

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (9) Isle au Haut RA; (10) Expanded Swan's Island; (11) Cobscook, Whiting & Dennys Bays & St. Croix River; (12) Expanded Upper Frenchman Bay**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure in the St. Croix River in Zone 3; and to expand existing closures in Frenchman Bay, Swan's Island and Isle au Haut rotational areas. 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: March 7, 2021

AGENCY CONTACT PERSON:	Melissa Smith (207-441-5040)
AGENCY NAME:	Department of Marine Resources
ADDRESS:	State House Station 21 Augusta, Maine 04333-0021
WEB SITE:	http://www.maine.gov/dmr/rulemaking/
E-MAIL:	Melissa.Smith@maine.gov
FAX:	(207) 624-6024
TTY:	(888) 577-6690 (Deaf/Hard of Hearing)

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 (Harpowell) 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 (Harpowell).

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. Upper Englishman Bay Rotational Area

All waters inside and shoreward of the following boundary line: A line beginning at the nearest prominence on the northeast tip of Great Spruce Island, then southeasterly to the western tip of Pulpit Rock and along its' western shore to the eastern tip, then running to the western tip of The Brothers Island and continuing along the northern shore to the eastern most tip, then running to the southwestern tip of Libby Island and continuing along the northern shore to the most northeastern tip; and then in an easterly direction (90° True) until it intersects the Western boundary of the Machias Area Rotational Closure (as identified in CHPT. 11.12 (1) C (1)), and then following that western boundary in a Northerly direction to its' point of origin at Bucks Head, Machiasport.

8. Addison Rotational Area

Eastern boundary: South and West 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 southeast to the most northern tip of eastern Plummer Island then the most western tip of Toms Island then True South to the three mile limit.

Western boundary: East and South of a line starting at Strout Point in the town of Milbridge to the most northern tip of Foster Island in the town of Milbridge then the most southeastern tip of Fosters Island to the most northern tip of Dyers Island; continuing from southern tip of Dyers Island to the most northwestern tip of Flint Island and the most southwestern tip of Flint Island then running Magnetic South to the three mile limit.

9. ~~Fox Islands~~ ~~Therefore within East Vinalhaven~~ Isle au Haut Rotational Area

Eastern boundary: South and West of a line starting at Moose Island, Deer Isle, to the western most point of Farrel Island, then True South to the three mile limit.

Western boundary: South of a line starting at the southern most point of Stinson Point, Deer Isle west to Mullen Head, North Haven; then East of a line starting at Fish Point, North Haven to Calder Wood Point on Calderwood Neck, Vinalhaven; continuing from the southern most point of Lane Island, Vinalhaven, True South to the three mile limit.

~~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~~ Expanded Swan's Island Rotational Area

Western boundary: East and south of a line from the southern most tip of Lopaus Point to the northern most point of Black Island; continuing from the western most tip of Black Island to the northern most tip of Swans Island Head, Swans Island; continuing south from West Point, Swans Island to Long Point, Marshall Island.

Southern boundary: North of a line starting at the southern tip of Lower Head, Marshall Island and running easterly to the southernmost tip of Heron Island; continuing northeasterly to the westernmost tip of Johns Island, following the northern shoreline to the northeastern most tip of Johns Island and continuing easterly to Gooseberry Point, Long Island; continuing along the northern shoreline of Long Island to the northeastern most point of Richs Head, Long Island, and then running northeasterly to the southern tip of Great Duck Island.

Eastern boundary: South and west of a line starting at Bass Harbor Head running southeasterly to the most eastern point of Great Gott Island and continuing to the most western point on Great Duck Island.

~~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.~~

11. Cobscook, Whiting & Denny's Bays & St. Croix River

Northern boundary: South and west of a line drawn from the International Bridge between Calais, Maine and St. Stephen, New Brunswick, Canada.

~~Northern boundary: South and west of a line drawn from mainland Eastport, opposite of Dog Island, running northeast to Dog Island, Eastport and continuing northeasterly to the southern tip of Deer Point, 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, February 15, 2021 by drag only and on Saturday, February 20, 2021, by hand harvest only.~~

12. Expanded Upper Frenchman's Bay

Southern boundary: North and east of a line starting at Lookout Point, Mount Desert Island and running easterly to the southern tip of Stave Island; continuing southeasterly to the northwestern tip of Jordan Island and running along the western shoreline to the southwestern tip of Jordan Island; continuing southwesterly to the northern tip of Ironbound Island and running along the eastern shoreline to the southern tip of Ironbound Island; and then running southeasterly to the westernmost point of Big Moose Island.

~~Southern boundary: North of a line from the southeastern tip of Meadow Point, running northeasterly to the southwest tip of Hancock Point, following the shoreline to the northeast tip of Hancock Point and running northeasterly to Bean Point, Sorrento.~~

13. Damariscotta River Limited Access Area

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.

14. West Casco Bay

Northern boundary: South and east of a line starting at Spring Point, South Portland and running northeasterly along the northern shore of Great Diamond Island; from the northeastern tip of Great Diamond, continuing to the western tip of Little Chebeague Island and running to Sunset Ledge, Great Chebeague Island.

Eastern boundary: West of a line starting at Sunset Ledge, Great Chebeague Island, and running along the southern shore to Deer Point, Great Chebeague Island and continuing southeasterly to the southern tip of Hope Island.

Southern boundary: North of a line starting at the southern tip of Hope Island and running southwesterly to northern point of Ship Cove, South Portland.

Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08, Targeted Closures: (9) Isle au Haut RA; (10) Expanded Swan's Island; (11) Cobscook... & St. Croix River; (12) Expanded Upper Frenchman Bay.

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 1; 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.

After the initial partial closure of the Fox Islands Thorofare, implemented Sunday, January 17, 2021 to protect scallop sublegal recruitment present at stations A6H4, A6L2 and A6L4 (Figure 1), Marine Patrol reported a decline in total vessel activity from 18 to less than 8 active harvester vessels operating southwest of Deer Isle, and when weather allowed, focusing on the scallop resource southeast of Vinalhaven. This number, considering weather and where the resource was located in exposed areas, decreased to 3-4 active vessels intermittently during the end of February. Patrol reports small meat size, with an estimation of 25 to 30 bushels of shellstock needed to reach 15 gallons of meat.

Harvesters commented that it was becoming more difficult to reach the daily limit by mid-February. Day trips required more time scouting for fresh areas to harvest. Additionally, harvesters reported seeing sublegal scallops with broken hinges coming up in their tows, indicating that continued harvesting was having a negative impact on sublegal scallop recruits.

This closure is necessary to reduce incidental mortality that is occurring on sublegal scallops and to cease further reduction of legal scallop spawning stock that remains in the area (Figure 2).

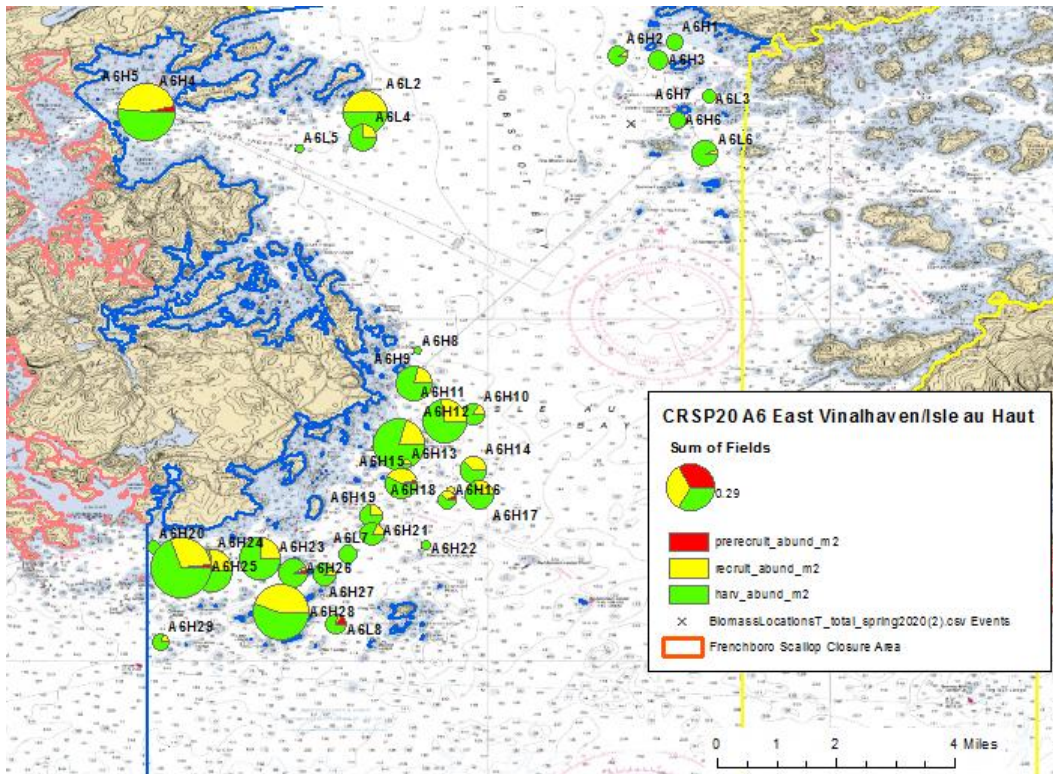


Figure 1: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 in the Isle au Haut Rotational Area. Legal biomass density was estimated at 1.45 g/m² in 2020 compared to 0.97 g/m² for the 2017-18 Scallop Season. There was minimal presence of sublegal (recruit) scallops observed in the Spring 2017 survey, but strong signals of recruitment along the southeast shore of Vinalhaven.

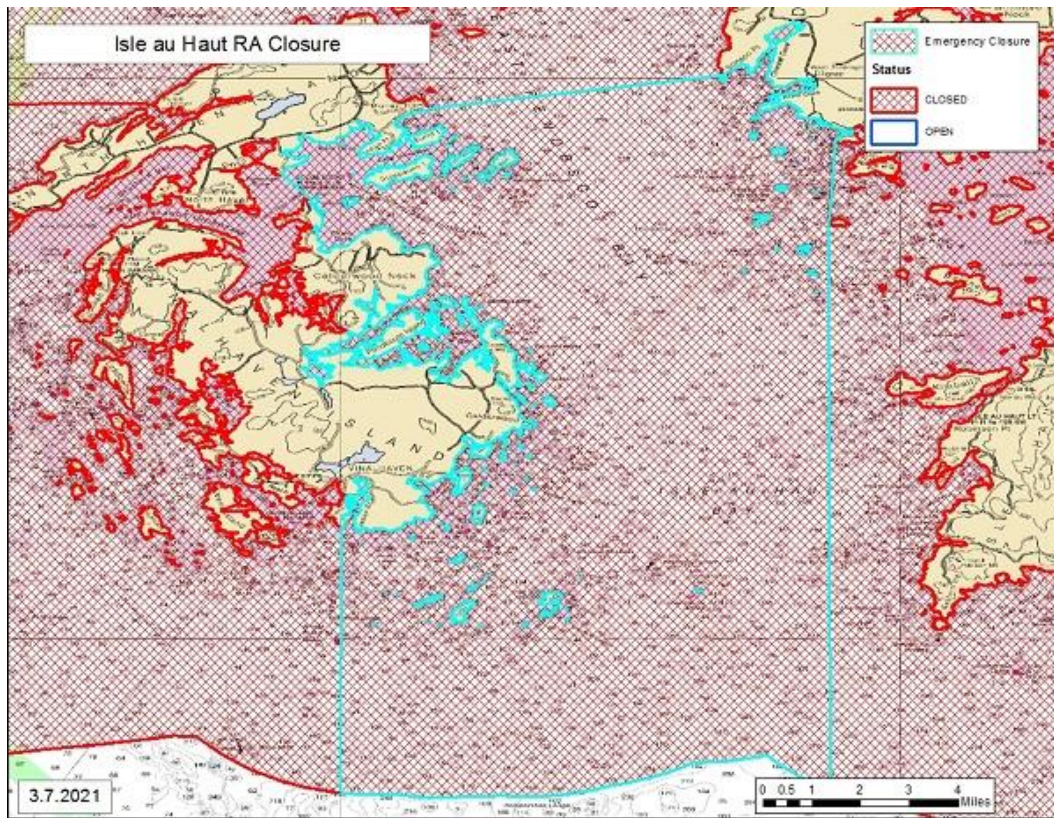


Figure 2: Chart depicts in-season conservation closure for the Isle au Haut Rotational Area, effective Sunday, March 7, 2021.

Expanded Swan's Island Closure

DMR scallop survey for 2020 observed strong sublegal scallop presence south of Black Island and north of Marshall Island (Figure 3; 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.

The expansion of the original Casco Passage and western Toothacher Bay closure, established January 17, 2021, captures the entire 2020 survey area that indicated moderate signs of seed and sublegal scallop resource. Relatively, this area had the most abundant observations of scallop recruitment in the Zone 2 management area along the western side of Swans Island and in deeper waters due north of Long Island (Figure 3).

Since the initial partial closure, Marine Patrol a decline in overall active vessels from a dozen to around 6-8 vessels during the end of January. This level remained somewhat consistent throughout the first half of February but declined to 3-4 vessels the final week of February. Vessels were able to reach daily limits relatively easy through mid-February, after which, it became more difficult to scout new areas. Reports indicate that the vessels that were still active during the last week of February were catching between 8 to 15 gallons.

Harvester comments received from this area indicate it did not recover as well from the previous open rotation and that perhaps it should not have remained open. Overall, there were less large meat sizes in the area and less density of legal scallop beds.

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).

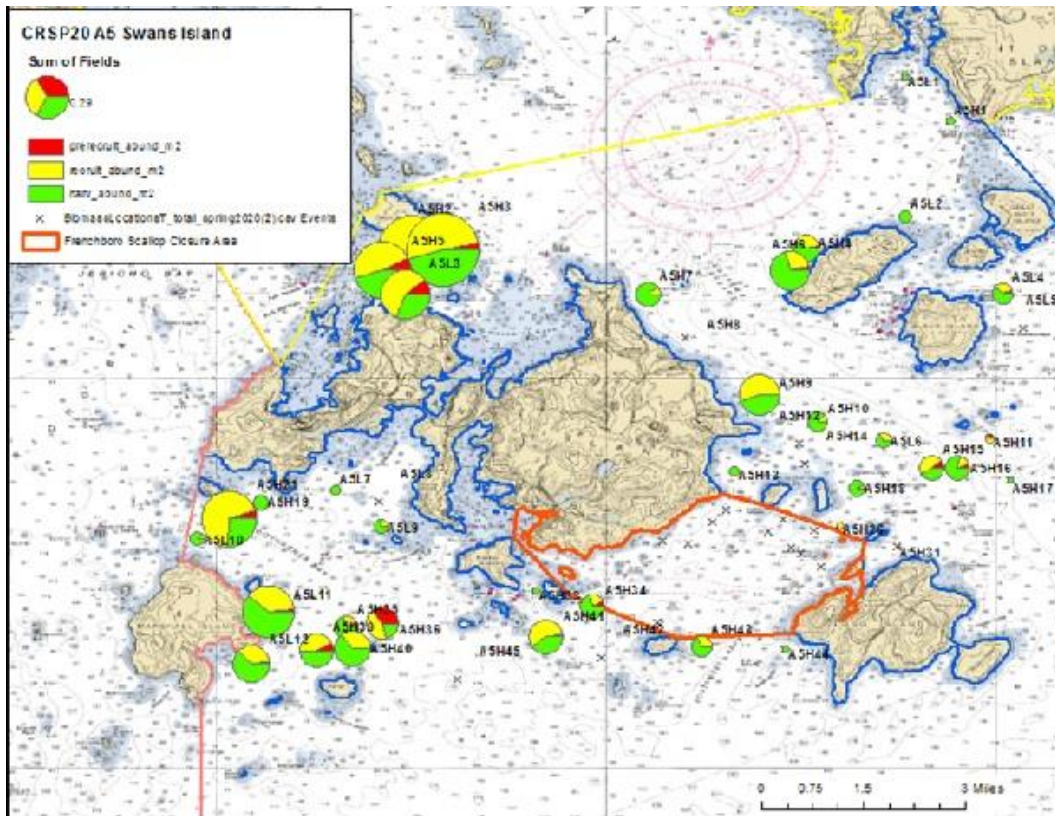


Figure 3: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 in the Swans Island Rotational Area. Legal biomass density was estimated at 1.64 g/m² in 2020 compared to 1.55 g/m² for the 2017-18 Scallop Season. Relative abundance of sublegal (recruit) scallops was observed in the 2020 surveys for both the Casco Passage area and north of Marshall Island. Additional seed was observed north of Long Island.

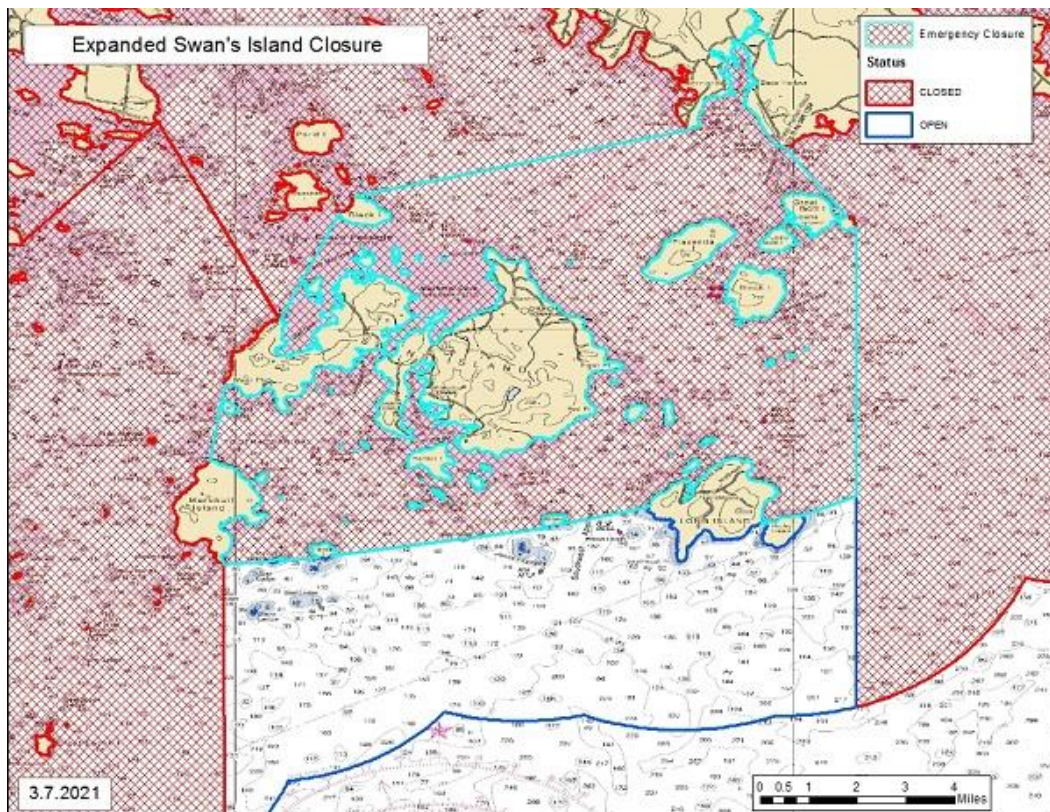


Figure 4: Chart depicts the expansion of the in-season conservation closure for the Swan's Island Rotational Area, effective Sunday, March 7, 2021.

St. Croix River

Harvester input has recommended a closure in the St. Croix, with the intent that it may allow for better recovery for following seasons.

Combined observations between harvesters and Patrol indicated 6 to 10 vessels were active in the St. Croix River proceeding the closure of Cobscook, Whiting and Dennys Bays on Sunday, February 14, 2021. The area is heavily impacted by tide and so harvest success fluctuated, but for the initial 6 days that it remained open, harvesters were able to meet and near the daily 10 gallon limit. Several harvesters chose to leave the area for better catch rates observed on the outside shore of Bold Coast in Zone 2.

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).

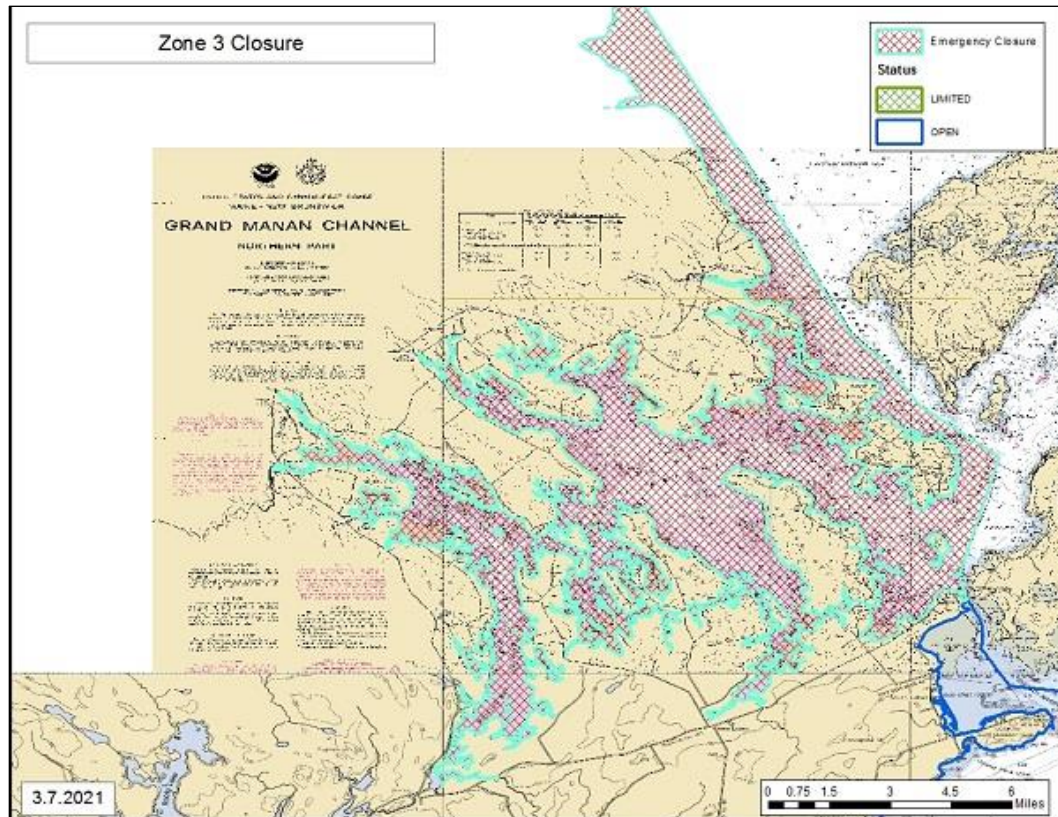


Figure 6: Chart depicts the expansion of the in-season conservation closure for Zone 3 to also include the St. Croix River, effective Sunday, March 7, 2021.

Upper Frenchman Bay

DMR scallop survey for 2020 observed a strong sublegal scallop presence in the upper northeast corner of Sullivan's Harbor and minor signs of recruitment in the mouth of the Skillings River (Figure 7; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicate a slight increase in relative legal scallop density from 0.67 g/m² to 0.79 g/m² observed during the most recent Spring 2020 survey. There were many stations where zero scallops were observed and overall expectation for this rotational area to perform was uncertain.

After the initial closure in the Skillings River and Sullivan Harbor, the level of active boats varied between 4 and 6, with new vessels visiting the area as overall biomass decreased in many of the open areas. These new vessels targeted the same areas that have already experienced consistent effort from vessels that harvested in December and January. The expansion to the original closure will prohibit new or repeated pressure on scallop beds that have already been targeted. Marine Patrol reports recent activity during the latter half of February was weather dependent, with approximately 2-4 vessels in the area, focusing in tows in deeper waters.

Harvester comments have also been varied with several observations early February that the area was showing signs of depletion and reaching daily limits was becoming difficult. As weather improved, vessels were able to scout new areas. However, there was consensus that some areas were harvested and should not remain open for the duration of the season.

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).

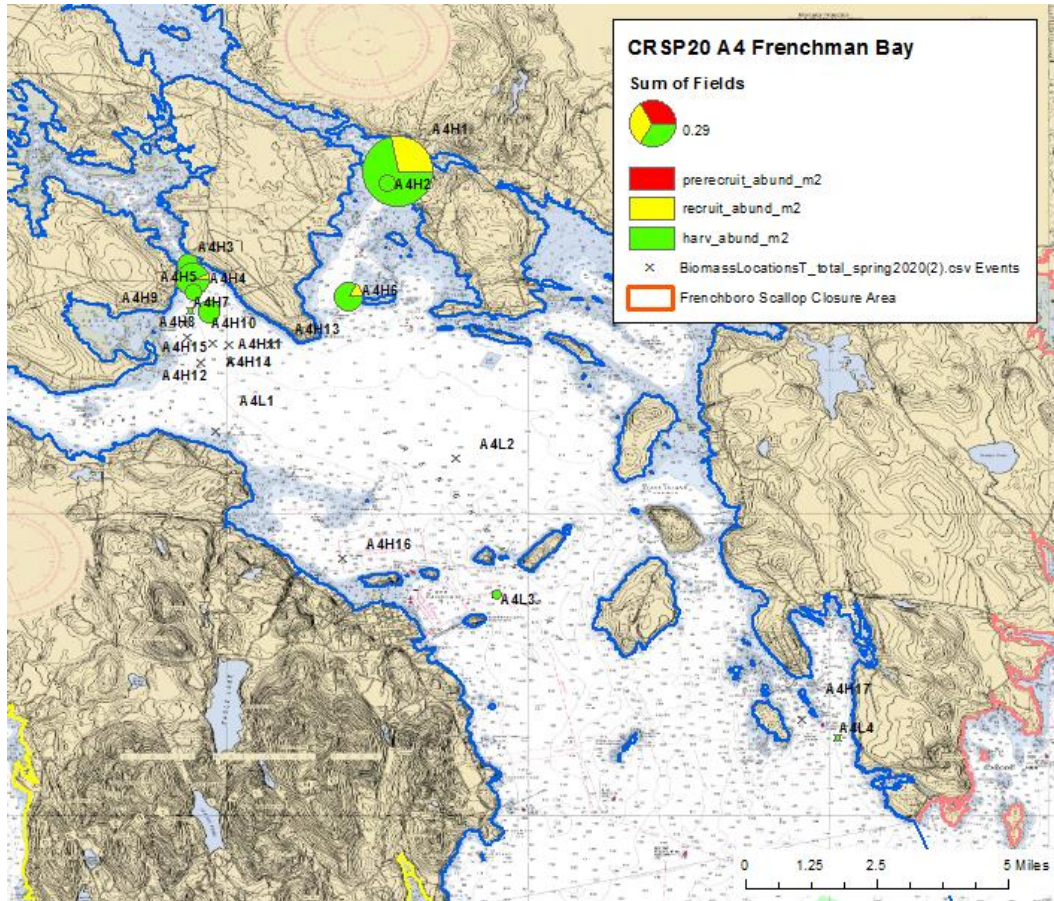


Figure 7: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 in the Frenchman Bay Rotational Area. Legal biomass density was estimated at 0.79 g/m² in 2020 compared to 0.67 g/m² for the 2017-18 Scallop Season.

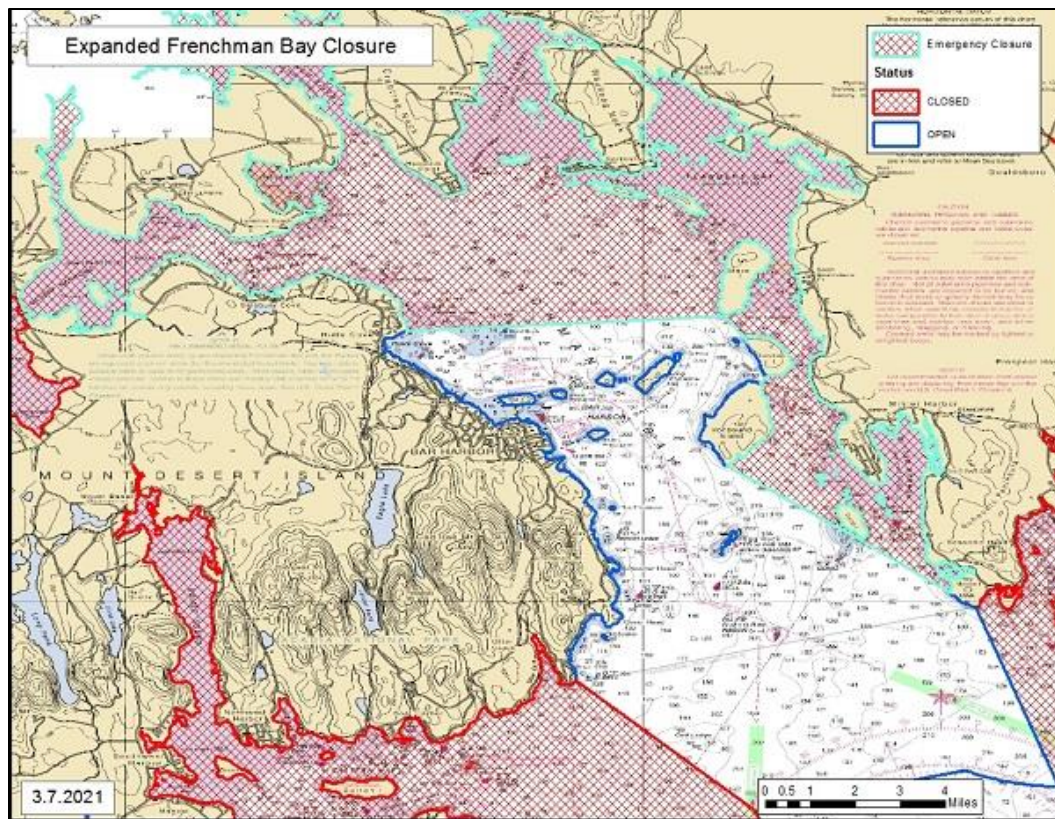


Figure 8: Chart depicts the expansion of the in-season conservation closure for the Upper portion of Frenchman Bay Rotational Area, effective Sunday, March 7, 2021.

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 St. Croix River, Upper Swans Island RA, Upper Frenchman Bay RA, and Isle au Haut RA.

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:

Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 441-5040; E-mail: Melissa.Smith@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: **Chapter 11.08, Targeted Closures: (9) Isle au Haut RA; (10) Expanded Swan's Island; (11) Cobscook... & St. Croix River; (12) Expanded Upper Frenchman Bay**

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 a scallop conservation closure in the St. Croix River in Zone 3; and to expand existing closures in Frenchman Bay, Swan's Island and Isle au Haut rotational areas. 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.