

NOTICE OF AGENCY EMERGENCY RULE-MAKING ADOPTION**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.22 Targeted Closures (1)(17) Muscle Ridge and Western Penobscot Bay. Emergency Regulations**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Muscle Ridge and Western Penobscot Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may reduce the broodstock essential for continuing recovery of the resource. 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 Muscle Ridge and Western Penobscot Bay as authorized by [12 M.R.S. §6171](#)(3).

EFFECTIVE DATE: January 23, 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 drawn 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 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, 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 44o 24'25.65" N Longitude 67o 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.

(17)Western Penobscot Area:

Western boundary: North and east of a line beginning at the southern tip of Marshall Point, Port Clyde and running true south to the intersection of Latitude 43° 55' N and then following this latitude in an easterly direction to its intersection on the west shore of Mosquito Island, St. George.

Eastern boundary: South and west 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 and continuing in a southwest direction to the most eastern tip of Mosquito Island, St. George.

Basis Statement

Chapter 11.22 Targeted Closures (1)(17) Muscle Ridge and Western Penobscot Bay. Emergency Regulations

Justification:

The Department is taking emergency rulemaking action to close the following targeted areas: Muscle Ridge and Western Penobscot Bay. 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 remaining broodstock scallops that are needed for successful spawning that is needed to rebuild the resource in these areas.

Muscle Ridge

In the [Muscle Ridge Area](#), Marine Patrol, in-season surveys and direct industry reports indicate that the majority of legal sized scallops have been harvested and the area warrants an immediate conservation closure. Since the area opened up to harvesting this season, only one harvester has been reported to have been able to reach their daily catch limit (15 gallons of meats), with all other vessels fishing in the area unable to achieve the limit after fishing from sunrise to sunset. Weather permitting, the majority of vessels from this area have chosen to fish in the Zone 2 [Lower Penobscot Bay & Outer Islands Rotational Area](#) across Penobscot Bay where catches had been stronger in lieu of fishing closer to home in Muscle Ridge. Muscle Ridge has been the target of a high amount of fishing pressure in recent years and access to the area has been restricted to two days per week for divers and draggers. However, during the DMR in-season survey conducted in the area on January 15, 2016, scallop tows reflected the lowest scallop biomass densities observed so far this season by the fishery independent survey of 0.60 g/m²; this is a decrease of **46%, which exceeds the 30% harvest target**, compared to the spring survey observations for this area which were 1.12 g/m² (Figure 1 & 2) with additional harvest in the area occurring during the week of January 18, 2016. Therefore, an immediate closure of the Muscle Ridge Area is needed for the remainder of the 2015-16 season to protect remaining legal sized scallops that are essential for rebuilding the resource in this area (Figure 3).

Western Penobscot Bay

In the Western Penobscot Bay portion of the [Muscongus/Western Penobscot Bay Limited Access Area](#), poor catches have prompted the majority of the local fleet to shift their harvesting to the Zone 2 [Lower Penobscot Bay & Outer Island Rotational Area](#) across Penobscot Bay. However, due to concern of the fleet shifting harvest back to this area following the [closure of the inner Vinalhaven area](#), DMR conducted an in-season survey of the area on January 15, 2016 and found scallop biomass density estimates to be very low (0.61 g/m²). In addition, very little sublegal scallops were observed in the survey, indicating that successful spawning may be hindered due to the low level of legal sized, broodstock scallops in this area (Figure 4). Therefore, an immediate closure of the Western Penobscot Bay Limited Access Area is needed for the remainder of the 2015-16 season to protect remaining legal sized scallops that are essential for rebuilding the resource in this area (Figure 5).

The Department is concerned that continued harvest during the remainder of the 2015-2016 fishing season in the above listed areas will reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary to reduce the risk of imminent depletion of the scallop resource in the Muscle Ridge and Western Penobscot 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).

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.

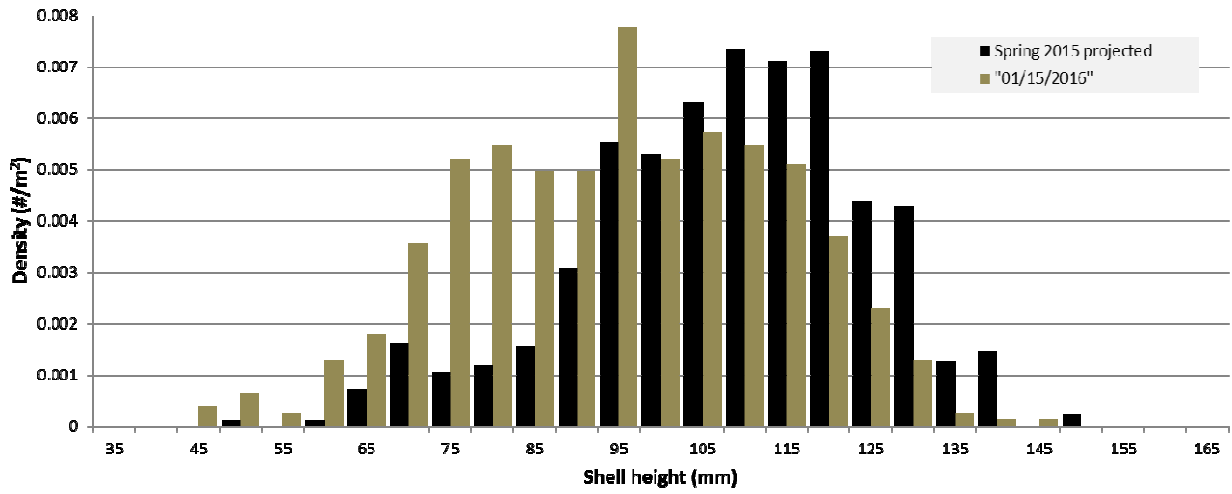


Figure 1. Shell height frequency of scallop observed in spring 2015 survey and the January 15, 2016 DMR in-season survey, reflecting a decline in legal sized scallops (>101.5mm).

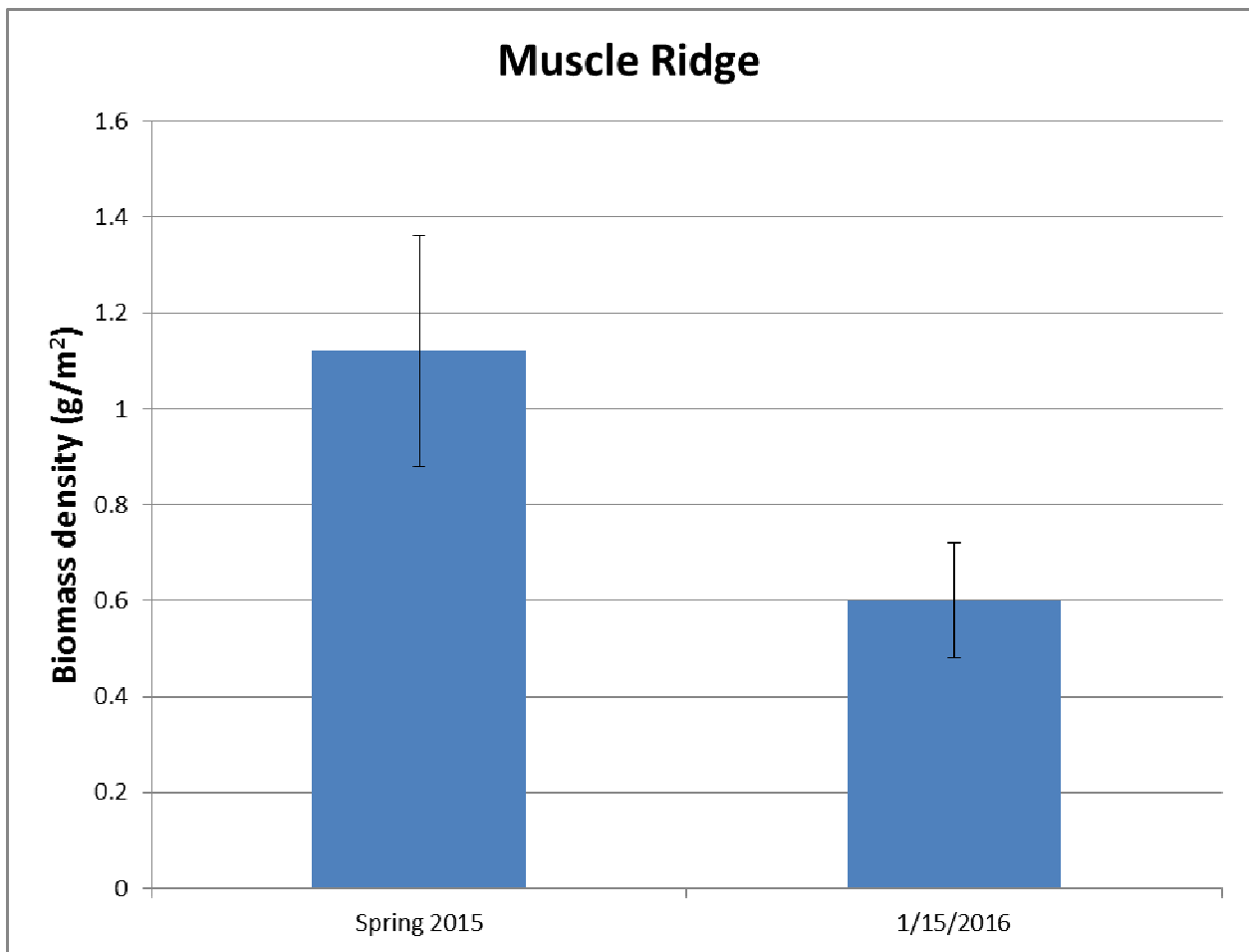


Figure 2. Biomass density estimates of scallop observed in spring 2015 survey and the January 15, 2016 DMR in-season survey, reflecting a decline of 46%.

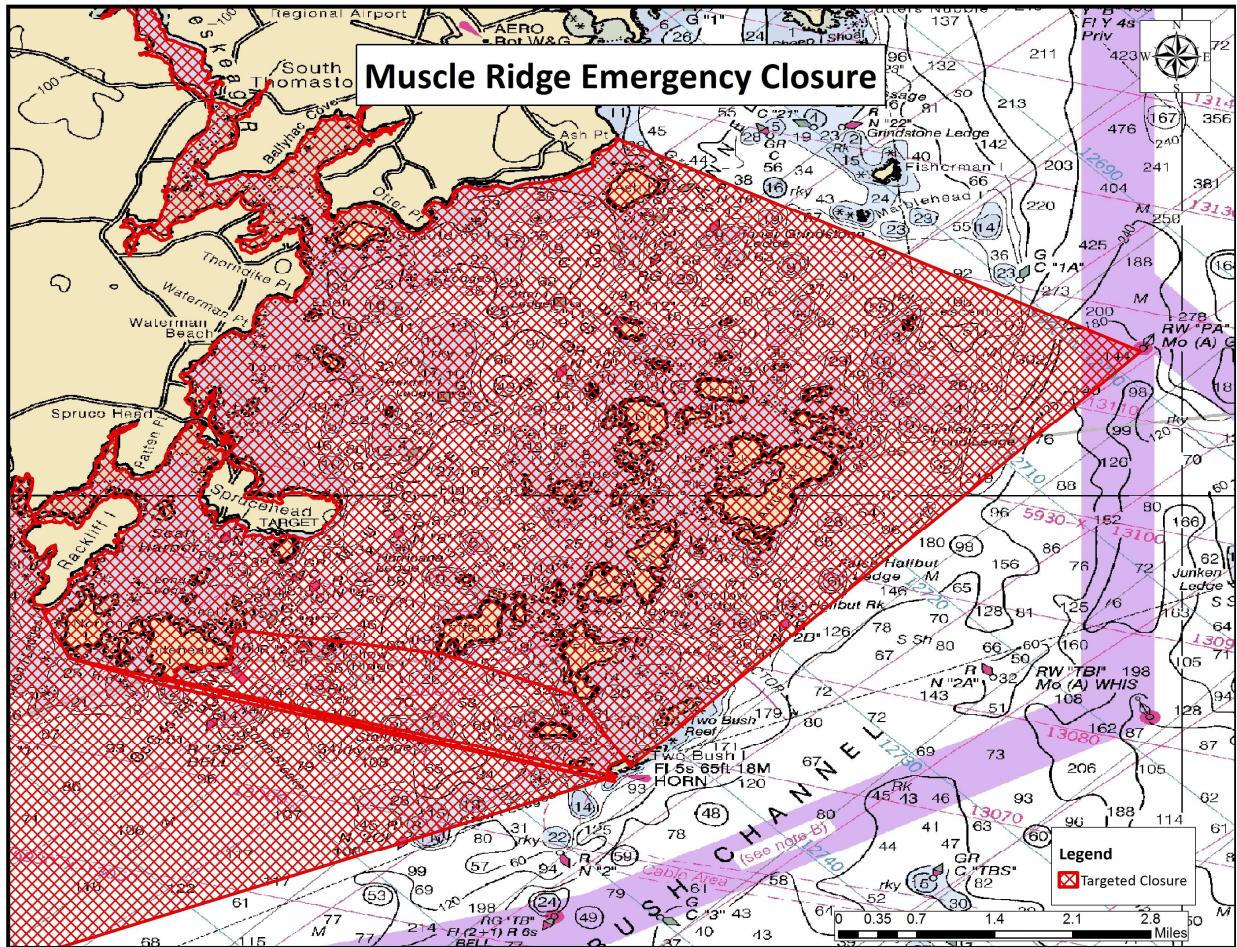


Figure 3. Muscle Ridge Emergency Closure.

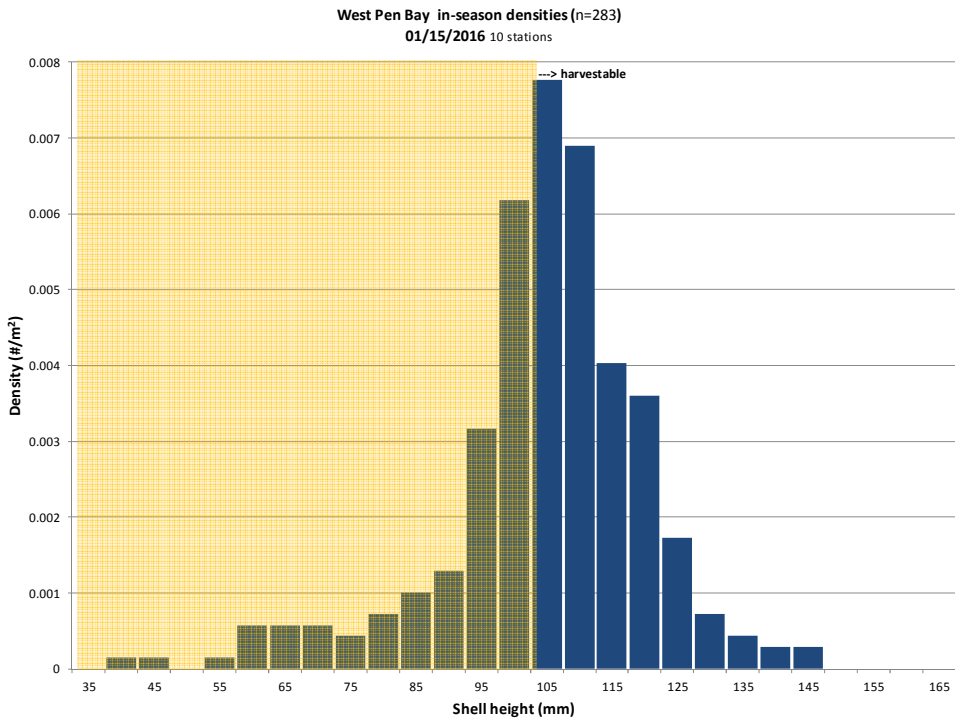


Figure 4. Shell height frequency of scallop observed in the January 15, 2016 DMR in-season survey, reflecting very low levels of sublegal scallops (shaded in yellow) and low levels of harvestable sized scallops (>101.5mm).

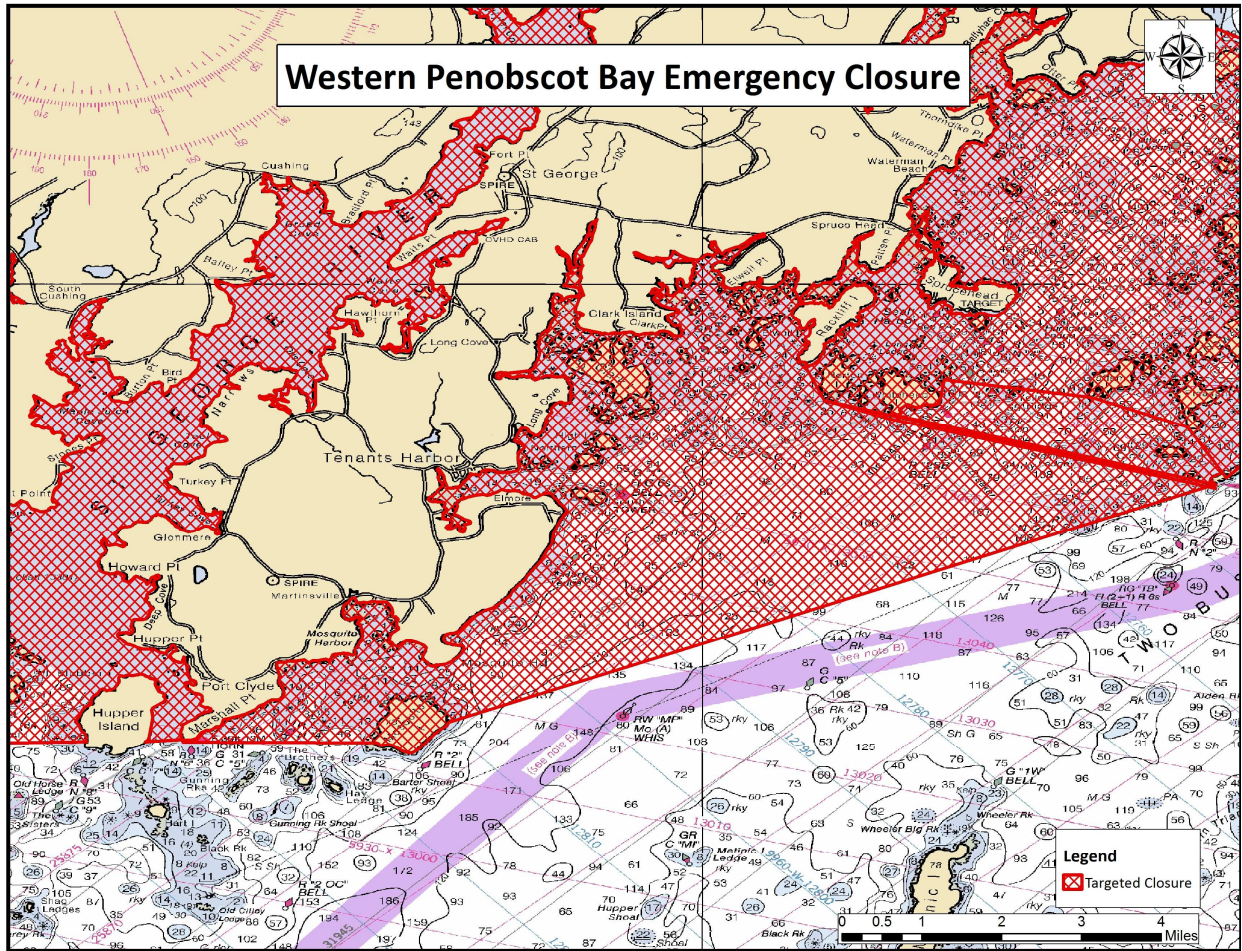


Figure 5. Western Penobscot Bay Emergency Closure.

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 (1)(17) Muscle Ridge and Western Penobscot Bay. 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 Muscle Ridge and Western Penobscot Bay in order to protect Maine's scallop resource due to the risk of imminent depletion and unusual damage. While scallop populations are indicating signs of recovery in some areas of the state, the Department is concerned that unrestricted harvest during the remainder of the 2015-16 fishing season in these specific areas may reduce the broodstock essential for continuing recovery of the resource. 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 Muscle Ridge and Western Penobscot Bay as authorized by [12 M.R.S. §6171\(3\)](#).

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.