

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.22 Targeted Closures (8)(9)(10)(11)(12)(13)(14)(15)(16)
Cobscook Bay, Whiting & Dennys Bays, St. Croix River, Inner Little Kennebec/Englishman Rotational
Area, Addison Rotational Area, Casco Passage, Bagaduce River; Sheepscot River; Casco Bay.
Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers, and one day per week for divers. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2014-15 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 Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay and restricts harvest in the St. Croix River, as authorized by [12 M.R.S. §6171\(3\)](#).

EFFECTIVE DATE: February 28, 2015

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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.10 Atlantic Sea Scallops Limitations

1. Size, Harvesting and Conservation Zone Regulations

A. Swans Island Lobster Conservation Area Scallop Drag Size Restrictions

It shall be unlawful to possess on any vessel fishing for scallops or fish for or take scallops within the Swans Island Lobster Conservation Area (DMR Regulation, Ch. 25.90, (A) (1)) with any scallop drag or combination of scallop drags (chain sweep or rock drags) having an aggregate width in excess of eight feet, six inches.

B. Atlantic Sea Scallops, Minimum Size

In Maine Territorial Waters, it shall be unlawful to possess Atlantic sea scallops whose shells are less than 4 inches in the longest diameter, effective on December 1, 2004 and thereafter in accordance with 12 M.R.S. § 6721(1)(A) & (B).

C. Atlantic Sea Scallops, Drag Size Restrictions

(1) From December 1 through April 15, both days inclusive, it shall be unlawful to possess on any vessel fishing for scallops or fish for or take scallops with any one combination of scallop drags having an aggregate in excess of 10 feet 6 inches in width (by measuring from the extreme outside edge of the mouth of the drag or drags), within Maine's territorial waters.

D. Atlantic Sea Scallops, Night Harvesting Prohibition

Effective November 1, 1986, it shall be unlawful to fish for or take scallops during the nighttime hours between sunset (as defined in 12 M.R.S. § 6001(46)) and sunrise (as defined in 12 M.R.S. § 6001(45)) within Maine's territorial waters.

E. Atlantic Sea Scallops, Culling Required

Scallops less than the minimum legal size must be immediately liberated. It is prima facie evidence of possession of illegal scallops if a vessel contains scallops smaller than the minimum size while a scallop license holder or crewmember is shucking scallops.

F. Atlantic Sea Scallops, Shellstock Ratio to Meat Conversion, Possession Limit, Daily Limit

(1) Shellstock Ratio to Meat Conversion.

For the purposes of this regulation, one and a half bushels of shellstock shall be equal to one gallon of scallop meat.

(2) Daily Harvest and Possession Limits.

It is unlawful to fish for, take or possess more than 15 gallons of scallop meat or any aggregate of meat and shellstock, which is greater than the equivalent of 15 gallons of meat per day per vessel.

(3) Daily Limit.

(a) It is unlawful to unload any portion of a day's catch and return to fishing in Maine's territorial waters.

(b) It is unlawful to transfer to or receive from another vessel any scallop shellstock or scallop meats

G. Atlantic Sea Scallops Harvested Seaward of Maine's Territorial Waters

A vessel may possess or land more than 15 gallons of scallop meats per day within Maine's territorial waters only if it meets each of the following requirements:

- (1) The scallop meats were harvested seaward of Maine's territorial waters.
- (2) The vessel holds a valid current Federal Permit (Title 50(A) §648.4) that authorizes possession of more than 15 gallons of scallop meats per day.
- (3) The amount of scallop meats on board does not exceed the maximum amount authorized by the vessel's Federal Permit.
- (4) The vessel has all fishing gear (dredges, drags) securely stowed when transiting Maine's territorial waters. 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.

H. Limited Access Areas

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by divers on January 2, 9, 16, 23, 30, 2015; February 6, 13, 20 and 27, 2015; March 7, 14, 21 and 28, 2015; and April 4 and 11, 2015 except for Whiting and Dennys Bays Area (4) where fishing shall be ~~additionally open on December 6, 13, 20 and 27, 2014 and prohibited on January 16 and 23, 2015~~ prohibited. All directions are relative to True north (not magnetic).

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by draggers on January 7, 14, 21, 28, 2015; February 4, 11, 18 and 25, 2015; March 4, 11, 18 and 25, 2015; and April 1 and 8, 2015 except for Whiting and Dennys Bays Area (4) where fishing shall be ~~additionally open on December 3, 10, and 17, 2014 and prohibited on January 14 and 21, 2015 and April 8, 2015~~ prohibited. All directions are relative to True north (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these Limited Access Areas, 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.

The Commissioner may close harvesting for the remainder of the season in the Limited Access Areas listed below through emergency rulemaking if the Department has information that indicates there is a likelihood that between 30 percent and 40 percent of the harvestable biomass has been removed.

(1) Casco Bay Area:

Western boundary: South of a line drawn from the most southwestern point of Basin Point (Harpowell) to the northern tip of Jewell Island. Also, the waters between and to the north of Basin Point and Gun Point bounded by the Route 24 Gurnet Bridge (Harpowell).

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, then continuing to the southeastern tip of Jewell island.

(2) Damariscotta/Sheepscot Area:

South 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. Then north of a line drawn from the most southern point of Outer Head Island at Griffith Head, Georgetown to the most southern tip of Cape Island, Southport and then to the most southern tip of Fishermen Island. Then, north of a line from the most northern tip of Fishermen Island to the most southwestern point of Thrumcap Island, and west of a line drawn from this point to the most southern tip of Shipley Point, following the western shoreline of Rutherford Island. Also, west of the South Bristol Bridge, and to include the Damariscotta River.

(3) Muscongus/Western Penobscot Area:

Western boundary: North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to its intersection on the west shore of Mosquito Island, St. George.

Eastern boundary: South and west 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 and continuing in a southwest direction to the most eastern tip of Mosquito Island, St. George.

(4) Whiting Bay and Denny's Bay Area (~~open December 2014 only as per section 11.10(H) above fishing is prohibited~~):

It shall be unlawful to fish for or take scallops and or urchins 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 Denny's Bay.

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 (1) which shall be open to diving on Wednesdays and Thursdays and shall be open to dragging on Mondays and Tuesdays; St. Croix River (10) which shall be open Mondays to draggers and Fridays to divers during the months of March and April, 2015, 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) Muscle Ridge (Open Mondays and Tuesdays to draggers. Open Wednesdays and 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.

This section Chapter 11.22 (1) sunsets May 1, 2015.

(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 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 (2) sunsets May 1, 2017.

(3) 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 (3) sunsets May 1, 2015.

(4) Ocean Point

West of a line drawn from Emerson Point, at the southern most 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 draw from R N "8" to the most southwestern tip of Ocean Point at Latitude 43° 48.874 N Longitude 069° 36.332 W.

This section Chapter 11.22 (4) sunsets May 1, 2017.

(5) 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° 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.

This section Chapter 11.22 (5) sunsets May 1, 2015.

(6) Pleasant Bay

All waters inside and shoreward of the following boundary line: A line beginning at Strout Point, Milbridge and running to the northern tip of Fosters Island and then following the high water mark around the eastern shore to its' southeastern tip, then running to the northern tip of Dyers Island and then following the high water mark along the northern shore to its' southern tip, then running to the northwest tip of Flint Island and following the high water mark along the northern shore to its' eastern tip, then running in a northeasterly direction to the southeast tip of Cape Split, South Addison. This closure includes Pleasant Bay; as well as, both the Addison and Pleasant Rivers.

This section Chapter 11.22 (6) sunsets March 26, 2015.

(7) Lower Englishman Bay

All waters inside and shoreward of the following boundary line: A line beginning at the southern tip of Shoppee Point, Roque Bluffs and then running to the northeastern point of Great Head, Roque Island, then following the high water mark in a clockwise direction along the Roque Island shoreline until reaching the northern entrance of the thorofare between Roque and Great Spruce Islands, then running in a southeasterly direction to the nearest prominence on the northwest tip of Great Spruce Island, then following the high water mark along the northern shore to its' eastern tip, then running to the western tip of Double Shot Island and continuing along its' western shoreline until reaching the northeast tip, then running to the western tip of Anguilla Island and following the shoreline in a clockwise direction until reaching its' eastern tip, then running to the southwest tip of Halifax Island and following the northern shoreline to its' northern tip, and then in a northerly direction to Cow Point, Roque Bluffs.

This section Chapter 11.22 (7) sunsets March 26, 2015.

(8) 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.

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.

Southern Boundary: North and west of the Lubec-Campobello Island bridge.

This section Chapter 11.22 (8) sunsets May 1, 2015.

(9) 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 (9) sunsets May 1, 2015.

(10) St. Croix River (open Mondays to draggers and Fridays to divers during the months of March and April, 2015)

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 (10) sunsets May 1, 2015.

(11) Inner Little Kennebec/Englishman Bay Rotational Area

All waters inside and shoreward of the following boundary line: A line beginning at the southern tip of Shoppee Point, Roque Bluffs and then running to the northeastern point of Great Head, Roque Island, then following the high water mark in a clockwise direction along the Roque Island shoreline until reaching the northern entrance of the thorofare between Roque and Great Spruce Islands, then running in a southeasterly direction to

the nearest prominence on the northwest tip of Great Spruce Island, then following the high water mark along the northern shore to its' eastern tip, then running in a southeasterly direction to the western tip of Pulpit Rock and continuing along its' western shore until reaching 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 western tip of the southwestern Libby Island and continuing along the northern shore to the northern most tip, then running to the southern tip of the eastern Libby Island and continuing along the northern shore until reaching the northern most tip, then continuing to the southern end of Northwest Head on Cross Island, then continuing to Buck Head, Machiasport.

This section Chapter 11.22 (11) sunsets May 1, 2015.

(12)Addison Rotational Area

Eastern boundary: South and West 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 southeast to the most northern tip of eastern Plummer Island then the most western tip of Toms Island then True South to the three mile limit.

Western boundary: East and South of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then the most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

This section Chapter 11.22 (12) sunsets May 1, 2015.

(13)Casco Passage

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.

This section Chapter 11.22 (13) sunsets May 1, 2015.

(14)Bagaduce River

East of a line starting at the southern tip of Dice Head, Castine, going in a southeasterly direction to the northwestern tip of Nautilus Island, then continuing along the northern shore until reaching the northeastern tip, then continuing in a northeast direction to the most northern tip of land on Cape Rosier and to include all of the Bagaduce River (Smith Cove, South Bay and Northern Bay).

This section Chapter 11.22 (14) sunsets May 1, 2015.

(15)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 southeastern tip of Dry Point, Georgetown Island, to the southern tip of Hendricks Head, Southport Island. To include all of the Sheepscot River, Knubble Bay, Montsweag Bay and Hockomock Bay.

This section Chapter 11.22 (15) sunsets May 1, 2015.

(16) Inner Casco Bay

All waters inside and shoreward of the following boundary line: A line beginning from the most eastern tip of the northern shore of Ship Cove, Portland Head, the running to the most southwestern tip of Cushing Island and following the southern shoreline to the most eastern of land of White Head, then continuing in a northeastern direction to the most southeastern tip of Vaill Island and following the southern shoreline to the most eastern tip, then continuing to the most southern point of Obeds Rock and following the southern shoreline to the most eastern tip, then continuing to the most southern tip of Deer Point on Great Chebeague Island and following the southern shoreline to the most northern tip, then running in a northwestern direction to the most northern tip of Littlejohn Island and following the southern shoreline to the bridge that connects Littlejohn Island to Cousins Island and running along the southern shoreline to the bridge that connect Cousins Island to Yarmouth. To include Portland Harbor, Hussey Sound, and Chandler Cove.

This section Chapter 11.22 (16) sunsets May 1, 2015.

Basis Statement

Chapter 11.22 Targeted Closures (8)(9)(10)(11)(12)(13)(14)(15)(16) Cobscook Bay, Whiting & Dennys Bays, St. Croix River, Inner Little Kennebec/Englishman Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River, Casco Bay. Emergency Regulations

Justification:

The Maine scallop fishery was formerly 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 33,141 meat pounds of scallop meats from Maine waters valued at \$272,703 (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 in a limited fishery. 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 accompanied by a 30% harvest target that when met would trigger in-season emergency management actions to ensure areas are not overfished and rebuilding continues. The combination of conservation measures appears to be effective as demonstrated by 505,837 meat pounds being landed in 2013 (Figure 2) valued at \$5.7 million (Figure 3), a fifteen-fold increase in landings and an almost twenty one-fold increase in value from 2005, while the fishery has experienced a significant increase in active participation in recent years (Figure 4).

This season was undertaken with the understanding that the length of the season likely far exceeds what the resource can sustain, and that the Department may need to use emergency rulemaking authority during the season to prevent overfishing. The industry, through the Scallop Advisory Council, requested that the Department provide the fishing opportunity up front, and make adjustments in-season as necessary. The Department was willing to take this approach in part because this fishery is prosecuted in the winter months, and proposing a very limited season could create an incentive to fish in unsafe conditions. The Department emphasized that it will take action to continue to rebuild the scallop resource, as well as provide stability and predictability for the industry into the future. Therefore, the DMR expanded the trigger mechanism to the entire fishery in order to move towards a more sustainable harvest of the resource statewide so that when data indicate that 30% of the harvestable biomass has been removed from an area, it will be closed early via emergency action in order to ensure that the resource has the ability to replace what has been removed and continue to rebuild. Such action will ensure continue progress towards the goal of a sustainable, rebuilt fishery.

The Department seeks to take rulemaking action to close the following targeted areas: Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay while restricting harvest in the St. Croix River, which will remain open Mondays for dragners and Fridays for divers during the months of March and April, 2015. Based on direct input from Marine Patrol and independent industry participants, the level of fishing effort in these discrete areas during the fishing season has likely exceeded the 30% removal target to ensure the fishery continues to rebuild and continued fishing threatens future recruitment of sublegal "seed" scallops in these areas and remaining broodstock scallops that are needed for successful spawning. For Cobscook Bay, this information along with data collected through the DMR port sampling program as well as the DMR fishery independent in-season survey further indicate that the area has exceeded the 30% removal target for legal biomass which correlates with estimated removals for the area of 222,30 pounds of scallop meats, which is **37%** of the 595,200 pounds available. Also, a fishery independent survey in April 2014 identified areas within the Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage and Bagaduce River as having an increased density of harvestable scallops following two years of closure and moderate amounts of seed scallops and thereby suggesting a recovery has begun. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. 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. Immediate action is necessary to protect the remaining seed and legal scallops in all of these areas, allow for continued harvest in the remaining areas, and continue to support rebuilding efforts.

Cobscook Bay

[Cobscook Bay](#) has experienced a high amount of fishing effort the past two seasons, as well as this season, and requires an immediate conservation closure. This determination is based on information collected in the DMR fishery independent in-season survey, DMR port sampling and Marine Patrol observations as well as direct industry reports. Since 2002, the Department has been conducting a dredge-based fishery-independent survey of the state scallop resource. The 2006, 2007, 2012, 2013 and 2014 coast-wide surveys indicated that Cobscook Bay had, by far, the highest scallop density in the state with the fall 2014 survey recording the highest amount of harvestable biomass yet observed for this area of 595,200 pounds of harvestable meat weight. During 2012-14 high sublegal abundance was observed by the fall survey. The fall 2014 survey however also indicated the next strong year class is not anticipated to recruit into the fishery until the 2016-17 fishing season as the majority of those scallops are ~75 mm shell height (SH) (Figure 5). Therefore, it is imperative that this area not be overharvested in order to ensure a healthy fishery is available to the fleet next season. This season, the DMR expanded the trigger mechanism to the entire fishery-including Cobscook Bay-in order to move towards a more sustainable harvest of the resource statewide so that when data indicate that 30% of the harvestable biomass has been removed from an area, it will be closed early via emergency action in order to ensure that the resource has the ability to replace what has been removed and continue rebuilding. Such action will ensure continued progress towards the goal of a sustainable, rebuilt fishery. Therefore, based on the fall survey harvestable biomass estimate, the harvest target for Cobscook Bay is 175,560 pounds of scallop meats which is 30% of the total 592,200 pounds available.

Marine Patrol and port sampling observations in combination with direct industry reports indicate a total of 75 vessels have been consistently targeting scallops in Cobscook Bay since the fishery opened in December prior to the mid-season break on January 7, 2015 (January 9, 2015 for divers). When Cobscook Bay reopened the week of January 26, 2015 for the second half of the season, there were ~100 vessels actively fishing in the area, with ~12 additional vessels moving into the area the week of February 11, 2015 and three more arriving the week of February 23, 2015, for a total of 115 vessels. However, foul weather has kept many of the vessels from being able to actively fish every scheduled open fishing day. This has allowed the season to remain open up until this point. It is estimated that **222,300 pounds** (or **37%** of the harvestable biomass) has already been removed from this area by dive and drag license holders combined. It is estimated that the draggers account for the majority of these landings, making up 207,450 pounds (35% of the harvestable biomass) of the total removals. It has also been estimated that there have been five divers actively fishing the area this season who are estimated to have landed 14,850 pounds (2% of the harvest target) of the total removals. Exploitation rate (E) of scallops in Cobscook Bay is currently estimated at 0.36, or 36%, with an approximate F (fishing mortality) = **0.45**. By comparison, an F of 0.38 is considered the maximum sustainable in the US federal waters scallop fishery (50th SAW Assessment Summary Report 2010). In an area like Cobscook Bay, which is fished each year and is very recruitment-driven, an even more conservative approach to managing the resource is appropriate. Regardless of the contribution of either component of the fleet, the cumulative catch warrants emergency action in Cobscook Bay as it has met the harvest target for the area as a whole.

In addition to estimated removals, for the first time DMR has conducted four in-season surveys at various points throughout the season to monitor the relative change in scallop abundance throughout the season compared to the full survey conducted in October 2014. These surveys were conducted in December, January, early February and late February. In the first in-season survey conducted on December 18 & 19, 2014, a 20% increase in the mean harvestable biomass density was observed after 9 days of fishing (Figure 6). However, this was the first time conducting the in-season survey, and the increase has been attributed to improperly assigning the survey stations in Cobscook Bay, possibly oversampling the "hot spots" and therefore resulting in an overestimate of the relative abundance. In the second in-season survey on January 8 & 9, 2015, the sampling issues were adequately addressed and a 21% decrease in the mean harvestable biomass estimate was observed after 18 days of fishing compared to the original October 2014 full survey estimate. The third in-season survey conducted on

February 5 & 6, 2015 detected no significant decrease in the mean harvestable biomass estimate as compared to the January 8 & 9, 2015 survey estimate. The mean harvestable biomass density estimate from the most recent February 19 & 20, 2015 survey (4.0 g/m²) was found to be 28% lower for Cobscook Bay than the October 2014 estimate (5.6 g/m²). This is a statistically significant ($p = 0.03$) decrease in mean harvestable biomass density. The variability between survey tows has also started to increase slightly possibly indicating some localized depletion. After three additional days of harvest in the area, the harvest target has likely been met as this data correlates with the estimated removals from the area. Fleet behavior suggests that Cobscook Bay is being serially depleted. During the first half of the season, vessels were concentrated on the best scallop beds/grounds. After the reopening in late January, the fleet has spread out as they search for other beds and sequentially depleted those grounds. While the fleet has been able to reach their daily landings limit, data collected in the port sampling program on almost a weekly basis from the Cobscook area has reflected changes in Catch Per Unit Effort (Figure 7) as well as a decrease in the size of the meats being landed by the fleet being reported by dealers buying scallops from the area, both further indicating that the harvest target has been met in this area. Continued scallop fishing in Cobscook Bay would cause continued unusual damage and imminent depletion of 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. 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. Also, the continued harvest in Cobscook Bay is likely to reduce the remaining legal-sized broodstock scallops that are not only essential for successful spawning but will be available to the fleet next season when there will be a limited amount of sub-legal sized scallops recruiting up into the fishery. Therefore, an immediate conservation closure of the area (Figure 8) is required as continued fishing in this area threatens sublegal scallops through incidental mortality of dredges and to protect remaining broodstock scallops so that the resource can continue to rebuild in this area. The St. Croix River will remain open one day per week for harvest opportunities to the local fleet and will be available for harvest to draggers on Mondays and divers on Fridays in March and April, 2015.

Whiting & Dennys Bays

In the [Whiting Bay & Dennys Bay Limited Access Area](#), the October 2014 fall survey observed 40,700 pounds of harvestable biomass for the area. This is a 44% decrease in the available harvestable biomass as compared to the 2013-14 season when 72,000 pounds were observed in the October 2013 survey. This area was heavily fished last season, particularly on the last day it was open (February 3, 2014) when ~100 vessels were observed fishing there and the area exceeded its harvest target as 30,600 pounds of 43% of the harvestable biomass was estimated to have been landed. This has likely reduced the biomass available to the fleet this season. By February 25, 2015, it is estimated that a total of **23,850** pounds have been landed from the area which is **59%** of the 40,700 pounds available this season, thus exceeding the harvest target for the area. It is estimated that the draggers account for the majority of these landings, making up 19,800 pounds (49% of the harvestable biomass) of the total removals. It has also been estimated that there have been 5 divers actively fishing the area this season who are estimated to have landed 4,050 pounds (10% of the harvest target) of the total removals. Regardless of the contribution of either component of the fleet, the cumulative catch warrants emergency action in the Whiting & Dennys Bays portion of Zone 3 as it has exceeded the harvest target for the area as a whole. Therefore, an immediate conservation closure of the Whiting Bay & Dennys Bay Limited Access Area is needed (Figure 8). The St. Croix River will remain open one day per week for harvest opportunities to the local fleet and will be available for harvest to draggers on Mondays and divers on Fridays in March and April, 2015.

Inner Little Kennebec/Englishman Bay Rotational Area

In the [Little Kennebec/Englishman Bay Rotational Area](#), Marine Patrol and sea sampling observations in combination with direct industry reports indicate that the Inner Little Kennebec/Englishman Bay Rotational Area has been the subject of intense fishing from the beginning of the season in December and requires an immediate conservation closure. On December 27, 2014, [the Lower Englishman Bay, including Roque Harbor \(Sand Bay\)](#) was closed due to the area being the subject of intense fishing by ~60 vessels when catch rates slowed from an average of 1.5-2 hours to 4-5 hours to reach the daily limit as well as to protect a high presence of sublegal scallops in the area. However, the

larger portion of the Little Kennebec/Englishman Bay Rotational Area remained open for harvest. Since then, catch rates have further slowed with the remaining ~20 vessels consistently targeting the area, weather permitting, requiring on average 7-8 hours to reach their daily limit of 15 gallons when available. In addition, dealers purchasing scallops from this area have observed that the average size of scallop meats being landed has decreased over time from an average of 15 meats per pound (U15) at the beginning of the season to 20-35 meats per pound (U20-U35) being reported the week of February 16, 2015. Both the decrease in catch rates and the decrease in the size in the scallop meats being landed indicate that the majority of the larger broodstock and legal sized scallops have been harvested from the area. In addition, the fishery independent survey in April 2014 observed a high presence of sublegal scallops inside of Pulpit Rock and Stone Island (Figure 9) require protection from incidental dredge mortality in order to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years. Therefore, a conservation closure of the Inner Little Kennebec/Lower Englishman Bay Rotational Area is needed to protect remaining broodstock scallops in order to continue to rebuild the resource in this area as well as to protect sublegal scallops from further unusual damage and imminent depletion so that they may be able to recruit up to the fishery and be available for harvest in future years. The outer portion of the [Little Kennebec/Englishman Bay Rotational Area](#) will remain open for harvest opportunities (Figure 10).

Addison Rotational Area

In the [Addison Rotational Area](#), Marine Patrol observations in combination with direct industry reports indicate that the area has been depleted and has likely far exceeded the 30% harvest target and requires an immediate conservation closure. On December 27, 2014, the [Pleasant Bay Area](#) of the Addison Rotational Area was closed due to the area being the subject of intense fishing by 30-40 vessels initially during the first week of the season. The effort then dropped off to 3-4 vessels in the area when catch rates slowed from an average of 3 hours to 6-7 hours in order to reach the daily limit as well as to protect a high presence of sub-legal scallops in the area. However, the outer portion of the Addison Rotational Area remained open for harvest. Since then, catch rates have slowed even further with the remaining 3 vessels mostly fishing in Tibbett Narrows taking 9-10 hours to reach their daily limit of 15 gallons when available. In addition, dealers purchasing scallops from this area have observed that the average size of scallop meats being landed has decreased overtime, from an average of 15 meats per pound (U15) to 20-35 meats per pound (U20-U35). Both the decrease in catch rates and the decrease in size in the scallop meats being landed indicate that the majority of the larger broodstock and legal sized scallops have been harvested from the area. Therefore, a conservation closure of the entire Addison Rotational Area is needed in order to protect remaining broodstock scallops so that the resource can continue to rebuild in this area (Figure 11).

Casco Passage

In the [Swan's Island Rotational Area](#), Marine Patrol observations in combination with direct industry reports indicate that Casco Passage has been the subject of intense fishing effort and requires an immediate conservation closure. During the first week of fishing, approximately 14 vessels were fishing the area, landing their 15 gallon daily limit within 2.5 to 3 hours. During the second week, catch rates dropped with 19 vessels taking 5-6 hours to get their daily limit. By the eighth week of fishing (30 cumulative fishing days), Marine Patrol observations indicated that the remaining vessels were working on the smaller, sublegal product in the area as the majority of the legal product had been harvested. In addition, the fishery independent survey in April 2014 observed a high presence of sublegal scallops (57%) inside of Casco Passage between Black Island and Orono Island (Figure 12) thereby requiring protection from incidental dredge mortality. A conservation closure of the Casco Passage Area is also needed to protect remaining broodstock scallops in order to continue to rebuild the resource in this area as well as to protect sublegal scallops from further unusual damage and imminent depletion. This will ensure that they may be able to recruit up to the fishery and be available for harvest in future years. Therefore, an immediate conservation closure of Casco Passage is required as continued fishing in this area threatens sublegal scallops through incidental mortality of dredges and to protect remaining broodstock scallops so that the resource can continue to rebuild in this area (Figure 13). The surrounding portions of the [Swan's Island Rotational Area](#) will remain open for harvest opportunities.

Bagaduce River

In the [Upper Penobscot Bay Rotational Area](#), Marine Patrol observations and industry reports indicate that the Bagaduce River has been the subject of intense fishing and requires an immediate conservation closure. During the first week of the season, 2 vessels were fishing in the area and easily landing their daily limit in less than an hour. By the sixth week of the season, the number of vessels fishing the area rose to 10 and required 4-5 hours in order to obtain their daily landings limit. By the seventh week, 13 vessels were fishing the area with only half of the vessels able to reach their daily landings limit by the end of the day. After the eighth week (30 cumulative fishing days), over half of the vessels left the area and Marine Patrol issued citations for the harvesting of sublegal product and fishing in the cable area near Trott Ledge, indicating that the majority of the legal product had been harvested from the River, likely exceeding the 30% harvest target for this area. In addition, the fishery independent survey in April 2014 observed a high presence of sublegal and seed scallops in the area of Middle Ground, just south of Trott Ledge (Figure 14). Therefore, this area requires protection in order to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years as continued fishing threatens sub-legal scallops through incidental mortality of dredges and threatens the conservation of legal sized spawning scallops (Figure 15). The remaining portion of the [Upper Penobscot Bay Rotational Area](#) will remain open for harvest opportunities.

Sheepscot River

In the Sheepscot River, the area has been fished since the beginning of the season and a large proportion of sub-legal scallops have been observed by industry in this area. The area has also been heavily fished the past few seasons while the adjacent [Sheepscot/Damariscotta Limited Access Area](#) has been either closed or restricted to one day per week of harvest. While only 5 vessels have been fishing the area this season, no vessels have been able to land their daily limit and coupled with a high amount of sublegal previously shucked shells being observed in catches indicating illegal harvesting of sublegal product it is evident that the amount of legal sized scallops have been depleted far beyond the 30% harvest target. Therefore, an immediate conservation closure of the Sheepscot River is needed in order to protect both the remaining legal scallops required for rebuilding and the sublegal scallops that will recruit up to the fishery in subsequent years from further damage and imminent depletion (Figure 16).

Casco Bay

The Casco Bay area-including Portland Harbor, Chandler Cove, Broad Sound and Hussey Sound- has been heavily fished by 25 vessels this season, which is unusually high for that area in the early season when compared to past years. Many vessels fishing this area normally do not rig over their vessels for scallop fishing until January as they are still fishing for lobsters during the month of December. However, this season a number of vessels travelled down from the mid-coast area along with a number of displaced vessels from the shrimp fishery entering the scallop fishery this season as well. Vessels were able to reach their daily limit the first week within 2.5 hours. During the second week of fishing, catch rates dropped and vessels were taking all day (9-10 hours) to reach their limit, if they were even able to reach the limit at all. During the third week of fishing, only eight vessels remained in the area as the mid-coast vessels left and some fishermen switched back to lobster fishing or fishing for groundfish. More recently, the fleet that remains continues to fish the area on foul weather days, further depleting any remaining legal size scallops beyond the 30% harvest target. Therefore, an immediate conservation closure of Casco Bay is needed in order to the remaining legal scallops required for rebuilding from imminent depletion (Figure 17).

The Department is concerned that continued harvesting during the remainder of the 2014-2015 fishing season in the above listed areas will damage sublegal 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 to reduce the risk of unusual damage and imminent depletion of the scallop resource in Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay while restricting harvest in the St. Croix River, which will remain open Mondays for draggers and Fridays for divers during the months of March and April, 2015.

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.

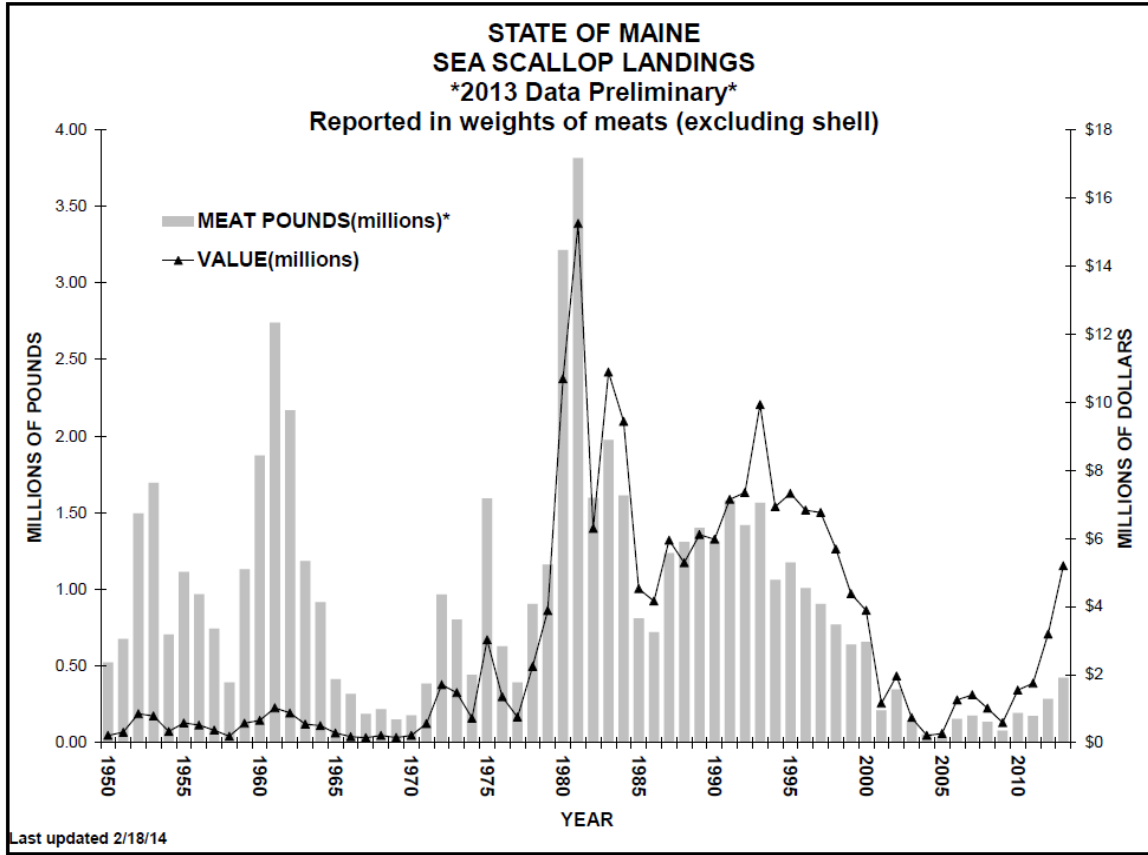


Figure 1. Maine scallop landings from 1950 to 2013. Landings are reported in meat pounds.

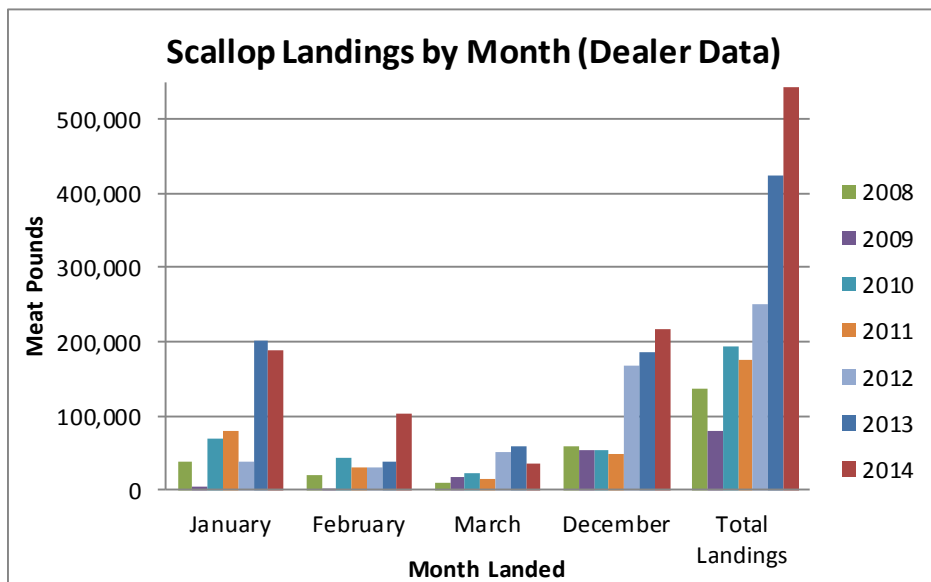


Figure 2. Monthly scallop landings, 2008-2014. Landings are reported in meat pounds.

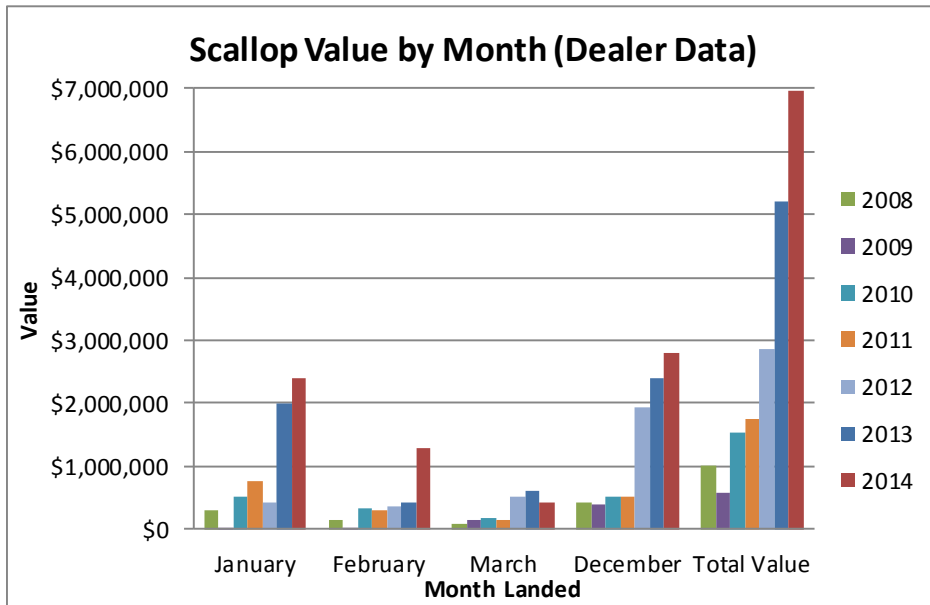


Figure 3. Monthly scallop value, 2008-2014.

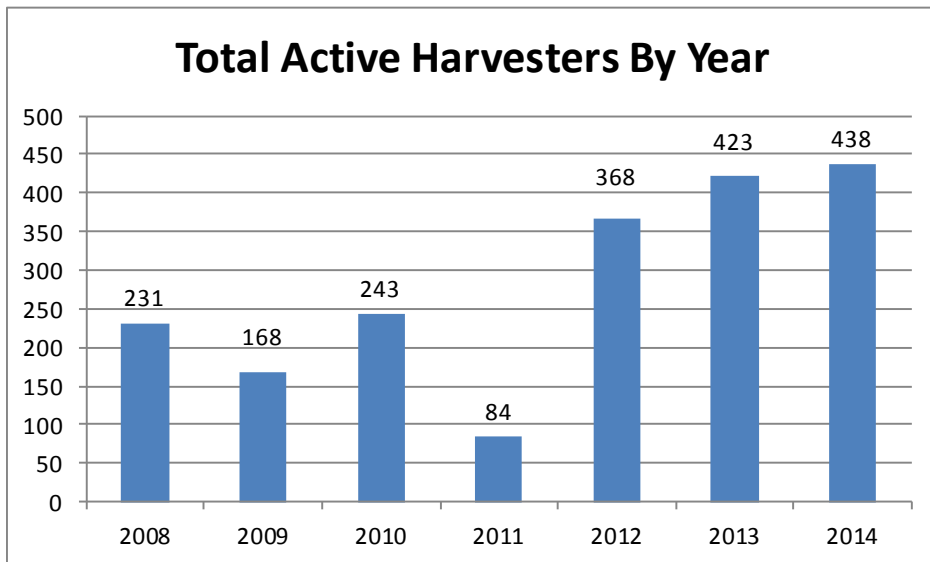


Figure 4. Number of active license holders in each season over the past 7 years.

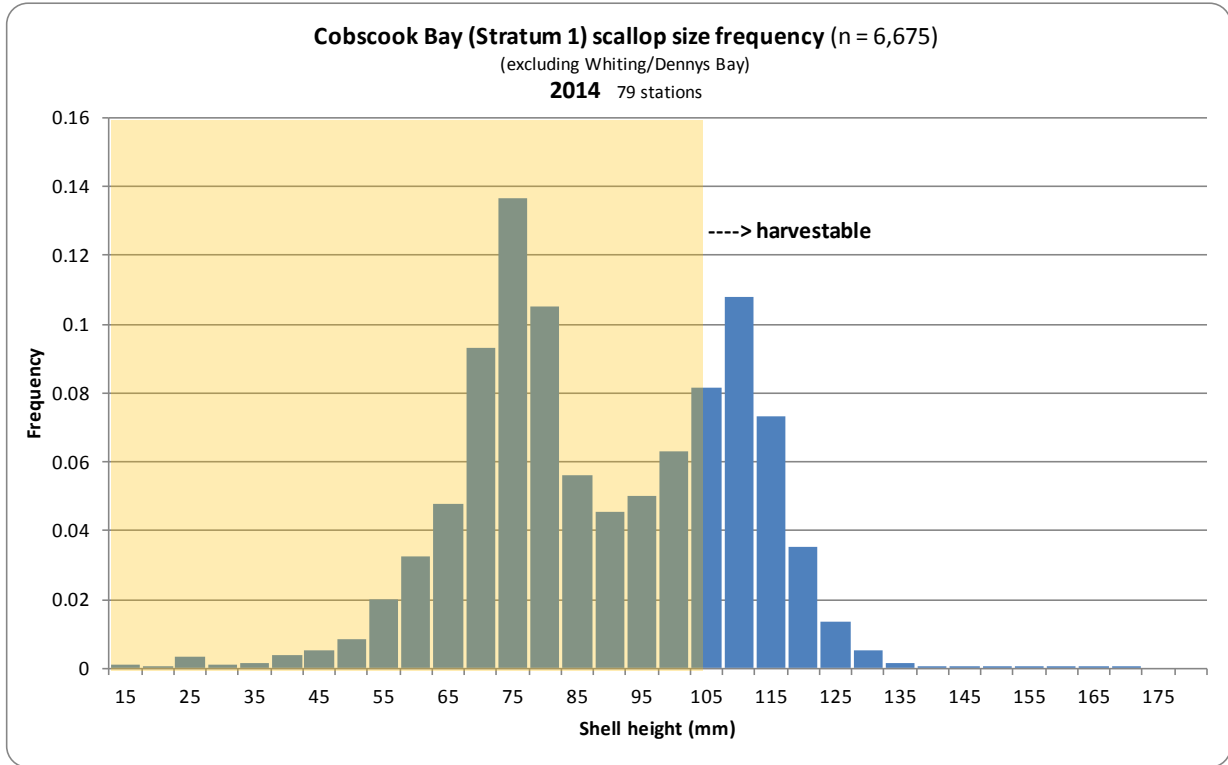


Figure 5. Length frequency of scallops observed in the October 2014 full survey. Note the next strong year class is around 75mm and is not expected to recruit into the fishery until the 2016-17 fishing season.

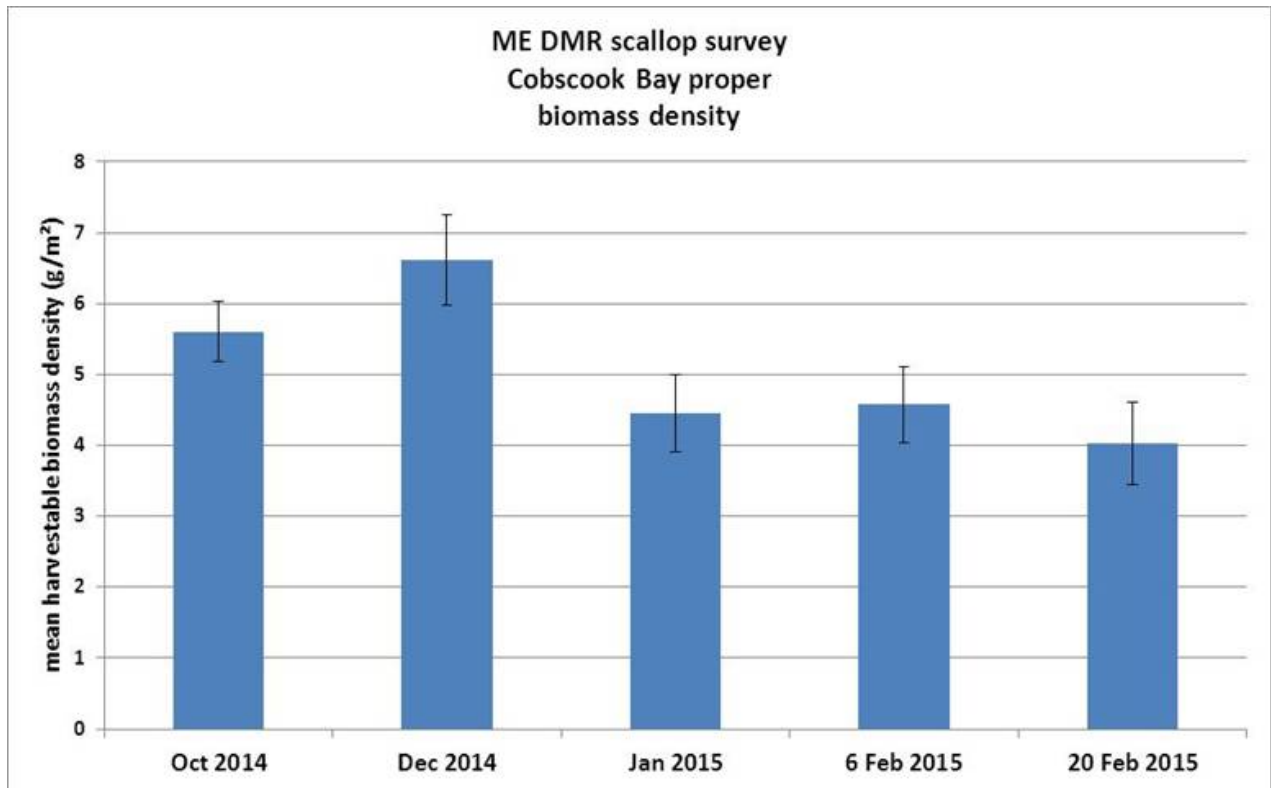


Figure 6. Relative change in abundance in mid-season surveys conducted in December, January, early February and late February compared to the full fall survey conducted in October 2014.

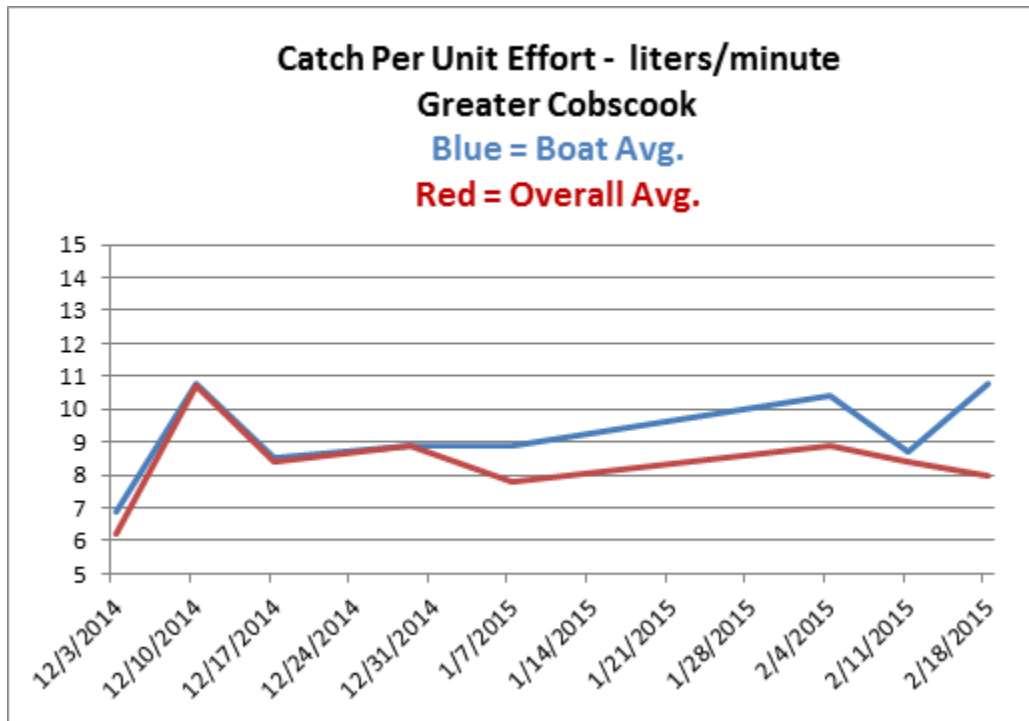


Figure 7. Catch Per Unit Effort in Cobscook Bay observed in the port sampling program reflecting a decreases through time, followed by increases, as the fleet serially deplete the area.

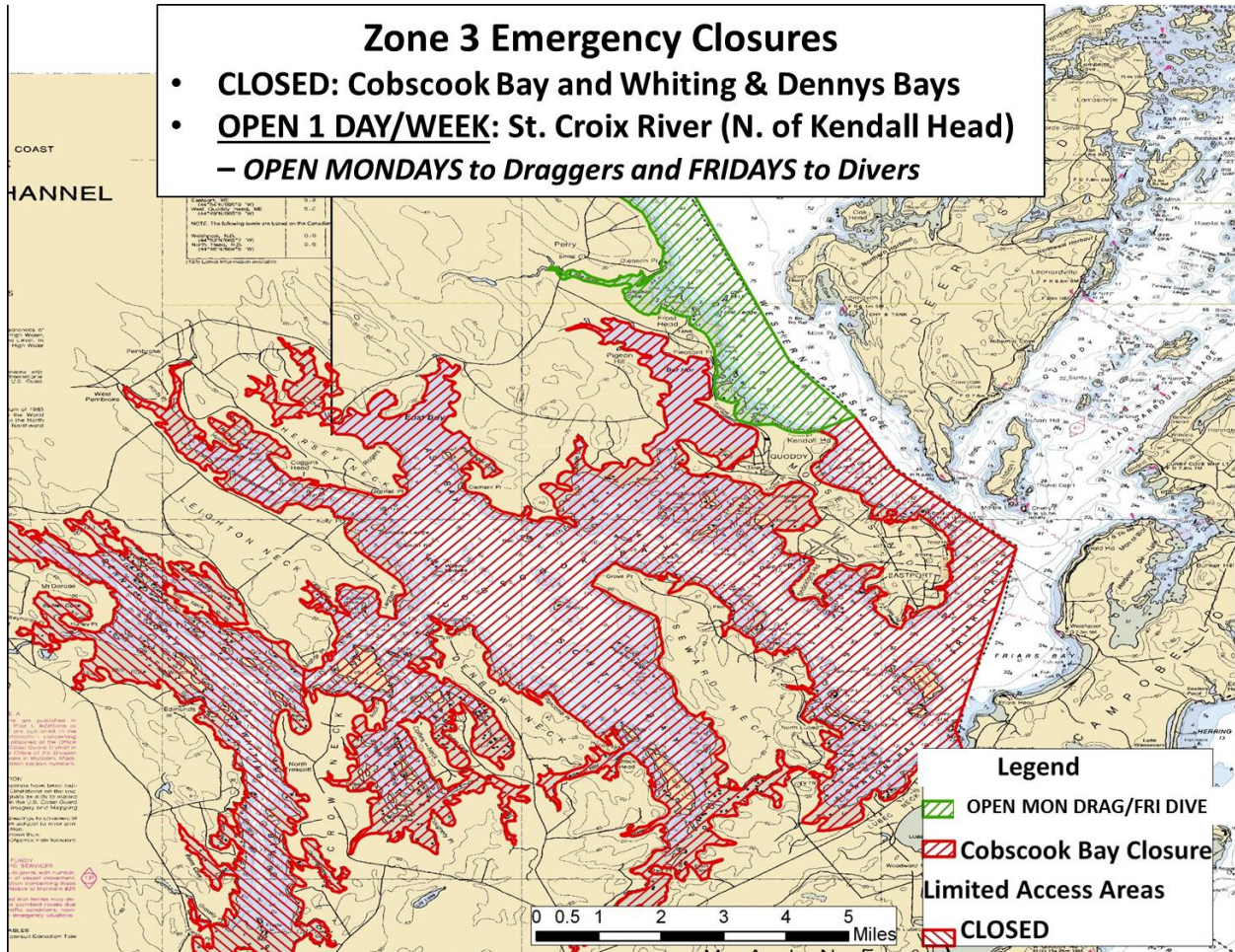


Figure 8. Zone 3 Emergency Closure Chart. Cobscook Bay and Whiting & Dennys Bay Closed while St. Croix River remains open one day/week from North of Kendall Head: open Mondays for draggers and Fridays for divers.

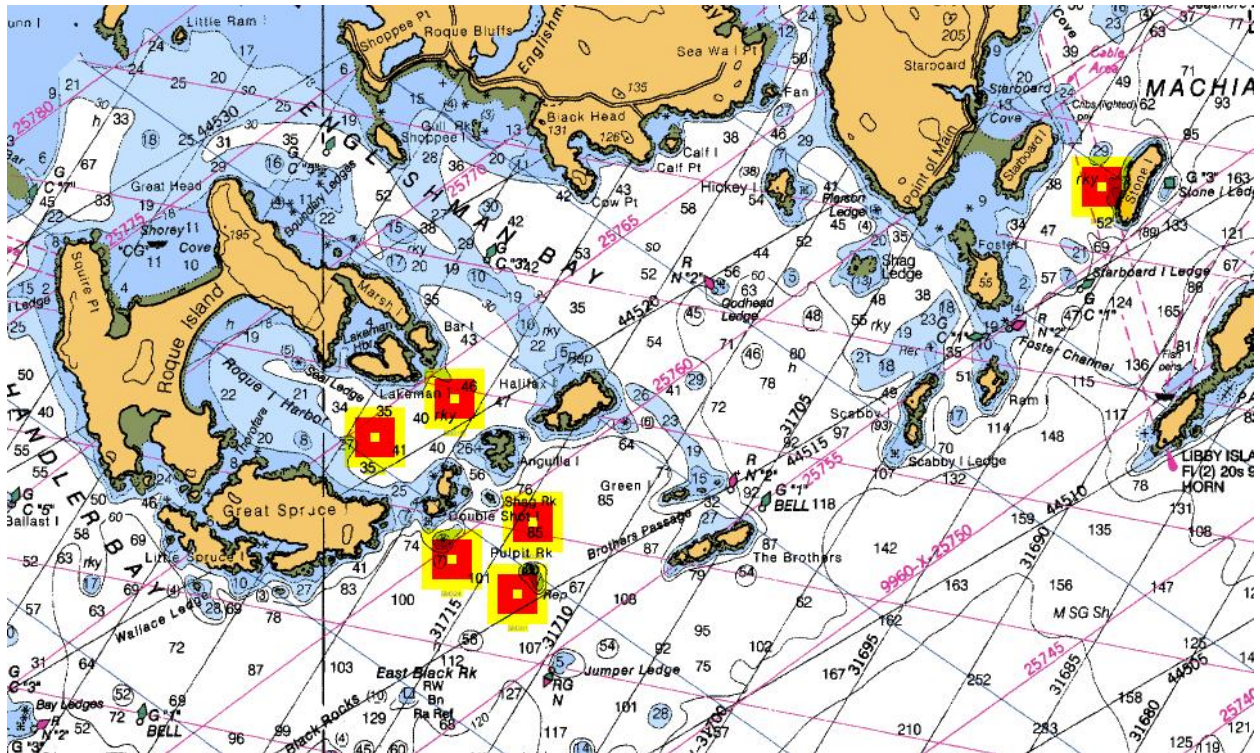


Figure 9. Location of survey tows which observed a high presence of sublegal scallops observed near Pulpit Rock and Stone Island, in addition to Roque Harbor.

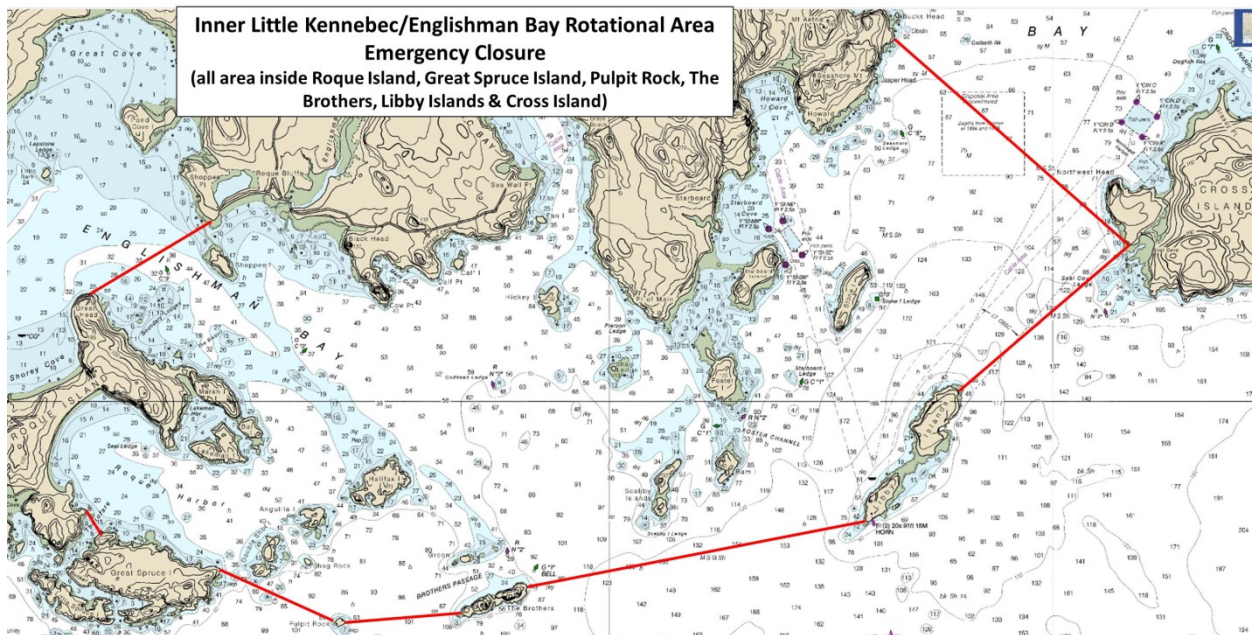


Figure 10. Inner Little Kennebec/Englishman Bay Rotational Area Emergency Closure Chart, including all areas inside Roque Island, Great Spruce Island, Pulpit Rock, The Brothers, Libby Islands and Cross Island.

Addison Rotational Area Emergency Closure

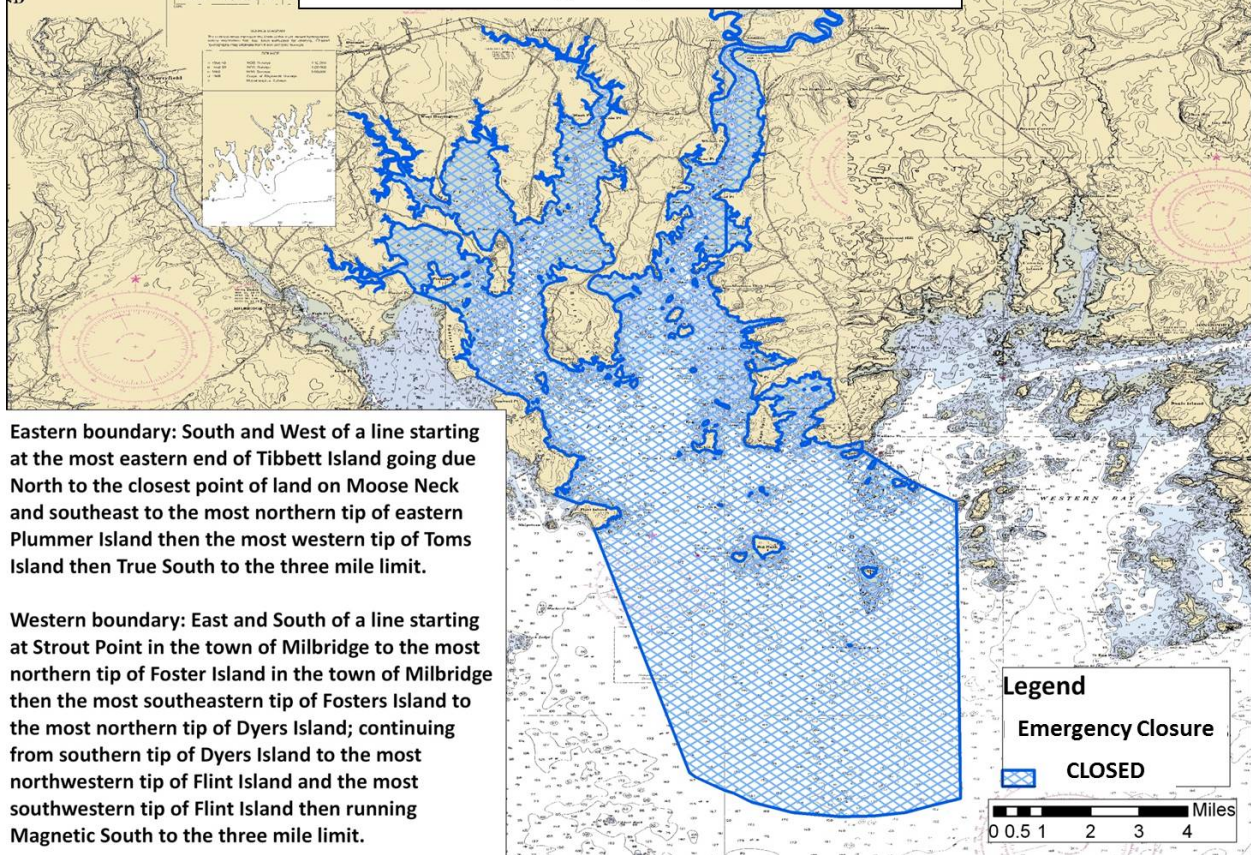


Figure 11. Addison Rotational Area Emergency Closure Chart.

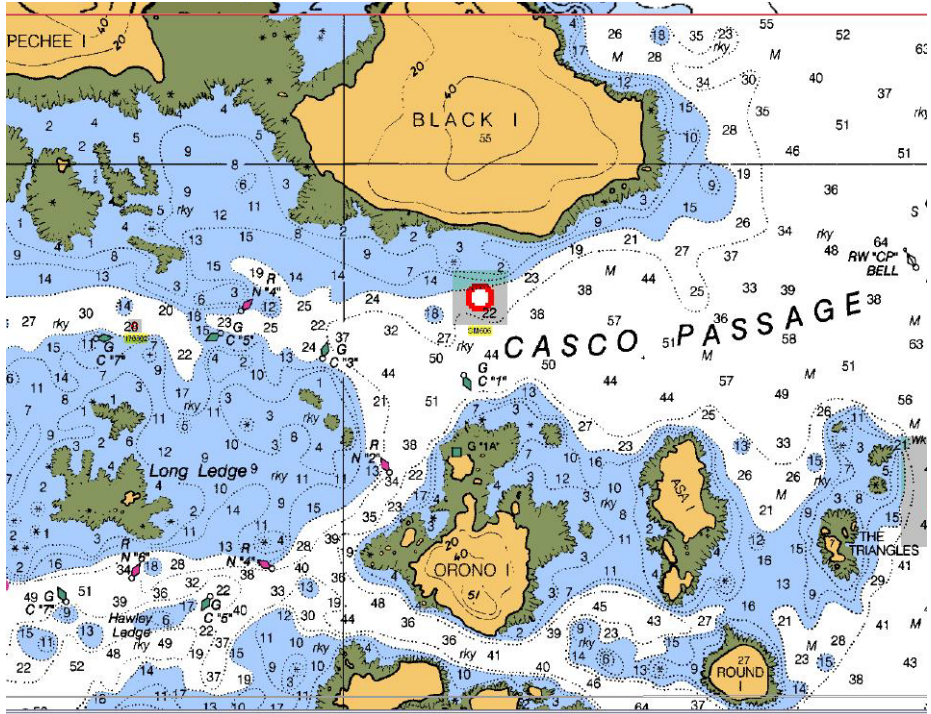


Figure 12. Location of survey tow that observed a high proportion (57%) of sublegal scallops.

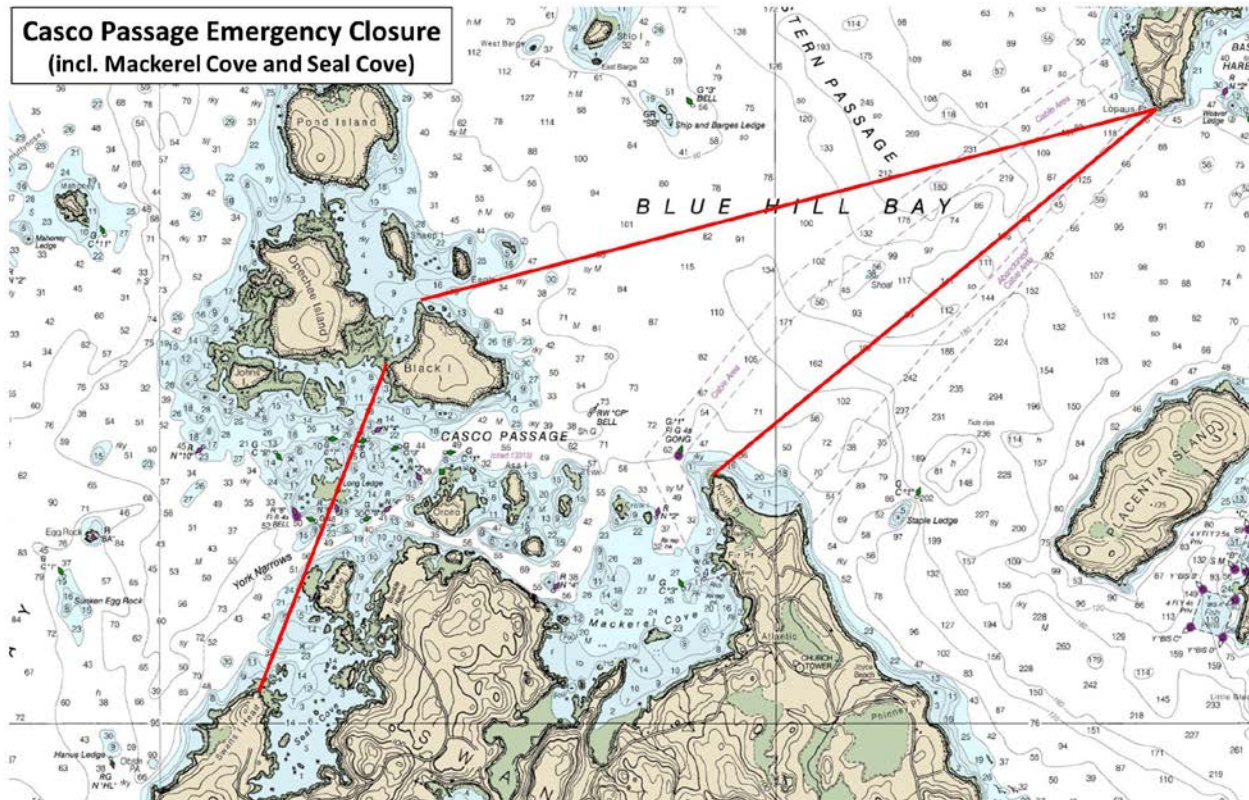


Figure 13. Casco Passage Emergency Closure Chart, including Mackerel Cove and Seal Cove.

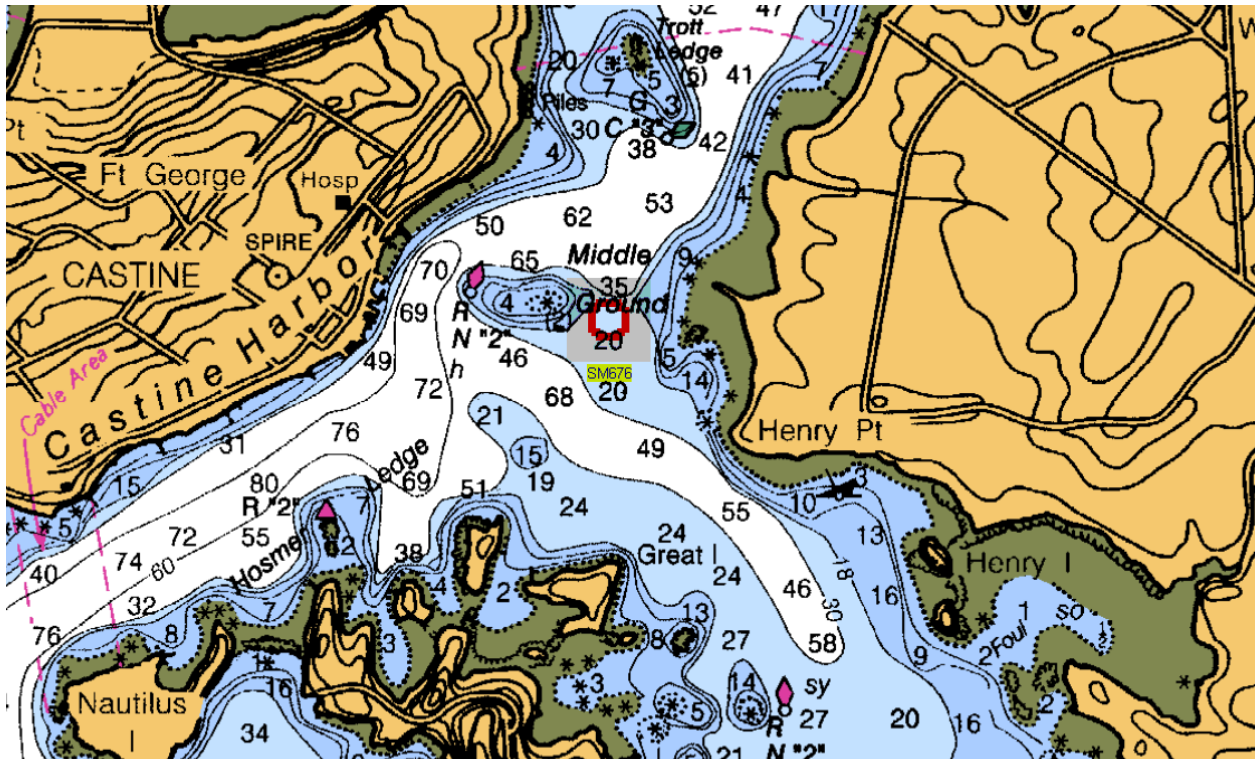


Figure 14. Location of survey tows that observed significant (90%) amounts of sublegal scallops.

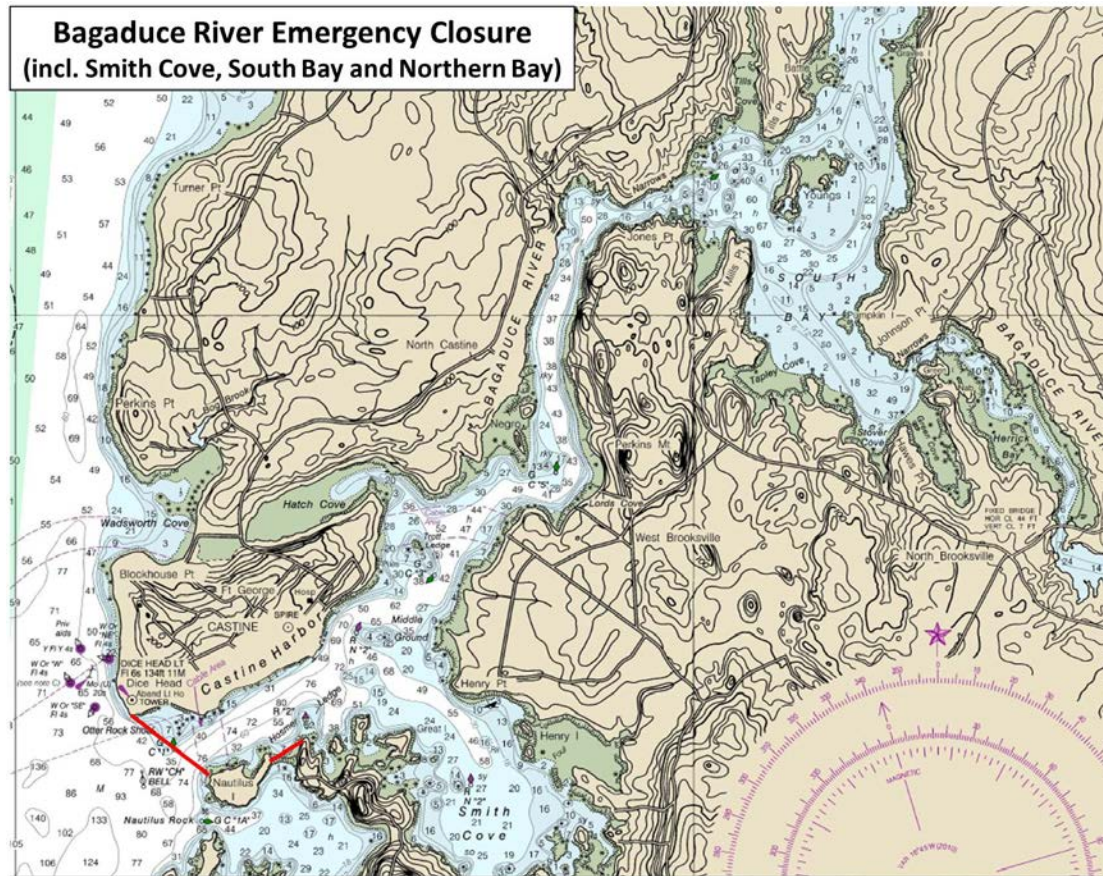


Figure 15. Bagaduce River Emergency Closure Chart, including Smith Cove, South Bay and Northern Bay.

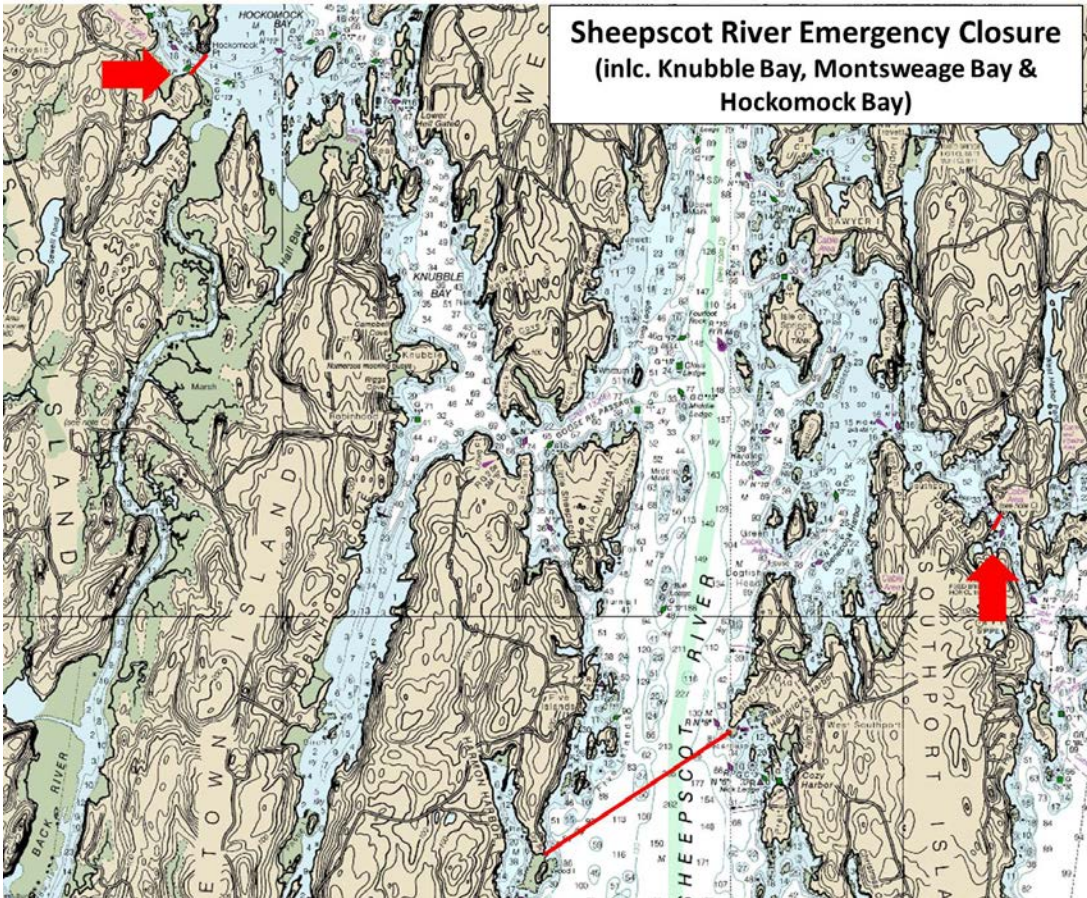


Figure 16. Sheepscot River Emergency Closure Chart, including Knubble Bay, Montsweage Bay and Hockomock Bay.

**Casco Bay Emergency Closure
(incl. Hussey Sound, Broad Sound,
Chandler Cove & Portland Harbor)**

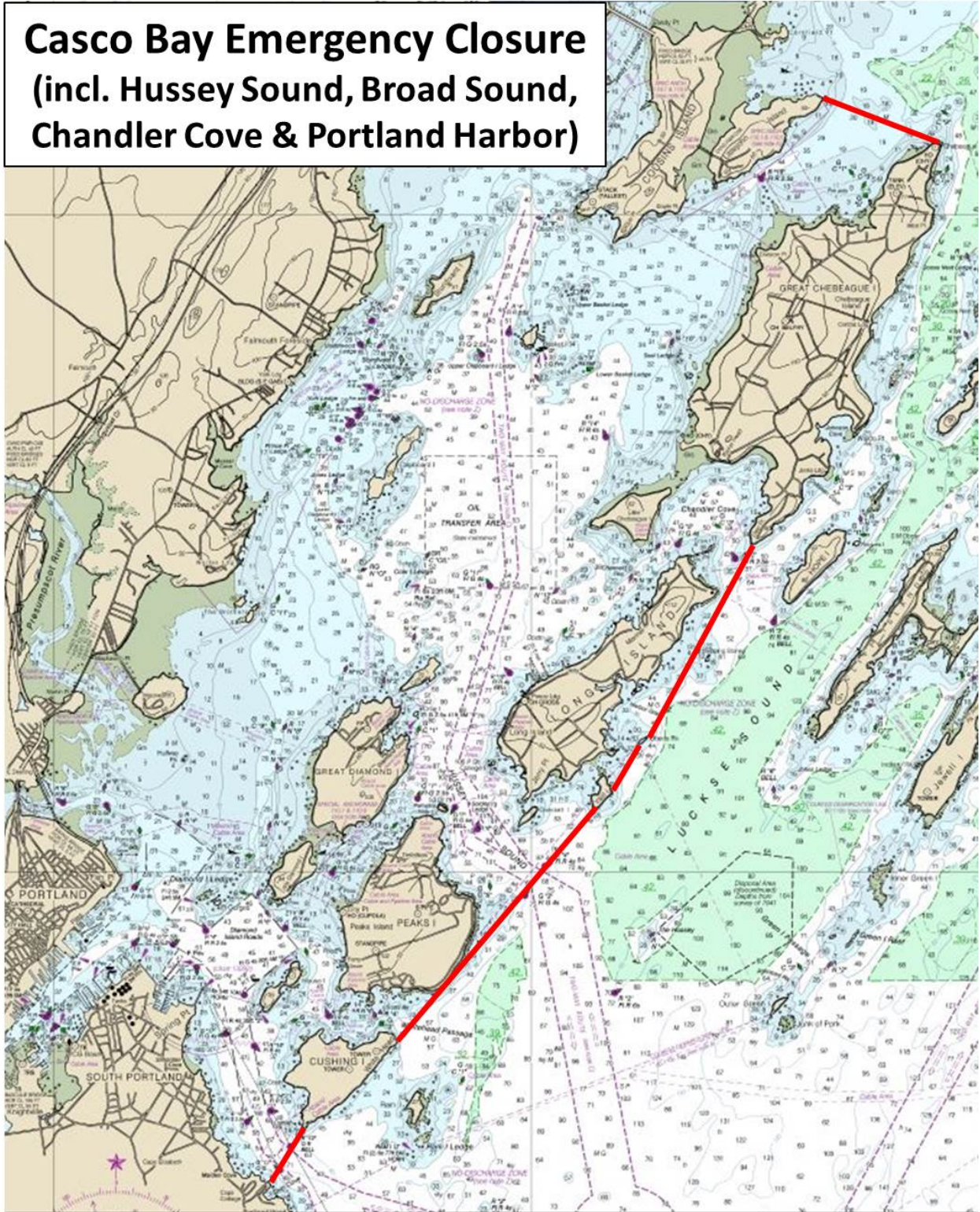


Figure 17. Casco Bay Emergency Closure Chart, including Hussey Sound, Broad Sound, Chandler Cove and Portland Harbor.

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

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Kevin Rousseau, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021
Telephone: (207) 624-6573; E-mail: dmr.rulemaking@maine.gov, web address:
<http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 11.22 Targeted Closures (8)(9)(10)(11)(12)(13)(14)(15)(16)
Cobscook Bay, Whiting & Dennys Bays, St. Croix River, Inner Little Kennebec/Englishman Rotational
Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River, Casco Bay.
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 Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers, and one day per week for divers. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2014-15 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 Cobscook Bay, Whiting & Dennys Bays, Inner Little Kennebec/Englishman Bay Rotational Area, Addison Rotational Area, Casco Passage, Bagaduce River, Sheepscot River and Casco Bay and restricts harvest in the St. Croix River, as authorized by [12 M.R.S. §6171](#)(3).

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 Targeted Closures ~~(8)(9)(10)(11)(12)(13)(14)(15)(16)~~
Cobscook Bay, Whiting & Dennys Bays, St. Croix River, Inner Little Kennebec/Englishman Rotational
Area, Addison Rotational Area, Casco Passage, Bagaduce River; Sheepscot River; Casco Bay.
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:

A total of 627 individuals are eligible to apply for a 2015 Maine commercial scallop harvesting license. It is anticipated that the majority of these individuals will obtain the license for the 2014-15 season. In 2014, 80 non-commercial scallop licenses were issued. The 2015 number will likely be similar.

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.