

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (11) Cobscook including...St. Croix River, (12) Blue Hill Bay/Union River RA, (13) West Lower Jericho Bay, (14) Upper Damariscotta River

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to implement conservation closures in St. Croix River, Blue Hill Bay/Union River RA, West Lower Jericho Bay and Upper Damariscotta River. The 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 St. Croix River, Blue Hill Bay/Union River RA, West Lower Jericho Bay and Upper Damariscotta River.

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 24, 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 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

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/Dyer Bay Rotational Area

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. Upper Machias Bay Rotational Area

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. Vinalhaven Islands within the Lower Penobscot Bay Rotational Area

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 and St. Croix River

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.~~ the International Bridge between Calais, Maine and St. Stephen, New Brunswick, 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.

12. Blue Hill Bay/Union River Rotational Area

North of a line from Eastern most point of Harriman Point due East to the southern tip of Hardwood Island, then South to the northern tip of Moose Island; then from the southern tip of Moose Island East to Reed Point, Mount Desert Island.

13. West Lower Jericho Bay

South and inside a line starting at the eastern tip of No Mans Island and running southeasterly to the northern tip of Fog Island and continuing along the shore to the southern tip of Fog Island, then running southerly to RN2, continuing southerly to GC1, then running southwesterly to the southern tip of York Island, and continuing due west magnetic to Isle au Haut Island.

14. Upper Damariscotta River

North and west of a line starting at the southern tip of Jones Point, South Bristol to the most northern tip of Farnham Point, East Boothbay.

Exception:

Scallops may be taken on Friday, March 15, 2019, by hand harvest only.

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for closure of (11) Cobscook including...St. Croix River, (12) Blue Hill Bay/Union River RA, (13) West Lower Jericho Bay, (14) Upper Damariscotta River

The Department is taking emergency rulemaking action to expand the targeted conservation closure in Cobscook Bay area to include St. Croix River (Figure 1), Upper Blue Hill Bay/Union River (Figure 2), West Lower Jericho Bay (Figure 4) in Zone 2 and Upper Damariscotta River Limited Access Area (Figure 6) within Zone 1.

St. Croix

This area has been open to harvest for 35 days, within Zone 3, but the primary focus of effort has been in the most recent 9 days of the calendar after Cobscook Bay closed (Figure 1). Beginning February 4, 2019, no more than 10 scallop fishing vessels were actively harvesting within the St. Croix River, from Kendall Head northward. Most reports from participants observed medium to large meat counts and scattered low to medium densities of scallops over variable depth ranges. In the previous season, this area was targeted for 12 days after Cobscook closed. Observations from harvesters this year indicate catch rates were lower than the previous year, but meat size was comparable. Initially, daily limits were being reached between around 10-12pm, depending on tide cycles. However, boat activity greatly decreased by the week of February 11th, 2019 and harvesters suggested that closing it may allow for moderate rebuilding for next year. DMR's fall scallop survey also observed low densities of legal scallops in the area. Thus, based on reduced catch rates, and harvester input, it was recommended to close this area to reduce repeated effort and allow for a longer period of recovery.

Upper Blue Hill Bay/Union River RA

This area opened for harvest on December 1, 2018 with approximately 10 boats; prospecting in Union River, Morgan Bay. Initial reports indicated there were large scallops in the area with large meats. Boats had variable catch rates around the 2nd week of December but most vessels had their daily limit before noon time.

At the end of December and into January, boat counts ranged from 5-7 vessels with some boats choosing to go harvest in Jericho on good weather days and save Upper Blue Hill Bay for bad weather days. Harvest rates were decreasing as more effort was needed to search for smaller scallop beds. By the end of January, most of the drag fleet moved over to Jericho, but diving harvesters remained active with 6-7 divers in the area.

Harvesters observed small sublegal scallops around Alley Island that was not caught during the April 2018 Spring scallop survey (Figure 3). Other general comments reported by harvesters in the area indicated there were few sublegal scallops showing up in tows otherwise. At the start of February, Marine Patrol indicated that drag vessels were not able to reach limits. Harvesters and Patrol reported renewed dragging activity during mid-February, with little success at reaching daily limits. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

West Lower Jericho Bay RA

This area opened for harvest on December 1st, 2018 with approximately 15 to 20 boats focused around Lazy Guts on southward toward Fog and York Islands, sticking to the western side of the RA in shallow waters. Daily limits were being reached around noon.

As the season progressed, boat counts increased to 25-30 at the end of December. Effort was still focused around the York Island area, with reports of good meat sizes being caught. Daily limits were reached by noon.

By January, boats began spreading, prospecting other parts of the bay and harvesting in deeper waters. The area is heavily dependent on weather and as such activity fluctuated; vessels opting for areas in the lee. The area around York and Fog Islands had a return of activity as it is moderately protected. By the

end of January, harvesters were taking longer to reach their daily limit; but this was also a factor of longer steam time, continued prospecting in the area as well as lower densities of scallops.

Currently, harvester reports indicate that little activity is still occurring in the proposed closure area, with the shallow waters having been harvested since the opening of the area (50 calendar days). Marine Patrol also indicates that several harvesters are not reaching daily limits. Of the 28 survey stations in the spring scallop survey, there were observations of seed scallops in the shallow waters between Fog and York Islands. Harvesting has been occurring in this area since the beginning of the season, with catch rates decreasing over the last month. It is recommended the area close after 50 days of open harvest to allow the remaining seed and broodstock to replenish the area.

Upper Damariscotta River Limited Access Area

This area has been alternating between closed and open as a limited access area (LAA) with the area having been closed in the 2015-2016 season, open LAA for 2016-2017, closed 2017-2018 and open for this current season. Reports from harvesters have all been positive and it appears this schedule is working to sustain a moderate harvest for local vessels in the area. Meat size has been in the U10-U15 range and also good quality.

Divers had access to the area beginning on December 7th, 2018 while the drag fleet began harvest on January 7th, 2019. As with the previous open season, the effort from the drag fleet focused on the area west and north of Jones Point to Fort Point. Over the last available 7 harvest days within this LAA, a range of 4-6 boats have been steadily working and catching their limits by noon to early afternoon. In comparing effort to the previous open season, this area had upwards of 8 or more boats for 5 harvest days prior to closing. This would result in a similar removal estimates between the two open seasons. Harvesters have reported that this upper portion has slowed down, and it would be best to repeat the closure line from the previous open season.

Therefore, the recommendation is for an immediate conservation closure of the upper portion of the river to allow for the remaining broodstock to rebuild in time for the next open season. The lower section of the river south of Jones Point and Farnham Point shall remain open for continued harvest as it has not been heavily targeted and will provide additional opportunity.

The last day of harvesting for scallop draggers will be Monday, February 18, 2019. The final day of harvesting for scallop divers will be Friday, March 15, 2019. These specific days allow for equal harvest opportunity of seven days. This action stems from a recommendation from the Scallop Advisory Council during their July 2018 meeting that requested parity of harvest opportunity when possible during emergency closures.

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

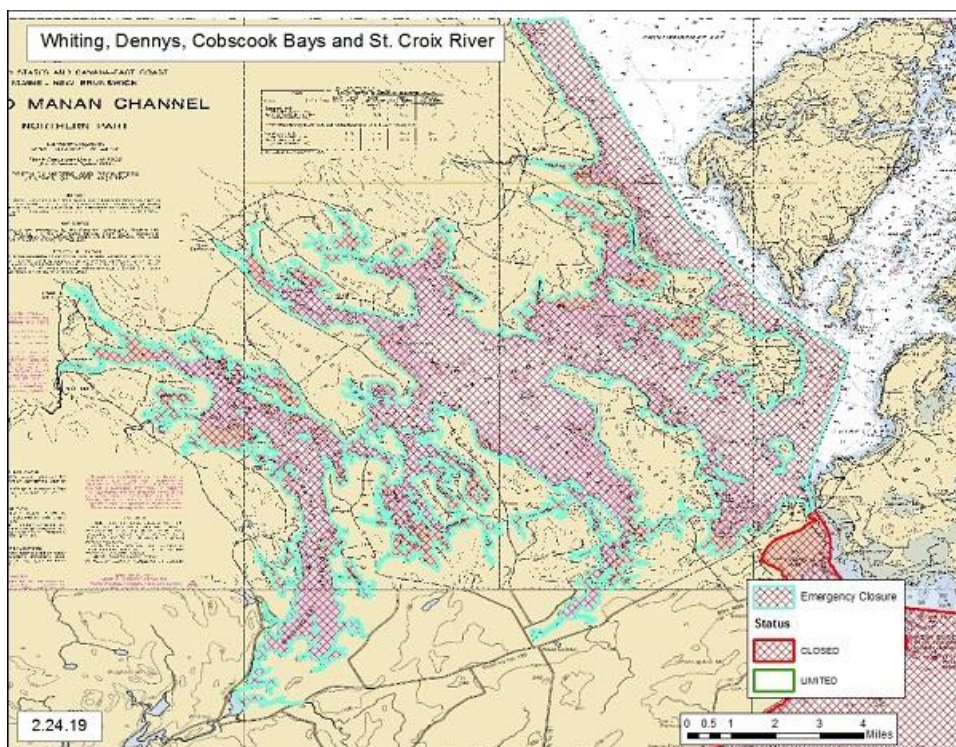


Figure 1: Chart of Zone 3 conservation closure, encompassing Whiting, Dennys, Cobscook Bays and St. Croix River, implemented on February 24, 2019.

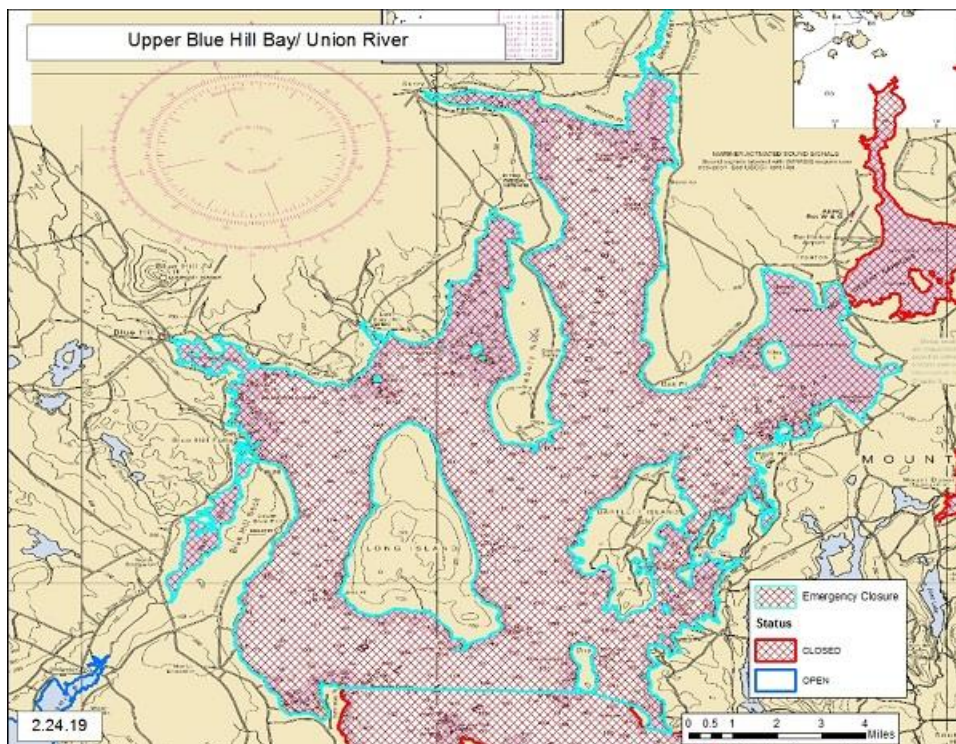


Figure 2: Chart of the Upper Blue Hill Bay/Union River RA conservation closure in Zone 2, implemented on February 24, 2019.

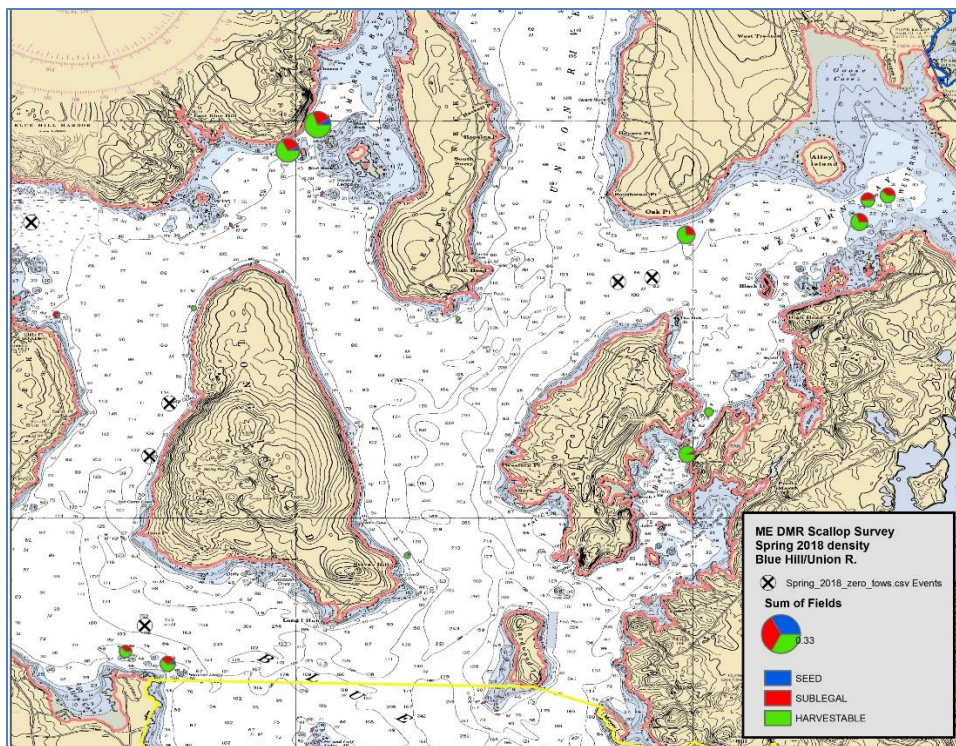


Figure 3: Stations from the spring scallop survey, (April 2018), representing the 22 stations assessed in the Upper Blue Hill Bay/Union River RA. Legal scallop densities were observed to be low with only two stations in Morgan Bay having seed scallops present.

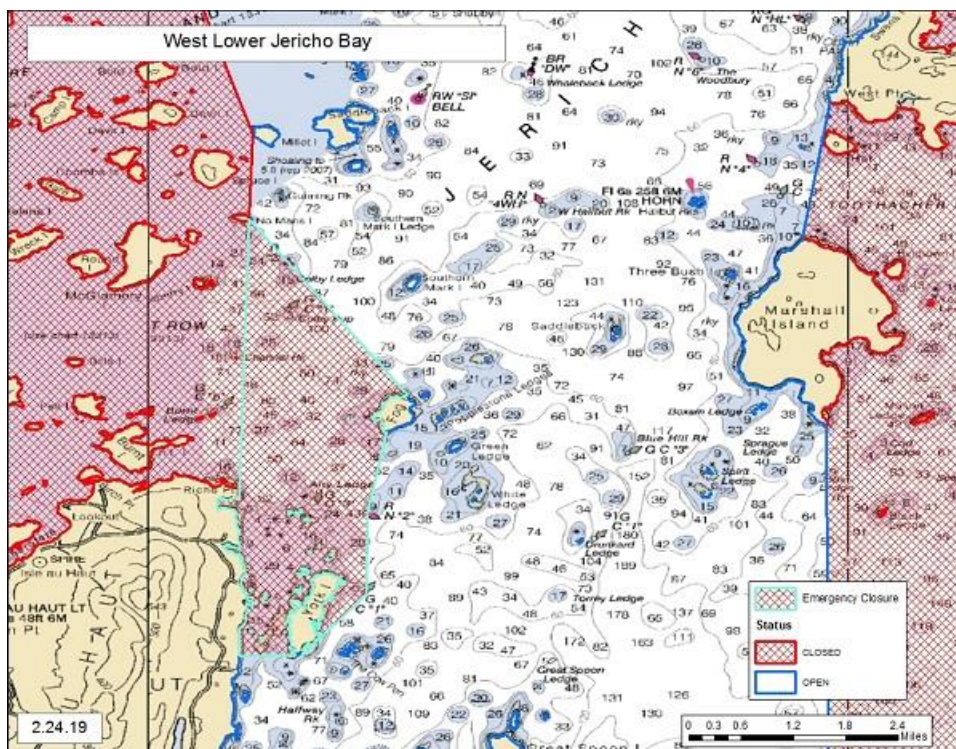


Figure 4: Chart of the west Lower Jericho conservation closure in Zone 2, implemented on February 24, 2019.

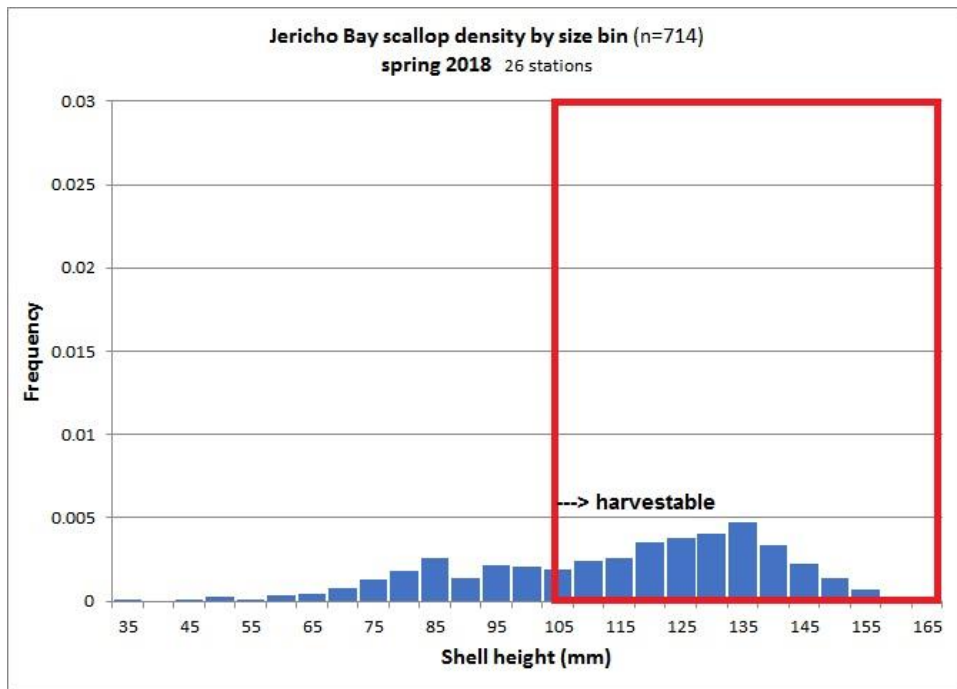


Figure 5: Size frequency plots of scallop resource observations during the ME DMR Spring Scallop Survey (April, 2018) in the Lower Jericho Bay Rotational Area.

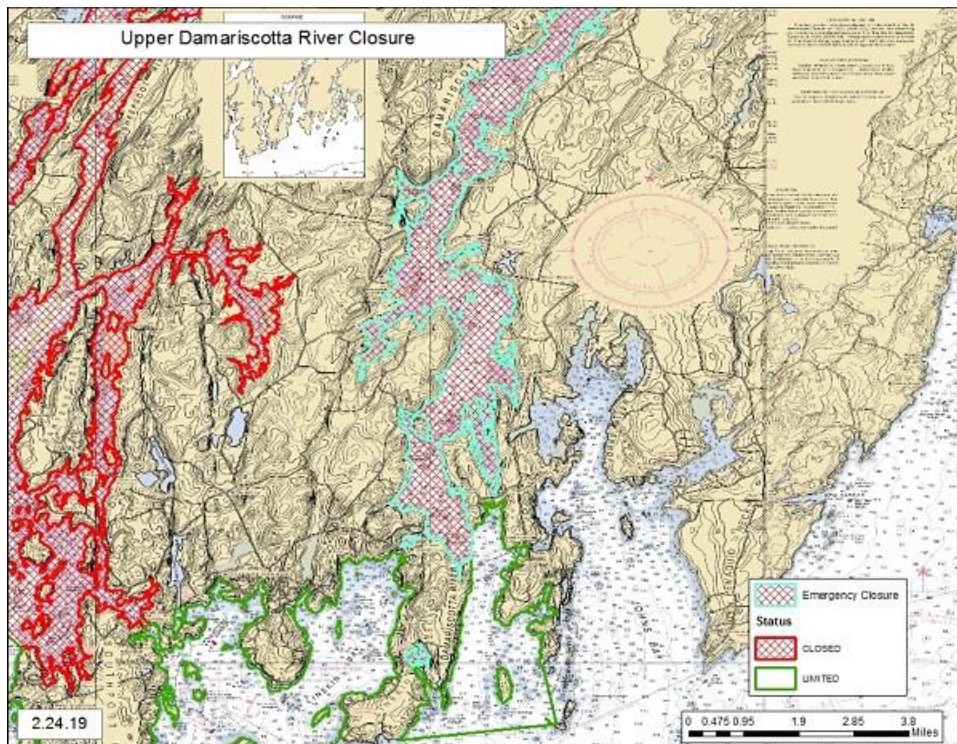


Figure 6: Chart of Upper Damariscotta River conservation closure in Zone 1, implemented on February 24, 2019.

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: (11) Cobscook including... St. Croix River, (12) Blue Hill Bay/Union River RA, (13) West Lower Jericho Bay, (14) Upper Damariscotta River**

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 St. Croix River, Blue Hill Bay/Union River RA, West Lower Jericho Bay and Upper Damariscotta River. The 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 St. Croix River, Blue Hill Bay/Union River RA, West Lower Jericho Bay and Upper Damariscotta River.

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.