

**NOTICE OF AGENCY EMERGENCY RULE-MAKING****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (10) Wohoa Bay; (11) Cobscook Bay including Whiting and Denny's Bays**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to implement a conservation closure in Wohoa Bay within the Wohoa/Western Bay Rotational Area. Additionally, the Zone 3 harvesting calendar in Cobscook Bay will be reduced to one day only for drag (Monday, January 28, 2019) and dive (Saturday, February 2, 2019), followed by a conservation closure in Cobscook Bay including Whiting and Denny's Bay on Sunday, February 3, 2019. These closures are required to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3.

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 27, 2019

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## Chapter 11 Scallops

## 11.08 Targeted Scallop Conservation Closures

Targeted closures are imposed as conservation measures to assist in rebuilding specific areas of the state. Targeted closures may be implemented based on depletion, seed, the presence of spat-producing scallops, and other conservation factors as determined by the Commissioner. Targeted closures are not seasonal closures and are implemented in order to improve and enhance the conservation and rebuilding of the resource in these specific areas.

Unless excepted, 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. 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 "2" at Eastern Drunkers Ledge.

Western boundary: East and North of a line drawn from R N "2" at Eastern Drunkers Ledge 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.

3. Upper 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 most northeastern point of Dogfish Head to the most northeastern point of Macmahan Island, and south of a line drawn from the most northwestern point of Macmahan Island to the most northeastern tip of Soldier Point and south and east of the Southport Island Bridge.

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. Gouldsboro and Dyers Bays within the Gouldsboro/Dyer Bay Rotational Area

North of a line starting at the eastern most tip of Youngs Point, Corea, continuing to the western most tip of Sheep Island and following the southern shoreline to the eastern most tip of Sheep Island; and then running easterly to the southern tip of Petit Manan Pt.

Hand harvest exception:

Scallops may be taken on Wednesday, December 19, 2018, by hand harvest only.

8. Machias and Little Machias Bays within the Machias Bay Rotational Area

Inside and north of a line starting at the most eastern point of Cross Island, then running easterly to the eastern point of Scotch Island and running continuing northeasterly to the southwestern tip of Cape Wash Island, continuing easterly to the southeastern tip of Cape Wash Island, then running northeasterly to the southwestern tip of Deer Island, continuing along the northern shoreline to the most northeastern tip of Deer Island and then running in a northerly direction to the mainland shore.

9. West Vinalhaven within the Lower Penobscot Bay Rotational Area

Western boundary: South and east of a line starting that the most southwestern tip of Crockett Point, heading southwesterly to green can "GC5", then running to red buoy "R2" and continuing to red buoy "R2A"; and then easterly to the most southern tip of Leadbetter Island.

Eastern boundary: West of a line running north through green can "~~GC2~~" "GC1".

10. Wohoa Bay within the Wohoa/Western Bay Rotational Area

Inside and north of a line starting at the western tip of Toms Island, continuing along the shore to the southern tip of Toms Island then running southeasterly to the southwestern tip of Drisko Island, continuing along the shore to the southeastern tip of Drisko Island, then running easterly to the northeastern tip of Norton Point.

11. Cobscook Bay including Whiting and Denny's Bays

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.

Eastern boundary: West of the international maritime boundary line.

Southern boundary: North and west of the International Bridge between Lubec and Campobello Island.

Exception:

Scallops may be taken on Monday, January 28, 2019, by scallop dragging only.

Scallops may be taken on Saturday, February 2, 2019, by hand harvest only.

## **Basis Statement**

Amendment to Chapter 11.08 Targeted Closures for closure of (10) Wohoa Bay; (11) Cobscook Bay including Whiting and Denny's Bays

### Justification:

The Department is taking emergency rulemaking action to implement targeted conservation closures in Wohoa Bay (Figure 1) within Zone 2 and Cobscook, Whiting and Denny's Bays (Figure 3) within Zone 3 to restrict harvest and preserve the remaining legal sized scallop resource for resource rebuilding (Figure 1).

### Wohoa Bay

This area opened for harvest on December 1<sup>st</sup>, 2018 with approximately 20 boats concentrated within the upper portion of the rotational area in the first week, spread between Moosabec Reach over to Tibbett Narrows. By week 2, the number of boats in the area dropped to a dozen or so, with reports that the effort within Moosebec Reach was greatly reduced. At the end of December, less than 10 boats were in the area, searching between Little Pond Head and Western Way. All reports received during January indicate that 1 to 4 boats occasionally enter the area, and have not been able to reach a daily limit.

Spring survey stations were spread throughout the rotational area, with many station tows resulting in 0 observations of scallops. Wohoa/Western Bay Rotational Area had the lowest mean harvestable density of all the surveyed rotational areas in April 2018 (Figure 2). While weather has been a factor to limit activity in this area, all reports indicate that scallop resource extraction occurred mostly during the month of December. What legal scallop resource remains needs to be conserved as broodstock.

### Cobscook Bay

Effort within Cobscook Bay in December was estimated at 60 to 70 boats, and quickly ramped up to 85 harvest vessels by the end of December and has leveled out at 100 boats for the last several weeks of January. This season, the harvest effort was not clustered like previous years; boats were spread out into all sections of Cobscook Bay. There has been a steady effort of 20-25 boats harvesting in the Whiting/Denny's Bay Limited Access Area on Mondays.

Two in-season surveys have been completed within the Cobscook and Whiting/Denny's Bay areas to monitor resource removals levels, occurring first on December 28-30, 2018 and second survey on January 15-17, 2019. Results from the first survey indicated that most harvest effort was occurring in Johnson Bay, coinciding with harvester and marine patrol reports. While the survey did not warrant conservation closures after 10 harvest days, results from the second in-season survey, after 20 days of harvesting, indicate the overall scallop density in Cobscook Bay has decreased in Cobscook bay is 36%, with both Johnson Bay and South Bay slightly exceeding the target; 42% and 44% respectively. However, Whiting and Denny's Bay has experienced a decrease in harvestable density of 19% only. There has been little change in density in the Breakwater sites, yet the density has been lower than previous years.

The comparison of harvestable densities between Johnson Bay (8.06 g/m<sup>2</sup> in 2018 vs 5.97 g/m<sup>2</sup> 2017) and the Breakwater (9.17 g/m<sup>2</sup> in 2018 vs 3.24 g/m<sup>2</sup> 2019) is an important indicator that overall scallop legal biomass has declined from previous season (see Table 1 & 2). Thus, in addition to there being a relative decline by 40%, there is also a broad scale decrease in the available biomass of scallops within Cobscook Bay. However, there is a very strong year class of just below legal scallops available for the future season (Figure 5 & 6).

Qualitative information from both marine patrol and active harvesters in the area have observed that sublegal sized cut shells have been coming up in commercial tows. These reports that small scallop product is being harvested is also observed in the science survey size frequency data (Figure 5) in which scallops below legal size experienced a decline in density over the course of the two in-season surveys. This information also factored into the rationale for this closure. Cobscook Bay has high proportions of both seed and sublegal product that would incur damage, if harvest continued with the existing 100 boats in the area.

General comments from harvesters this season indicate smaller meats overall, when compared to the last two previous seasons. Additionally, there were less hotspots with high densities of scallops; the resource was also spread out more evenly. These observations from harvesters are also shown within the data;

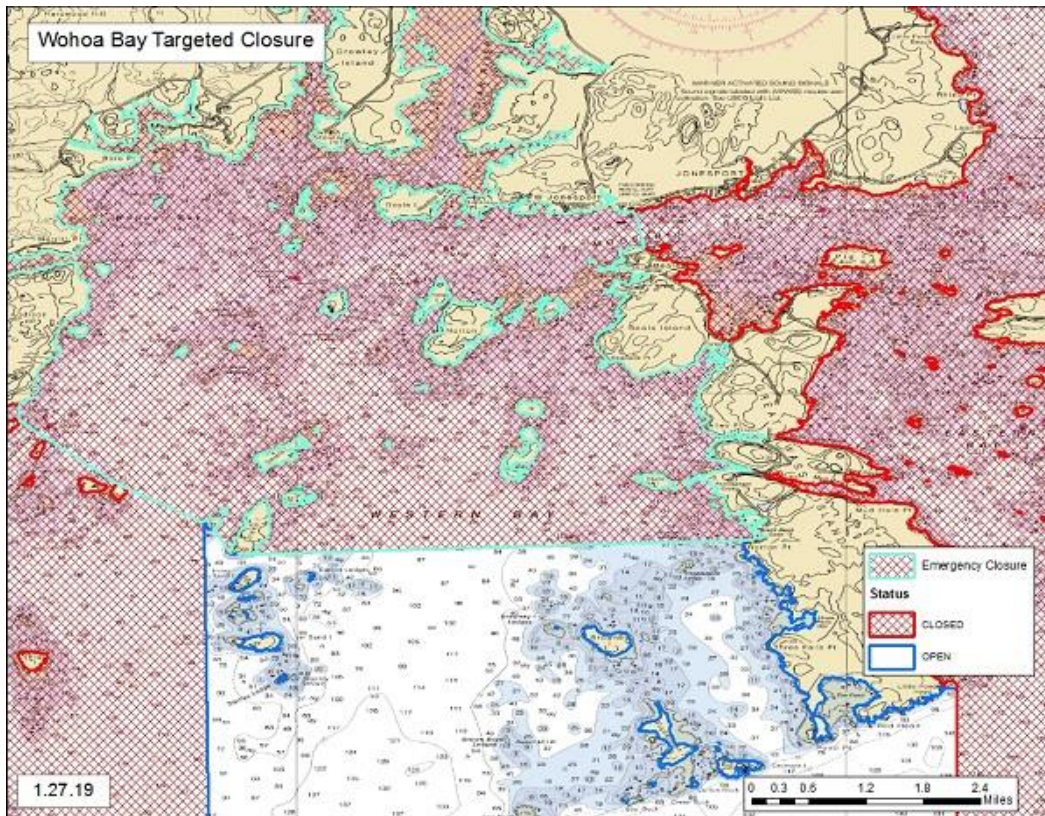
the annual fall scallop surveys, occurring annually in November, with the starting densities of individual areas being lower than in previous years (Table 1 and Table 2).

Considering that there is still available legal product to be harvested within the Whiting/Denny's Bay Limited Access Area, and additionally effort has been minimal in the East Bay portion, we are allowing one additional harvest day to occur for each the drag and dive sector of the scallop fishery prior to the closing of Cobscook, Whiting and Denny's Bays. Harvest may occur on Monday, January 28, 2018 for the drag sector with the ability to access either Cobscook Bay or Whiting Denny's Limited Access Area. Hand harvest may occur on Saturday, February 2, 2019 with access in either Cobscook Bay or Whiting Denny's Limited Access area. On Sunday, February 3, 2019, Cobscook, Whiting and Denny's Bays will close while the St Croix remains open for harvesting until further notice. This arrangement will allow for the harvesting of scallops in areas that have not yet reached maximum yield prior to the conservation closure occurring.

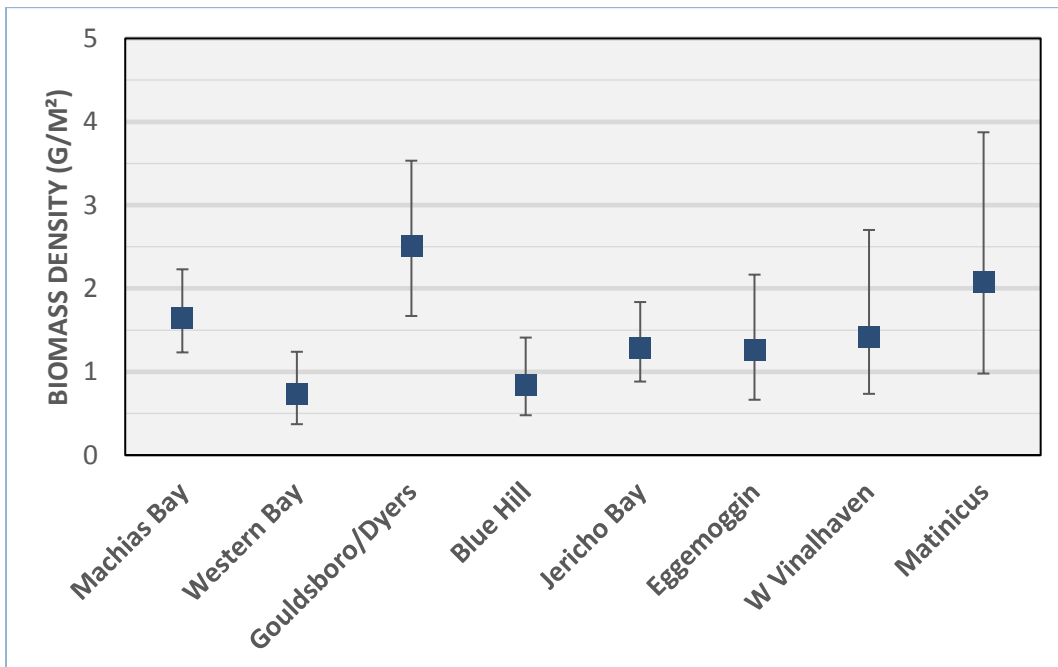
In summary, the Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3. 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.

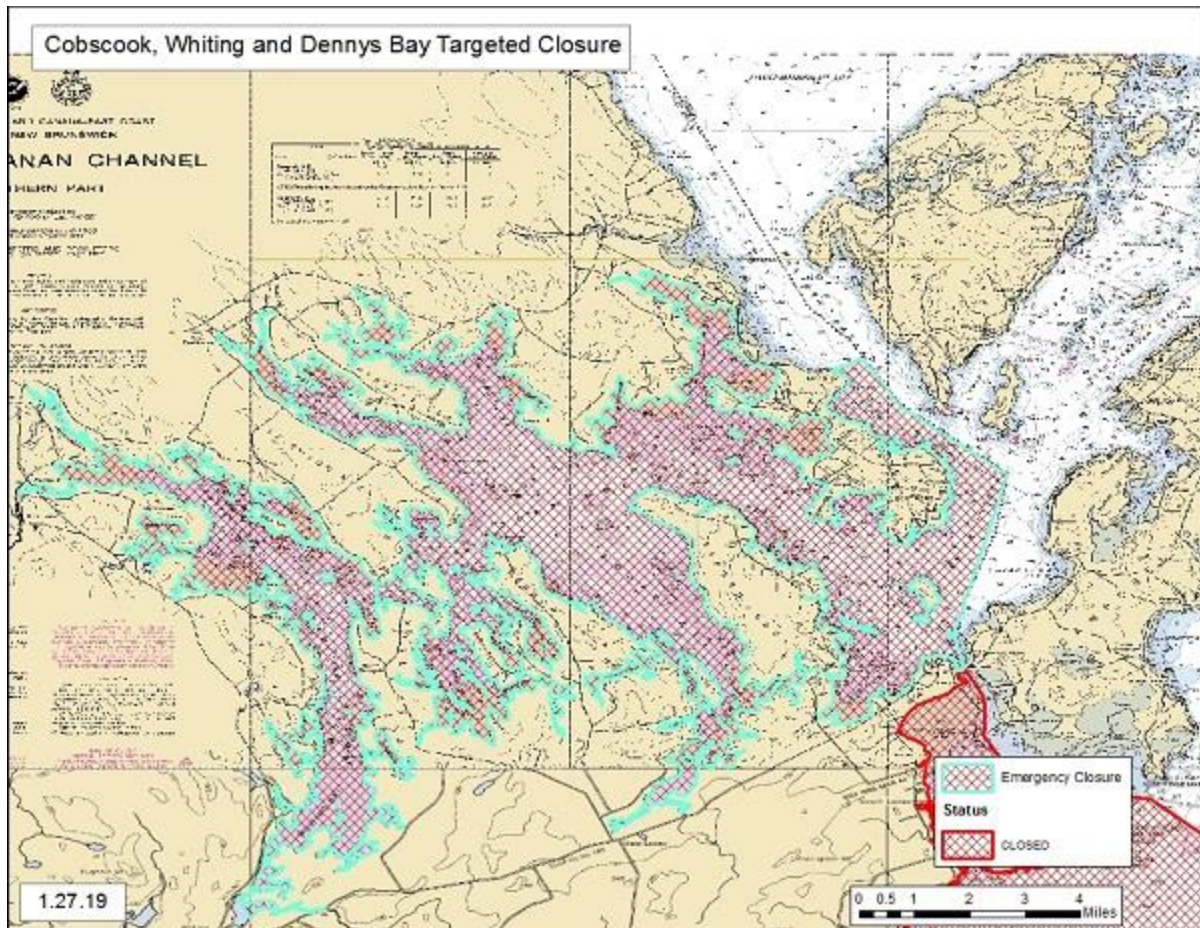
## Figures & Tables



**Figure 1:** Chart of the Woeha Bay Conservation Closure within the Woeha/Western Rotational Area in Zone 2, implemented on January 27, 2019.



**Figure 2:** Mean harvestable biomass density with bootstrapped 95% confidence intervals from the 2018 DMR Spring Scallop Survey. Western Bay had 20 survey stations and had the lowest harvestable biomass observed during the survey.



**Figure 3:** Chart of the Whiting, Denny’s and Cobscook Bays Conservation Closure within Zone 3, implemented on January 27, 2019.

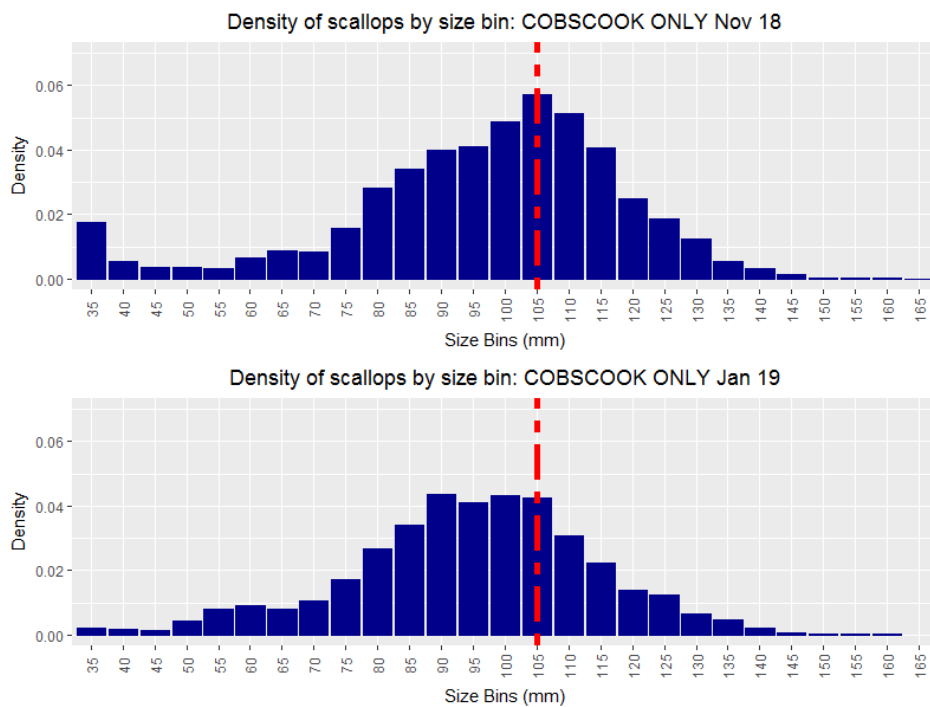
**Table 1:** Calculated estimates of harvestable density of scallops from the Cobscook Bay surveys conducted November 18, 2018, December 30, 2018 and January 19, 2019. The 66 stations of Cobcook are broken down into 4 smaller areas: Johnson Bay, Breakwater, South Bay and Whiting with station counts for each survey in parenthesis below.

Date 2018-2019	Cobscook Overall (66,65, 65)	Johnson Bay (19,17,17)	Breakwater (6, 7, 7)	South Bay (32,32,32)	Whiting (13,13,13)
18-Nov	5.49	5.97	3.24	7.37	4.87
30-Dec	4.28	4.14	3.75	5.86	4.50
19-Jan	3.52	3.45	3.36	4.14	3.93
% change	36%	42%	-4%	44%	19%

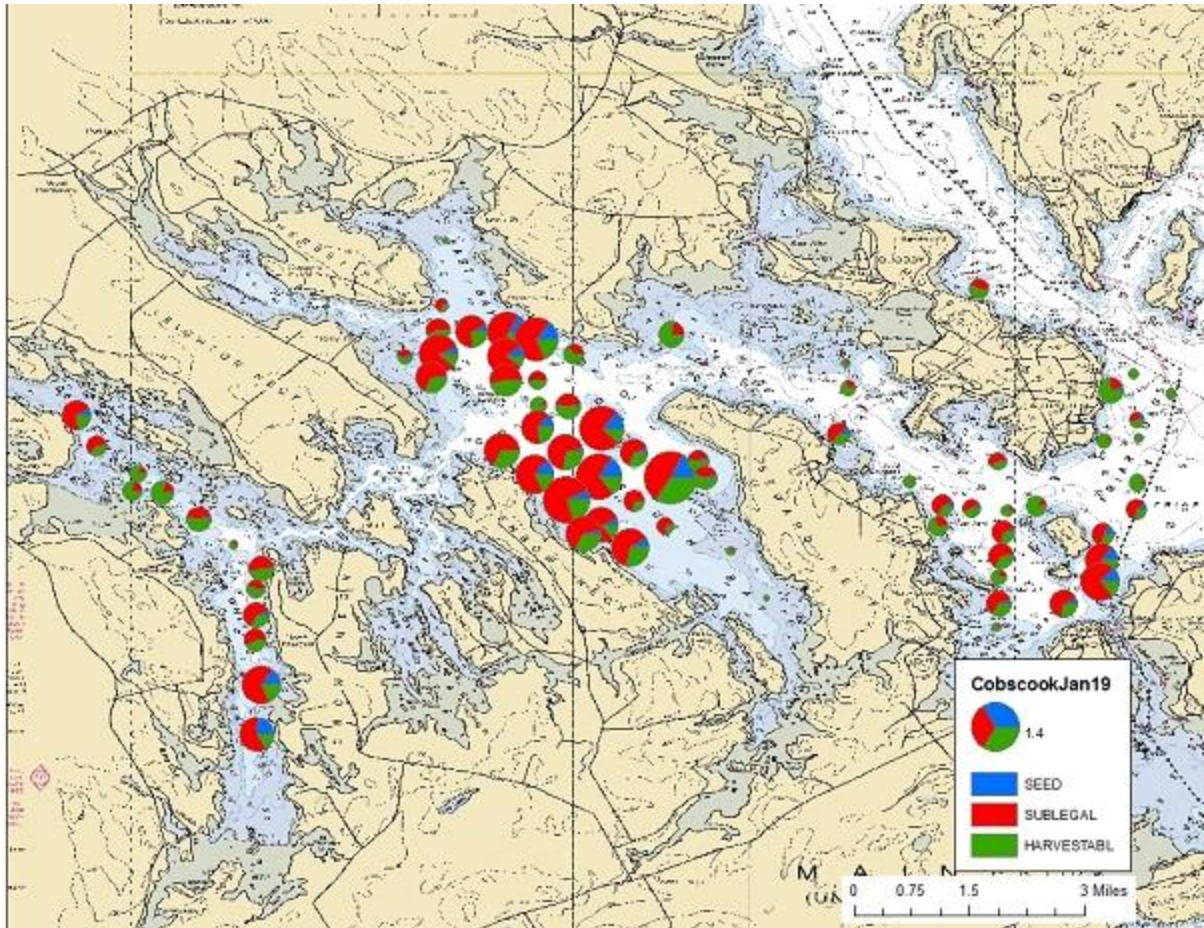


**Table 2:** Calculated estimates of harvestable density of scallops from the Cobscook Bay surveys conducted November 2017, January 14, 2018 and January 28, 2018. The 65 stations of Cobcook are broken down into 4 smaller areas: Johnson Bay, Breakwater, South Bay and Whiting with station counts for each survey in parenthesis below.

date	Cobscook Bay (non-Whiting, 65,63 stations)	Johnson Bay (15,15 stations)	Breakwater (2,5 stations)	South Bay (32,31,31 stations)	Whiting (13,8,12 stations)
Fall 2017	4.46	8.06	9.17	4.19	6.29
1/14/2018	2.95	2.74	1.97	4.12	4.14
1/28/2018				3.06	3.44
% change	34%	66%	79%	27%	45%



**Figure 5:** Size frequency plots of scallop resource observations during the ME DMR Fall pre-season (November 18, 2018) Scallop Survey in Cobscook Bay area (top figure) and the in-season survey conducted at the same 65 stations on January 17-19, 2019 (bottom figure).



**Figure 6:** Bubble plots of scallop resource observations during the ME DMR Fall Scallop Survey conducted January 15-17, 2019 at 65 survey stations in the Cobscook Bay Area. Most stations indicate a predominate proportion of sublegal scallop resource, with several stations also indicating seed scallops.

## 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: (10) Wohoa Bay; (11) Cobscook Bay including Whiting and Denny's Bays**

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

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 implement a conservation closure in Wohoa Bay within the Wohoa/Western Bay Rotational Area. Additionally, the Zone 3 harvesting calendar in Cobscook Bay will be reduced to one day only for drag (Monday, January 28, 2019) and dive (Saturday, February 2, 2019), followed by a conservation closure in Cobscook Bay including Whiting and Denny's bay on Sunday, February 3, 2019. These closures are required to protect Maine's scallop resources from the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2018-19 fishing season in these areas will greatly reduce the abundance of the remaining broodstock as well as seed scallop resource that is essential to the ongoing recruitment, regrowth and recovery of the scallop resource. Immediate conservation closures are necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in Wohoa Bay in Zone 2 and Whiting, Denny and Cobscook Bays in Zone 3.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_ X 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.*