

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.22 Atlantic Sea Scallop Regulations and 2013-2014 Harvesting Season, Targeted Closures (20) Machias Area and (21) Lower Sheepscot River. Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in the Machias Area Limited Access Area (LAA) and the Lower Sheepscot River in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2013-14 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in the Machias Area Limited Access Area (LAA) and the Lower Sheepscot River as authorized by [12 M.R.S. §6171](#)(3).

EFFECTIVE DATE: February 22 2014

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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.22 Targeted Closures

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 (8) which shall be open Mondays, Tuesdays, and Thursdays to draggers during the months of January, February and March, 2014 and open Tuesdays, Thursdays and Fridays to divers during the months of January and February, 2014 and then Thursdays, Fridays and Saturdays to divers during the month of March, 2014 in accordance with the dates specified in section 11.09. 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) Chandler Bay

North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing to the most southern tip of Bonney Point, Roque Island; then continuing along the shore to the most northeastern point of Great Head, Roque Island; then northeast to the most southern end of Shoppee Point, Roque Bluffs and to include all the upper portions of Chandler Bay and Englishman Bay as well as Great Cove.

This section Chapter 11.22 (1) sunsets May 1, 2014.

(2) East Moosabec Reach

Eastern boundary: West of a line starting at the western end of the breakwater in Sawyer's Cove, Jonesport, to the most western end of Pig Island and then due south to the closest point of land on Great Wass Island.

Western boundary: East of the Jonesport-Beals Island bridge.

This section Chapter 11.22 (2) sunsets May 1, 2014.

(3) Dyer Bay

North and West of a line drawn from Bear Cove on Petite Manan Point, Stueben at Latitude 44° 24'25.65" N Longitude 67° 54'24.98" W to the most southern tip of Dyer Point, Stueben and to include all of Dyer Bay.

This section Chapter 11.22 (3) sunsets May 1, 2014.

(4) Greening Island

Northern boundary: South of a line from the most southern tip of Connor Point, Southwest Harbor, to the most southern tip of Manchester Point, Northeast Harbor.

Southern boundary: North and West of a line drawn from the southern most tip of Sargent Point, Northeast Harbor, southwesterly to the most northern tip of Kings Point, Southwest Harbor.

This section Chapter 11.22 (4) sunsets May 1, 2014.

- (5) Blue Hill Bay Area (Blue Hill Salt Pond/Blue Hill Harbor/Morgan's Bay Area)
All waters of the Blue Hill Salt Pond; as well as waters North of a line drawn from Stills Point, Blue Hill Neck to the most northern point of Long Island, and then continuing to the most southwestern point of Newbury Neck.

This section Chapter 11.22 (5) sunsets May 1, 2014.

- (6) Union River/Bartlett's Narrows/Western Bay
East and North of a line drawn from the most southwestern point of Burnt Point, Newbury Neck, to the most northwestern point of Western Point, Bartlett Island; then following the shore to the most southeastern point of Eastern Point, Bartlett Island to the nearest point of land along the northern shore of Sawyer Cove. Seal Cove (Mount Desert Island) and to include all of Bartlett Narrows, Pretty Marsh Harbor, Western Bay and Union River.

This section Chapter 11.22 (6) sunsets May 1, 2014.

- (7) Inner Harbor/Deep Hole
West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44° 12.407 N Longitude 068° 38.819 W.

This section Chapter 11.22 (7) sunsets May 1, 2014.

- (8) Muscle Ridge (Open Mondays, Tuesdays, and Thursdays to draggers during the months of January, February and March, 2014. Open Tuesdays, Thursdays and Fridays to divers during the months of January and February, 2014 and then Thursdays, Fridays and Saturdays to divers during the month of March, 2014)
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.

This section Chapter 11.22 (8) sunsets May 1, 2014.

(9) 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.

This section Chapter 11.22 (9) sunsets May 1, 2017.

(10) 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.

This section Chapter 11.22 (10) sunsets May 1, 2014.

(11) Ocean Point

West of a line drawn from Emerson Point, at the southern most tip of Ocean Point, Boothbay at Latitude $43^{\circ} 48.852$ N Longitude $069^{\circ} 35.454$ W, to the most northern tip of Fisherman Island, then continuing to R N "8" AND East of a line draw from R N "8" to the most southwestern tip of Ocean Point at Latitude $43^{\circ} 48.874$ N Longitude $069^{\circ} 36.332$ W.

This section Chapter 11.22 (11) sunsets May 1, 2014.

(12) 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 "4" at Drunkers Ledges.

Western boundary: East and North of a line draw from R N "4" at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude $43^{\circ} 42.950$ N Longitude $70^{\circ} 00.137$ W to the most southeastern tip of land along Jaquish Gut at Latitude $43^{\circ} 43.043$ N Longitude $70^{\circ} 00.128$ W.

This section Chapter 11.22 (12) sunsets May 1, 2014.

(13) Muscongus Area

North and east of a line beginning at the intersection of Latitude $43^{\circ} 55'$ N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to a point directly South of Marshall Point, Port Clyde at Latitude $43^{\circ} 54.84$ N Longitude $69^{\circ} 15.60$ W then due north to the most southern tip of Marshall Point, Port Clyde.

This section Chapter 11.22 (13) sunsets May 1, 2014.

(14)Somes Sound

North and West of a line drawn from the southern most tip of Sargent Point, Northeast Harbor, southwesterly to the most northern tip of Kings Point, Southwest Harbor, including all of Somes Sound.

This section Chapter 11.22 (13) sunsets May 1, 2014.

(15)Cobscook Bay

Western Boundary: East of a line drawn from the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott.

Eastern/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.

This section Chapter 11.22 (15) sunsets May 1, 2014.

(16)St. Croix River

North of a line drawn from the northern tip of Kendall Head, Eastport to the southern tip of Cummings Cove, Deer Island, Canada, to include all of the St. Croix River.

This section Chapter 11.22 (16) sunsets May 1, 2014.

(17) Whiting Bay and Dennys Bay Area

West of a line starting at the western end of Mahar Point, Pembroke, due south to the nearest point of land on Crow Neck, Trescott, to include all of Whiting Bay and Dennys Bay.

This section Chapter 11.22 (16) sunsets May 1, 2014.

(18)Gouldsboro Bay

Inside and north of a line starting a Young's Point, Corea east to the end of Dyer Point, Steuben.

This section Chapter 11.22 (13) sunsets May 1, 2014.

(19)Jonesport Reach

East and North 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 then east to the most northern end of Ram Island at Latitude 44° 29'41.56" N Longitude 67°37'53.31" W then on to the most western end of Slate Island and then from the eastern most tip of Slate Island to the nearest point of land along the southern shore of Slate Island Cove on Great Wass Island and West of a line starting at the western end of the breakwater in Sawyer's Cove the southeast to the most western end of Pig Island and then due South to the closest point of land of Great Wass Island.

This section Chapter 11.22 (13) sunsets May 1, 2014.

(20)Machias Area

North and East of a line starting at Bucks Head, Machiasport proceeding East to the southern end of Northwest Head, Cross Island, then following the shore to the most eastern point of Cross Island to the most western point of Scotch Island, then following the shore to the most eastern point of Scotch Island to the most western point of Old Man Island, then following the shore to the most eastern point of Old Man Island to the most southern tip of Great Head, Cutler.

This section Chapter 11.22 (13) sunsets May 1, 2014.

(21)Lower Sheepscot River

Northern boundary: South of a line drawn from the southern tip of Fowle Point, Westport Island, to the southern tip of Cross Point, Edgecomb.

Eastern boundary: West and North of the Townsend Gut Bridge connecting Southport Island and West Boothbay Harbor.

Western boundary: South and east of a line drawn from the southern tip of Thomas Point, Westport Island, to the southern tip of Beal Island, then continuing in a westerly direction to the nearest point of land on Georgetown Island.

Southern boundary: North of a line drawn from the southeastern tip of Dry Point, Georgetown Island, to the southern tip of Hendricks Head, Southport Island.

This section Chapter 11.22 (13) sunsets May 1, 2014.

Basis Statement

Chapter 11.22 Atlantic Sea Scallop Regulations and 2013-2014 Harvesting Season, Targeted Closures (20) Machias Area and (21) Lower Sheepscot River. Emergency Regulations

The Maine scallop fishery is a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters (Figure 1). The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 289,827 pounds being landed in 2012, an eight fold increase from 2005 (Figure 2). However, those landings were caught by approximately 150 additional participants compared to previous years (Figure 3).

Based on recent information and feedback, the Department is concerned that continued harvesting during the remainder of the 2013-2014 fishing season in the Machias Area LAA and the Lower Sheepscot River will damage sub-legal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary in the Machias Area and the Lower Sheepscot River area.

In the Machias Area LAA, sea sampling observations and Marine Patrol feedback along with direct industry reports indicate that this area has been depleted of the majority of legal-sized scallops and requires an immediate conservation closure. Last season, this area was subjected to heavy fishing effort and was closed early by an emergency action on February 4, 2013. So far this season, the area has been fished by upwards of 85 vessels. The majority of the vessels fishing the area were able to reach their daily landings limit within a few hours. However, over the past two LAA days only a small portion of the vessels were able to reach the 15 gallon daily limit with many only landing five gallons. This indicates the majority of the legal-sized scallops in this area have been harvested. In addition, the 2013 spring DMR survey indicated that 49% of all scallops in the Machias Bay LAA are sub-legal size (less than 4 inches or 101 mm). Continued scallop fishing in the Machias Area LAA would cause continued unusual damage and imminent depletion to the scallop resource due to mortality of scallops contacted by dragging during fishing operations. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. Regardless of the lesser contribution of the dive fleet (less than 10% statewide), the cumulative catch warrants emergency action. This level of scallop mortality would have a significant negative impact on the abundance of the sublegal scallops that will recruit into the fishery in future seasons. DMRs observations largely account for the drag portion of the harvest in the area. Therefore, an immediate conservation closure of the Machias Area LAA is needed to protect any remaining broodstock scallops in order to rebuild the resource in this area as well as sublegal scallops that would recruit up to the fishery in subsequent fishing seasons.

In the Lower Sheepscot River, the area has been heavily fished since the beginning of the season and a larger proportion of sub-legal scallops have been observed by industry and Marine Patrol in this area. These scallops require protection in order to recruit up to the fishery in future seasons. Therefore, an immediate conservation closure of the Lower Sheepscot River is needed in order to protect both remaining legal scallops required for rebuilding and sublegal scallops that will recruit up to the fishery in subsequent years from further damage and imminent depletion.

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).

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.

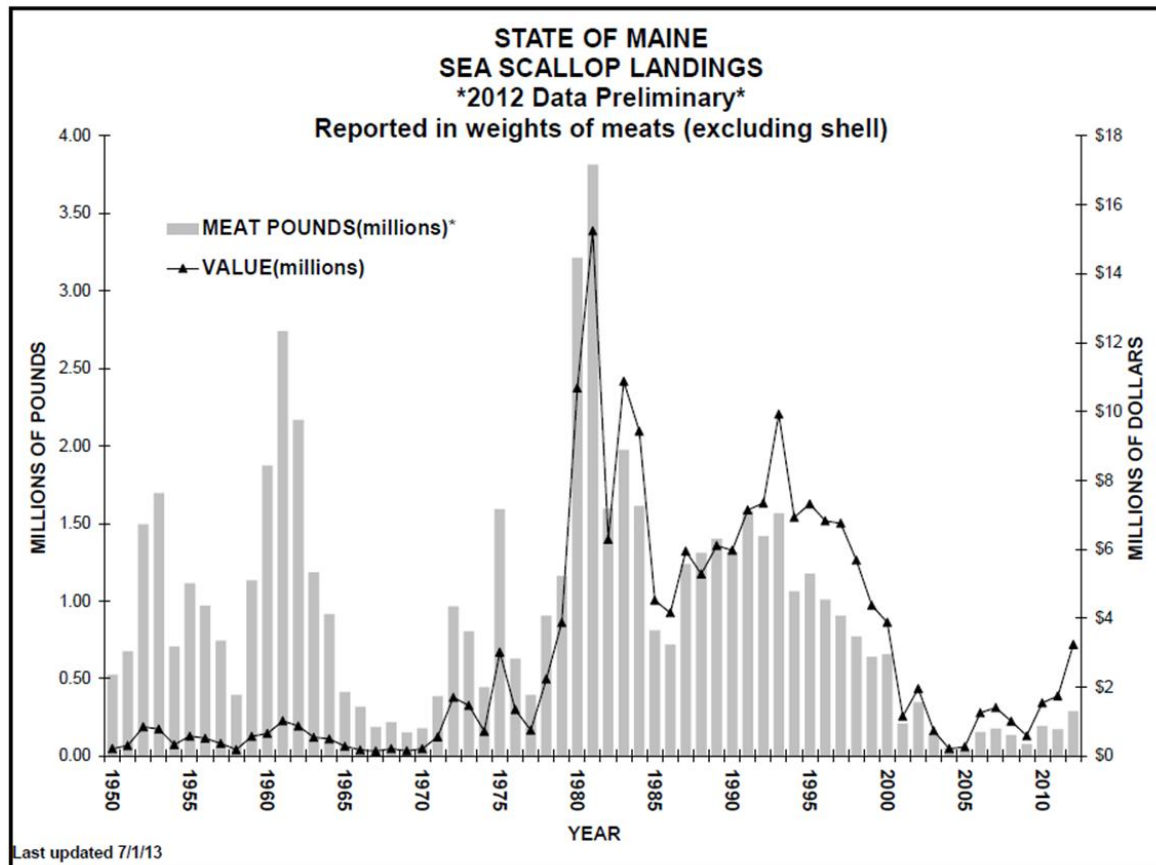


Figure 1. Maine scallop landings from 1950 to 2012. Landings are reported in meat pounds.

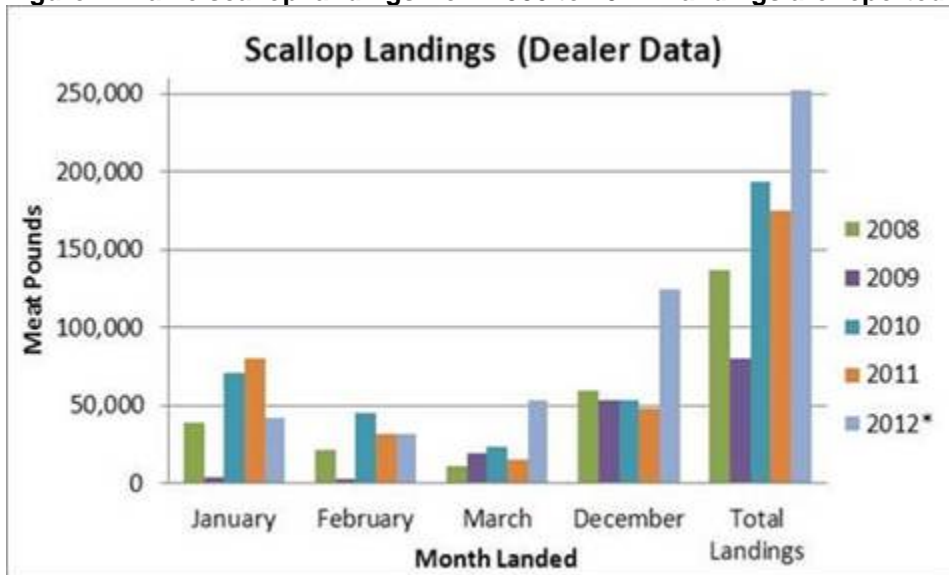


Figure 2. Monthly scallop landings, 2008-2012. Landings are reported in meat pounds.

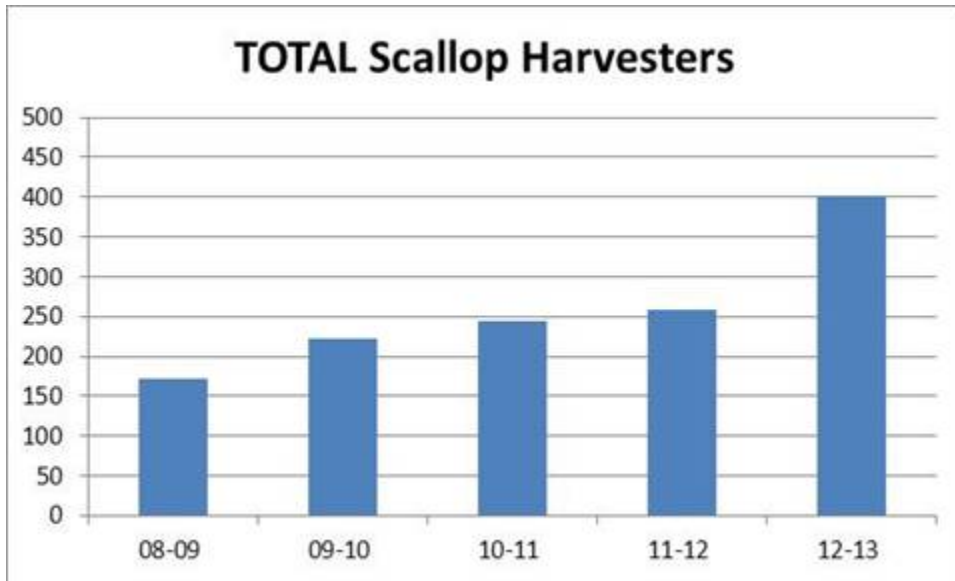


Figure 3. Number of active license holders in each season over the past 5 years.

Rule-Making Fact Sheet (5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 11.22 Atlantic Sea Scallop Regulations and 2013-2014 Harvesting Season, Targeted Closures (20) Machias Area and (21) Lower Sheepscot River.
Emergency Regulations

STATUTORY AUTHORITY: [12 M.R.S. §6171](#)(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in the Machias Area Limited Access Area and the Lower Sheepscot River order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. These immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion. 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).

The Maine scallop fishery is a valuable winter/spring fishery providing a substantial source of income to fishing businesses at a time of year without many other fishing opportunities. The fishery experienced an all-time low in 2005, landing just over 33,000 pounds of scallop meats from Maine waters (Figure 1). The Department has been working closely with the Scallop Advisory Council and members of the industry for several years to rebuild a sustainable resource and provide economic opportunity. Beginning in 2009, the DMR adopted a spatial management approach that has included targeted area closures and Limited Access Areas (LAA), and implemented a Rotational Management Plan. The combination of conservation measures appears to be effective as demonstrated by 289,827 pounds being landed in 2012, an eight fold increase from 2005 (Figure 2). However, those landings were caught by approximately 150 additional participants compared to previous years (Figure 3).

Based on recent information and feedback, the Department is concerned that continued harvesting during the remainder of the 2013-2014 fishing season in the Machias Area LAA and the Lower Sheepscot River will damage sub-legal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary in the Machias Area and the Lower Sheepscot River area.

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past two LAA days only a small portion of the vessels were able to reach the 15 gallon daily limit with many only landing five gallons. This indicates the majority of the legal-sized scallops in this area have been harvested. In addition, the 2013 spring DMR survey indicated that 49% of all scallops in the Machias Bay LAA are sub-legal size (less than 4 inches or 101 mm). Continued scallop fishing in the Machias Area LAA would cause continued unusual damage and imminent depletion to the scallop resource due to mortality of scallops contacted by dragging during fishing operations. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. Regardless of the lesser contribution of the dive fleet (less than 10% statewide), the cumulative catch warrants emergency action. This level of scallop mortality would have a significant negative impact on the abundance of the sublegal scallops that will recruit into the fishery in future seasons. DMRs observations largely account for the drag portion of the harvest in the area. Therefore, an immediate conservation closure of the Machias Area LAA is needed to protect any remaining broodstock scallops in order to rebuild the resource in this area as well as sublegal scallops that would recruit up to the fishery in subsequent fishing seasons.

In the Lower Sheepscot River, the area has been heavily fished since the beginning of the season and a larger proportion of sublegal scallops have been observed by industry and Marine Patrol in this area. These scallops require protection in order to recruit up to the fishery in future seasons. Therefore, an immediate conservation closure of the Lower Sheepscot River is needed in order to protect both remaining legal scallops required for rebuilding and sublegal scallops that will recruit up to the fishery in subsequent years from further damage and imminent depletion.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Rulemaking statement of impact on small business
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F, and
Executive Order 20 FY 11/12, August 24, 2011 (replaces EO's 09, 13 & 14)

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 11.22 Atlantic Sea Scallop Regulations and 2013-2014 Harvesting Season, Targeted Closures (20) Machias Area and (21) Lower Sheepscot River.
Emergency Regulations

1. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; and EO20 1.A. The impact of the proposed rule on job growth or creation:

In 2013, 547 individuals held a current Maine commercial scallop dragger harvesting license and 84 individuals held the commercial scallop diver license. In 2013, 95 non-commercial scallop licenses were issued. In 2013, 19 individuals held a Passamaquoddy scallop license.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; and EO20 1.C. The cost to the public in terms of time and money required to comply with the rule and EO20 1.B. The burden imposed by any fees included in the rule:

There are no additional reporting, record-keeping, fees or other administrative duties associated with this emergency scallop conservation area closures rule.

3. A brief statement of the probable impact on affected small businesses; and EO20 1.D. The extent to which other laws and regulations already address the subject matter of the rule:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule; and EO20 1.E. The relevant Federal standards, if any and the specific need for Maine's rules to differ from them if such a need exists:

The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry by increasing the likelihood of a speedy recovery of Maine's scallop resource. In the short-term, harvesters and the businesses that purchase scallops have already seen a decrease in landings and therefore these measures are considered necessary. There are no federal regulations that apply in this case.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained: Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.