

**NOTICE OF AGENCY EMERGENCY RULE-MAKING****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures of the Harrington River in Addison RA and Roque Island Harbor and Little Kennebec Bay portion of the Englishman's Bay RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 Scallop surveys that are 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 four important scallop harvest 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:** December 24, 2023

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## DEPARTMENT OF MARINE RESOURCES

## 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.

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 draw 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

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.

Eastern boundary: West of a line drawn at the most northern tip of Soldier Point, Georgetown Island running north to the most southern tip of Westport Island.

Southern boundary: North of a line drawn from the most southern point of Kehail Point running northeasterly to the most southern point of Barbers Island and continuing southeasterly to the most northwestern tip of Sawyer Island.

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. Green Island/The Brothers

Inside a line starting at the southwestern tip of The Brothers Island, running along the southern shore to the northeastern tip of The Brothers Island, then running northeasterly to the green buoy (G"1" Bell), continuing northwest to the red buoy (RN"2"), continuing westerly to the eastern tip of Green Island and running along the north shore of Green Island to the western tip of Green Island, and then running southerly to meet the southwestern tip of The Brothers Island

8. Roque Island Harbor & Little Kennebec Bay within Englishman Bay Rotational Area

Southern boundary. North of a line starting at the eastern tip of Great Spruce Island, and continuing easterly to the western tip of The Brothers, running along the southern shore to the eastern tip of The Brothers then continuing northeasterly to the green buoy (G"1" Bell), then running north to the southern tip of Hickey Island and continuing east to Point of Main, Machiasport.

9. Harrington River within Addison Rotational Area

Southern boundary: North of a line beginning at the eastern tip on the southern shore of Northeast Cove, Dyer Island, and running easterly to Red Nun 4, then continuing on to Red Nun 2, and continuing northeasterly to the southern tip of Narrows Island, running north along the eastern shoreline to the northern tip of Narrows Island and running to the eastern tip of Willard Point, Ripley Neck.

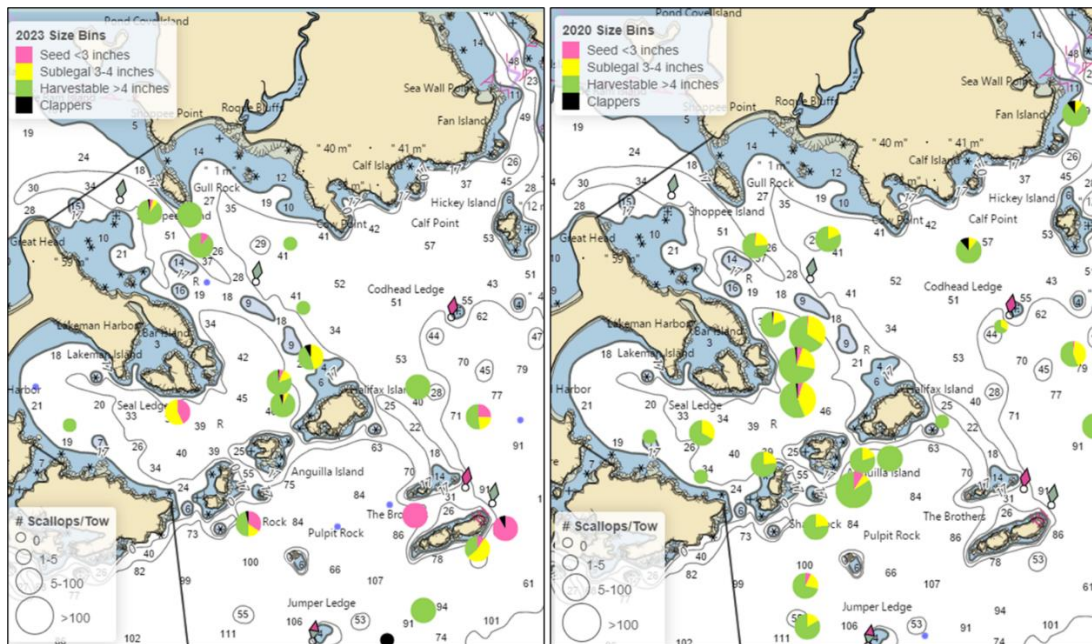
## Basis Statement

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison Rotational Area.

### Rogue Island Harbor and Little Kennebec Bay within Englishman Bay Rotational Area

DMR scallop survey for 2023 observed strong sublegal scallop presence inside of the islands chain around Rogue Island Harbor (Figure 1; sublegal shown in yellow and pink). Comparison with the DMR scallop survey completed Spring 2020 indicate a decrease of 57% in legal scallop density from 2.7 g/m<sup>2</sup> to 1.2 g/m<sup>2</sup> observed during the most recent Spring 2020 survey. There were minimal observations of seed scallops during this survey.

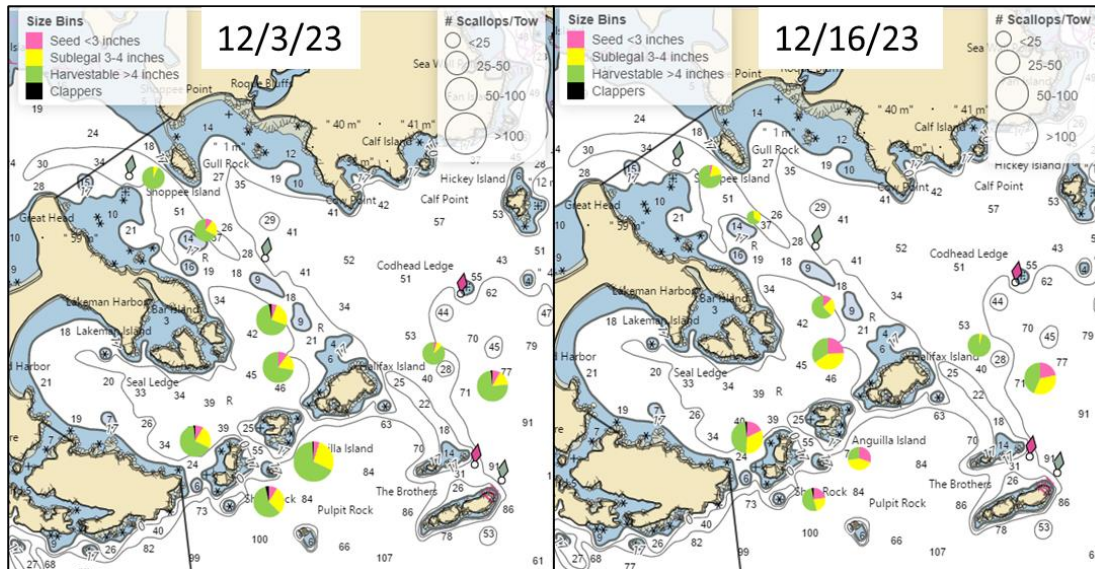
Opening week of the 2023-2024 scallop season, Patrol observed approximately 40 vessels operating in this area, with 20 vessels focusing on the resource west of Halifax Island in Sand Bay. Harvesters were reaching daily limits quickly and reporting good meat quality. By the second week, some vessels already started to look elsewhere for scallops, as catch rates decreased with less than 10 vessels remaining in the area and struggling to reach their quota before noontime. Upon the third week of harvesting, several vessels moved out of the area for Cobscook, as weather continued to disrupt harvest. Additionally, harvesters reported that there were few areas with high densities of scallops and that many tows were depleted over the period of the second week. Several harvesters indicated to Patrol that it was time to close the area as they had observed sublegal scallops in some areas and were concerned about illegal cutting. Due to poor weather conditions, boats stayed focused in these sheltered areas for the first three weeks.



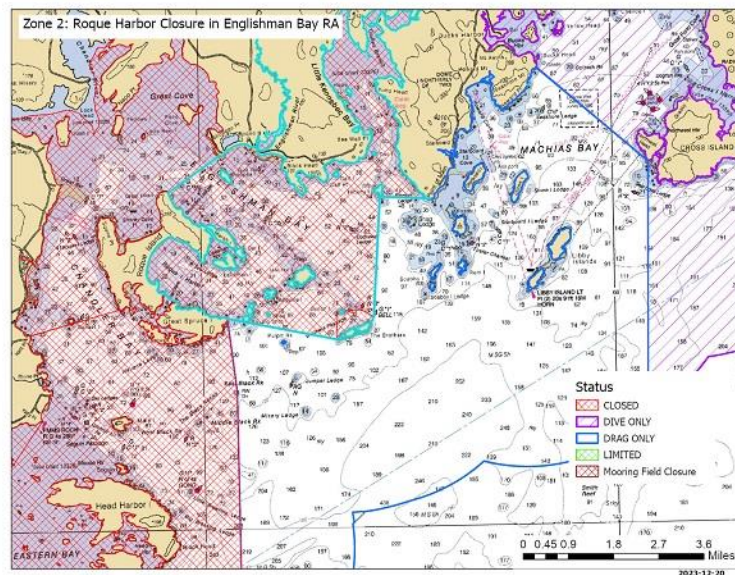
**Figure 1:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2023 (left) and Spring 2020 (right) in the Englishman Bay Rotational Area. Legal biomass (Green) density was estimated at 1.2 g/m<sup>2</sup> in 2023 compared to 2.7 g/m<sup>2</sup> for the 2020-21 Scallop Season.

Twenty stations with historic high catches and in areas where the fishing was expected to occur in this season were sampled using the standardized scallop survey parameters on December 3<sup>rd</sup>, after one day of fishing, and again on December 16<sup>th</sup> after 11 days open to fishing. The first survey showed the similar abundance of seed (<3 inches) and sublegal scallops (3-4 inches) to the spring survey results in the 9 stations around Halifax Island. The second survey (post fishing effort) showed a 43% decrease in the density of the legal scallops from 3.7 g/m<sup>2</sup> to 2.1 g/m<sup>2</sup> in these stations around Halifax Island. The December 16<sup>th</sup> survey showed most of these stations highlighted a shift from legal scallops being dominate to primarily sublegal and seed scallops being the majority of the catch (Figure 2). During this second survey, DMR staff also noted observations of freshly cut sublegal shells.

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 3).



**Figure 2:** Bubble plots of the Halifax Island stations from the pre-season (Left) and in-season (right) scallop survey. The bubble plots show the relative proportion of the difference size classes of scallops at each station where in the December 3<sup>rd</sup> survey the dominate size bin was legal scallops (green) and on the December 16<sup>th</sup> survey after 11 days of fishing the dominate size bin was scallop <3 inches (yellow and pink)



**Figure 3:** Chart depicts in-season conservation closure for Roque Island Harbor and the Kennebec River within the Englishman Bay Rotational Area, effective Sunday, December 24, 2023.

### Harrington River within Addison Rotational Area

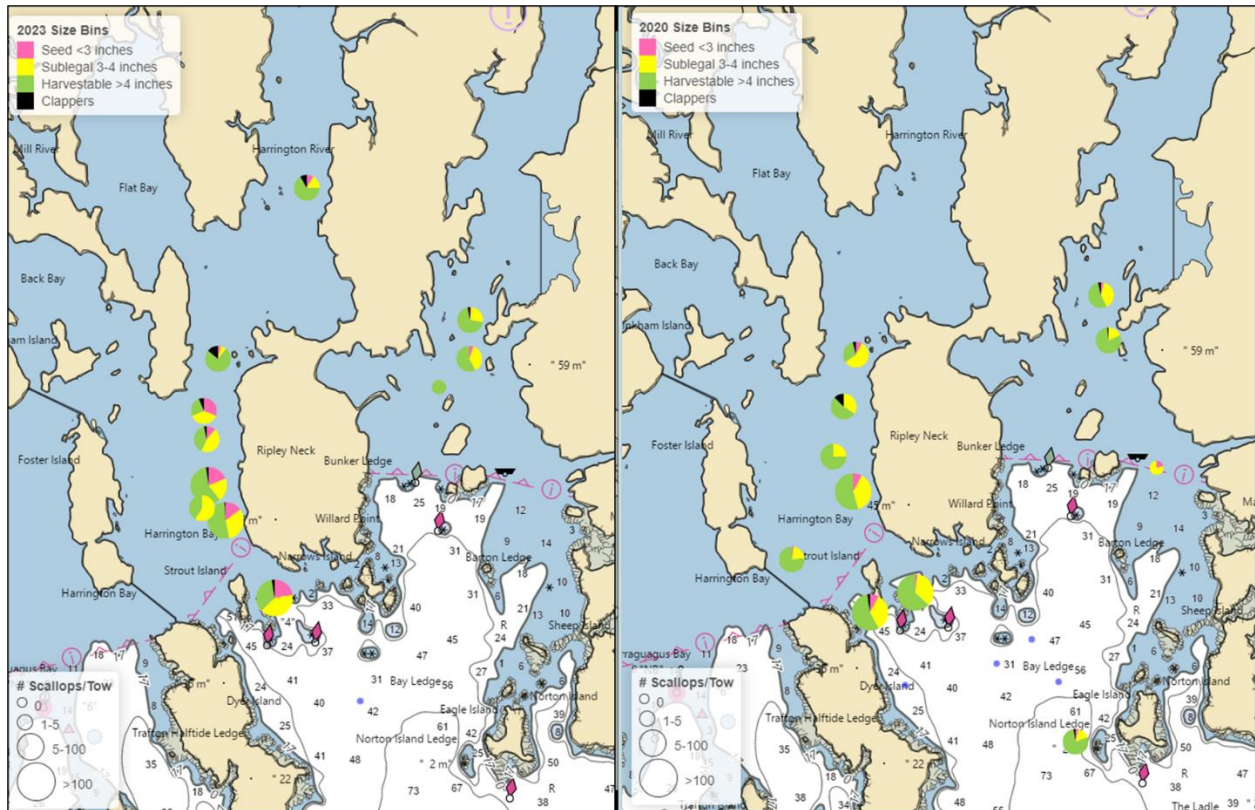
DMR scallop survey for 2023 observed strong sublegal scallop presence around Strout Island ledges in Pleasant Bay (Figure 4; sublegal shown in yellow and pink). Comparison with the DMR scallop survey completed Spring 2020 indicates an increase of 8% in legal scallop density from 2.4 g/m<sup>2</sup> to 2.6 g/m<sup>2</sup> observed during the most recent Spring 2023 survey.

Marine Patrol reported 18-20 active harvester vessels during the opening week of the 2023-2024 Scallop Season. Majority of effort focused around either side of Ripley Neck, with the best catches occurring on the western side around Strout Island. This observation is supported by the survey results indicating strong density of legal scallops at stations west and south of Ripley Neck (Figure 4). By the end of the

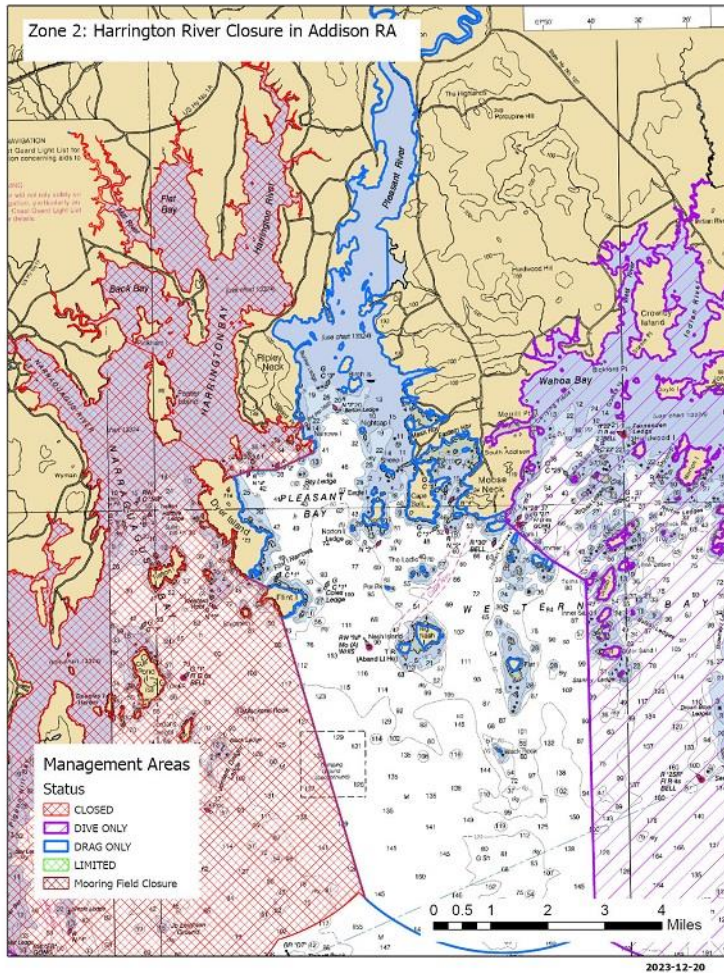
first week, both harvesters and Patrol reported upwards of 24 boats in the upper portion of this rotational area. In previous years, this area would support on average of 15 boats for a month.

Several harvesters have reported decreased catches in the areas denoted by the closure and also commented on the Strout Island area and it's nearby ledges as traditional scallop nursery grounds. This area was also suggested for pre-season closure considering the high observations of seed and sublegal scallops during the 2023 spring scallop survey. However, to balance effort and conservation, it was opened for harvest with the understanding that it would likely close early to preserve the recruitment event. 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 5).



**Figure 4:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2023 (left) and Spring 2020 (right) in the Addison Rotational Area. Legal biomass density was estimated at 2.6 g/m<sup>2</sup> in 2023 compared to 2.6 g/m<sup>2</sup> for the 2020-21 Scallop Season. Survey observed a higher relative abundance of seed <3 inches (Pink) scallops in 2023.



**Figure 5:** Chart depicts in-season conservation closure for the Harrington River within the Addison Rotational Area, effective Sunday, December 23, 2023.

In summary, the Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 scallop surveys (spring and in-season) that are 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 Harrington River, Roque Island Harbor and Little Kennebec Bay (Zone 2).

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: (8) Roque Island Harbor and Little Kennebec Bay in Englishman Bay Rotational Area; (9) Harrington River in Addison 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 of the Harrington River in Addison RA and Roque Island Harbor and Little Kennebec Bay portion of the Englishman's Bay RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2023-2024 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2023 Scallop surveys that are 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 four important scallop harvest areas.

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 along with landing reports and scallop survey data streams.

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.*