

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11 Scallops, Targeted Closures (10) Hussey Sound and (11) Roque Island Harbor (Sand Bay)

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of targeted conservation closures located in Hussey Sound, Casco Bay and Roque Island Harbor (Sand Bay) of the Lower Kennebec/Englishman Bay Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact 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 both the Hussey Sound and Roque Island Harbor (Sand Bay) 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 1, 2018

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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, except for Muscle Ridge (1) which shall be open to diving on Thursdays and shall be open to dragging on Tuesdays, on calendar dates specified in section 11.11. 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 to draggers. Open Thursdays 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 Graftam 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. Ocean Point

West of a line drawn from Emerson Point, at the southernmost 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 drawn from R N "8" to the most southwestern tip of Ocean Point at Latitude 43° 48.874 N Longitude 069° 36.332 W.

4. 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.

5. 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.

6. 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.

7. 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).

8. 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.

9. 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.

10. Hussey Sound

North and west of a line drawn from the most northern tip of Long Island to the most southern tip of Little Chebeague Island; following the shoreline to the most western tip of Little Chebeague Island and continuing in a southwest direction to the most northern tip of Cow Island; continuing along the northern shoreline to the southwestern tip of Cow Island and proceeding to the most northern tip of Great Diamond Island, Portland; following the eastern shoreline of Great Diamond Island to the most northern tip of the southern shore of Diamond Cove; and, continuing in a southeast direction to the most southwestern tip of Pumpkin Nob and along the eastern shoreline to the most eastern tip of Pumpkin Nob; continuing to the most western tip of College Island; and then following the north shore of College Island to the most eastern tip and continuing in a northeast direction to the nearest point of land on Long Island.

11. Rogue Island Harbor (Sand Bay)

Within the following boundary line: A line beginning at the southern tip of Shoppee Point, Roque Bluffs and then running to the northeastern point of Great Head, Roque Island, then following the high water mark in a clockwise direction along the Roque Island shoreline until reaching the northern entrance of the thoroughfare between Roque and Great Spruce Islands, then running in a southeasterly direction to the nearest prominence on the northwest tip of Great Spruce Island, then following the high water mark along the northern shore to its' eastern tip, then running to the western tip of Double Shot Island and continuing along its' western shoreline until reaching the northeast tip, then running to the western tip of Anguilla Island and following the shoreline in a clockwise direction until reaching its' eastern tip, then running to the southwest tip of Halifax Island and following the northern shoreline to its' northern tip, and then in a northerly direction to Cow Point, Roque Bluffs.

11.11 Open and Closed Scallop Fishing Days

5. Zone 2 State Waters season

In addition to the dates identified for draggers and divers in Zone 2 in sections 3 and 4, the Atlantic Sea Scallop harvesting season in Maine's territorial waters around Machias Seal Island and North Rock is open March 1, 2018 through March 31, 2018, both days inclusive. ~~Fishing will be prohibited during the months of December, January, February, and April, 2018.~~

Basis Statement

Amendment to Chapter 11.08 Targeted Closures for the inclusion of (10) Hussey Sound and (11) Rogue Harbor (Sand Bay).

Justification:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Hussey Sound in Casco Bay (Zone 1) and Rogue Island Harbor (Sand Bay) in Little Kennebec/Englishman Bay Rotational Area (Zone 2). The rule also permits harvesting in the territorial waters around Machias Seal Island on any day that is open for Zone 2 draggers and divers. As targeted closures are implemented, the opportunity around Machias Seal Island may relieve fishing pressure on other inshore areas.

Hussey Sound

Monitoring of fishing effort and resulting resource removals from known fishing areas was completed through one-on-one interviews with scallop harvesters in the area and ongoing observations by Marine Patrol officers through routine boardings and site visits.

An estimated 6-8 boats have been steadily working within the Hussey Sound area and Marine Patrol reports the majority of boats in the first two weeks of the fishery were reaching their daily harvest limit by noon. However, as the fishery progressed, the length of time to reach a daily limit was increasing to late afternoon. In addition, there have been a lot of empty shells coming up in the drags, resulting in a reduced amount of bushels of commercial grade product per tow.

Through phone interviews with participating industry members, there has been consensus that the area has been a primary focus of harvesting with upwards of 10 boats observed some days. The input from industry has indicated that effort has greatly increased to attain the daily limit and there is little legal product remaining in the area.

Based on this information, it is necessary to protect the remaining legal scallop resource as broodstock for subsequent fishing years (Figure 1).

Rogue Island Harbor (Sand Bay)

Marine Patrol observed 52 boats harvesting the Rogue Island Harbor/Sand Bay area on opening day of the 2017-18 scallop fishing season. Effort remained strong for the first 5-day fishing week, with desirable average meat counts.

Continued reports from Marine Patrol indicated that the fishing fleet began to disperse during the second and third weeks of December, while a few boats remained in the area. Those harvesters that remained required greater effort (time) to reach their daily limit and have been persistent in harvesting this area.

Comments from participating harvesters in the area detailed the abundance of legal product in the rotational area, however, not to the extent of the 2014-15 fishery season. Additionally, there has been consensus from several participating harvesters in the area that the remaining resource is no longer able to be efficiently harvested without causing damage to the remaining resource and the habitat.

During the spring and pre-season science survey, observations of seed or sublegal product was low, especially in the Sand Bay area. While there was higher than expected growth of the sublegal product observed during the spring survey to legal size, it is necessary to ensure a healthy amount of broodstock remains within good habitat to ensure the longevity and sustainability of scallops within this area (Figure 2).

The Department is concerned that continued harvesting for the duration of the 2017-18 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 both the Hussey Sound and Rogue Island Harbor (Sand Bay) 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).

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

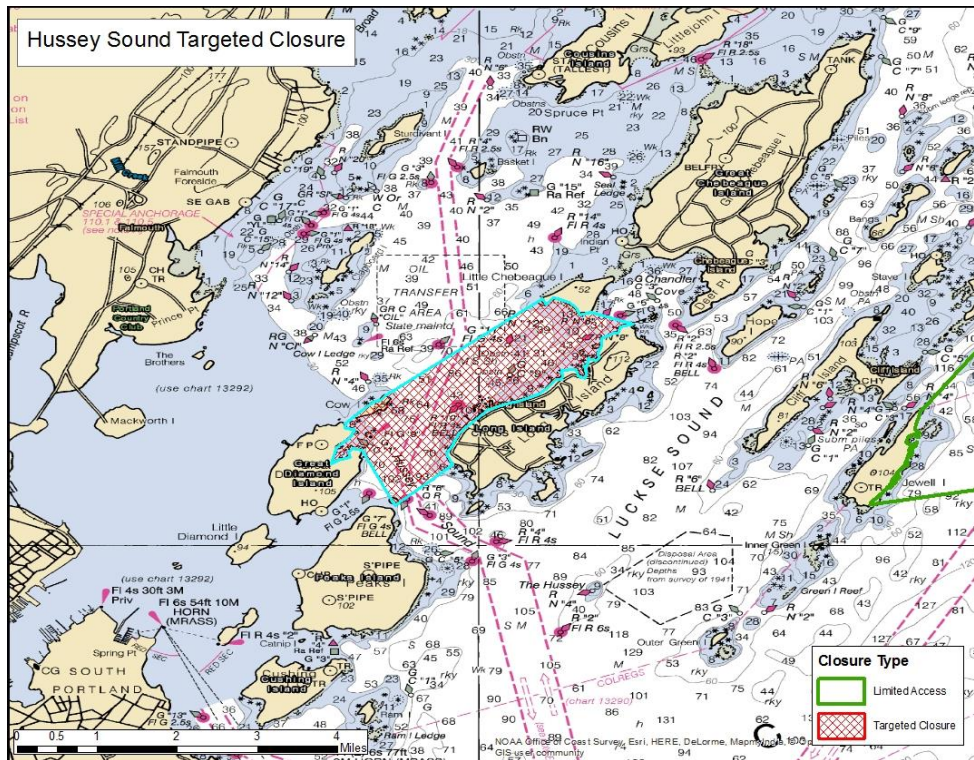


Figure 1: Chart of the Hussey Sound emergency targeted closure, implemented on January 1, 2018.

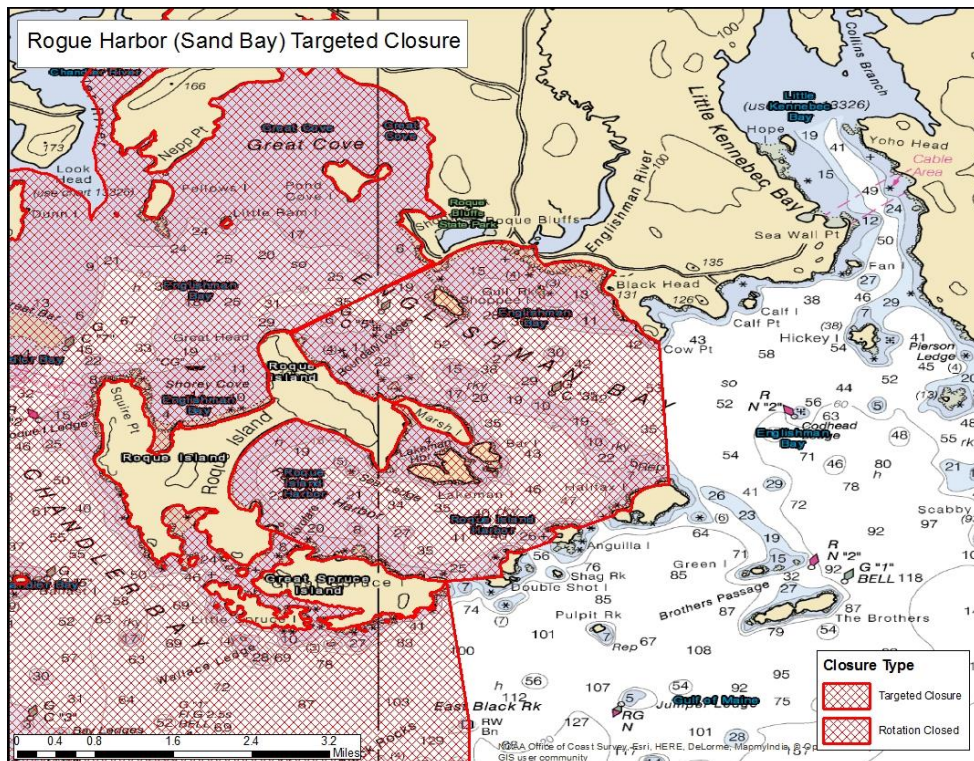


Figure 2: Chart of the Rogue Island (Sand Bay) emergency targeted closure, implemented on January 1, 2018.

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; 11.11**

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 for the implementation of targeted conservation closures located in Hussey Sound as well as in Rogue Island Harbor (Sand Bay) of the Lower Kennebec/Englishman Bay Rotational Area to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. The Department is concerned that continued harvesting for the duration of the 2017-18 fishing season in these areas will remove any remaining broodstock as well as negatively impact 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 both the Hussey Sound and Rogue Island Harbor (Sand Bay) 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.