, by hand harvest only.~~

Eastern boundary: South and West of a line starting at the most southern tip of Petit Manan to EB gong; then South to the northern most tip of Green Island; then from the southeastern top of Green Island to the northern tip of Petit Manan Island; then from the southern tip of Petit Manan Island to N"2"; then to G"1" bell; then True South to the three mile limit.

Western boundary: North and East of a line starting from the southern most tip of Schoodic Point Magnetic South to the three mile limit (western boundary of the Zone A lobster management zone).

8. ~~Machias and Little Machias Bays within the~~ Upper Machias Bay Rotational Area

~~Inside and north of a line starting at the most eastern point of Cross Island, then running easterly to the eastern point of Scotch Island continuing northeasterly to the southwestern tip of Cape Wash Island, continuing easterly to the southeastern tip of Cape Wash Island, then running northeasterly to the southwestern tip of Deer Island, continuing along the northern shoreline to the most northeastern tip of Deer Island and then running in a northerly direction to the mainland shore.~~

Inside and north of a line starting at Great Head, Cutler, then running southwesterly to the southern tip of Old Man; and, continuing southwesterly to the southern tip of Double Head Shot Island; and then continuing easterly to the Seal Cove Ledge RN2.

9. ~~West~~ Vinalhaven Islands within the Lower Penobscot Bay Rotational Area

~~Western boundary: South and east of a line starting that the most southwestern tip of Crockett Point, heading southwesterly to green can "GC5", then running to red buoy "R2"~~

~~and continuing to red buoy "R2A"; and then easterly to the most southern tip of Leadbetter Island.~~

~~Eastern boundary: West of a line running north through green can "GC1".~~

South and east of a line starting at the most southwestern tip of Crockett Point, heading southwesterly to red nun "RN4", then running southeasterly to James & Willies Ledge green can "GC1" and continuing to Colt Ledge red nun "R2"; and then due east magnetic to the closure boundary.

10. Wohoa Bay within the Wohoa/Western Bay Rotational Area

Inside and north of a line starting at the western tip of Toms Island, continuing along the shore to the southern tip of Toms Island then running southeasterly to the southwestern tip of Drisko Island, continuing along the shore to the southeastern tip of Drisko Island, then running easterly to the northeastern tip of Norton Point.

11. Cobscook Bay including Whiting and Denny's 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.

Exception:

Scallops may be taken on Monday, January 28, 2019, by scallop dragging only.

Scallops may be taken on Saturday, February 2, 2019, by hand harvest only.

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for closure of (7) Gouldsboro/Dyers Bays Rotational Area, (8) Upper Machias Bay Rotational Area, and (9) Vinalhaven Islands in the Lower Penobscot Bay Rotational Area

Justification:

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Vinalhaven Islands (Figure 1), Upper Machias (Figure 3) and Gouldsboro Dyers Bay RA (Figure 5) within Zone 2.

Vinalhaven Islands

This area opened for harvest on December 1, 2018 with approximately 25 boats concentrated within the islands west of Vinalhaven. Effort was strong during the first week, as Zone 1 was not yet open. By week two, the number of boats in the area dropped to 15 or so, as some boats returned to Zone 1. By week four effort remained around 20 boats that had spread from the inner islands to west and south of the area. This range of 15 – 20 boats, depending on weather, has maintained effort in the open portion of the Lower Penobscot Bay rotational area for the duration of January with vessels harvesting around islands outside the closure and other areas within the rotational zone down to Matinicus.

Survey stations were concentrated inside the inner islands. This also represents where most the effort had taken place during December and where the initial closure took place. This area was opened to harvest for 21 days prior to the first in-season survey; the overall decrease in available harvestable biomass at all stations was approximately 46%. While the additional 11 days of harvest opportunity were not fully utilized due to weather and tides, resource extraction continued at a reduced level such that a closure was warranted on January 6, 2019.

A second in-season survey was conducted on January 26, 2019 in which the relative change in legal density of scallops was calculated at 65% (5.76 g/m² to 1.98 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops (Figure 2). While this survey commenced after 34 days of total harvest, approximately 12 of the 20 survey stations were within the closed area and represent a significant proportion of the decrease in legal density of scallops. Approximately four stations that remained in harvestable waters exhibited higher proportions of legal sized scallops to harvest, albeit at lower densities. Due to continued poor weather following the week of the survey, and forecasted for week ahead, the delay to expand the closure until this coming weekend was to allow access on the best weather days to provide harvest opportunity prior to this area closing until the 2021-22 season.

Machias and Little Machias Bays

This area opened for harvest on December 1, 2018 with approximately 15 boats concentrated within Little Machias Bay. This area experienced a partial closure on December 30, 2018 that closed Machias and Little Machias Bays because of information received from the first in-season survey as described in a previous action. Harvest continued outside of this closure line with activity of 12-15 boats ranging from Cross Island to Old Man; harvesting has been inconsistent due to the poor weather conditions during January.

A second in-season survey was conducted on February 3, 2019 in which the relative change in legal density of scallops was calculated at 74% ((4.30 g/m² to 1.14 g/m²) as is demonstrated by the decrease in the size frequencies of legal scallops (Figure 4). This survey took place after 38 days of total harvest, with ¼ of the survey stations having already been within an existing partial closure. Rate of effort has been variable in this area due to ongoing poor weather conditions, as conditions did not allow for prospecting and harvesting further from shore. As such, the area closest to shore contained most vessels during opportune harvest days, resulting in the decreased density of legal scallops. This proposed closure encompasses most of the survey stations for continued conservation.

Gouldsboro Dyers Bay Rotational Area

This area opened for harvest on December 3rd, 2018 with approximately 40 boats concentrated within Gouldsboro Bay and was partially closed on December 16, 2018 in the upper portion of Gouldsboro and Dyers Bays after 10 days of intense fishing pressure. After the initial closure, many boats left the area. However, several local scallop boats remained fishing near Prospect Harbor and the outer portion of the

area searching deeper waters for scallops. Recent reports indicate 4-6 boats have been steadily in the area during January on pleasant weather days. However, over the last two weeks of harvesting, vessels have not been able to reach a daily limit and a closure is needed to protect the remaining legal product for rebuilding purposes.

In summary, Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Gouldsboro & Dyers Bay, Vinalhaven, and Machias 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

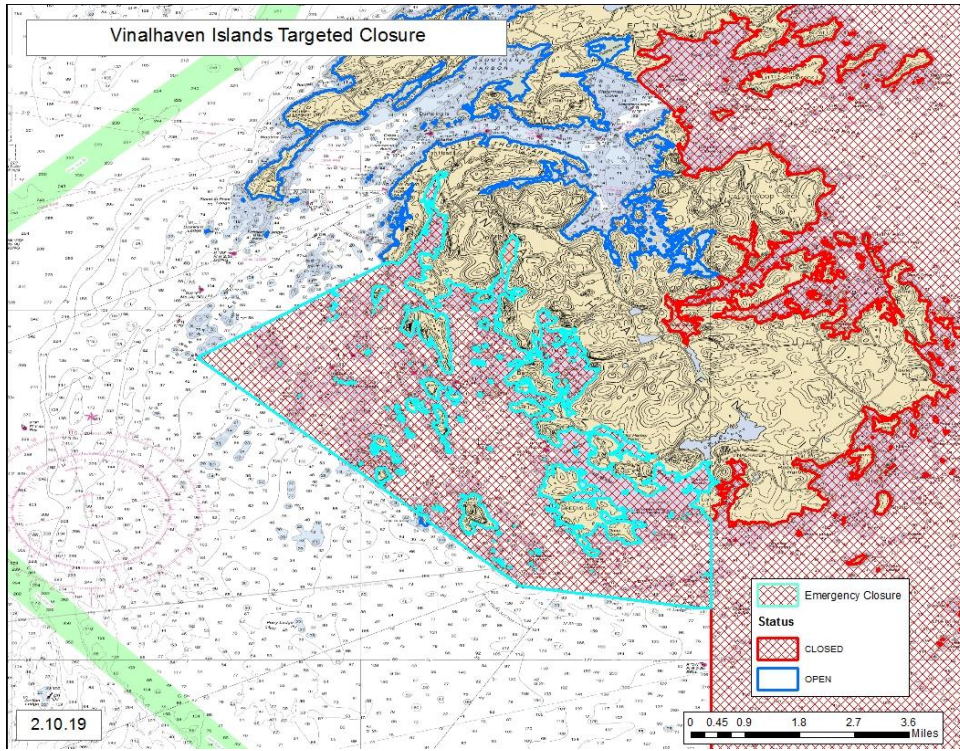


Figure 1: Chart of the Vinalhaven Islands Conservation Closure within the Lower Penobscot Bay Rotational Area in Zone 2, implemented on February 10, 2019.

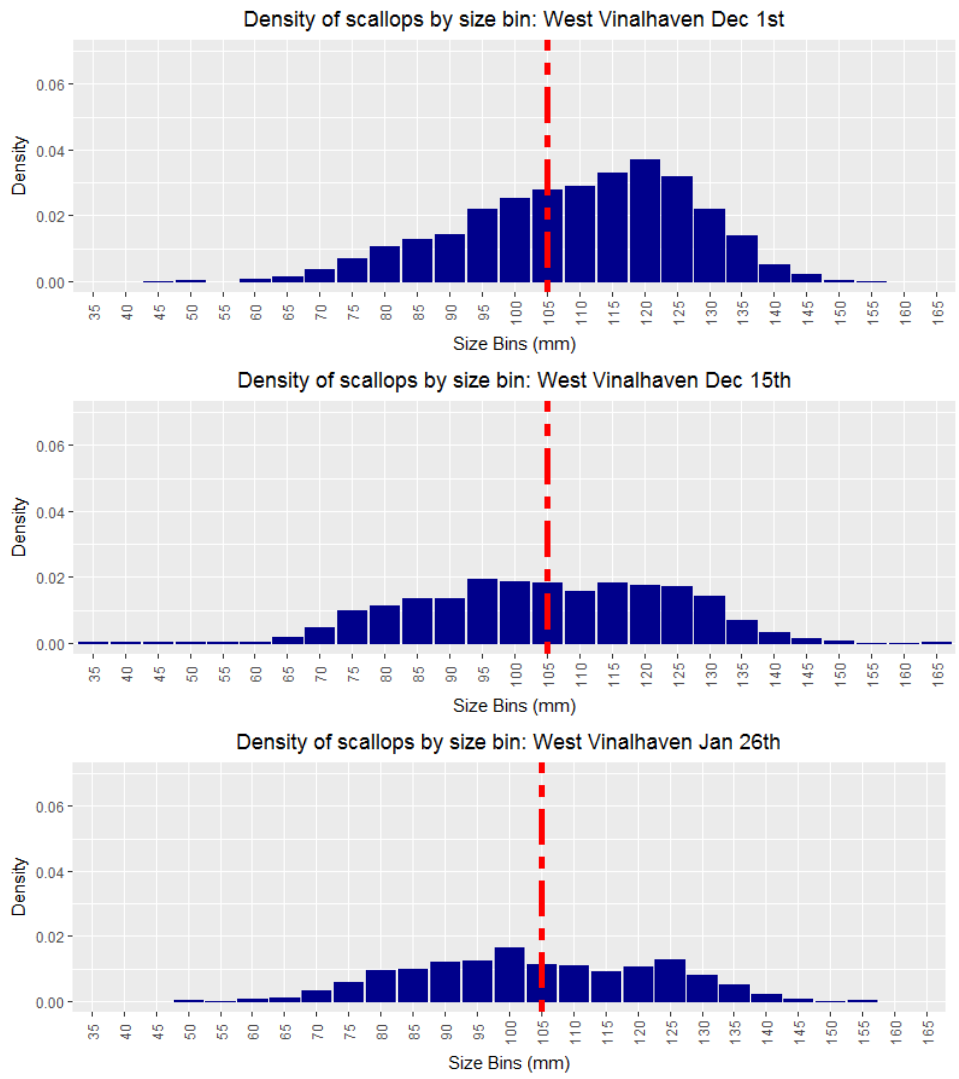


Figure 2: Size frequency plots of scallop resource observations during the ME DMR pre-season (December 1, 2018) Scallop Survey in the Lower Penobscot Rotational Area (top figure); the in-season survey conducted at the same 20 sites on December 15, 2018 (middle figure); and, the second in-season survey conducted on January 26, 2019.

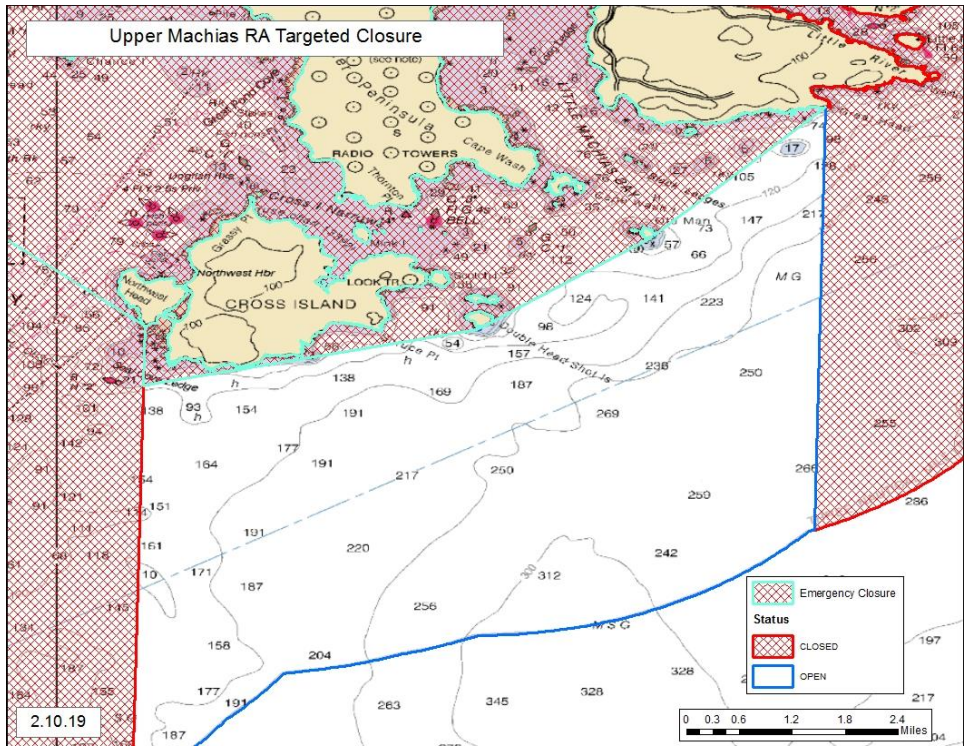


Figure 3: Chart of the Upper Machias Bay RA Conservation Closure within the Machias Bay Rotational Area in Zone 2, implemented on February 10, 2019.

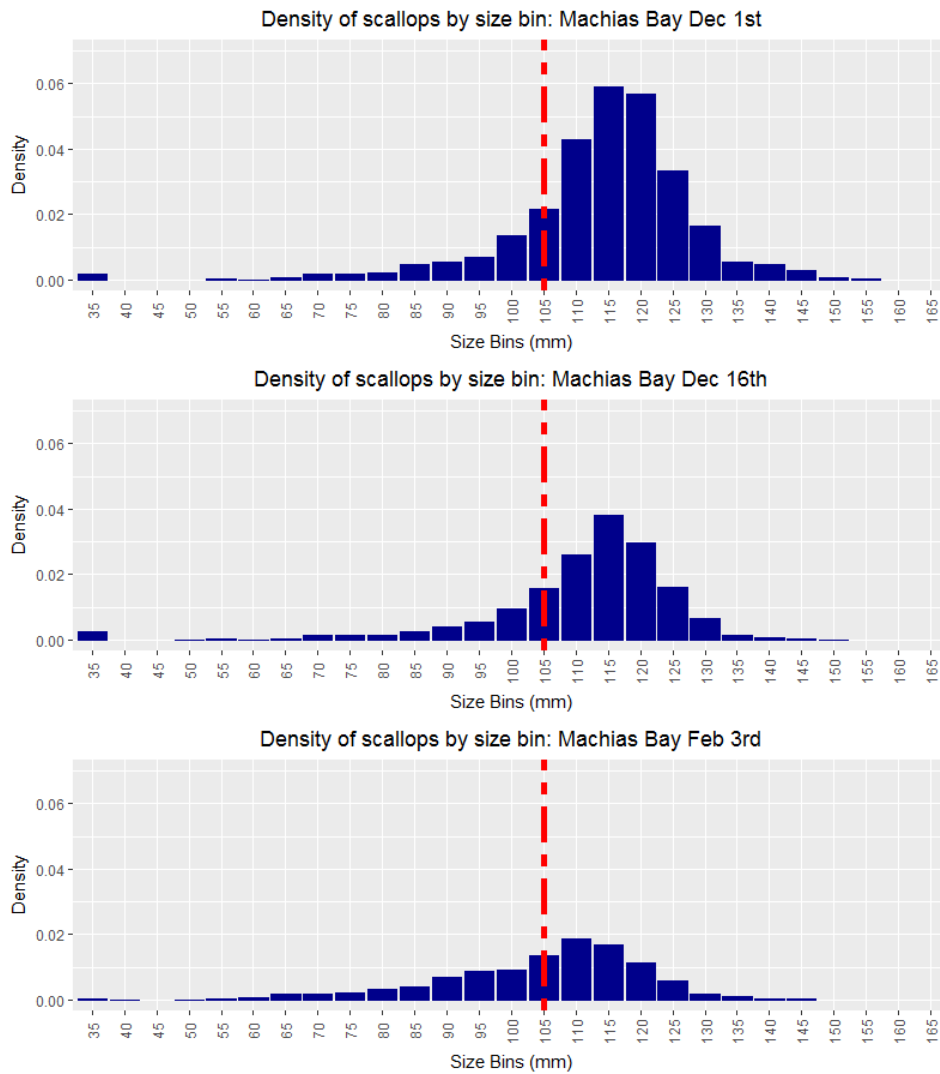


Figure 4: Size frequency plots of scallop resource observations during the ME DMR pre-season (December 1, 2018) Scallop Survey in the Machias Bay Rotational Area (top figure); the in-season survey conducted at the same 22 sites on December 16, 2018 (middle figure); and, the second in-season survey conducted on February 3, 2019.

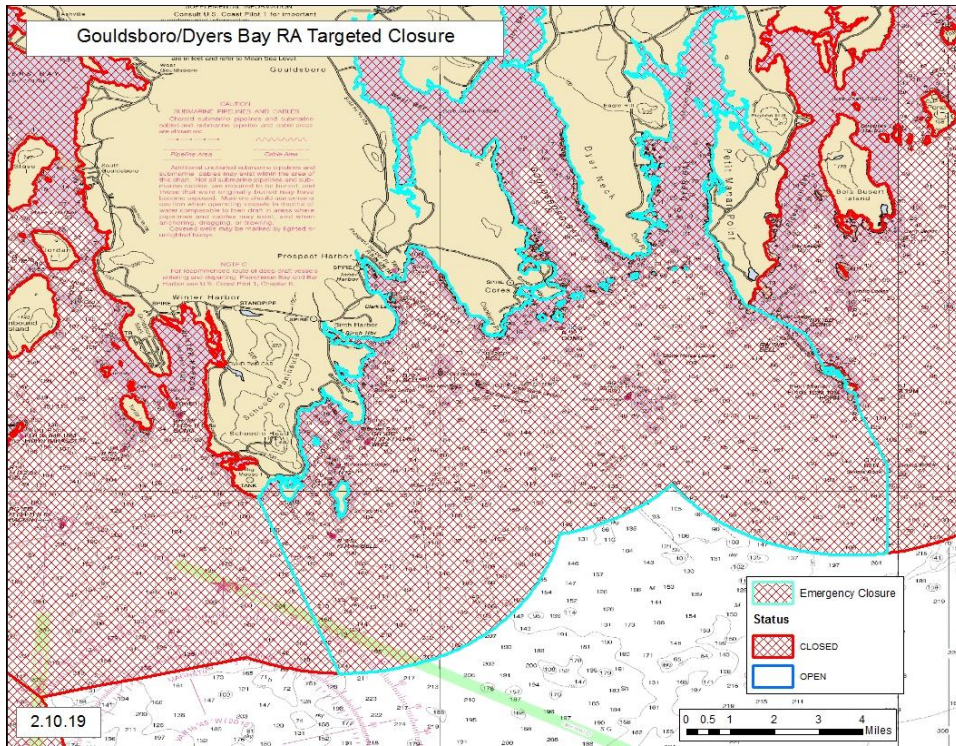


Figure 5: Chart of the Gouldsboro Dyers Bay Rotational Area closure in Zone 2, implemented on February 10, 2019.

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: (7) Gouldsboro/Dyers Bays Rotational Area, (8) Upper Machias Bay Rotational Area, and (9) Vinalhaven Islands in the Lower Penobscot Bay Rotational Area**

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 Gouldsboro Dyers Bay Rotational Area, Upper Machias Rotational Area and Vinalhaven Islands in the Lower Penobscot Bay Rotational Area. These closures are required 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 2018-19 fishing season will further reduce the abundance of remaining broodstock that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource.

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.