

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.22 Targeted Closures (6)(15)(16) South Portland Harbor, Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2015-16 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 Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays as authorized by [12 M.R.S. §6171](#)(3). In addition, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

EFFECTIVE DATE: January 16, 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 Muscle Ridge (1) which shall be open to diving on Thursdays and Fridays and shall be open to dragging on Tuesdays and Wednesdays, 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 Tuesdays and Wednesdays to draggers. Open Thursdays and Fridays 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.

- (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 Scammon~~ House 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~~ Ship Cove, ~~South-Portland~~ 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.

Basis Statement

Chapter 11.22 Targeted Closures (6)(15)(16) South Portland Harbor, Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. 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 605,224 meat pounds being landed in 2014 (Figure 2) valued at \$7.7 million (Figure 2), 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 3).

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 last season 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 continued progress towards the goal of a sustainable, rebuilt fishery.

The Department seeks to take rulemaking action to close the following targeted area: Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. 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 discrete areas during the fishing season has likely exceeded the 30% removal target that ensures the fishery continues to rebuild. Continued fishing threatens future recruitment of sublegal "seed" scallops in these areas and remaining broodstock scallops that are needed for successful spawning. Finally, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

Vinalhaven & Fox Island Thorofare

In the [Lower Penobscot Bay & Outer Islands Rotational Area](#), Marine Patrol, sea sampling, in-season surveys and direct industry reports indicate that the majority of fishing activity has been focused in the Fox Island Thorofare and around the inshore islands (Leadbetter, Hurricane, and Greens Islands) west and southwest of Vinalhaven. Strong catches were reported during the first three weeks of the season, with upwards of 20 vessels fishing and easily able to reach their daily landings limit by as early as 10am. However, over the following weeks, Catch Per Unit Effort decreased with vessels taking the majority of the day to reach their daily landings limit and the fleet began working in more exposed areas outside of the sheltered islands, indicating that the majority of legal sized scallops had been harvested from these areas. These observations were confirmed independently in the DMR in-season surveys (Figure 4). On December 11, 2015 after 7 days of harvest, the in-season survey observed a 1.92 g/m³ biomass density estimate, reflecting a decrease of 12% from the original projected estimate at the start of the fishery on December 1. On January 8, 2016 after 21 days of harvest, a biomass density estimate of 0.78 g/m³ was observed, a significant decline of 64%, thus exceeding the target harvest threshold for this area. Additionally, numerous newly cut/harvested sublegal scallops shells were observed in the survey tows indicating the illegal harvest of seed scallops. Therefore, a targeted conservation closure of the inshore area west of Vinalhaven and the Fox Island Thorofare is necessary to protect the remaining seed so that it may recruit up to the fishery in future seasons and legal, broodstock scallops that are needed for

continued spawning and rebuilding of the fishery in this area (Figure 5). The outer portion of the Lower Penobscot Bay & Outer Islands Rotational Area will remain open for continued harvesting opportunities.

Whiting & Denny's Bays

In the [Whiting & Denny's Bays Limited Access Area](#), Marine Patrol observations, port sampling, in-season surveys and direct industry reports indicated that harvest target for this area has been met. DMR staff conducted fishery independent surveys of the area in late October 2015, and in-season surveys on December 17 & 18, 2015 and January 7 & 8, 2016 to monitor changes in scallop biomass density as the fishery progressed. The original biomass density estimate observed in October 2015 was 3.73 g/m³. During the first two weeks of harvest only 22 vessels were observed fishing the area and on the third week the number increased to 31. During the first in-season survey, DMR staff observed little to no significant decrease in observable biomass density estimates (3.64 g/m³ or 2.4% decrease) in the area after three weeks of fishing by both divers and draggers. On December 30 and January 6, 42 vessels were observed fishing the area while 6 divers have been consistently harvesting the area each week since the area opened. During the January 7 & 8 survey, a significant decline was observed, with biomass density estimates at 2.39 g/m³, a 36% decrease (Figure 6). In addition, the area will be available for harvest on January 13 for draggers and January 15 for divers, therefore exceeding the upper limit of the trigger threshold. Therefore, an immediate conservation closure of the Whiting & Denny's Bays Limited Access Area (Figure 7) is necessary to protect remaining legal sized broodstock scallop so that the resource can continue to rebuild in this area.

The Department is concerned that continued harvesting during the remainder of the 2015-2016 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 the Vinalhaven & Fox Island Thorofare and the Whiting & Denny's Bays.

South Portland Harbor Closure

Finally, a correction to the originally published targeted closure description is needed to ensure that [South Portland Harbor Targeted Closure](#) is enforceable. In the original closure description, the northern boundary was stated as being drawn from the breakwater on Spring Point, Portland to the southwestern tip of Fort Scammon Island; this should in fact be House Island, not Fort Scammon Island and requires correction. In addition, the southern boundary is described as being a line from Cushing Island to the north shore of Shop Island, South Portland, when in fact it should be Ship Cove, Cape Elizabeth. Therefore, the language describing this targeted closure required a correction (Figure 8).

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.

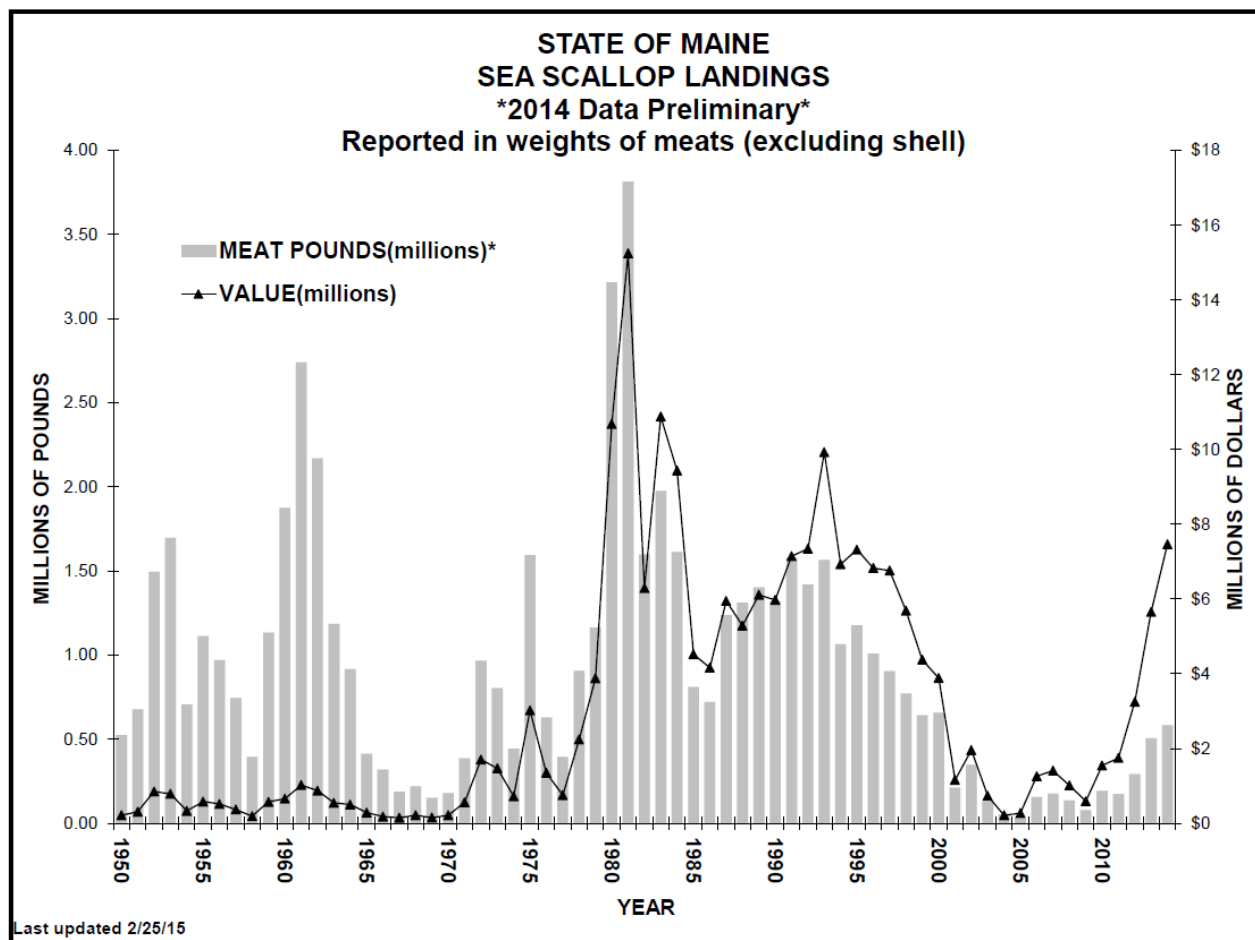


Figure 1. Maine scallop landings from 1950 to 2014. Landings are reported in meat pounds.

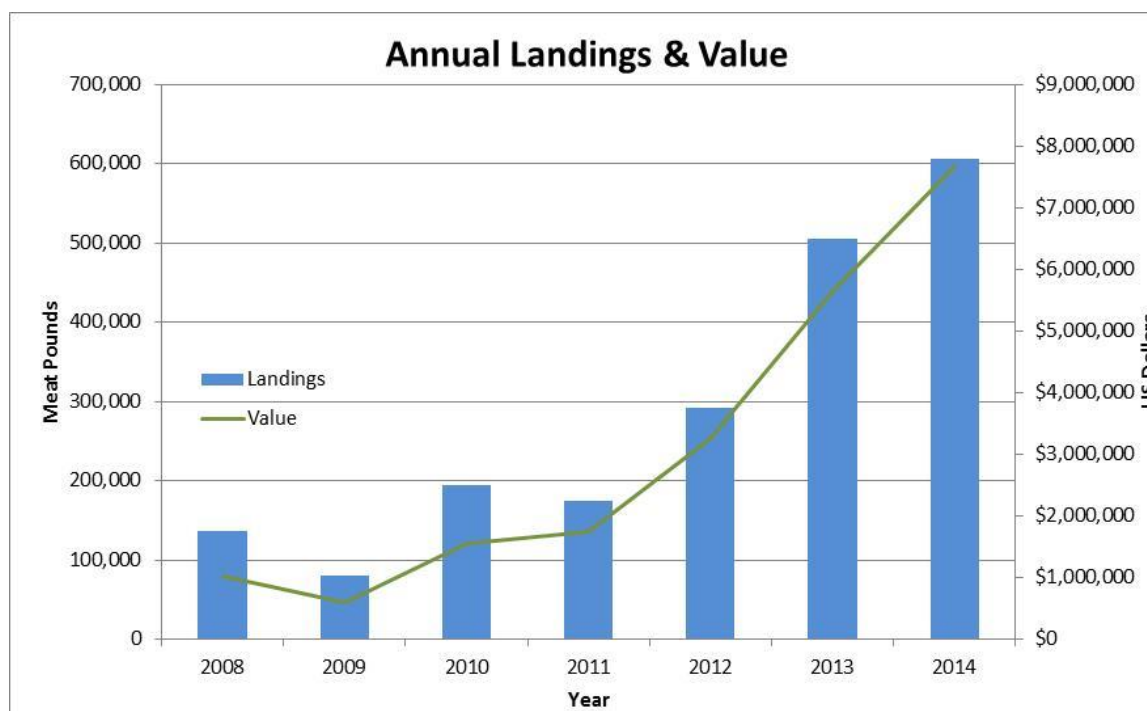


Figure 2. Annual scallop landings, 2008-2014. Landings are reported in meat pounds.

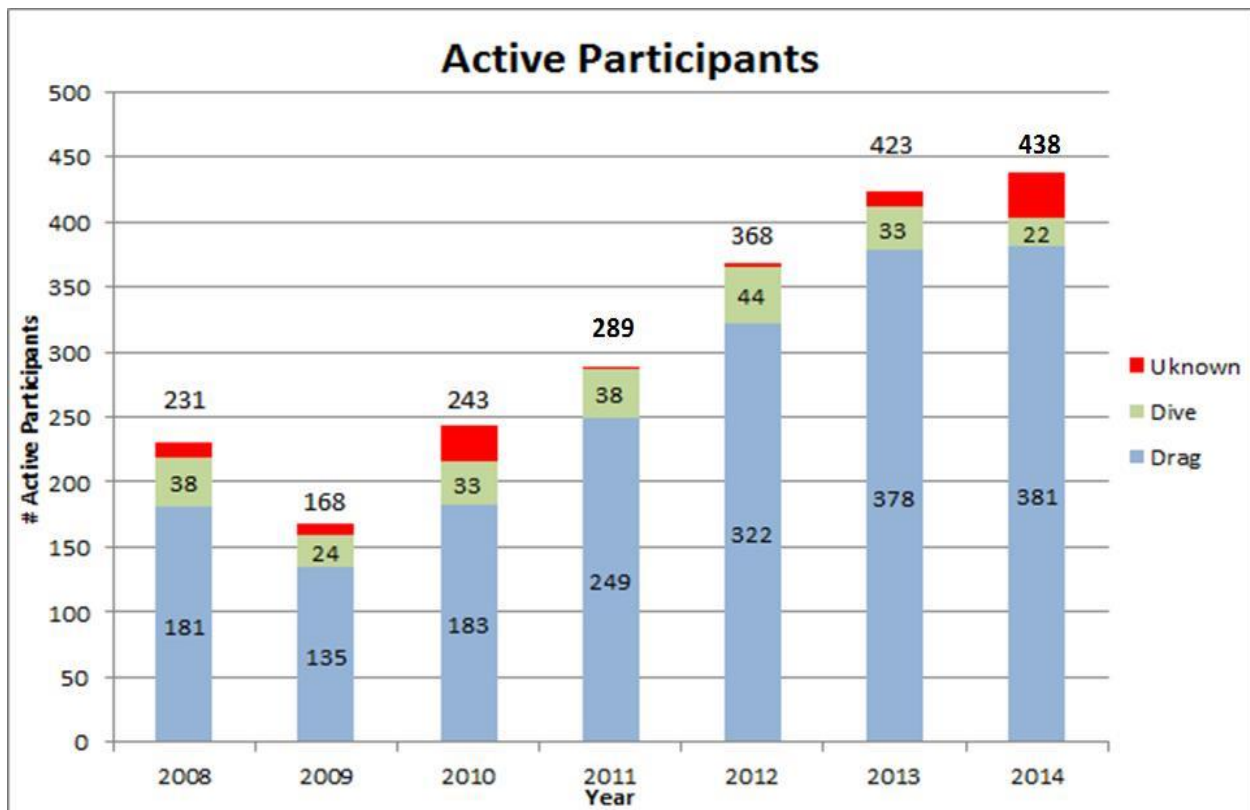


Figure 3. Number of active license holders in each season over the past 7 years.

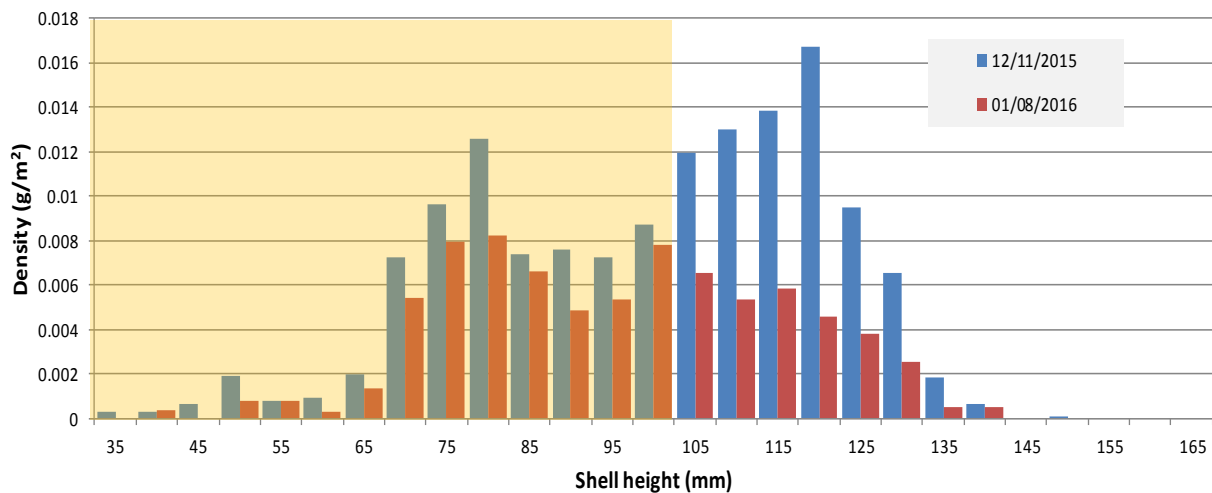


Figure 4. Shell height frequency of scallop observed in December 11, 2015 and January 8, 2016 DMR in-season survey, indicating a decline in legal sized scallops.

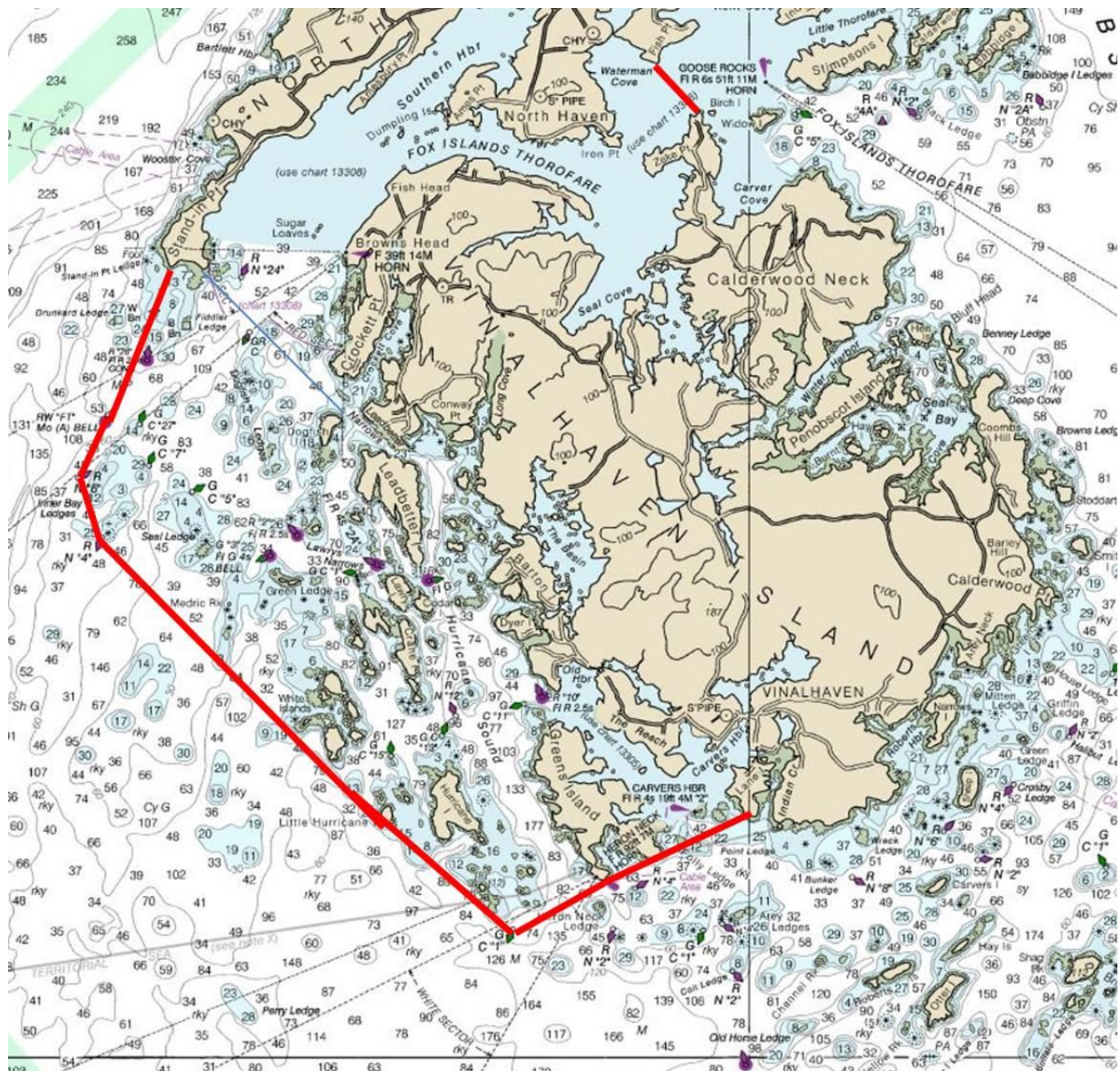


Figure 5. Vinalhaven & Fox Island Thorofare Emergency Closure.

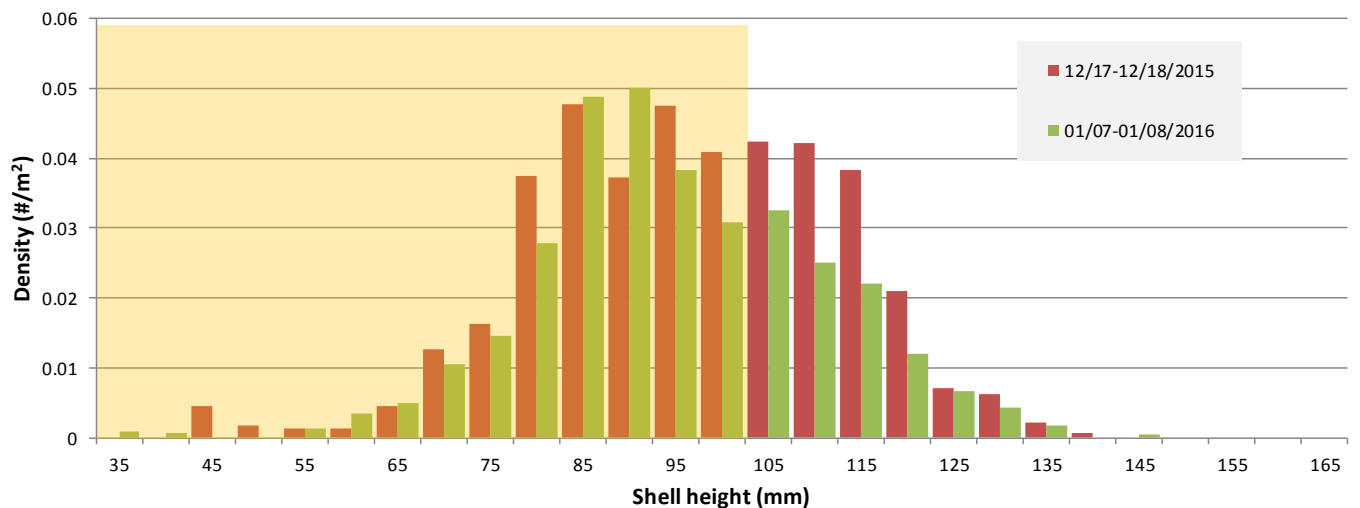


Figure 6. Shell height frequency of scallop observed in December 17-18, 2015 and January 7-8, 2016 DMR in-season survey, indicating a decline in legal sized scallops as well as scallops just under the measure, indicating illegal harvest of sublegal scallops.

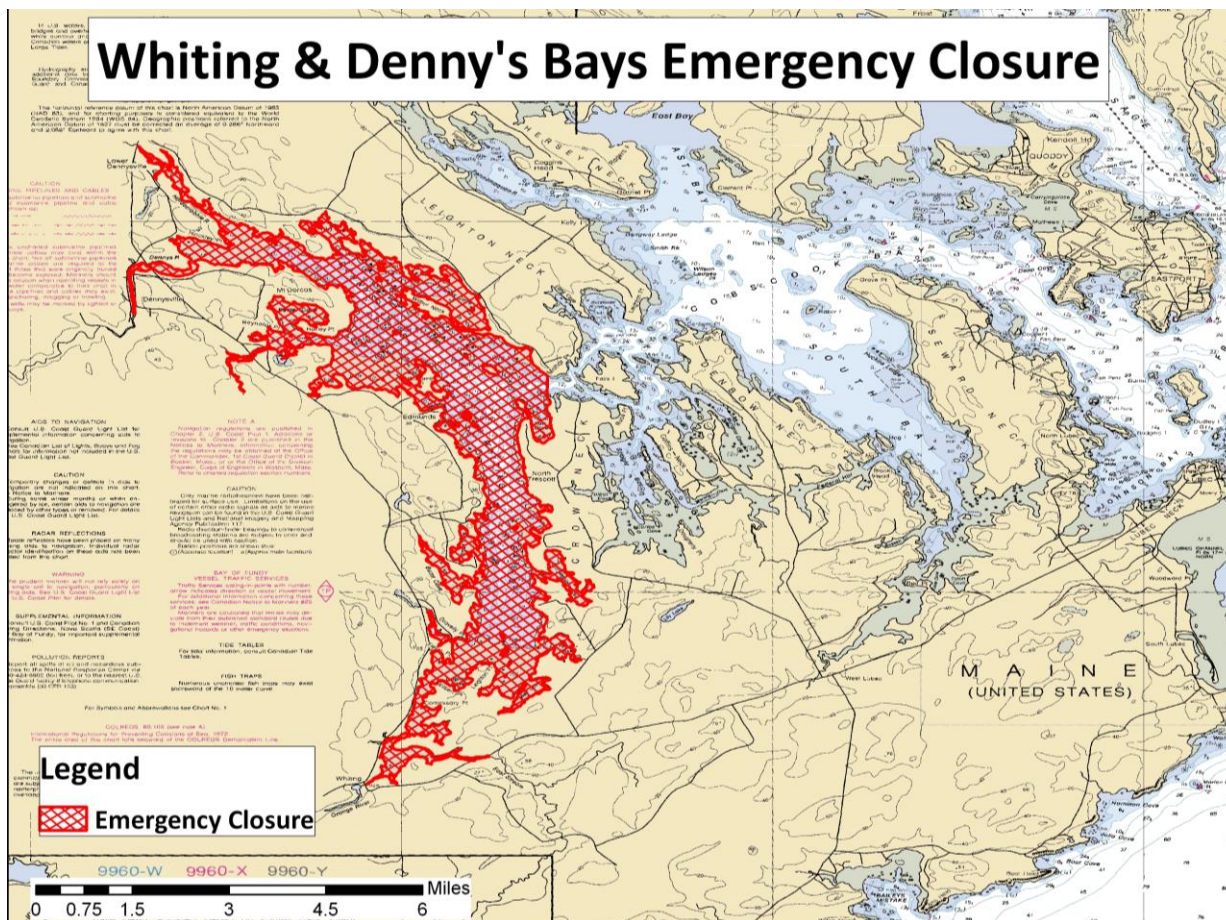


Figure 7. Whiting & Denny's Bays Emergency Closure.

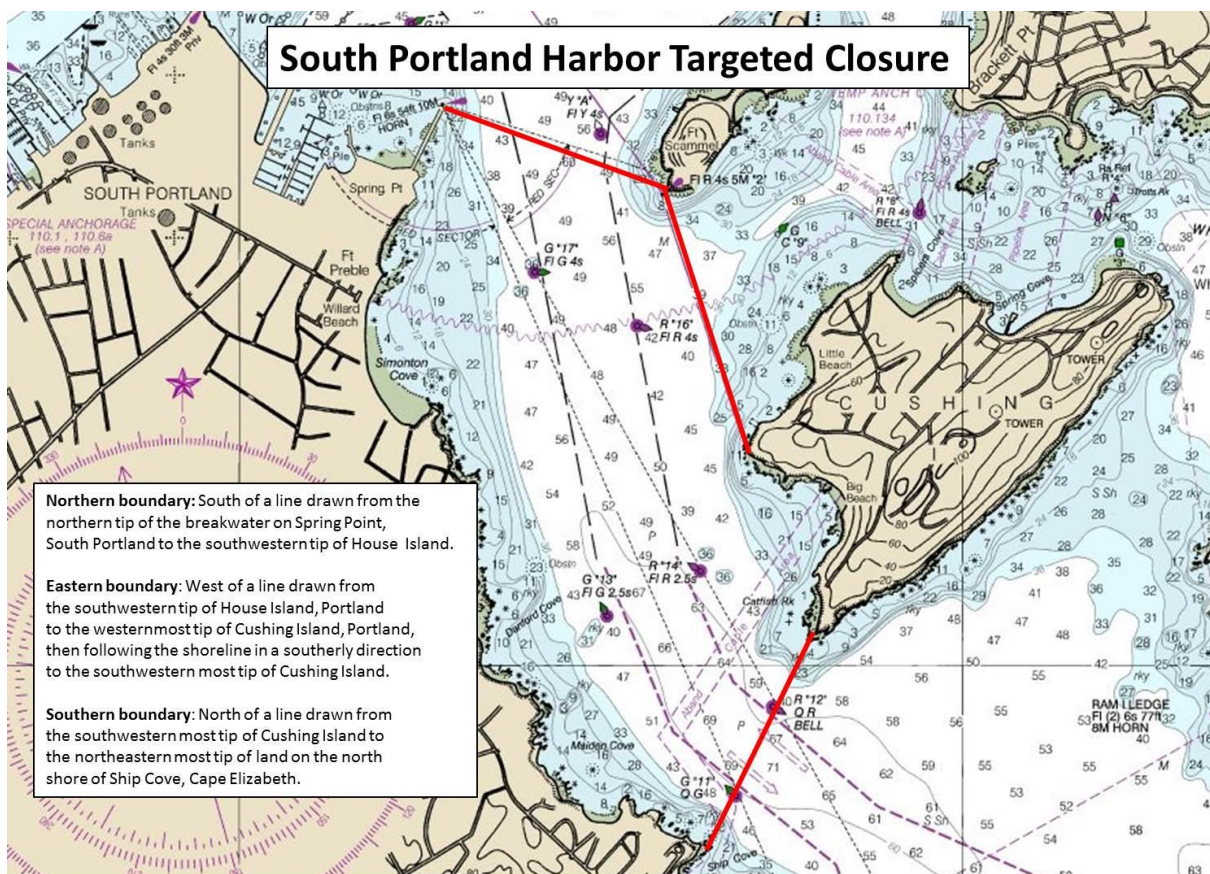


Figure 8. South Portland Harbor Targeted Closure correction.

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 (6)(15)(16) South Portland Harbor, Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays. 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 Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2015-16 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 Vinalhaven & Fox Island Thorofare and Whiting & Dennys Bays as authorized by 12 M.R.S. §6171(3). In addition, a correction is needed for the South Portland Harbor Closure to ensure enforceability of this area.

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.