

**NOTICE OF AGENCY EMERGENCY RULE-MAKING****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (13) Cobscook, Whiting & Dennys Bays**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for Cobscook, Whiting and Dennys Bays, all within Zone 3. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will impact the abundant sublegal scallop resource, as well as lower the existing scallop broodstock further, observed in the 2019 Fall Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource that supports an annual fishery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these Zone 3 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 16, 2020

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DEPARTMENT OF MARINE RESOURCES

## 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 to 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.

13. Cobscook, Whiting & Dennys Bays

Northern boundary: South and west of a line drawn from Dog Island, Eastport to the southern tip of Deer Point, 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.

### **Basis Statement**

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08. Targeted Closures will be established in (13) Cobscook, Whiting & Dennys Bays.

#### **Cobscook, Whiting & Dennys Bays**

Effort within Cobscook Bay in December 2019 was estimated at 70 boats, and quickly ramped up to 100 harvest vessels by the second week of December. Effort has remained stable at 100 boats throughout January and the first two weeks of February. This season, the harvest effort was not clustered like previous years; boats were spread out into all sections of Cobscook Bay and made good use of the Whiting and Dennys Bay Limited Access Area (LAA) on its open days. There has been a steady effort of 25-35 boats harvesting in the Whiting/Denny's Bay Limited Access Area on Mondays.

Two in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on December 21-23, 2019 and second survey on January 23-25, 2020. Results from the both surveys indicated that most harvest effort was occurring in Whiting and Dennys Bay LAA and South Bay, coinciding with harvester and marine patrol reports. While the second survey did not warrant conservation closures after 23 harvest days, results indicated legal sized scallop density had decreased 24% and 26% respectively in Whiting and Dennys and South Bay. There has been an additional 9 days of harvest, and with steady harvest days with 100 boats, it is expected that the resource has exceeded the 30% reduction of legal scallop density estimates.

The comparison of harvestable densities between Johnson Bay (4.18 g/m<sup>2</sup> in 2019 vs 5.97 g/m<sup>2</sup> 2018) and Whiting & Dennys LAA (4.22 g/m<sup>2</sup> in 2019 vs 4.87 g/m<sup>2</sup> 2018) remains an important indicator showing scallop legal biomass remains lower than previous season observations. While there are very strong year classes of sublegal scallops available for the future seasons, it's still imperative to conserve the legal standing stock (Figure 1 & 2).

Qualitative information from both marine patrol and active harvesters in the area have observed that sublegal sized cut shells have been coming up in commercial tows. These reports that small scallop product is being harvested is also observed in the science survey size frequency data (Figure 2) in which scallops below legal size experienced a decline in density over the course of the two in-season surveys. This information also factored into the rationale for this closure (Figure 3). Cobscook Bay has high proportions of both seed and sublegal product that would incur damage, if harvest continued with the existing 100 boats in the area.

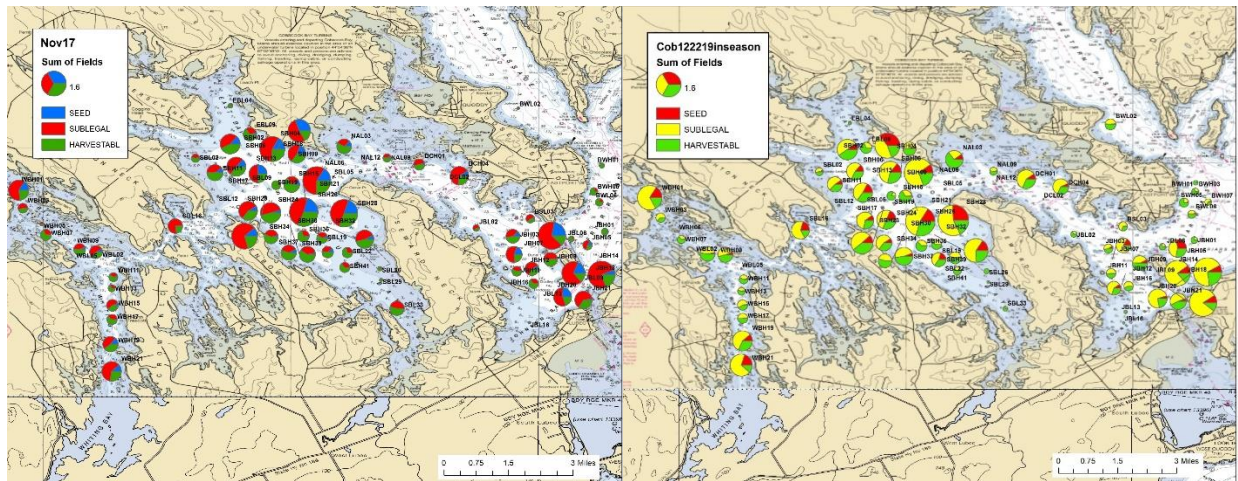
On Sunday, February 16, 2020, Cobscook, Whiting and Dennys Bays will close while the St Croix River area remains open for harvesting until further notice.

In summary, catch rates have diminished and sublegal cut shells have been observed in the Cobscook, Whiting and Dennys Bays in Zone 3. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will impact the abundant sublegal scallop resource, as well as lower the existing scallop broodstock further, observed in the 2019 Fall Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource that supports an annual fishery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these Zone 3 areas.

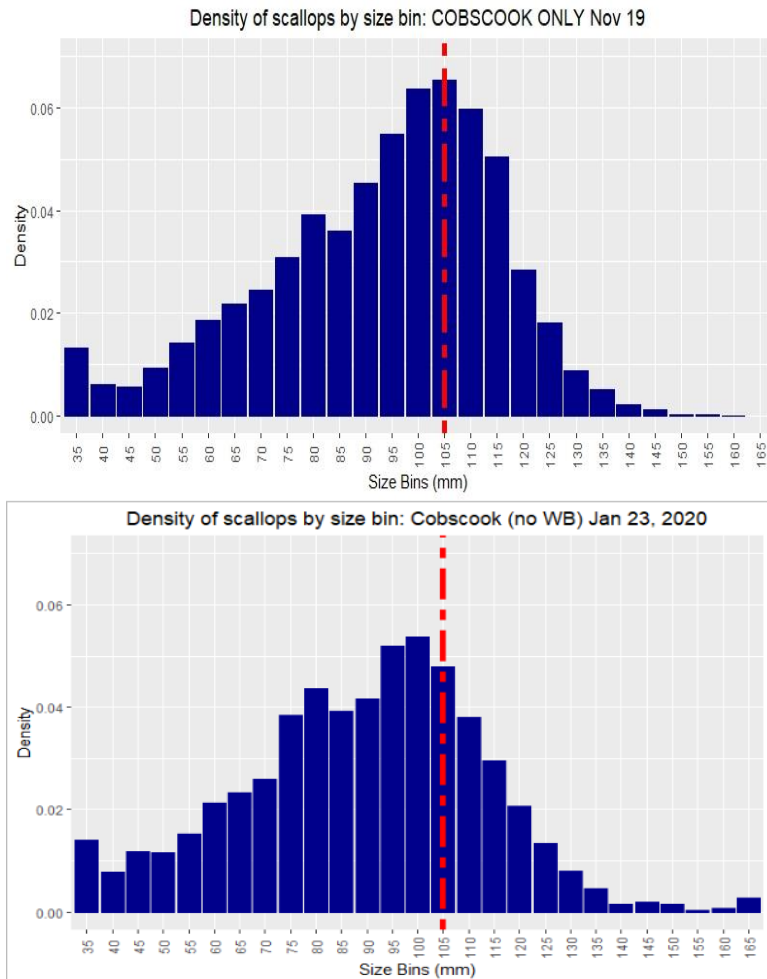
For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §6171(3)(A).

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.

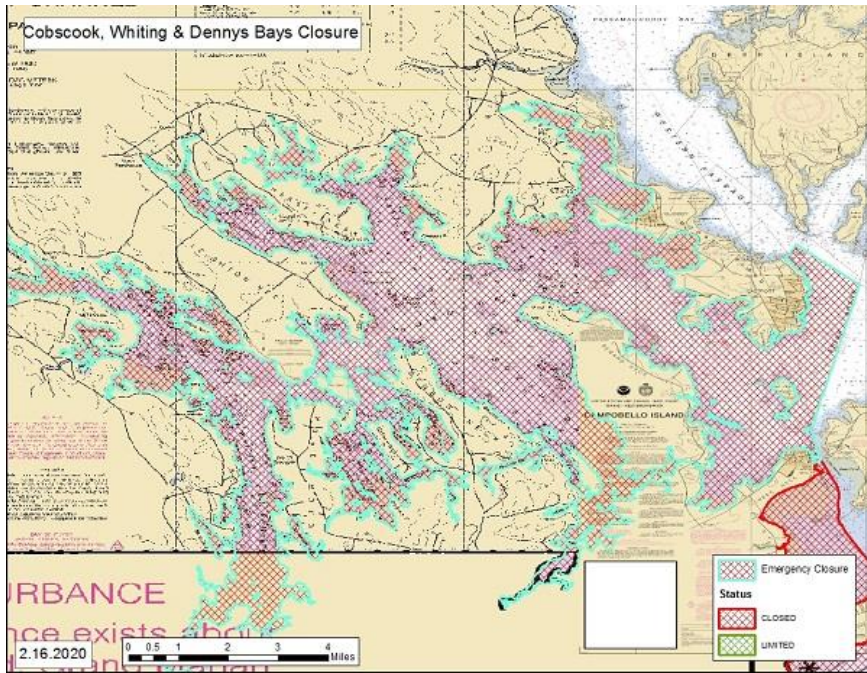
## Figures & Tables



**Figure 1:** The 2019 pre-season survey (left) observed a moderate quantity of legal scallops (indicated in green) in addition to larger portions of sublegal and seed scallops (indicated in red and blue, respectively) in Cobscook Bay stations that is sited for closure. During the second in-season survey (right) on January 23, 2020, the observed legal sized scallop density (indicated in green) represents the smaller proportion of scallop resource at most stations (seed shown in red with sublegal shown in yellow).



**Figure 2:** Comparison of scallop density by size frequency observed during the pre-season survey (top) on November 19, 2019 and the most recent in-season survey (bottom) on January 23, 2020 at the 65 stations within Zone 3.



**Figure 3:** Chart depicts the conservation closure for the scallop resource within the Whiting, Dennys and Cobscook Bays, within Zone 3, effective on Sunday, February 16, 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: (13) Cobscook, Whiting & Dennys Bays**

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 for Cobscook, Whiting and Dennys Bays, all within Zone 3. The Department is concerned that continued harvesting for the remainder of the 2019-2020 fishing season in these areas will impact the abundant sublegal scallop resource, as well as lower the existing scallop broodstock further, observed in the 2019 Fall Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource that supports an annual fishery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these Zone 3 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.*