

Department of Marine Resources
NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: 11.22 Targeted Closures (1)(12)(13)(14) Muscle Ridge, Gouldsboro and Dyer Bays, Wohoa Bay and Jonesport Reach and Inner Machias Rotational Area. Emergency Regulations

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Gouldsboro & Dyer Bays, Wohoa Bay & Jonesport Reach and Inner Machias Rotational Area in 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 Gouldsboro & Dyer Bays, Wohoa Bay & Jonesport Reach and Inner Machias Rotational Area as authorized by [12 M.R.S. §6171](#)(3). In addition, a clarification to the access in the Muscle Ridge Limited Targeted Closure is needed to ensure that access to this area does not overlap with that for the West Penobscot Bay Limited Access Area for both draggers and divers.

EFFECTIVE DATE: December 13, 2015

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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 Mondays and Tuesdays and Wednesdays~~ to draggers. ~~Open Wednesdays and 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 Scammer 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 Shop Cove, South Portland.

(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 $44^{\circ} 12.407$ N Longitude $068^{\circ} 38.819$ 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 $44^{\circ} 24'25.65''$ N Longitude $67^{\circ} 54'24.98''$ 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 $44^{\circ} 29'41.56''$ N Longitude $67^{\circ} 37'53.31''$ 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.

Basis Statement

Chapter 11.22 Targeted Closures (1)(12)(13)(14) Muscle Ridge, Gouldsboro and Dyer Bays, Wohoa Bay and Jonesport Reach and Inner Machias Rotational Area. 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 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 areas: Gouldsboro and Dyer Bays, Wohoa Bay and Jonesport Reach and Inner Machias Rotational Area. 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 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.

Gouldsboro & Dyer Bays

In the [Gouldsboro/Dyer Bays Rotational Area](#), marine patrol and sea sampling observations as well as direct industry reports indicate that the majority of fishing activity has been focused in the Gouldsboro and Dyer Bays portions of this rotational area. On December 1st, it was reported that 33 vessels were fishing in Gouldsboro Bay and were able to reach their daily limit by 10am. On December 2nd, 26 vessels were reported fishing the area, with the majority of the vessels (17) still fishing past 11am as they had not yet gotten their limit, while 2 vessels moved to Dyer Bay. On December 3rd, the majority of the 23 vessels in Gouldsboro Bay fished past noon to get their daily limit and 4 vessels moved to Dyer Bay. During the second week of fishing, a portion of the fleet shifted to primarily fish in Dyer Bay; on December 9th 13 vessels were fishing in Dyer's bay while 7 remained in Gouldsboro Bay. This information along with data collected through the DMR fishery independent spring survey indicate that the area has exceeded the 30% removal target of available harvestable biomass. On December 9th, it is estimated that the target has been exceeded when 15,255 lbs. or **40%** of the available 38,000lbs was harvested (Figure 5). In addition, high concentrations of seed and sublegal scallops were observed in both Gouldsboro and Dyer Bays during the spring DMR survey indicating that a recovery in both of these areas has begun (Figure 6). 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. Therefore, an immediate action is necessary to protect the remaining seed and legal scallops in the Gouldsboro & Dyer Bay Area to support rebuilding efforts (Figure 7). The outer portion of the Gouldsboro and Dyer Bays Rotational Area will remain open for continued harvesting opportunity.

Wohoa Bay & Jonesport reach

In the [Wohoa & Western Bay Rotational Area](#), marine patrol observations and direct industry reports indicate that the majority of fishing activity has been focused in the Jonesport Reach and in the Wohoa Bay near Tibbets Narrows portions of this rotational area. On December 1st, it was reported that 20 vessels were fishing the area, primarily focused in Jonesport Reach, with the majority reaching their daily limit by 11am. On December 2nd, while a portion of these vessels returned to fish the Jonesport Reach, others began searching to the west toward Tibbets Narrows or left the area completely; of those that remained, the majority continued to fish past 1pm while others were not able to get their daily limit. By December 3rd, many vessels fished past 3pm and not all landed their limit. During the second week of fishing, many vessels left this rotational area to fish elsewhere; of those that remained, very few were reported as getting their daily limit, or taking all day to do so. By December 9th, no vessels remained fishing in the area. This information indicates that the majority of legal sized scallops in the area have been harvested. In addition, the DMR fishery independent spring survey observed very low densities of scallops overall ($<0.2/m^2$; Figure 8). Therefore, a conservation closure of the Wohoa Bay and Jonesport Reach areas where the majority of the fishing activity has been focused is needed in order to protect remaining legal sized broodstock scallops so that the resource can continue to rebuild in this area (Figure 9). The outer portion of the Wohoa & Western Bay Rotational Area will remain open for continued harvesting opportunity.

Inner Machias Rotational Area

In the [Machias Rotational Area](#), marine patrol and sea sampling observations as well as direct industry reports indicate that the majority of fishing activity has been focused in Machias Bay, Cross Island Narrows and the Little Machias Bay portions of this rotational area with 30-34 vessels fishing in these areas each day since the start of the season. The majority of the 30 fishermen in the area were able to get their limit by 9:30am the first day of the season on December 1st; however, by December 9th it was taking the majority of the 34 vessels until 1-2pm to reach their daily limit. This information along with data collected through the DMR fishery independent spring survey indicate that the area has exceeded the 30% removal target of available harvestable biomass. On December 9th, it is estimated that the target was met when 25,110 lbs. or **34%** of the available 74,100 lbs. was harvested (Figure 10). In addition, high concentrations of seed and sublegal scallops were observed in the rotational area as a whole, particularly on the southern shore of Cross Island and between Double Head Shot Island, Cape Wash Island and Old Man Island during the spring DMR survey indicating that a recovery has begun (Figure 11). 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. Therefore, an immediate action is necessary to protect the remaining seed and legal scallops in the Inner Machias Rotational Area to support rebuilding efforts (Figure 12). The outer portion of the Machias Rotational Area will remain open for continued harvesting opportunity.

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 Gouldsboro & Dyers Bays Area, the Wohoa & Jonesport Reach Area and the Inner Machias Rotational Area.

Muscle Ridge Limited Targeted Closure

Finally, a clarification to the regulation is needed to reflect separate access days to the draggers and divers in the Muscle Ridge Limited Targeted Closure. Draggers will have access on Tuesdays and Wednesdays, while divers will have access to the area on Thursdays and Fridays. This clarification is needed to allow for the fleet in the area to have complimentary access to the local Limited Access Area (Western Penobscot Bay) on a separate day (Mondays for draggers and Wednesdays/Saturdays for divers) that do not overlap with the access to the Muscle Ridge Limited Targeted Closure (Figure 13).

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.

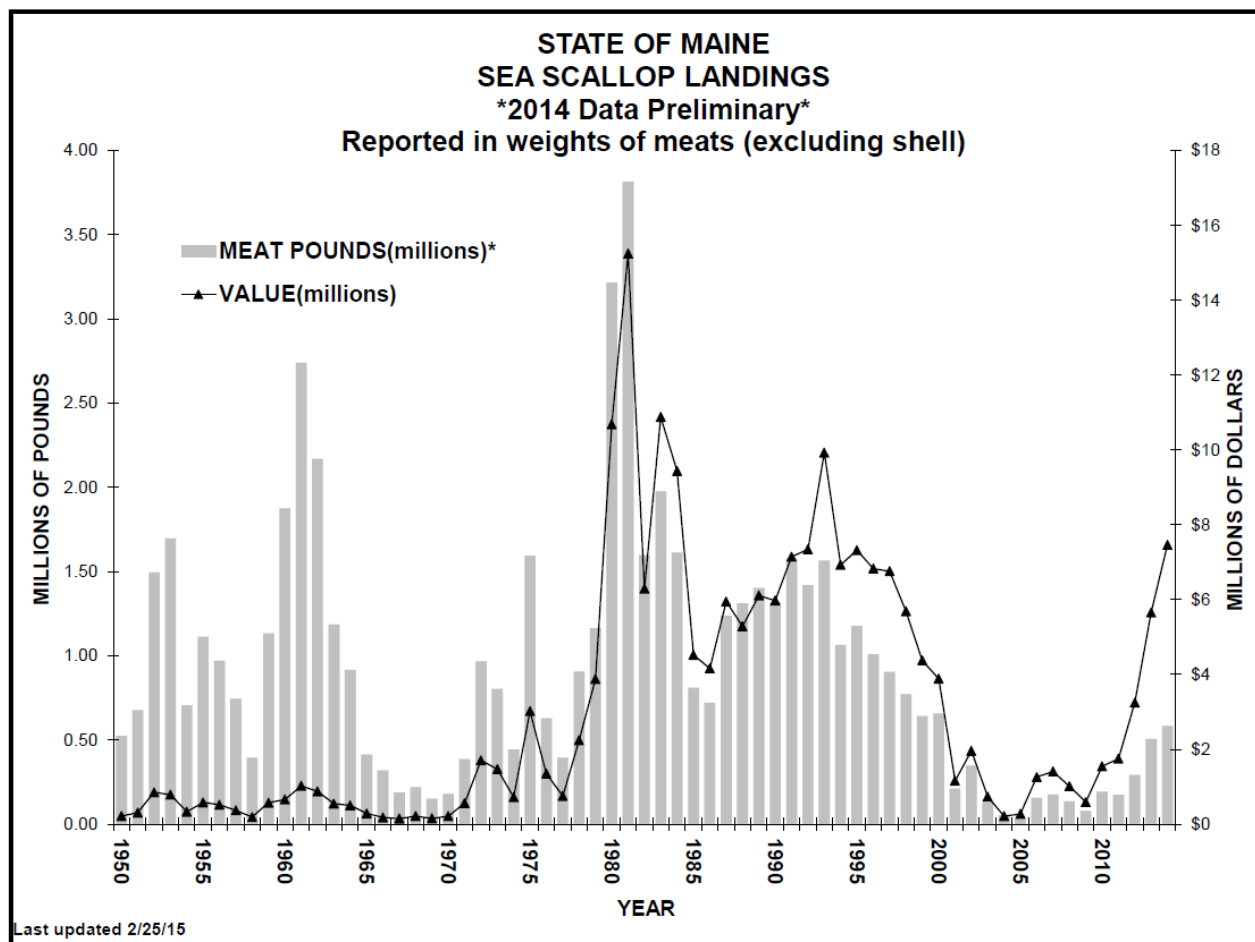


Figure 1. Maine scallop landings from 1950 to 2014. Landings are reported in meat pounds.

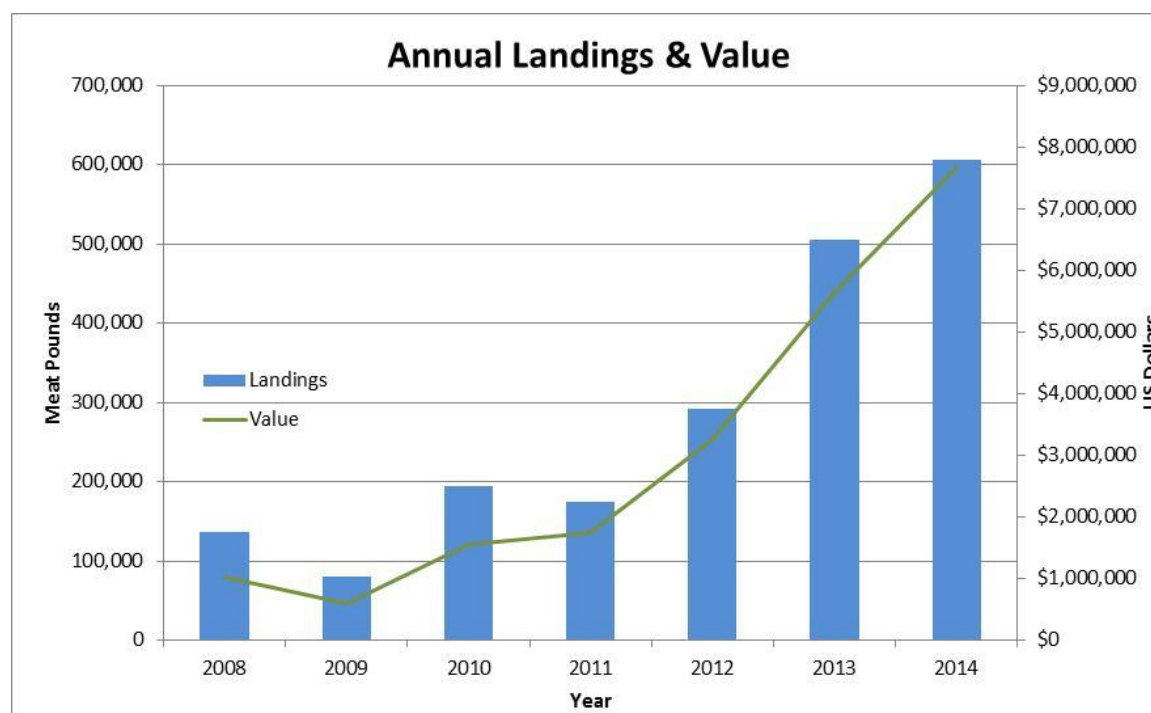


Figure 2. Annual scallop landings, 2008-2014. Landings are reported in meat pounds.

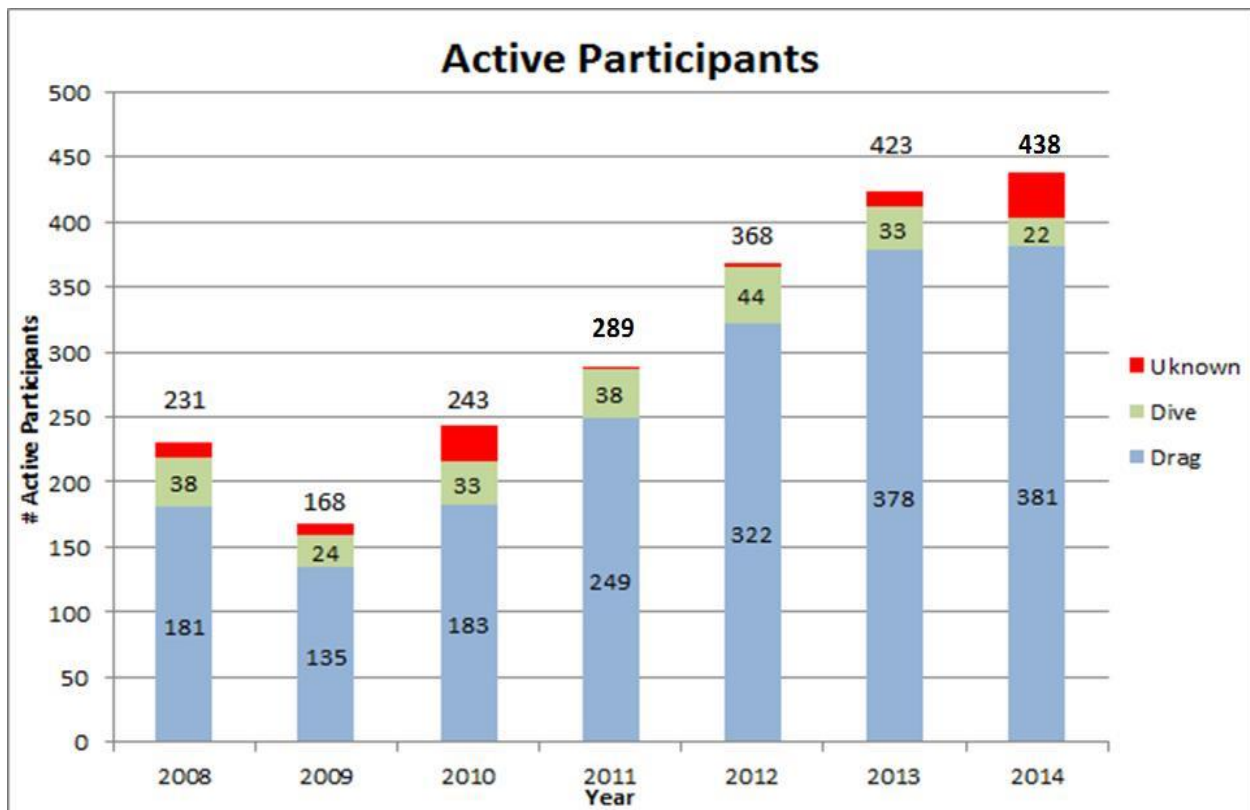


Figure 4. Number of active license holders in each season over the past 7 years.

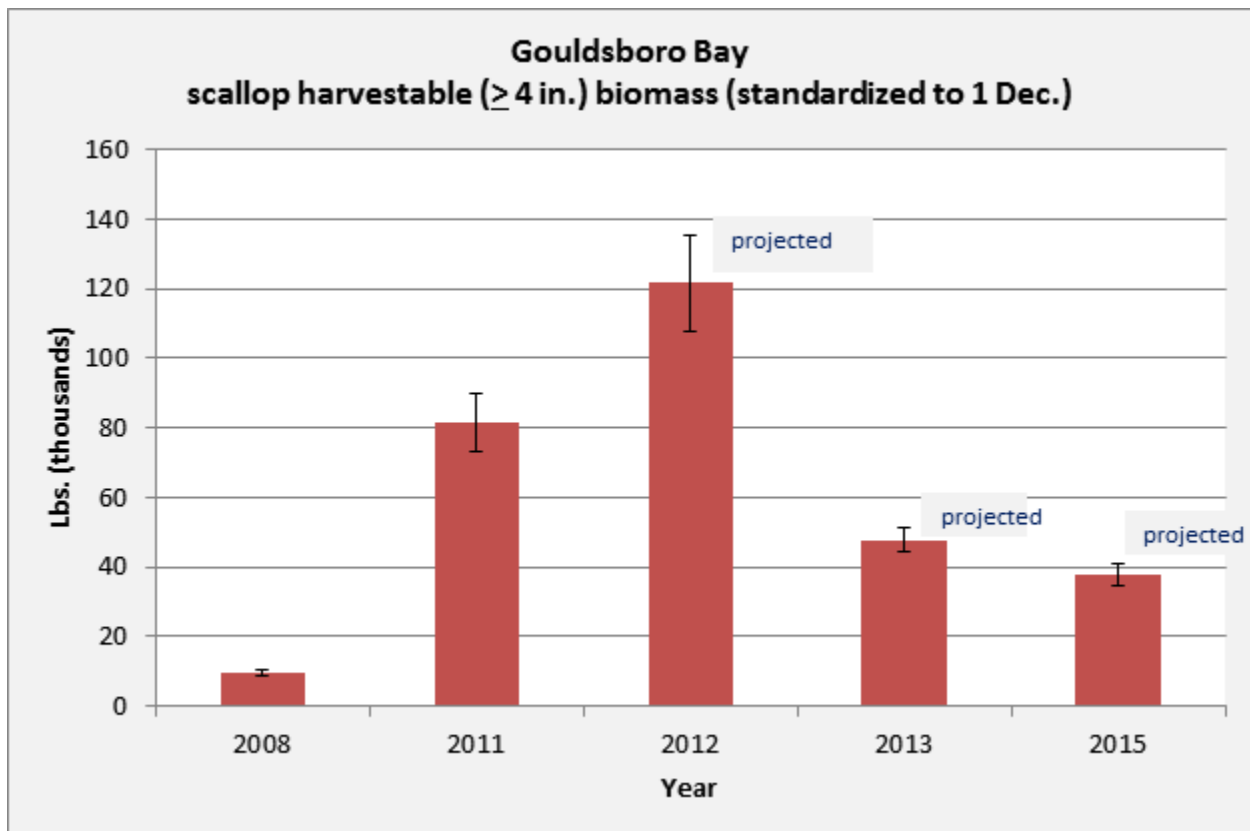


Figure 5. Biomass estimates for Gouldsboro Bay.

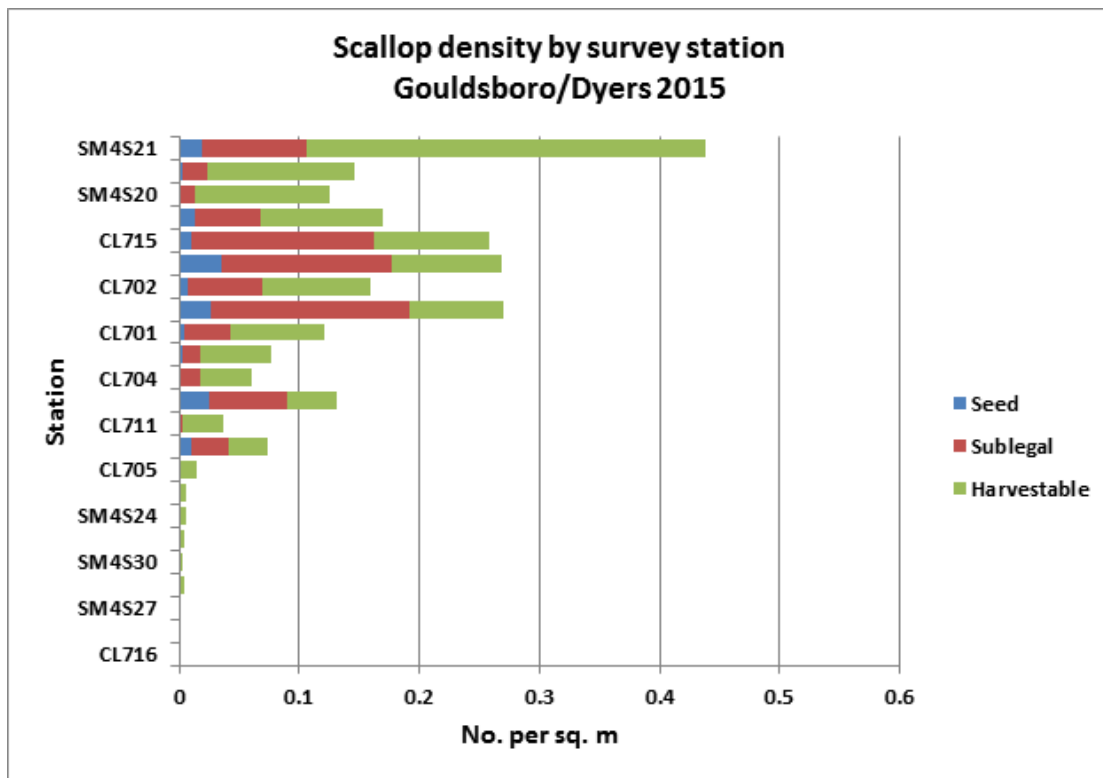


Figure 6. Density of scallops and size class composition by tow (Gouldsboro & Dyer Bays), 2015 survey (*seed* = less than 2.5 inches shell height, *sublegal* = 2.5-3.9 inches, *harvestable* = 4 inches or greater).

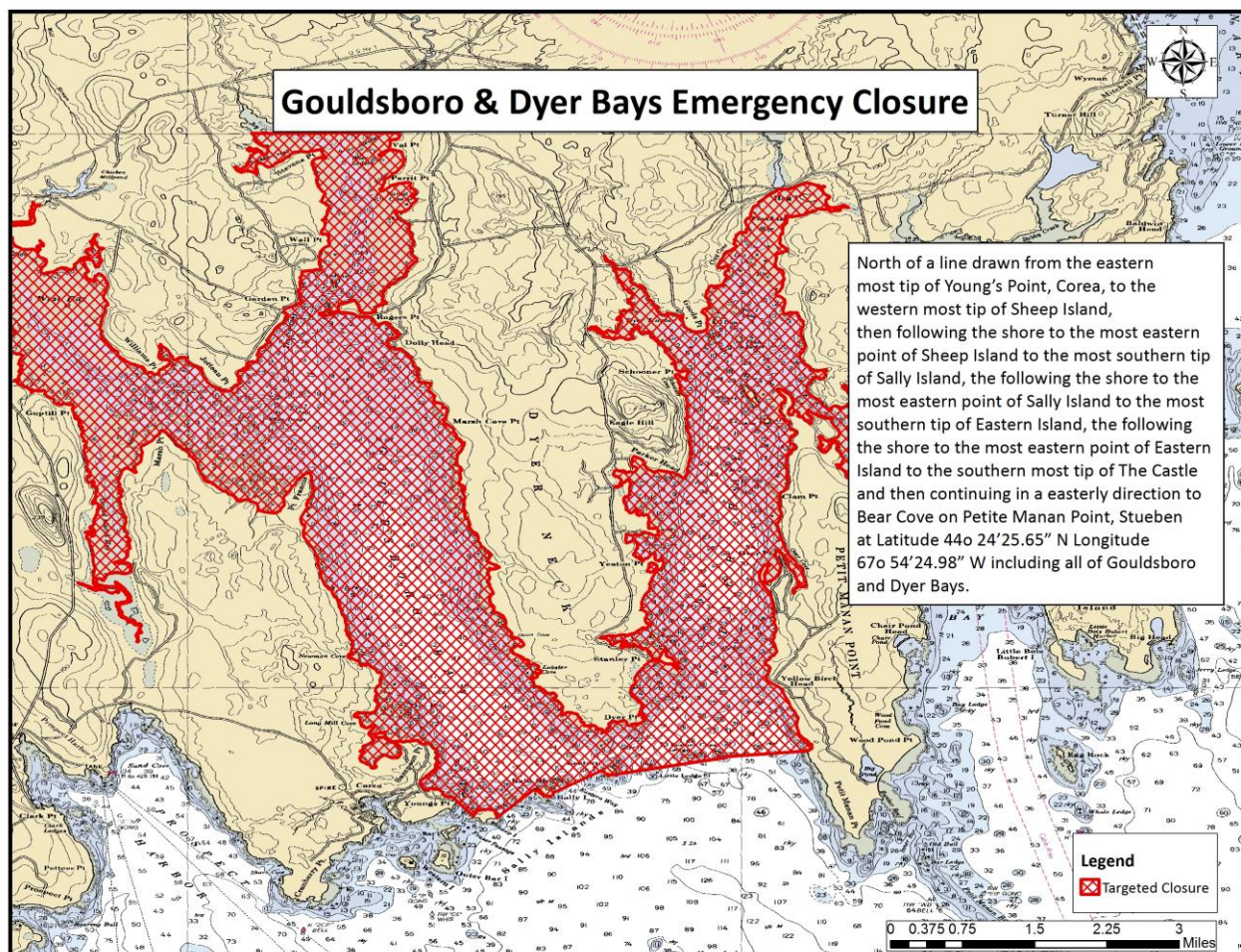


Figure 7. Gouldsboro & Dyer Bays Emergency Targeted Closure.

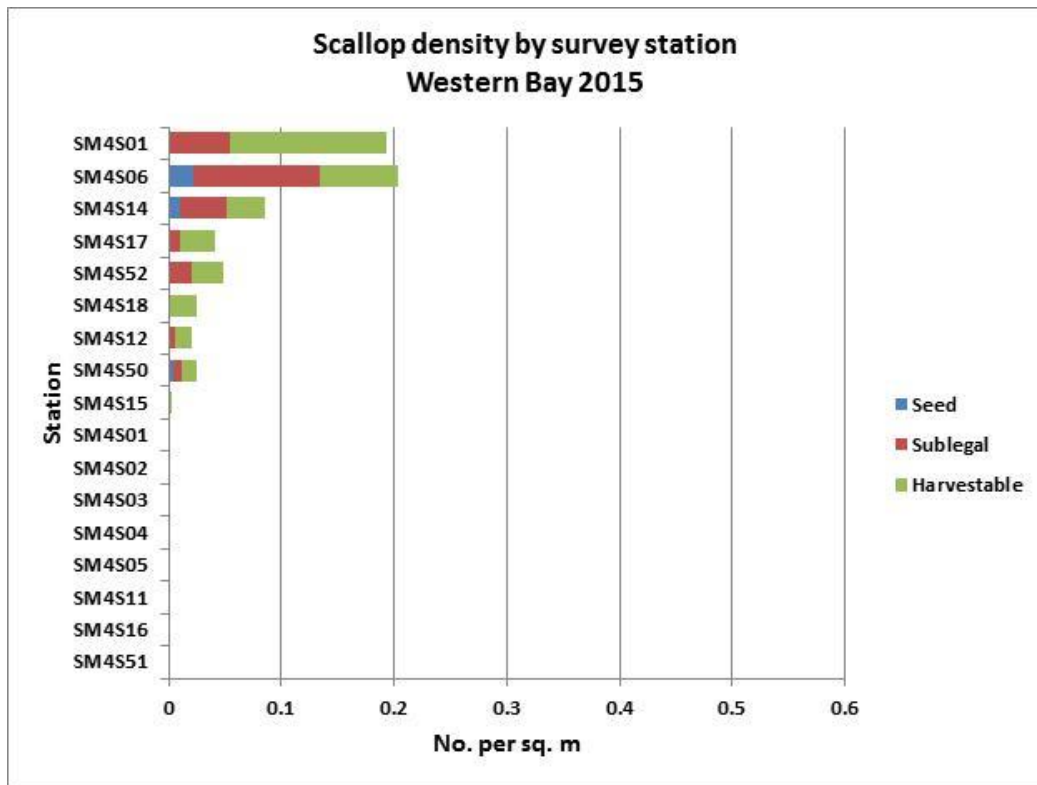


Figure 8. Density of scallops and size class composition by tow (Western Bay), 2015 survey (*seed* = less than 2.5 inches shell height, *sublegal* = 2.5-3.9 inches, *harvestable* = 4 inches or greater).

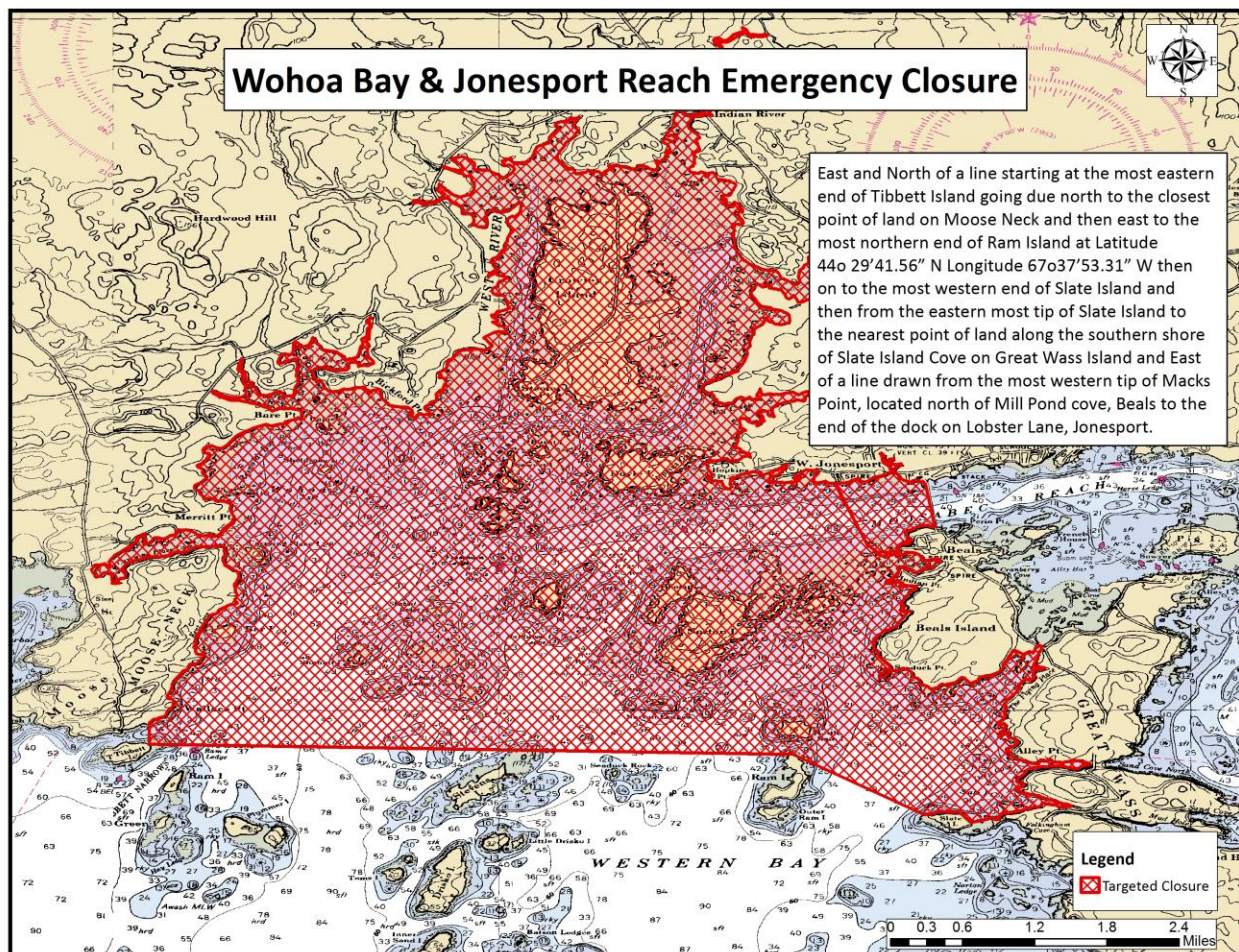


Figure 9. Wohoa Bay & Jonesport Reach Emergency Targeted Closure.

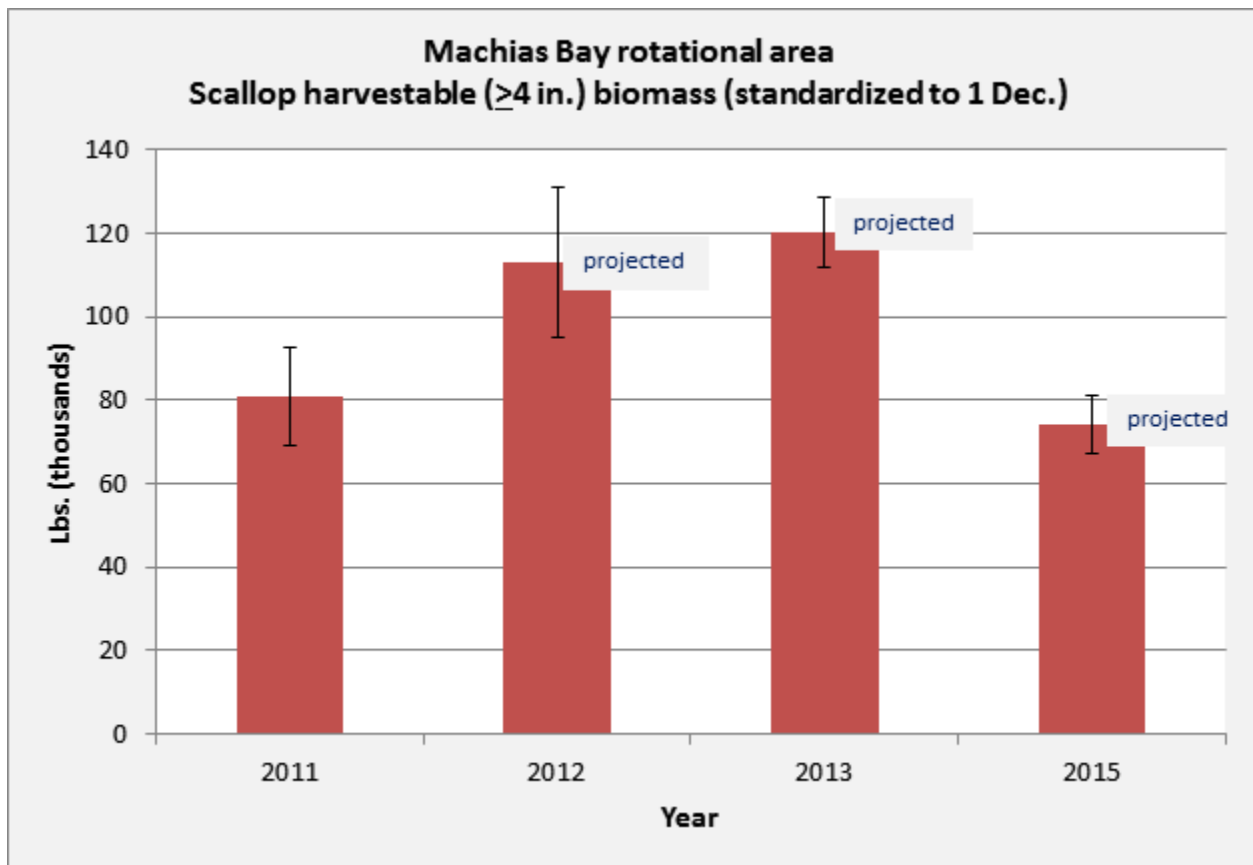


Figure 10. Biomass estimates for Gouldsboro Bay.

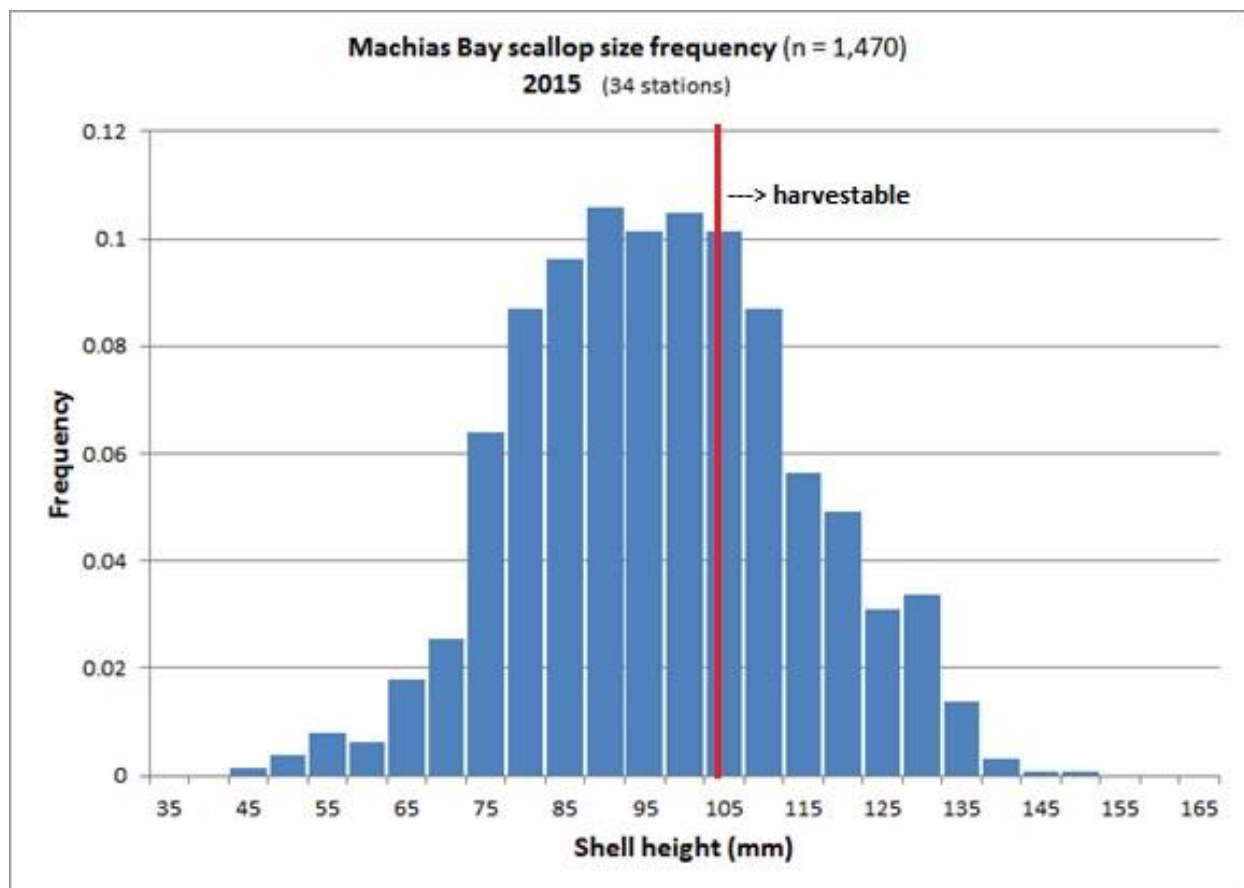


Figure 11. Size frequency (5 mm increments) of scallops in Machias Bay rotational closure (2015).

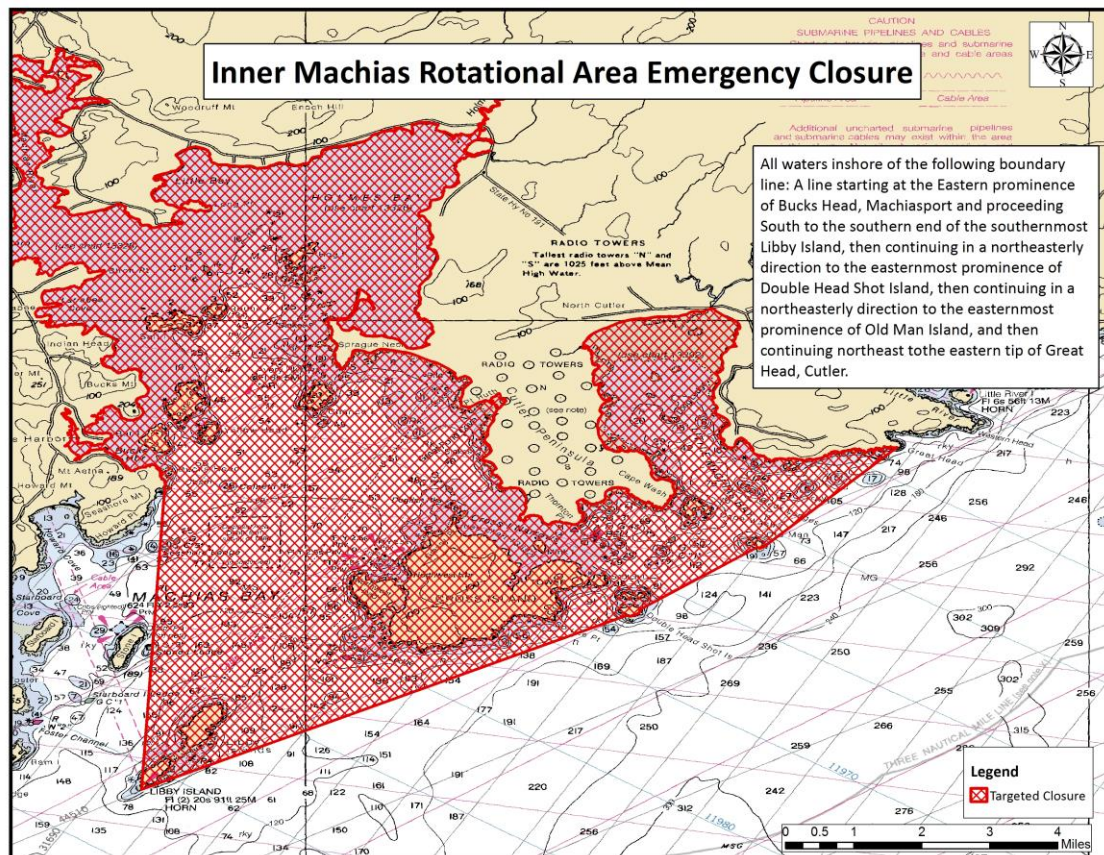


Figure 12. Inner Machias Rotational Area Emergency Targeted Closure.

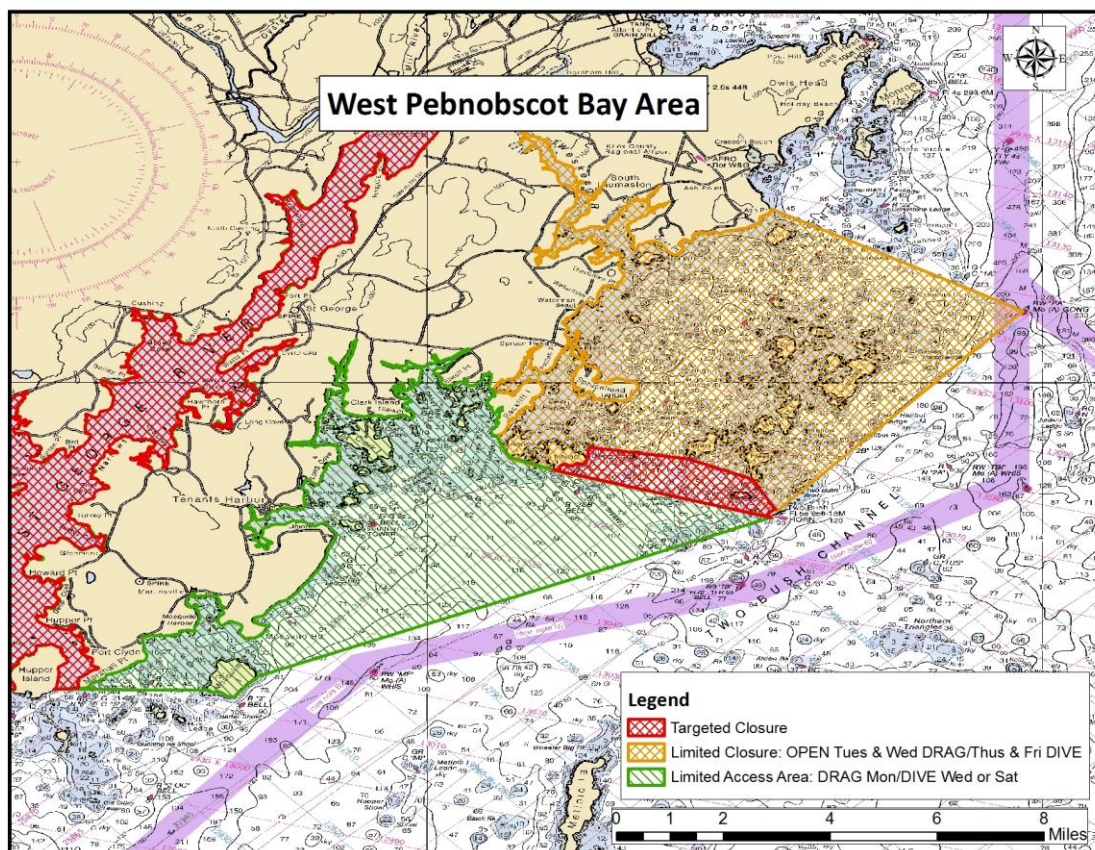


Figure 13. West Penobscot Bay Area indicating access to the Muscle Ridge Limited Targeted Closure on Tuesdays and Wednesdays for draggers and Thursdays and Fridays for divers. The West Penobscot Bay Limited Access area is open on Mondays for draggers and Wednesdays or Saturdays for divers.

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

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: 11.22 Targeted Closures (1)(12)(13)(14) Muscle Ridge, Gouldsboro and Dyer Bays, Wohoa Bay and Jonesport Reach and Inner Machias Rotational Area. 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 Gouldsboro & Dyer Bays, Wohoa Bay & Jonesport Reach and Inner Machias Rotational Area in 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 Gouldsboro & Dyer Bays, Wohoa Bay & Jonesport Reach and Inner Machias Rotational Area as authorized by 12 M.R.S. §6171(3). In addition, a clarification to the access in the Muscle Ridge Limited Targeted Closure is needed to ensure that access to this area does not overlap with that for the West Penobscot Bay Limited Access Area for both draggers and divers.

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.