

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (7) Roque Island Harbor and Kennebec River in Englishman's Bay Rotational Area; (8) Harrington and Pleasant Rivers in Addison Rotational Area; (9) Fox Island Thorofare in Isle au Haut Rotational Area; and (10) Casco Passage and western Toothacher Bay in Swan's Island Rotational Area

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in Roque Island Harbor and Kennebec River; Harrington and Pleasant Rivers; Fox Islands Thorofare; and, Casco Passage and western Toothacher Bay in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2020-2021 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2020 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these four scallop resource areas. 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)(A).

EFFECTIVE DATE: January 17, 2021

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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.

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. 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.

2. Western Casco Bay

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

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 "2" at Eastern Drunkers Ledge, then continuing to the southeastern tip of Jewell island.

3. Sheepscot River

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 most southern point of Outer Head Island at Griffith Head, Georgetown to the most southern tip of Cape Island, Southport.

Eastern boundary: West and North of the Townsend Gut Bridge connecting Southport Island and West Boothbay Harbor.

4. 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).

5. 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.

6. 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.

7. Roque Island Harbor & Kennebec River within Englishman Bay Rotational Area

Southern boundary. North of a line starting at the eastern tip of Great Spruce Island, following the northern shoreline of Double Shot, Anguilla and Halifax Islands; continuing to the southern tip of Calf Island, then running northeasterly to the most southerly point on Fan Island and continuing true east to shore.

8. Harrington & Pleasant Rivers within Addison Rotational Area

Southern boundary: North of a line beginning at the eastern tip on the southern shore of Northeast Cove and running easterly to the northern tip of Sheep Island, and continuing true east to shore.

9. Fox Islands Thorofare within East Vinalhaven Rotational Area

Eastern boundary: West of a line from the eastern tip of Mullen Head, North Haven, running southeasterly to the northern tip of Babbidge Island and continuing south along the shoreline to the eastern tip of Babbidge Island, then running southeasterly to the RN "2A" buoy; then continuing southwesterly to the eastern tip of Calderwood Neck, Vinalhaven.

10. Casco Passage within Swan's Island Rotational Area

Northern boundary: South and west of a line starting from North Point, Swans Island, running northwest to the eastern point of Black Island; continuing around the southern shoreline of Black Island to the western most point of Black Island, then running southwesterly to northern most tip of Swans Island Head, Swans Island.

Southern boundary: East and north of a line starting at West Point, Swans Island, running southerly to Long Point, Marshall Island; continuing along the northern shoreline of Marshall Island to the northeastern point of Devils Head, Marshall Island; and then running northeasterly to the southern tip of Hockamock Head, Swans Island.

Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08. Targeted Closures will be established in (7) Roque Island Harbor and Kennebec River in Englishman's Bay Rotational Area; (8) Harrington and Pleasant Rivers in Addison Rotational Area; (9) Fox Island Thorofare in Isle au Haut Rotational Area; and (10) Casco Passage and western Toothacher Bay in Swan's Island Rotational Area.

Rogue Island Harbor (Sand Bay) and Kennebec River in Englishman's Bay Rotational Area

DMR scallop survey for 2020 observed strong sublegal scallop presence inside of the islands chain around Roque Island Harbor (Figure 1; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicate a decrease in relative legal scallop density from 3.11 g/m² to 2.20 g/m² observed during the most recent Spring 2020 survey.

Opening week of the 2020-2021 scallop season, Patrol observed approximate 25 vessels operating in this area with harvesters reaching daily limits quickly, with good meat quality. By the second week, some vessels already started to look elsewhere for scallops, as catch rates decreased; 15 vessels remained in the area. Due to poor weather conditions, boats stayed focused in these sheltered areas through to the end of December. However, not all vessels were reaching their daily limits. Some harvesters chose to swap out drags, upgrading from 5 ft to 8 ft or 10 ft drags to cover more ground in less time to reach daily limits. By the first week of January, less than 10 boats were in the area and landing between 60 and 90 lbs of the 135 daily limit.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect the sublegal scallops from any additional incidental mortality (Figure 2).

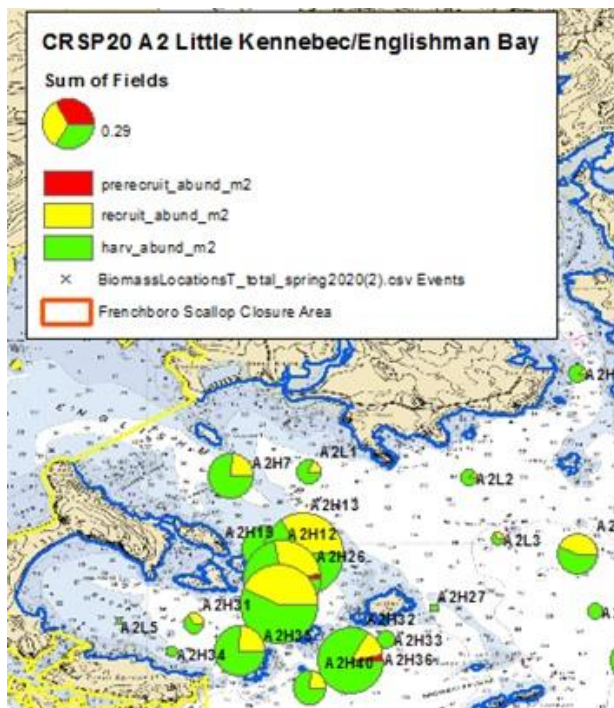


Figure 1: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 (left) and Spring 2017 (right) in the Englishman Bay Rotational Area. Legal biomass density was estimated at 2.20 g/m² in 2020 compared to 3.11 g/m² for the 2017-18 Scallop Season.

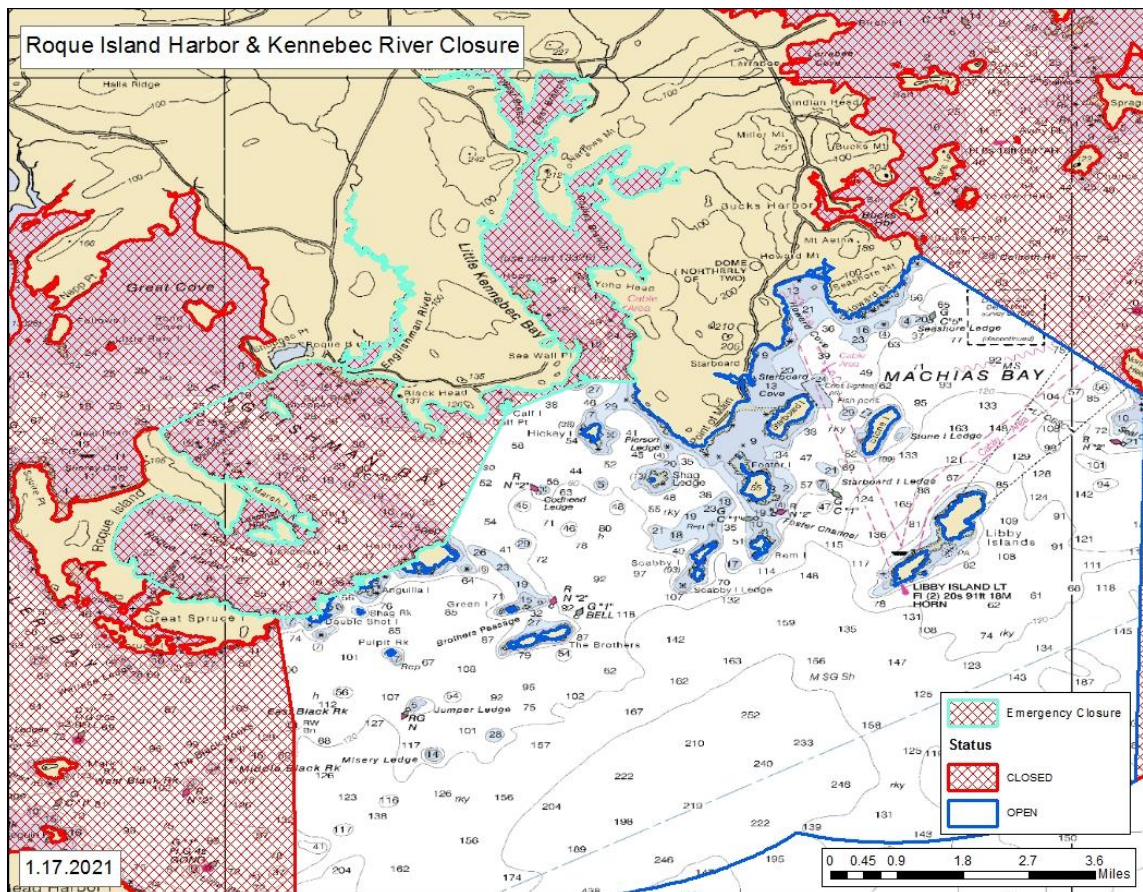


Figure 2: Chart depicts in-season conservation closure for Roque Island Harbor and the Kennebec River within the Englishman Bay Rotational Area, effective Sunday, January 17, 2021.

Harrington & Pleasant Rivers within Addison Rotational Area

DMR scallop survey for 2020 observed strong sublegal scallop presence around Libby Strout Island ledges in Pleasant Bay (Figure 3; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicates an increase in relative legal scallop density from 0.50 g/m² to 2.06 g/m² observed during the most recent Spring 2020 survey.

Marine Patrol reported 14 active harvester vessels during the opening week of the 2020-2021 Scallop Season. Majority of effort focused around either side of Ripley Neck, with the best catches occurring on the western side. This observation is supported by the survey results indicating strong density of legal scallops at stations west and south of Ripley Neck (Figure 3). Current Patrol details have reported a reduction in active harvester vessels in the area to 5 vessels, with other vessels having hauled out or have left the area.

Several harvesters have reported decreased catches in the areas denoted by the closure and also commented on the Strout Island area and its nearby ledges as traditional scallop nursery grounds. Current effort is occurring more southerly around Norton Island.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect the sublegal and seed scallops from any additional incidental mortality (Figure 4).

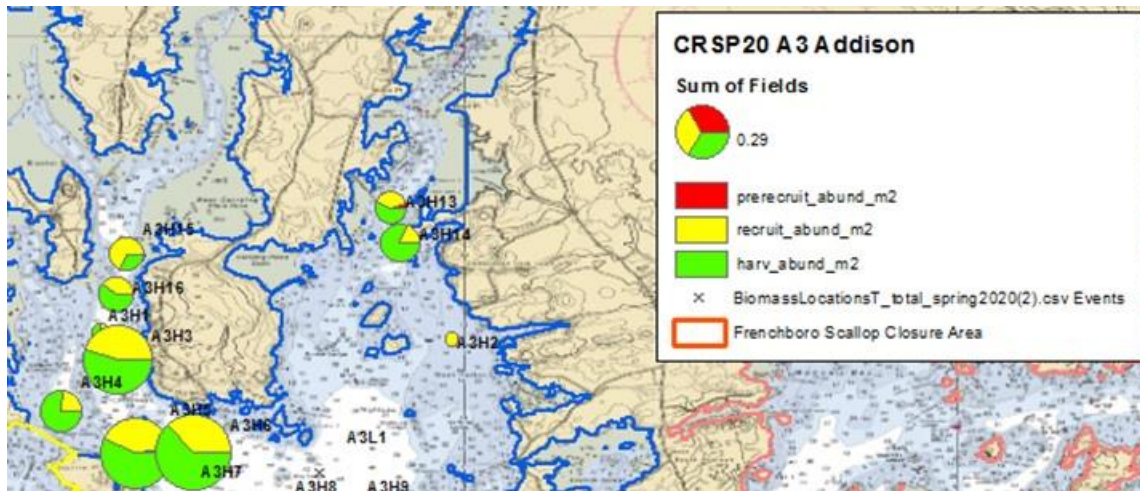


Figure 3: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 (left) and Spring 2017 (right) in the Addison Rotational Area. Legal biomass density was estimated at 2.06 g/m² in 2020 compared to 0.50 g/m² for the 2017-18 Scallop Season. Survey observed a higher relative abundance of sublegal (recruit) scallops in 2020.

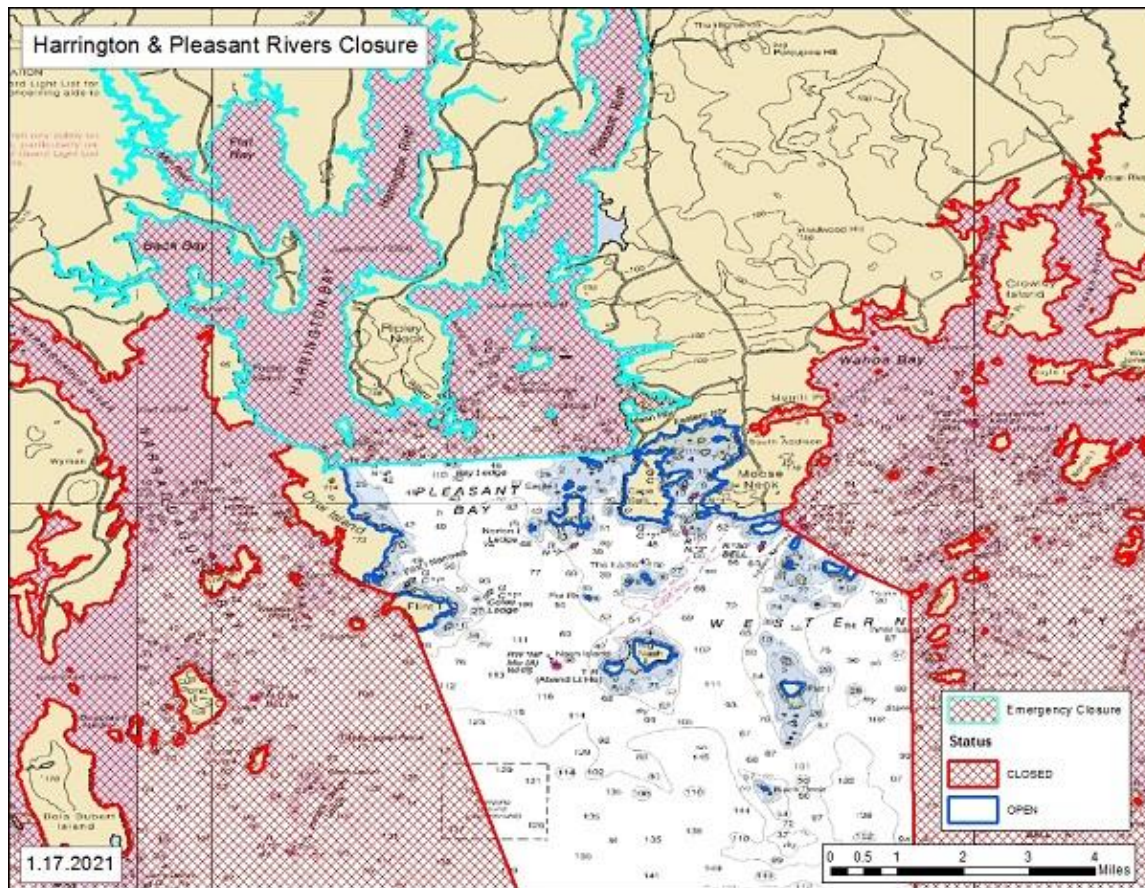


Figure 4: Chart depicts in-season conservation closure for the Harrington & Pleasant Rivers within the Addison Rotational Area, effective Sunday, January 17, 2021.

Fox Islands Thorofare within Isle au Haut Rotational Area

DMR scallop survey for 2020 observed strong sublegal scallop presence inside of the Fox Islands Thorofare, which were not present during the 2017 scallop survey (Figure 5; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicate an increase in relative legal scallop density from 0.97 g/m² to 1.45 g/m² observed during the most recent Spring 2020 survey.

Marine Patrol reported 18 active harvester vessels operating in the Fox Islands Thorofare during the opening week of the 2020-2021 Scallop Season and approximately 5 vessels operating at the southern end of Vinalhaven. The Fox Islands Thorofare is one of the few places in the rotation that can be accessed during poor weather days and has therefore seen prolonged activity. Reports from Patrol for the second week of January indicate only 4 boats remain and are struggling to reach their daily limit.

Several harvesters within this rotational area have stated that catch rates in and around Fox Islands Thorofare have drastically decreased and that it is no longer worth returning, with hauls dropping from 4 bushels per tow to 1-1.5 bushels per tow.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect the sublegal and seed scallops from any additional incidental mortality (Figure 6).

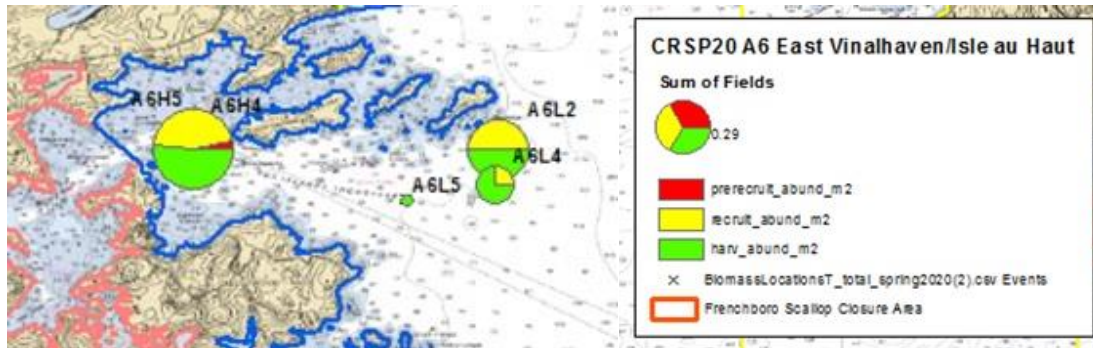


Figure 5: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 (left) and Spring 2017 (right) in the Isle au Haut Rotational Area. Legal biomass density was estimated at 1.45 g/m² in 2020 compared to 0.97 g/m² for the 2017-18 Scallop Season. There was minimal presence of sublegal (recruit) scallops observed in the Spring 2017 survey.

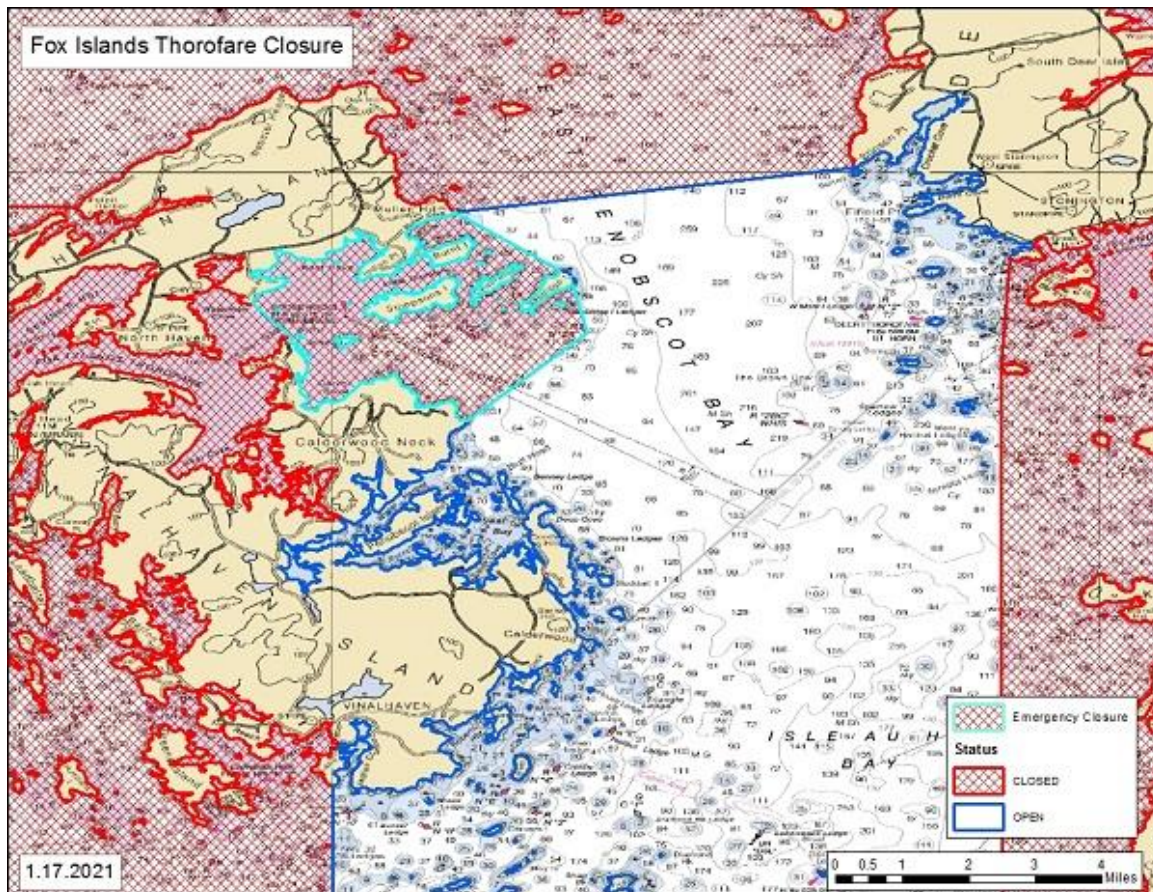


Figure 6: Chart depicts in-season conservation closure for Fox Island Thorofare within the Isle au Haut Rotational Area, effective Sunday, January 17, 2021.

Casco Passage within Swan's Island Rotational Area

DMR scallop survey for 2020 observed strong sublegal scallop presence south of Black Island and north of Marshall Island (Figure 7; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicate an increase in relative legal scallop density from 1.55 g/m² to 1.64 g/m² observed during the most recent Spring 2020 survey. There was minimal sublegal (recruit) scallops observed north of Marshall Island during the 2017 survey.

Marine Patrol reported 10-12 active harvester vessels in Casco Passage during the opening week of the 2020-2021 Scallop Season. Several boats left the area during the second week, as catch rates dropped. Patrol observed 4 boats remaining in Casco Passage during the second week of January and getting only half of the daily limit in the area. Patrol indicated that a few boats are returning to the area due to the higher meat size and quality, even though vessels are not able to get their daily limits. Patrol reports harvester vessels were in Toothacher during the second week of December and encountered low catch rates and poor quality meats. Boats did not stay in the area.

Harvester comments from this rotational area state that the first week was the best week for Casco Passage, but that catch rates have greatly decreased. In general, harvesters report spreading out to other areas of the rotational area to reach their daily limits.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect the sublegal and seed scallops from any additional incidental mortality (Figure 8).

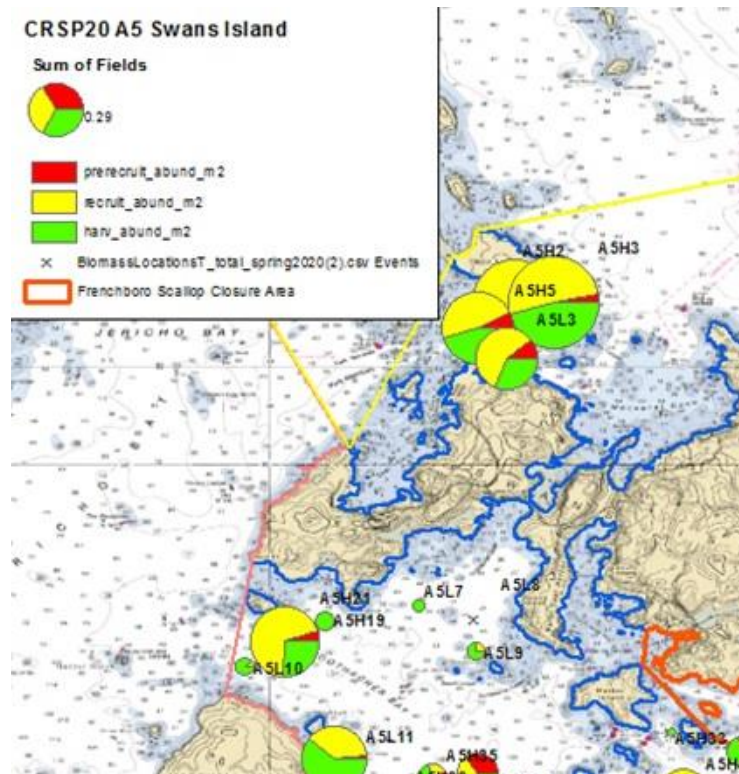


Figure 7: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 (left) and Spring 2017 (right) in the Swans Island Rotational Area. Legal biomass density was estimated at 1.64 g/m² in 2020 compared to 1.55 g/m² for the 2017-18 Scallop Season. Relative abundance of sublegal (recruit) scallops was observed in the 2020 surveys for both the Casco Passage area and north of Marshall Island.

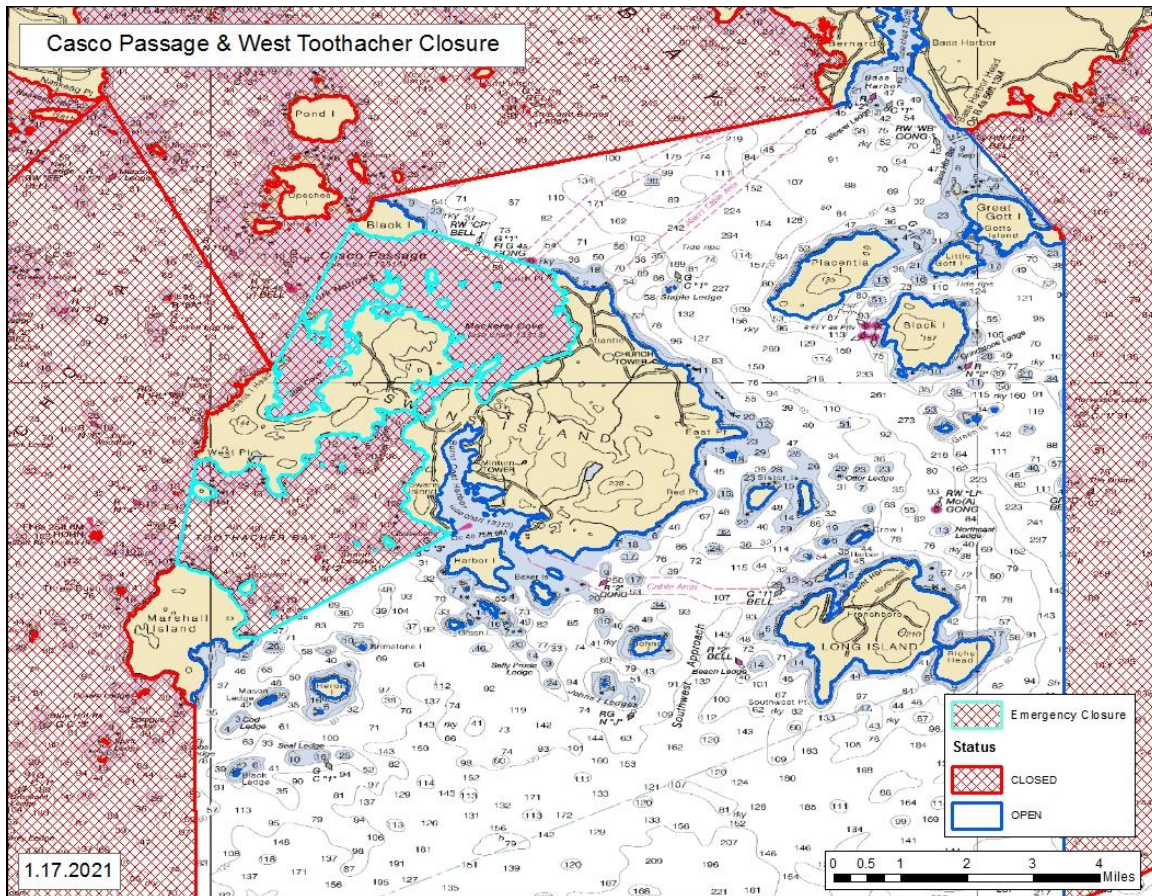


Figure 8: Chart depicts in-season conservation closure for Casco Passage and west side of Toothacher Bay within the Swans Island Rotational Area, effective Sunday, January 17, 2021.

In summary, the Department is concerned that continued harvesting for the duration of the 2020-21 fishing season in the above listed areas will reduce any remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource in these areas. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Roque Island Harbor, Kennebec, Harrington and Pleasant Rivers, Fox Island Thorofare, Casco Passage and western Toothacher Bay.

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)(A).

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.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: **Chapter 11.08, Targeted Closures: (7) Roque Island Harbor and Kennebec River in Englishman's Bay Rotational Area; (8) Harrington and Pleasant Rivers in Addison Rotational Area; (9) Fox Island Thorofare in Isle au Haut Rotational Area; and (10) Casco Passage and western Toothacher Bay in Swan's Island Rotational Area**

STATUTORY AUTHORITY: **12 M.R.S. §6171(3)(A)**

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in Roque Island Harbor and Kennebec River; Harrington and Pleasant Rivers; Fox Islands Thorofare; and, Casco Passage and western Toothacher Bay in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2020-2021 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2020 Spring Scallop survey that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in these four scallop resource areas.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seek to maintain the recovery of the scallop resource within the State of Maine. The rule is intended to have a long-term positive impact on the scallop fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

Input from DMR science staff, Maine Marine Patrol, and scallop industry members.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [*see* §8057-A(2)(C)]

Note: If necessary, additional pages may be used.