

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08 Targeted Closures (19) Cobscook Bay Emergency Regulation

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Cobscook Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops potentially being caught with an increased frequency, and also, reduce the level of broodstock essential to continuing recovery. Based on observations and direct input from Marine Patrol, industry participants, and data provided by the Department's monitoring program, the level of fishing effort in this area has exceeded the 30% removal target. Continued fishing threatens both seed and the remaining broodstock scallops in the area needed for future recruiting and successful spawning as management maintains a rebuilding strategy to increase overall stock biomass.

EFFECTIVE DATE: March 12, 2017

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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.

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 Fridays; and Casco Bay (11), Inner Cranberry Isles Area (14) and Damariscotta River (15) which shall remain open to diving. 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 to hand harvest [scuba divers] only, on Wednesdays and Fridays)

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.

- (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.

- (3) Ocean Point

West of a line drawn from Emerson Point, at the southernmost 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.

- (4) 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 drawn 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 070° 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43° 43.043N Longitude 070° 00.128W.

(5) 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 southernmost tip of Cape Newagen, Southport Island, to the eastern tip of Outer Head Island, Georgetown Island, then following the southern shoreline to the most southwestern tip of Outer Head Island, then a line drawn due west to the nearest point of land on Griffith Head, Georgetown Island.

(6) Muscongus Bay

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 eastern side of Hupper Island, Port Clyde, then to the southern tip of Marshall Point.

(7) 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).

(8) 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.

(9) 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.

(10) Portland Harbor

Northern boundary: South of a line drawn from the northern tip of South Portland at the entrance to Portland Harbor at Bug Light 'Fl 4s 3M Priv' to the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges near Ft Gorges, Portland.

Eastern boundary: West of a line drawn from the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges to the southwestern tip of House Island, Portland to the westernmost tip of Cushing Island, Portland, then following the shoreline in a southerly direction to the southwestern most tip of Cushing Island, Portland.

Southern boundary: North of a line drawn from the southwestern most tip of Cushing Island, Portland to the northeastern most tip of land on the north shore of Ship Cove, Cape Elizabeth.

(11) Casco Bay (Open to hand harvest [scuba divers] only)

North and west of a line drawn from Portland Head Light, Cape Elizabeth to the southwestern point of Cushing Island, then following the southern shoreline to the northeastern point of Cushing Island then to the southern point of Cliff Island, then continuing to the southwestern point of Jewell Island, then following the western shoreline to the northern point of Jewell Island, then continuing to the southwestern point of Basin Point, Harpswell.

(12) Narraguagus/Pigeon Hill Bay

Eastern boundary: South and West 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.

Western boundary: North and East 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.

(13) Chandler Bay/Head Harbor Island

All tidal waters of the Chandler Bay/Head Harbor Island rotational scallop area, as defined in Chapter 11.12 1. B. (2), which are inside and inshore of the following boundary lines:

- (a) Inside and inshore of a line beginning at the most eastern tip of Head Harbor Island to the western tip of the most western of The Brothers Islands, intersecting the Little Kennebec/Englishman Bay rotational area's western boundary at Latitude 67° 29.160 N Longitude 44° 31.020 W. To include all waters of the Chandler Bay/Head Harbor Island rotational scallop area inshore of this line.
- (b) Inside and inshore of a line beginning at the easternmost tip of Little Pond Head, Great Wass Island to the southernmost tip of Freeman Rock, then continuing on to the southernmost tip of Mistake Island, then to the southernmost tip of Man Island; then continuing to the southernmost tip of Head Harbor Island.

(14) Inner Cranberry Isle Area (Open to hand harvest [scuba divers] only)

A. It shall be illegal to drag for scallops in the tidal waters of the Cranberry Isle rotational scallop area, as defined in Chapter 11.12 1. B. (4), which are inside and inshore of the following boundary lines:

- 1. Inside and inshore of a line beginning at the eastern end of Otter Point, Mount Desert and running in a southwesterly direction to navigational buoy R "2" FI R2s GONG, and then continuing in a southeasterly direction to the navigational buoy "C" 5 at Gilley Ledge, and then continuing in a southerly direction to the northern tip of Baker Island.
- 2. Inside and inshore of a line beginning at the western prominence of Baker Island and running in a westerly direction to the eastern tip of Deadman Point, Great Cranberry Island.

3. Inside and inshore of a line which runs congruent with the southern boundary of the Spurling Point cable area between Great Cranberry Island and Mount Desert Island.

B. Except on Thursdays, it shall be illegal to take scallops by diving inside and inshore of the following boundary line.

1. Inside and inshore of a line drawn from the southernmost tip of Sargent Head, Northeast Harbor, southwesterly to the most northern top of King Point, Southwest Harbor and to include all of Somes Sound.

(15) Damariscotta River (Open to hand harvest [scuba divers] only)

North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to the most northwestern tip of Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(16) North Haven

Inside of a line starting at the most northern tip of Webster Head, North Haven to the most western tip of Great Spruce Island and following the northern coastline to the most northern tip of Great Spruce Island; then continuing to the most northern tip of Butter Island and following the eastern coastline to the most eastern tip of Butter Island; then continuing to the most northeastern tip of Eagle Island; then continuing to the most eastern tip of the southernmost of The Porcupines Islands; then continuing in a southwestern direction to the most eastern tip of Mullen Head. To include all waters inside of Great Spruce Island, Butter Island and Eagle Island.

(17) Mid Penobscot Bay

Northern boundary: South of a line from the most northwestern point of Little Deer Isle to the most northern point of Pickering Island, then to the most eastern tip of Dark Harbor, Islesboro; continuing on from Grindel Point, Islesboro due West to the Sea Urchin Zone line at Latitude 44° 16.913 N Longitude 068° 58.508 W.

Southern boundary: North of a line starting at the southern most point of Stinson Point, Deer Isle, West to Mullen Head, North Haven AND North of a line starting at Pulpit Rock, North Haven due West to the Sea Urchin Zone line at Latitude 44° 09.551 N Longitude 069° 01.510 W.

(18) Lower Blue Hill Bay/Jericho Bay

Eastern boundary: North and West of a line from the southern most tip of Lopaus Point to the northern most point of Black Island; continuing from the western most tip of Black Island to the northern most tip of Swans Island Head.

Western boundary: North and East of the line from the most southeastern point of Naskeag Point, Brooklin to the northern most tip of Swan's Island Head, Swan's Island.

Northern boundary: South of a line drawn from the 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.

(19) 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.

Basis Statement

Chapter 11.08 Targeted Closures (19) Cobscook Bay Emergency Regulation

Justification:

The Department is taking emergency rulemaking action to implement an expanded targeted closure in Cobscook Bay (Figures 1-5). The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in this specific area may damage sublegal scallops potentially being caught with an increased frequency, and also, reduce the level of broodstock essential to continuing recovery. Based on observations and direct input from Marine Patrol, industry participants, and data provided by the Department's monitoring program, the level of fishing effort in this area has exceeded the 30% removal target. Continued fishing threatens both seed and the remaining broodstock scallops in the area needed for future recruiting and successful spawning as management maintains a rebuilding strategy to increase overall stock biomass.

Cobscook Bay

As noted in past years, Cobscook Bay continues to experience a high amount of fishing pressure throughout the scallop fishing season. At the beginning of the fishing season, December 5, 2016, an estimate of 69 boats were harvesting daily within Cobscook Bay area. By January 23rd, observations made by either Marine Patrol or independent industry participants denoted approximately 122 boats were actively harvesting within Cobscook Bay. For the past seven weeks, roughly 120 - 130 boats have been steadily removing scallop resource from the Cobscook Bay area. Scallop meat counts were reported to be large in size and in the category of U10 to U15s during December and January. However, recent reports indicate meat counts have increased, showing a larger proportion of smaller meats being harvested.

DMR science staff conducted pre-season surveys from November 2-11, 2016, surveying 146 stations (ME DMR survey drag, 2" rings) within Cobscook Bay area to assess harvestable scallop biomass density (Figure 2a). Three in-season surveys were completed on January 7, February 5 and March 5, 2017 at the same 65 survey stations (Figure 2b) to monitor resource extraction during the scallop season. Overall, the biomass density within Cobscook Bay was 4.54 g/m² during the fall survey. The first and second in-season surveys indicated that biomass density was 4.75 g/m² and 4.59 g/m², respectively (no significant change from preseason). Results from the survey completed March 5, 2017 indicate a significant decline of 39% in the available harvestable biomass density calculated at 2.79 g/m² (Table 1 & Figure 3). In addition, prevalence of seed and sublegal scallops were higher during the March survey (Figure 2a & 2b), while the presence of legal-sized product has decreased as seen in Figure 4.

Discrete areas of Cobscook Bay, namely Johnson Bay, South Bay and the Eastport/Breakwater all indicate significant decreases in harvestable scallop biomass density and have exceeded the target set for conservation closures (Table 1). The Johnson Bay subarea had the largest decrease in biomass density (62%). Additionally, catch per unit effort (CPUE) calculations also confirm that removals are greater than 30% for both East Bay and the Eastport/Breakwater area when computed separately.

Continued scallop fishing in Cobscook Bay would cause 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. 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. Current observations reported from the March 5, 2015 survey indicate the presence of both seed and sublegal scallop stock are present in all areas of Cobscook Bay (Figure 2a & 2b). Recent reports from both industry and Marine Patrol confirm that 3 inch cut shells are being observed in routine tows (Figure 5). This provides additional evidence that available legal product is diminishing from this area. Therefore, an immediate conservation closure of Cobscook Bay (Figure 6) 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. Cutler rotational area, Whiting and Denny's Bay limited access area and the St. Croix River area will remain open to harvest opportunities for the local fleet.

The Department is concerned that continued harvesting during the remainder of the 2016-2017 fishing season in the above listed area will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce 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 the Cobscook Bay area. 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.

Figures & Tables

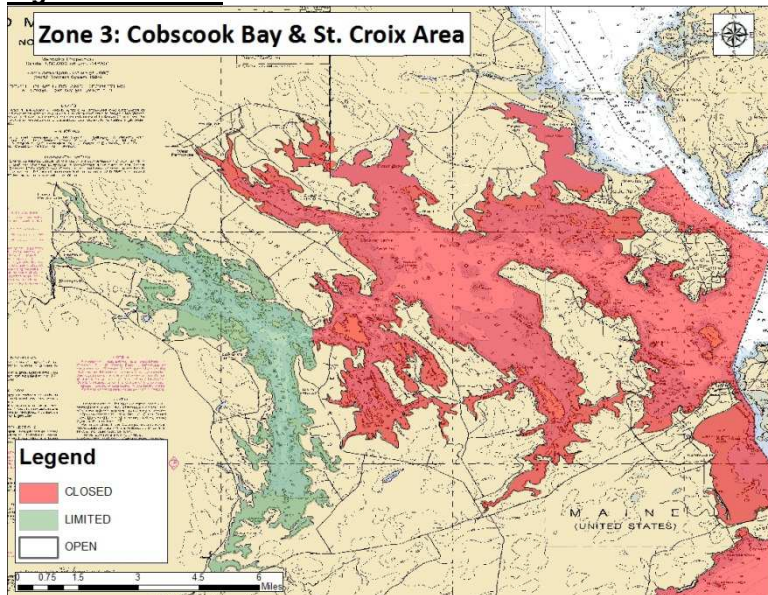


Figure 1: Chart of the Cobscook Bay emergency closure, implemented on March 12, 2017.

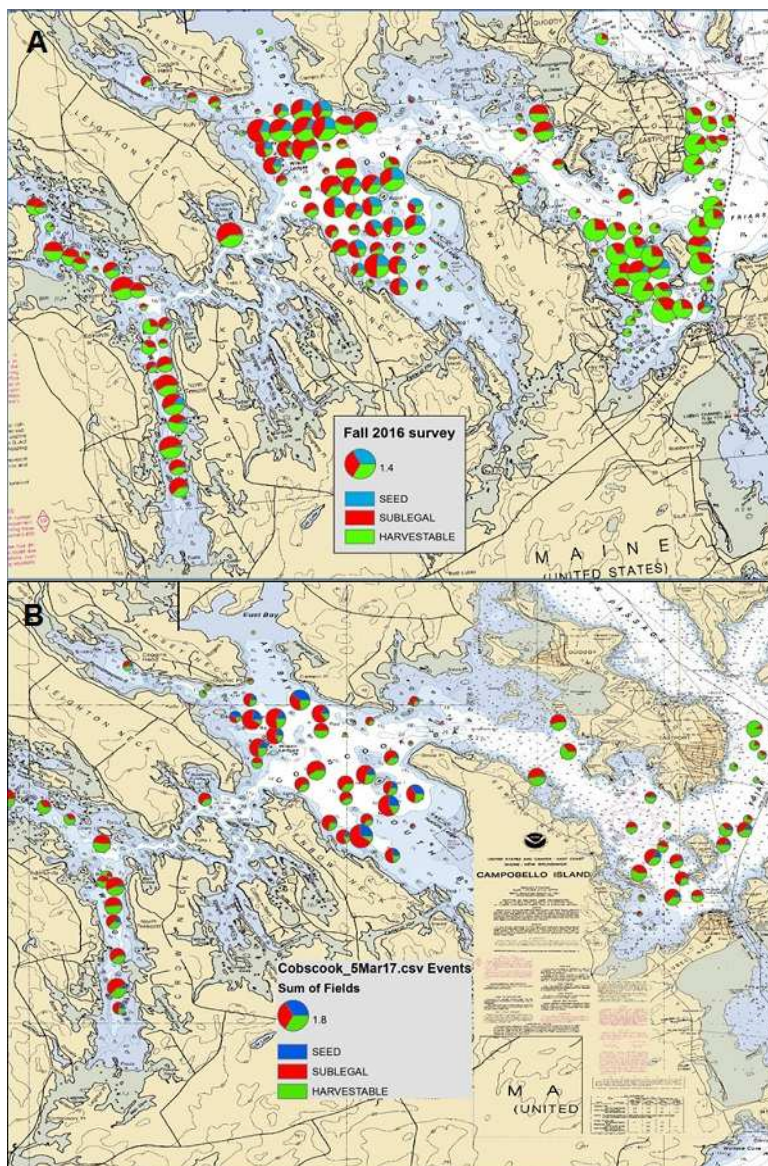


Figure 2: DMR survey results depicting available biomass for Cobscook Bay during the Fall survey (A; November 2-11, 2016) and the most recent in-season survey on March 5, 2017 (B).

Table 1: Estimates of harvestable scallop biomass density, Cobscook Bay and components, 2016-17. Aside from Whiting Bay, all discrete portions of Cobscook have met the target or are nearing it.

	Cobscook Bay (non-Whiting, 65 stations)	Johnson Bay (12 stations)	Breakwater (4 stations)	South Bay (23 stations)	Whiting (13 stations)	new East Bay (16 stations)
date						
Fall 2016	4.54	11.36	8.26	4.52	5.35	3.45
01/07/17	4.75	9.43	9.06	4.55	6.68	3.55
02/05/17	4.59	8.05	9.17	5.32	6.29	3.59
03/05/17	2.79	4.3	5.68	3.08	6.31	2.66
% change	39%	62%	31%	32%	-18%	23%
	= increase (negative value = increase)					
	>40%					
	between 30-40%					
	<30%					

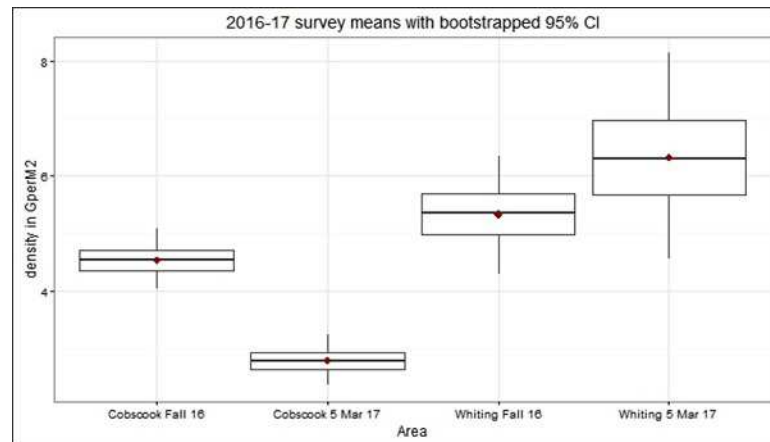


Figure 3: Mean harvestable scallop biomass density with bootstrapped 95% confidence intervals by area comparing Fall (November 2016) and March 2017 surveys in Cobscook and Whiting Bays, 2016-17. The decrease in mean density observed between the two surveys in Cobscook is a significant decline.

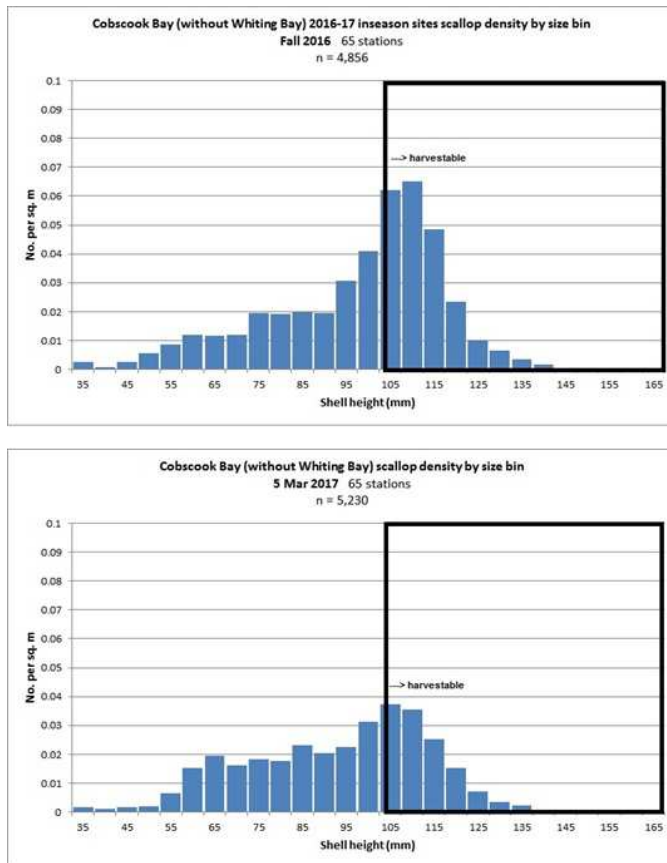


Figure 4: Scallop density by 5 mm shell height size bin, Cobscook Bay, comparing relative frequencies during the Fall survey (top) and the March survey (bottom) illustrates the removal of legal-sized product.



Figure 5: Photo taken by Marine Patrol the week of March 1, 2017 from an industry member harvesting in Cobscook Bay showing a cut 3 inch scallop shell observed during the sorting process of a tow. Cut shells were also prevalent in tows during this week, as both Marine Patrol and industry have reported.