

NOTICE OF EMERGENCY AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.22 Targeted Closures (18)(19)(20) Cobscook Bay, St. Croix River and Owls Head. Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Cobscook Bay and Owls Head in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. 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. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas 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 and Owls Head as well as restricts harvest in the St. Croix River, as authorized by [12 M.R.S. §6171](#)(3).

EFFECTIVE DATE: February 6, 2016

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DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.22 Targeted 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 St. Croix River (19) which shall be open Wednesdays to draggers and Fridays to divers during the months of February, March and April, 2016. 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

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) 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.

(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.

(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.

(6) South Portland Harbor

Northern boundary: South of a line drawn from the northern tip of the breakwater on Spring Point, South Portland to the southwestern tip of Fort Scammar Island.

Eastern boundary: West of a line drawn from 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.

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

(7) Lower Broad Sound

Northern boundary: South of a line drawn from the northern tip of the Bates Island, Cumberland to the northern tip of Eagle Island, Harpswell.

Eastern boundary: West of a line drawn from the southern tip of Eagle Island, Harpswell to West Brown Cow Island, Cumberland.

Southern boundary: North of a line drawn from the western tip of West Brown Cow Island, Cumberland to the eastern most tip of Cliff Island, Cumberland.

Western boundary: East of a line drawn from the eastern most tip of Cliff island, Cumberland to the southernmost tip of Bates Island, Cumberland

(8) 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.

(9) 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.

(10) Moosabec Reach

Eastern boundary: West of the Jonesport Bridge.

Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.

(11) Inner Harbor/Deep Hole Closure

West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44° 12.407 N Longitude 068° 38.819 W.

(12) Gouldsboro and Dyer Bays

North of a line drawn from the eastern most tip of Young's Point, Corea, to the western

most tip of Sheep Island, then following the shore to the most eastern point of Sheep Island to the most southern tip of Sally Island, the following the shore to the most eastern point of Sally Island to the most southern tip of Eastern Island, the following the shore to the most eastern point of Eastern Island to the southern most tip of The Castle and then continuing in a easterly direction to Bear Cove on Petite Manan Point, Stueben at Latitude

44° 24'25.65" N Longitude 67° 54'24.98" W including all of Gouldsboro and Dyer Bays.

(13)Wohoa Bay and Jonesport Reach

East and North of a line starting at the most eastern end of Tibbett Island going due north to the closest point of land on Moose Neck and then east to the most northern end of Ram Island at Latitude 44°29'41.56" N Longitude 67 °37'53.31" W then on to the most western end of Slate Island and then from the eastern most tip of Slate Island to the nearest point of land along the southern shore of Slate Island Cove on Great Wass Island and East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.

(14)Inner Machias Rotational Area

All waters inshore of the following boundary line: A line starting at the Eastern prominence of Bucks Head, Machiasport and proceeding South to the southern end of the southernmost Libby Island, then continuing in a northeasterly direction to the easternmost prominence of Double Head Shot Island, then continuing in a northeasterly direction to the easternmost prominence of Old Man Island, and then continuing northeast to the eastern tip of Great Head, Cutler.

(15)Vinalhaven and Fox Island Thorofare

Western boundary: East and North of a line drawn from the southwestern tip of Stand-in Point, North Haven to RW "FT" Mo (A) BELL, then continuing in a southwesterly direction to R N "6", then continuing to R N "4", then continuing in a southeasterly direction to the southwestern tip of Little Hurricane Island, then continuing to G C "1", the continuing in a northeasterly direction to the southernmost tip of Heron Neck on Green Island, then continuing in a northeastern direction to the southernmost tip of Lane Island, Vinalhaven. Eastern boundary: West of a line starting at Calderwood Point, Vinalhaven to Fish Point, North Haven.

(16)Whiting Bay and Dennys Bays Area:

All waters inshore 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 Bays.

(17)Western Penobscot Area:

Western boundary: North and east of a line beginning at the southern tip of Marshall Point, Port Clyde and running true south to the intersection of Latitude 43° 55' N and then following this latitude in an easterly direction 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.

(18)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.

(19) St. Croix River (open Wednesdays to draggers and Fridays to divers during the months of

February, March and April, 2016)

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.

(20) Owls Head

Northern boundary: South and West of a line drawn from the eastern tip of Owls Head to the G "11" BELL, then in a southeasterly direction to the RW "PA" Mo (A) GONG.

Southern boundary: West and North 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.

Basis Statement

Chapter 11.22 Targeted Closures (18)(19)(20) Cobscook Bay, St. Croix River and Owls Head.
Emergency Regulations

Justification:

The Department is taking emergency rulemaking action to close the following targeted area: Cobscook Bay. In addition, harvesting in the St. Croix River will be limited to one day per week for draggers on Wednesdays and one day per week for divers on Fridays during the months of February, March and April 2016. Based on direct input from Marine Patrol and independent industry participants as well as observations made through the Department's monitoring programs, the level of fishing effort in these areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens remaining broodstock scallops that are needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years.

Cobscook Bay & St. Croix River

Cobscook Bay has experienced a high amount of fishing effort the past three fishing 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. These reports indicate a total of 59 vessels have been consistently targeting the area since it opened on December 1, 2015. In the following weeks, the number of active vessels in the area steadily rose to 134 vessels which have been consistently fishing in Cobscook Bay since the week of December 28, 2015. In addition, approximately 6 divers have also been targeting the area the entire season to date. During the first week of the season, the majority of vessels were able to reach their daily limit of 10 gallons by 9am. Scallop meat counts were reported to be large in size and varied between 15-17 meats per pound as the majority of harvesters were only taking the larger, 5-6" scallops.

During the week of January 25, 2016, after 25 days of harvest in the area, the Catch Per Unit Effort (CPUE) observed by the port sampling program was 6.2 l/m, which was down from 9.6 l/m observed during the first week of December, representing a **35.5% decline**. Fleet behavior suggests that Cobscook Bay is being serially depleted. During the first few weeks of the season, vessels were concentrated on the best scallop beds/grounds; however, a portion of the fleet has begun to spread out as they search for other beds and sequentially depleted those grounds, moving from the East and South Bay area to the Lower portion of Cobscook Bay in Johnsons Bay and around Treats Island. During the week of February 1, 2016, after 28 days of harvest, the majority of vessels were reported to be reaching their daily limit around 11am, with some fishing past noon. In addition, both port sampling program and dealers purchasing scallops in the area have reported that the size of meats has started to decline with counts reported by the dealers in the mid to high 20s, indicating that the majority of the larger sized scallops have been harvested from the area. Marine Patrol observations further confirmed this on February 1, 2016 when the average meat counts were approximate 31 count per pound. Finally, the DMR in-season survey has been observing increasing numbers of freshly cut sublegal scallop shells down to the 2 inch size range, while Marine Patrol issued summonses during the week of February 1, 2016 for sublegal shellstock, further indicating that the majority of legal sized scallops have been removed and the harvest target for the area has been met. Furthermore, a high concentration of sublegal scallops has been observed in all five DMR fishery independent surveys for the area which require protection (101.6mm or 4 inches; Figure 1).

Continued scallop fishing in Cobscook Bay would cause continued unusual damage and imminent depletion to the scallop resource due to mortality of scallops contacted by dragging during fishing operations. Incidental mortality of scallops caused by dragging has been estimated to be at least 13-17% per tow. 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. Therefore, an

immediate conservation closure of Cobscook Bay (Figure 2) 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 Wednesdays and divers on Fridays in February, March and April, 2016.

Owls Head

In the Owls Head area of [Lower Penobscot Bay](#), Marine Patrol, in-season surveys and direct industry reports indicate that the majority of legal sized scallops have been harvested and the area warrants an immediate conservation closure. While members of the fleet were able to reach their daily landings limit (15 gallons of meats) during the first few weeks of the season, over the past month the majority of vessels have moved out of this area, targeting outside areas when possible. However, on foul weather days, some vessels have returned to the area to fish for any remaining legal product, but unable to reach the daily limit. Direct industry reports indicate that contained in this area are pockets of high concentrations of sublegal product and concern that continued fishing will damage and prevent that product from being available in future fishing seasons. In response to these concerns, on January 29, 2016 DMR conducted an in-season survey of the area; observations reflected extremely low levels of harvestable biomass density of 0.58 g/m² (Figure 3). The biomass density estimates were lower than what was observed in the [Muscle Ridge](#) and [Western Penobscot Bay Limited Access Area](#), which were closed via emergency regulation on January 23, 2016, suggesting that the 30% harvest target for this area has also been met. Therefore, an immediate closure of the Owl Head Area is needed for the remainder of the 2015-16 season to protect remaining legal sized scallops that are essential for rebuilding the resource in this area as well as to protect sublegal scallops from incidental mortality associated with dragging to ensure they can recruit up to the fishery in future seasons (Figure 4).

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.

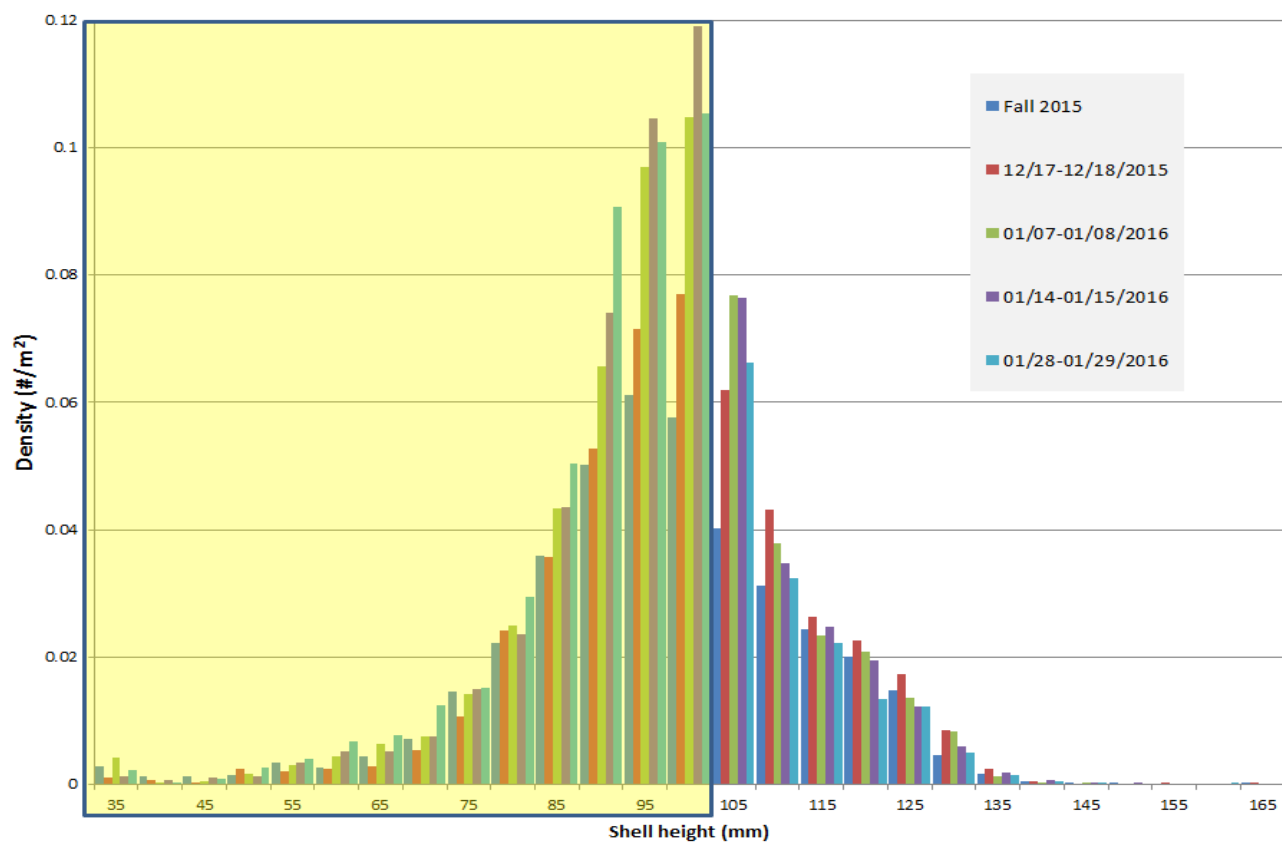


Figure 1. Length frequency of scallop densities observed in the five DMR fishery independent surveys. Sublegal scallops are highlighted in yellow and are 101.6mm in size or less.

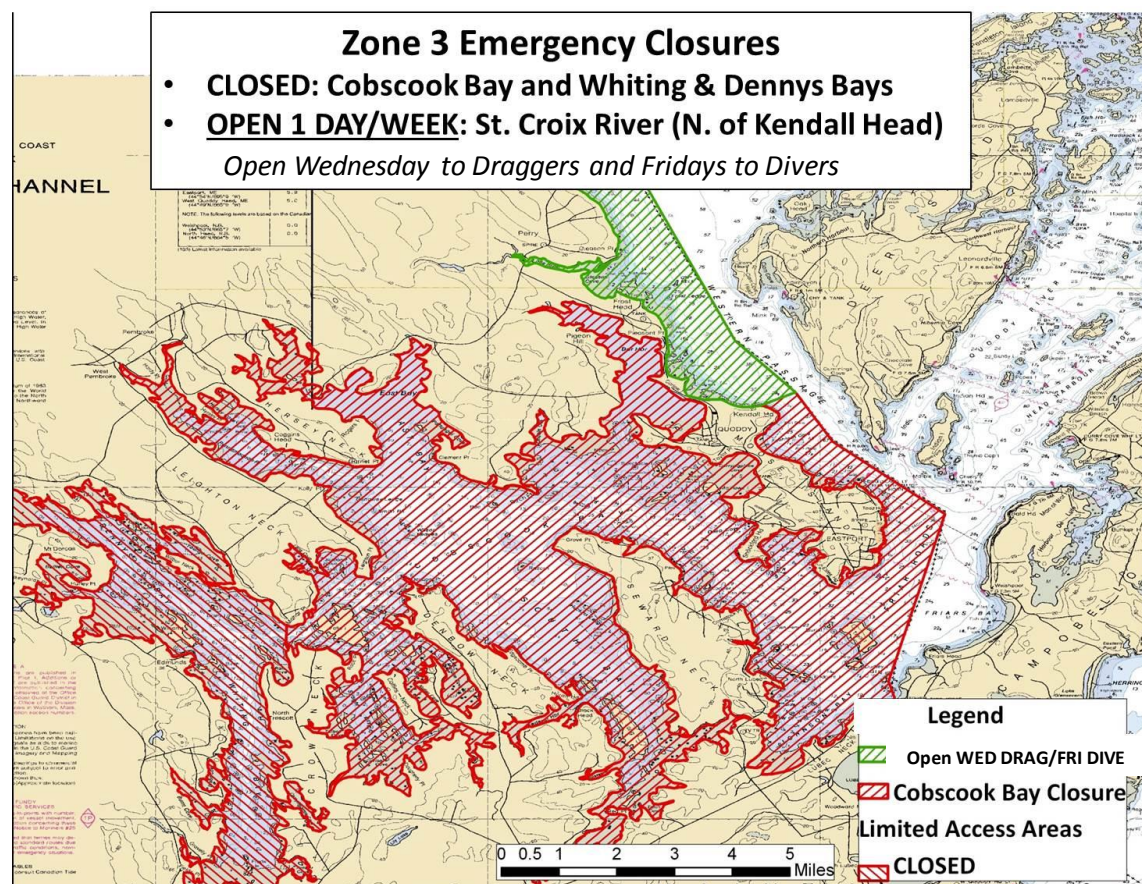


Figure 2. Zone 3 Emergency Closure Chart. Cobscook Bay and Whiting & Dennys Bay are closed while St. Croix River remains open one day/week from North of Kendall Head: open Wednesdays for draggers and Fridays for divers.

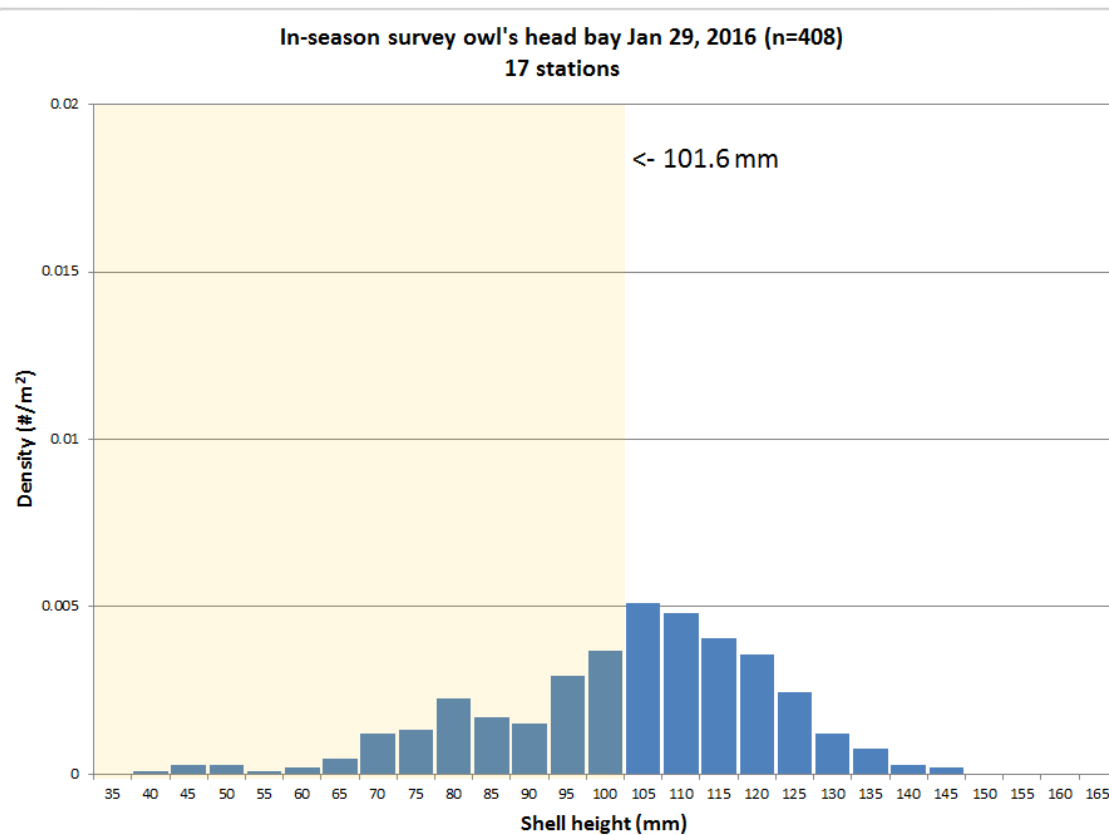


Figure 3. Biomass density estimates of scallop observed in the January 129, 2016 DMR in-season survey, reflecting extremely low levels of scallop density.

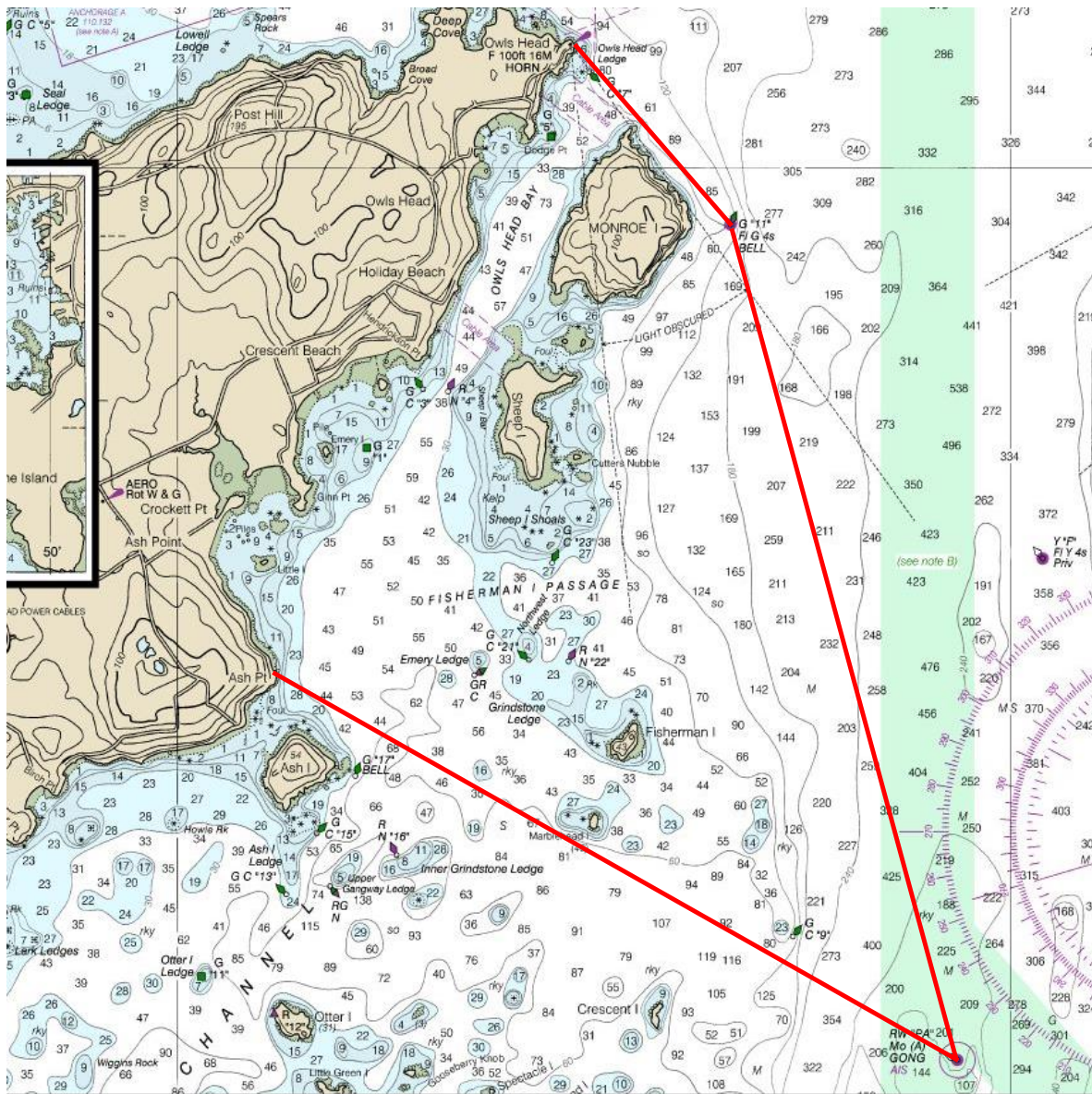


Figure 4. Owls Head Emergency Targeted Closure Area.

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

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 11.22 Targeted Closures (18)(19)(20) Cobscook Bay, St. Croix River and Owls Head, 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 and Owls Head in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. 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. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas 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 and Owls Head as well as 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.