

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures (11)(13)(15)(16)(17)(18) Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay and Lower Blue Hill Bay/Jericho Bay. Emergency Regulations.

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of conservation closures located in Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay, and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 areas during the fishing season has exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have to sublegal product, diving in this area will be allowed to continue when the Zone 1 dive season resumes on March 1. Divers will also be allowed continued access in North Haven, Upper Damariscotta River and Lower Blue Hill Bay/Jericho Bay until such time as further management actions are necessary.

EFFECTIVE DATE: February 5, 2017

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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 Wednesdays and Fridays, ~~Hussey Sound/Chandler Cove~~ Casco Bay (11), Inner Cranberry Isles Area (14), Upper Damariscotta River (15), North Haven (16) and Lower Blue Hill Bay/Jericho Bay (18) which shall remain open to diving. Mid Penobscot Bay (17) shall be limited to fishing on Mondays and Tuesdays only for draggers, divers may access as provided in section 11.11(2). 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 to hand harvest [scuba divers] only, on Wednesdays and Fridays)

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) 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 draw 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 "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.

(5) 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.

(6) 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.

(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 Sebascodogan 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) Portland Harbor

Northern boundary: South of a line drawn from the northern tip of South Portland at the entrance to Portland Harbor at Bug Light 'Fl 4s 3M Priv' to the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges near Ft Gorges, Portland.

Eastern boundary: West of a line drawn from the fixed Navigational Aid 'Fl 2.5s 24 ft 5M' on the western end of Diamond Ledges to 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, Portland.

Southern boundary: North of a line drawn from the southwestern most tip of Cushing Island, Portland to the northeastern most tip of land on the north shore of Ship Cove, Cape Elizabeth.

- (11) ~~Hussey Sound/Chandler Cove~~ Casco Bay (Open to hand harvest [scuba divers] only)

~~North and west of a line drawn from the most northeastern tip of Long Island to the most southern tip of Deer Point, Great Chebeague Island; then following the shoreline in a northerly direction to the most southwestern tip of Ricker Head, Great Chebeague Island. Then south and east of a line from the most southwestern tip of Ricker Head, Great Chebeague Island, to the most northeastern tip of Little Chebeague Island, then following the southern shoreline to the most western tip of Little Chebeague Island, then continuing in a southwest direction to the most northern tip of Cow Island. Then following the northern shoreline to the southwestern tip of Cow Island; then continuing in a southwest direction to the most northern tip of Great Diamond Island, Portland. Then following the eastern shoreline of Great Diamond Island to the most northern tip of the southern shore of Diamond Cove; continuing in a southeast direction to the most southwestern tip of Pumpkin Island. Then following the eastern shoreline to the most eastern tip of Pumpkin Island; continuing to the most western tip of College Island. 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.~~

North and west of a line drawn from Portland Head Light, Cape Elizabeth to the southwestern point of Cushing Island, then following the southern shoreline to the northeastern point of Cushing Island then to the southern point of Cliff Island, then continuing to the southwestern point of Jewell Island, then following the western shoreline to the northern point of Jewell Island, then continuing to the southwestern point of Basin Point, Harpswell.

- (12) Narraguagus/Pigeon Hill Bay

Eastern boundary: South and West 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.

Western boundary: North and East of a line starting at the most southern tip of Petit Manan to EB gong, then South to the northern most tip of Green Island; then from the southeastern top of Green Island to the northern tip of Petit Manan Island; then from the southern tip of Petit Manan Island to N"2", then to G"1" bell, then True South to the three mile limit.

- (13) Chandler Bay/Head Harbor Island

All tidal waters of the Chandler Bay/Head Harbor Island rotational scallop area, as defined in Chapter 11.12 1. B. (2), which are inside and inshore of the following boundary lines:

- (a) Inside and inshore of a line beginning at the most eastern tip of Great Spruce Island and running in a southerly direction to the day marker at East Black Rock 'RW Bn', then continuing in a southwesterly direction to the southern tip of Mark Island, then continuing in a southerly direction to the eastern tip of Seguin Island, then continuing due south to the nearest point of land on Head Harbor Island.
- (b) ~~Inside and inshore of a line beginning at the western tip of Crow's Point on Head Harbor Island and running in a westerly direction to the northeast tip of Mud Hole Point on Great Wass Island. the easternmost tip of Little Pond Head, Great Wass Island to the southernmost tip of Freeman Rock, then continuing on to the southernmost tip of Mistake Island, then to the southernmost tip of Man Island; then continuing to the southernmost tip of Head Harbor Island.~~

- (14) Inner Cranberry Isle Area (Open to hand harvest [scuba divers] only)

- A. It shall be illegal to drag for scallops in the tidal waters of the Cranberry Isle

rotational scallop area, as defined in Chapter 11.12 1. B. (4), which are inside and inshore of the following boundary lines:

1. Inside and inshore of a line beginning at the eastern end of Otter Point, Mount Desert and running in a southwesterly direction to navigational buoy R "2" FI R2s GONG, and then continuing in a southeasterly direction to the navigational buoy "C" 5 at Gilley Ledge, and then continuing in a southerly direction to the northern tip of Baker Island.
 2. Inside and inshore of a line beginning at the western prominence of Baker Island and running in a westerly direction to the eastern tip of Deadman Point, Great Cranberry Island.
 3. Inside and inshore of a line which runs congruent with the southern boundary of the Spurling Point cable area between Great Cranberry Island and Mount Desert Island.
- B. Except on Thursdays, it shall be illegal to take scallops by diving inside and inshore of the following boundary line.
1. Inside and inshore of a line drawn from the southernmost tip of Sargent Head, Northeast Harbor, southwesterly to the most northern top of King Point, Southwest Harbor and to include all of Somes Sound.

(15) Upper Damariscotta River (Open to hand harvest [scuba divers] only)

North and west of a line starting at the southern tip of Jones Point, South Bristol to the most northern tip of Farnham Point, East Boothbay

(16) North Haven (Open to hand harvest [scuba divers] only)

Inside of a line starting at the most northern tip of Webster Head, North Haven to the most western tip of Great Spruce Island and following the northern coastline to the most northern tip of Great Spruce Island; then continuing to the most northern tip of Butter Island and following the eastern coastline to the most eastern tip of Butter Island; then continuing to the most northeastern tip of Eagle Island; then continuing to the most eastern tip of the southernmost of The Porcupines Islands; then continuing in a southwestern direction to the most eastern tip of Mullen Head. To include all waters inside of Great Spruce Island, Butter Island and Eagle Island.

(17) Mid Penobscot Bay [Open to dragging on Mondays and Tuesdays only, divers may access as provided in section 11.11(2)]

Northern boundary: South of a line from the most northwestern point of Little Deer Isle to the most northern point of Pickering Island, then to the most eastern tip of Dark Harbor, Islesboro; continuing on from Grindel Point, Islesboro due West to the Sea Urchin Zone line at Latitude 44 16.913 N Longitude 68 58.508 W.

Southern boundary: North of a line starting at the southern most point of Stinson Point, Deer Isle, West to Mullen Head, North Haven AND North of a line starting at Pulpit Rock, North Haven due West to the Sea Urchin Zone line at Latitude 44 09.551 N Longitude 69 01.510 W.

(18) Lower Blue Hill Bay/Jericho Bay (Open to hand harvest [scuba divers] only)

Eastern boundary: North and West 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.

Western boundary: North and East of the line from the most southeastern point of Naskeag Point, Brooklin to the northern most tip of Swan's Island Head, Swan's

Island.

Northern boundary: South of a line drawn from the eastern most point of Harriman Point due East to the southern tip of Hardwood Island, then South to the northern tip of Moose Island, then from the southern tip of Moose Island East to Reed Point, Mount Desert Island.

11.09 Limited Access Areas

The areas below are open on the dates specified, unless otherwise indicated in 11.08.

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by divers on December 1, 3, 8, 10, 15, 17, 22 and 29, 2016; January 7, 2017; March 2, 9, 16, 18, 23, 25 and 30, 2017; and April 6 and 13, 2017 except for MDI Area (5) where fishing shall be only open to divers on December 1, 8, 15, 22 and 29, 2016; January 5, 12, 19 and 26, 2017; February 2, 9, 16, and 23, 2017; March 2, 9, 16, 23 and 30, 2017; and April 6 and 13, 2017 and Whiting and Dennys Bays Area (4) which shall be open to divers on December 3, 10, 17, 24 and 31, 2016; January 6, 13, 20 and 27, 2017; February 3, 11, 18 and 25, 2017; and March 4, 10, 17 and 24, 2017. All directions are relative to True north (not magnetic).

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following Limited Access Areas except by draggers on January 2, 9, 16, 23 and 30, 2017; February 6, 13, 20 and 27, 2017; March 6, 13, 20 and 27, 2017; and April 3 and 10, 2017 except for Whiting & Dennys Bays (4) where fishing shall be open to draggers on December 7, 14, 21 and 28, 2016; January 4, 11, 18 and 25, 2017; February 1, 8, 15 and 22, 2017; and March 1, 8, 15, 22 and 29, 2017. All directions are relative to True north (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these Limited Access Areas, 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.

The Commissioner may close harvesting for the remainder of the season in the Limited Access Areas listed below though emergency rulemaking if the Department has information that indicates there is a likelihood that between 30 percent and 40 percent of the harvestable biomass has been removed.

(1) Casco Bay Area:

Western boundary: South of a line drawn from the most southwestern point of Basin Point (Harpwell) 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 (Harpwell).

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, then continuing to the southeastern tip of Jewell island.

(2) Damariscotta/Sheepscot Area: [Sheepscot closed in 2016-17 season, as per 11.08(5); Upper Damariscotta River closed to dragging for remainder of 2016-17 season, as per 11.08(15)]

South 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. Then 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 and then to the most southern tip of Fishermen Island. Then, north of a line from the most northern tip of Fishermen Island to the most southwestern point of Thrumcap Island, and west of a line drawn

from this point to the most southern tip of Shipley Point, following the western shoreline of Rutherford Island. Also, west of the South Bristol Bridge, and to include the Damariscotta River.

(3) Muscongus/Western Penobscot Area: [Muscongus Bay closed in 2016-17, as per 11.08(6)]

Western boundary: 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 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.

(4) Whiting Bay and Denny's Bay Area:

It shall be unlawful to fish for or take scallops and or urchins west 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 Denny's Bay.

(5) Mount Desert Island Area (Open to hand harvest [scuba divers] only)

Southern boundary: North and west of a line drawn from the southernmost tip of Sargent Head, Northeast Harbor, southwesterly to the most northern top of King Point, Southwest Harbor and to include all of Somes Sound.

11.12 Ten (10) Year Rotational Management Plan

1. Zone Two (2): Eastern Maine

The open and closed seasons in the specified areas within Zone Two (2) shall be open on a rotational basis as shown in the following table:

B. Second Rotation

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for the 2012-13 fishing season, the 2013-14 fishing season, the 2016-17 fishing season and the 2019-20 fishing season. All directions are relative to True North (not Magnetic unless specified as such).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) 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.

(1) The Cutler Shore

Eastern boundary: South and West of a line starting at the most western tip of Jim's Head in the town of Trescott and Magnetic South to the three mile limit.

Western boundary: North and East of a line drawn South from Great Head, Cutler to the three mile limit.

(2) Chandler Bay/Head Harbor Island [Inner area closed in 2016-17, as per 11.08(13)]

Eastern boundary: North and West a line starting at the most northeastern point of Great Head, Roque Island then northeast to the most southern end of Shoppee Point, Roque Bluffs and from the eastern tip of Great Spruce Island to the day board at East Black

Rock 'RW Bn', and then True South to the three mile limit, including the Thoroughfare between Roque Island and Great Spruce Island.

Western boundary: East of the Jonesport Bridge then True South from the most Eastern tip of Little Pond Head to the three mile limit.

(3) Narraguagus/Pigeon Hill Bay [Closed in 2016-17 season, as per 11.08(15)]

Eastern boundary: South and West 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.

Western boundary: North and East of a line starting at the most southern tip of Petit Manan to EB gong, then South to the northern most tip of Green Island; then from the southeastern top of Green Island to the northern tip of Petit Manan Island; then from the southern tip of Petit Manan Island to N"2", then to G"1" bell , then True South to the three mile limit.

(4) Cranberry Isle Area [Inner Cranberry Isles Area closed in 2016-17 season to draggers, as per 11.08(14)]

Eastern boundary: South and West of a line starting at the most eastern end of Otter Point, Mount Desert Island continuing SE (135°) to the three mile limit at Latitude 44 16.080 N Longitude 68 07.919 W.

Western boundary: North and East of a line starting at Bass Harbor Head Light then in a southeast direction to the most easterly point on the eastern head of Great Gott Island continuing on True South to the three mile limit.

(5) Lower Blue Hill Bay/Jericho Bay [Closed in 2016-17 season to draggers, as per 11.08(18)]

Eastern boundary: North and West 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.

Western boundary: North and East of the line from the most southeastern point of Naskeag Point, Brooklin to the northern most tip of Swan's Island Head, Swan's Island.

Northern boundary: South of a line drawn from the eastern most point of Harriman Point due East to the southern tip of Hardwood Island, then South to the northern tip of Moose Island, then from the southern tip of Moose Island East to Reed Point, Mount Desert Island.

(6) East Isle Au Haut Bay

Eastern boundary: West of a line from the eastern tip of Coles Head on Whitmore Neck, Deer Isle to the western most point of Millett Island, then South to Richs Point, Isle Au Haut; then from the southern tip of Eastern Head, Isle au Haut, True South to the three mile limit.

Western boundary: South and East 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

(7) Mid Penobscot Bay [Open on Mondays and Tuesdays only in 2016-17 season to draggers, as per 11.08(17); North Haven area closed to draggers in 2016-17, as per 11.08(16)]

Northern boundary: South of a line from the most northwestern point of Little Deer Isle to the most northern point of Pickering Island, then to the most eastern tip of Dark Harbor, Islesboro; continuing on from Grindel Point, Islesboro due West to the Sea Urchin Zone line at Latitude Latitude 44 16.913 N Longitude 68 58.508 W.

Southern boundary: North of a line starting at the southern most point of Stinson Point, Deer Isle, West to Mullen Head, North Haven AND North of a line starting at Pulpit Rock, North Haven due West to the Sea Urchin Zone line at Latitude 44 09.551 N Longitude 69 01.510 W.

Basis Statement

Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures (11)(13)(15)(16)(17)(18) Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay and Lower Blue Hill Bay/Jericho Bay, Emergency Regulations

Justification:

The Department is taking emergency rulemaking action to implement targeted closures in the following areas: Casco Bay (hand harvest only), Upper Damariscotta River (hand harvest only), Mid Penobscot Bay (draggers limited to Mondays & Tuesdays), North Haven (hand harvest only), Lower Blue Hill Bay/Jericho Bay (hand harvest only) and Chandler Bay/Head Harbor Island (Figures 1, 2, 3, 4, 5 & 6). 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 areas during the fishing season has exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have during hand harvest to sublegal product, diving in these two areas will be allowed to continue as divers have not had access to the area since the first week of January and will resume fishing on March 1. Diving will also be allowed to continue in Upper Damariscotta River as a section of the furthest reaches of the upper river has not yet been fully exploited and will provide additional opportunity to divers when their season resumes on March 1. Finally, diving will also be allowed to continue in both North Haven and Lower Blue Hill Bay/Jericho Bay. Since the beginning of the season, draggers have had a total of 41 fishing days in these areas while the divers have only had 34 days. To provide equal access to the resource for both gear types, access will remain open for divers. Continued fishing threatens the remaining broodstock scallops needed for successful spawning to rebuild the resource in these areas as well as sublegal product that will recruit up to the fishery for harvest in future years and therefore the areas described above will be closed to fishing, except Casco Bay, Upper Damariscotta River, North Haven and Lower Blue Hill Bay/Jericho Bay, which shall remain open to divers until such a time as further management actions are necessary.

Casco Bay

In the Casco Bay Area, Marine Patrol observations and direct industry reports indicate that the majority of the area has been heavily fished and requires protection. A preseason survey of 17 stations (with ME DMR survey drag, 2" rings) was conducted on December 2, 2016 followed by in-season surveys of the same stations on December 22, 2016 and January 28, 2017. Biomass density of harvestable scallops in the area was estimated at 1.23 g/m² in the preseason survey (Figure 7, Table 1). Following the December 22, 2016 survey, the biomass density was 0.8 g/m² which was a decline of 35%. The January 28, 2017 survey indicated biomass density was 0.67 g/m² which was a decline of 46% for the whole area. The South Portland Harbor and Hussey Sound/Chandler Cove areas were closed to fishing on January 2, 2016 for conservation purposes (Figure 8 & 9). The December 22, 2016 survey found that biomass density in South Portland Harbor had declined to 0.86 g/m² from 3.59 g/m² in the preseason survey, a decline of 76% (Figure 7). The reduction in harvestable scallops was also apparent in size class composition observed over the course of the three surveys (Figures 10-13). Hussey Sound/Chandler Cove was closed to protect seed and sublegal scallops. For the remainder of Casco Bay the December 2, 2016 survey indicated relatively low biomass density (0.66 g/m²). This value declined slightly to 0.61 g/m² on December 22, 2016 but then increased to 0.68 g/m² on January 28, 2017. While further dragging activity could damage small scallops in this area and therefore have a negative impact on recruitment, hand harvest by scuba diving will have negligible impact on these small scallops. In addition, divers have only has access to Casco Bay for 26 days this season while draggers have had 32 fishing days as of February 5, 2017. Therefore, the Casco Bay Area requires a conservation closure for the drag component of the fleet to ensure that sublegal scallops are able to recruit up to the fishery and be available to the fleet in future seasons (Figure 1). However, hand harvest by scuba divers will be permitted in the area to allow this component of the fleet access during the bulk of the scheduled days for the 2016-17, which are in March (21 days) and April (13 days).

Damariscotta River

The Damariscotta River was last surveyed by ME DMR in the spring of 2015 (survey drag, 2" rings). There were 13 stations and three contained no scallops (Figures 14-15). Harvestable scallop density (0.019 per m²) has declined significantly since the previous (2011) survey (0.074 per m²) (Figure

16). The 2015 survey indicated seed and sublegal scallops were present, particularly between Jones Point and Carlisle Island. Therefore, this area remained closed for further rebuilding during the 2015-16 season and was reopened this year on a limited basis as it is a component of the Sheepscot/Damariscotta Limited Access Area (Figure 17). Divers reported strong catches in the river during December landing mostly U10 scallops when they had access before their split in the season. One fisherman reported landing a scallop meat that weighed 0.61 lbs., which would be a U2 scallop, previously unheard of in Maine waters. The drag fleet began fishing the area on January 2 and reported good catches with a high proportion of the catch reflecting U10-U15 scallops. The fleet primarily focused their fishing effort above Jones Point. Direct industry reports collected during the month of January from the drag fleet reflect a 35% decline in Catch per unit effort (CPUE). Therefore an immediate conservation closure of the upper portion of the river is required to ensure that the area continues to rebuild. However, while a segment of the furthest upper reaches of the river have not been exploited by the drag fleet, divers will be allowed continued access to this area when their season resumes on March 1, 2017. Finally, the lower section of the river below Jones Point and Farnham Point shall remain open for continued harvest to the entire fleet as it has not been heavily targeted and will provide additional opportunity (Figure 2).

Mid Penobscot Bay & North Haven

The Mid Penobscot Bay Rotational area was surveyed by ME DMR (survey drag, 2" rings) in the spring of 2016. There were 20 tows completed and seven contained no scallops (Figure 19 & 20). Densities were among the lowest on the spring survey. The estimated harvestable biomass density was 0.26 g/m² (in comparison nearby Lower Blue Hill Bay was 2.03 g/m²). There was some presence of seed and sublegals near Sheep and Eagle Island as well as near Little Deer Isle. Despite these low density levels, the fleet targeting the area has been able to obtain their daily limit over the past two months. However, direct industry reports reflect a 70% decline in CPUE since the area opened. Therefore, the Mid Penobscot Bay area requires a limited conservation closure for the drag component, with only two days a week (Mondays & Tuesdays) open to extend access further into the season (Figure 3). In addition, a targeted conservation closure of the North Haven area around Great Spruce Island, Butter Island and Eagle Island is required as the majority of the draggers fishing effort has been focused in this area and to ensure seed and sublegal scallops in the area recruit up to the fishery in future seasons (Figure 4). However, hand harvest by scuba divers will be permitted in the rotational area to allow this component of the fleet access during the bulk of the scheduled days for the 2016-17 season, which are in March (19 days) and April (6 days). Finally, divers, who are on a reduced schedule in January and February, have only had access to the area for 26 days this season while draggers have had 32 fishing days and therefore divers will also be allowed to continue access the North Haven targeted closure until such a time as further management actions are necessary.

Lower Blue Hill Bay/Jericho Bay

The Lower Blue Hill Bay Rotational Area has supported a robust fishery over the past two months, producing high quality U10 grade scallops fetching fishermen a premium price for their daily catch. Approximately 30 vessels have been fishing the area, working primarily between Naskeag Point, Flye Island and Pond Island during the first few weeks of the season in December. By January, boats began to spread out in search of other scallop beds in the area. During the week of January 30, 2017 many industry reports indicated that a significant amount of the harvestable scallops had been landed from the area, with some vessels unable to obtain their daily limit after fishing all day. In addition, sublegal cut shells were observed while numerous fishermen conveyed that a closure of the entire area was needed. This information suggests that the area has exceeded its harvest target and is supported by data collected in DMRs monitoring programs.

A preseason survey of 19 stations (with commercial drag, 4" rings) was conducted on November 28, 2016 followed by an in-season survey of the same stations on January 14, 2017. Biomass density of harvestable scallops in the area was estimated at 2.37 g/m² in the preseason survey (Figure 20, 21 & 22) compared to 1.19 g/m² on January 14, 2017 (Figure 20, 23 & 24); this was a decline of 50%. Biomass density (based on four stations) of harvestable scallops in the Tinker/Bar Island portion of the Lower Blue Hill Bay area was estimated at 2.58 g/m² in the preseason survey (Figure 25) compared to 1.19 g/m² on January 14, 2017; this was a decline of 54% (Figure 26). Direct industry reports from the area reflect a 48% decline in CPUE, further supporting that the area has exceeded its catch target and requires an immediate closure to protect remaining scallops to ensure there is a healthy level of spawning stock biomass in the area to support future recruitment to the fishery. However, while draggers have had access to the area for 41 days, divers, who are on a reduced schedule in January and February, have only had 34

days to fish the area. Therefore, divers will be permitted to continue to access to the Lower Blue Hill Bay/Jericho Bay closure (Figure 5) until such a time as further management actions are necessary.

Chandler Bay/Head Harbor

Within the Chandler Bay/Head Harbor Rotational Area, the upper part of Chandler Bay above Ballast Island was the target of heavy fishing by 84 vessels at the beginning of the season, and experienced an 86% decrease in harvestable biomass density from 3.50 g/m² being observed on December 3, 2016 (Figure 27, 28, 29 & 33), to 0.48 g/m² observed during the January 7, 2017 survey (Figure 27, 28, 30 & 33), which was conducted after the area was closed via emergency regulation on January 1, 2017 for the remainder of the season (Figure 31).

Much of the fleet continued to fish below Ballast Island, around Mark Island, Eastern Bay and in the eastern end of the Moosabec Reach. The Moosabec Reach Limited Access Area opened to draggers on January 2, 2017 with 57 boats observed [fishing the area](#), easily obtaining their daily catch within one to two hours of fishing. The next open day on January 9, 2017, 44 vessels were fishing the area and catch rates slowed with some vessels moving out of the area to get their daily limit. On January 16, 2017, the number of vessels fishing the area dropped to 27, with many vessels fishing well into the afternoon before obtaining their daily limit, while others avoided the area all together. On January 7, 2017 a survey of the entire Chandler Bay/Head Harbor Rotational Area was undertaken and the area overall has experienced a 50% decline in harvestable biomass, from 2.48 g/m² being observed during the December 3, 2016 survey (Figures 29, 32 & 34) to 1.23 g/m² which was observed on the January 7, 2017 in-season survey (Figures 30, 32 & 34). Therefore, this area exceeded its harvest target and closed to ensure rebuilding continues by protecting remaining spat-producing scallops as well as to allow sublegal and seed scallops the opportunity to recruit up to the fishery in future years. However, the Mud Hole Channel and offshore areas southeast of Mark Island remained open for harvesting opportunity (Figure 35).

During the following weeks of January 23 and January 30, foul weather forced the remaining 8 vessels in the area to fish almost exclusively in the Mud Hole Channel area, with only 2 vessels reporting being able to fish the offshore area southeast of Mark Island as it is very weather dependent. The Mud Hole Channel area has been heavily fished over the past two months since the season started as the area provides protection from high seas. However, industry reports reflect a 72% decline in overall CPUE for the Chandler Bay/Head Harbor Island Rotational Area, and the Mud Hole Channel requires protection to ensure a critical mass of legal scallops are left behind to support successful spawning to help rebuild the area. Therefore, the Chandler Bay/ Head Harbor Island targeted closure will be expanded to include Mud Hole Channel for the remainder of the season (Figure 6). However, the offshore area southeast of Mark Island shall remain open for additional fishing opportunity at this time.

The Department is concerned that continued harvesting during the remainder of the 2016-2017 fishing season in the above listed areas will damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the scallop resource in the Muscle Ridge, Inner Cranberry Isle and Chandler Bay/Head Harbor 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).

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.

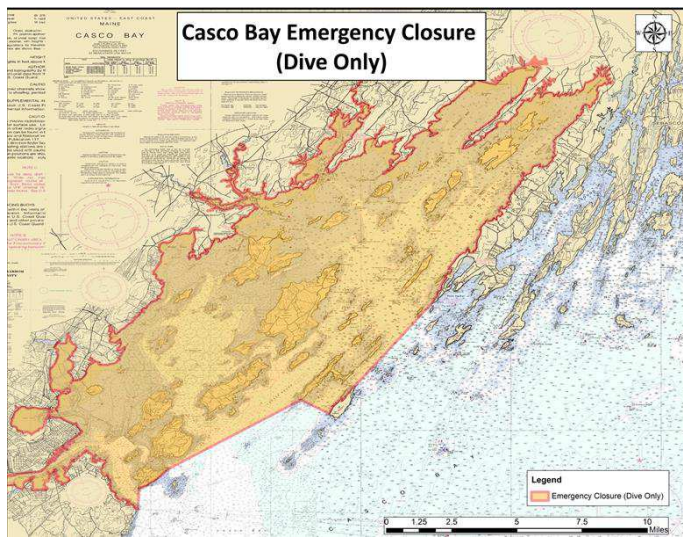


Figure 1. Chart of the Casco Bay (hand harvest only), emergency closure, which was implemented on February 5, 2017.

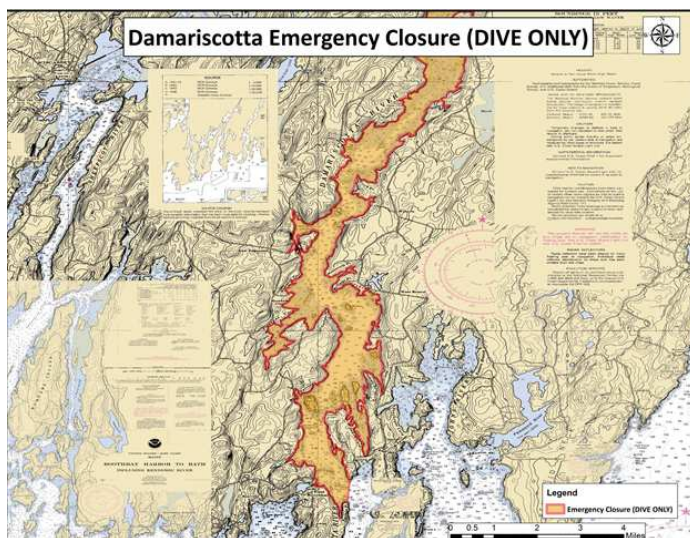


Figure 2. Upper Damariscotta River (hand harvest only) emergency closure, which was implemented on February 5, 2017.

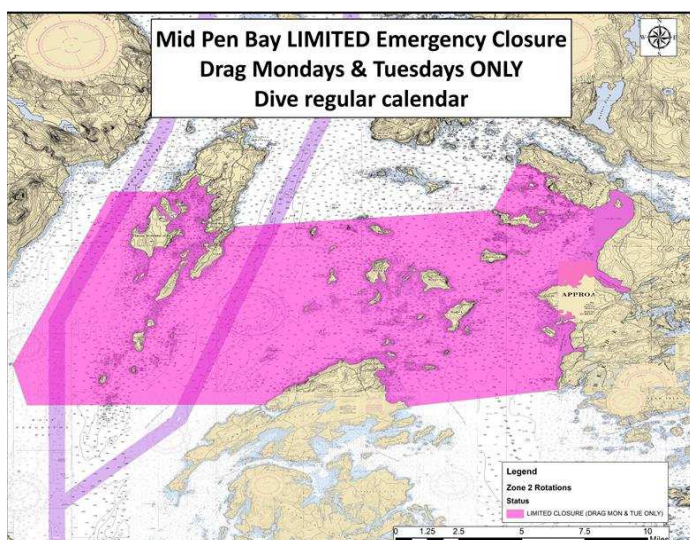


Figure 3. Chart of the Mid Penobscot Bay (draggers limited to Mondays & Tuesdays) emergency closure, which was implemented on February 5, 2017.

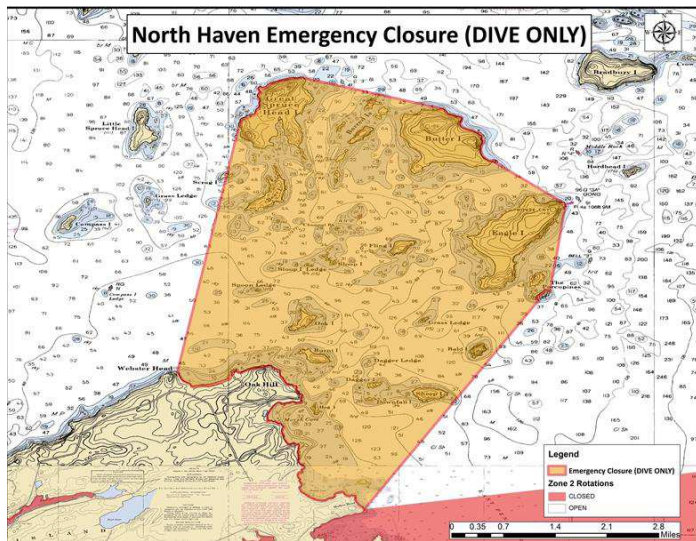


Figure 4. Chart of the North Haven (hand harvest only) emergency closure, which was implemented on February 5, 2017.

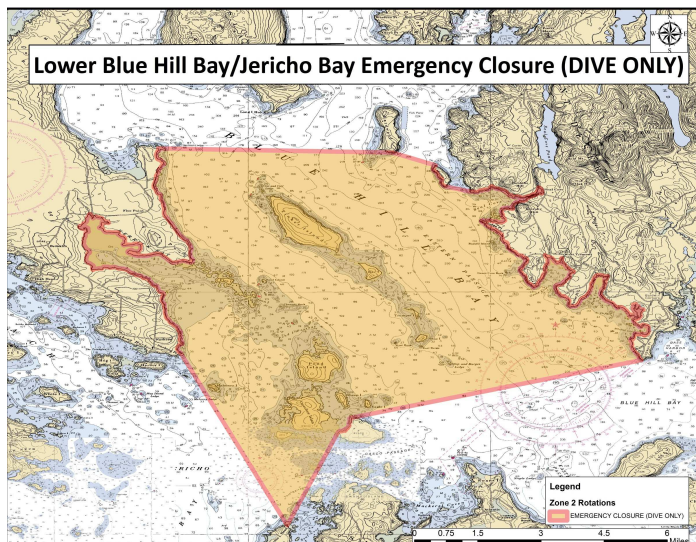


Figure 5. Chart of Lower Blue Hill Bay/Jericho Bay (hand harvest only) emergency closure, which was implemented on February 5, 2017.

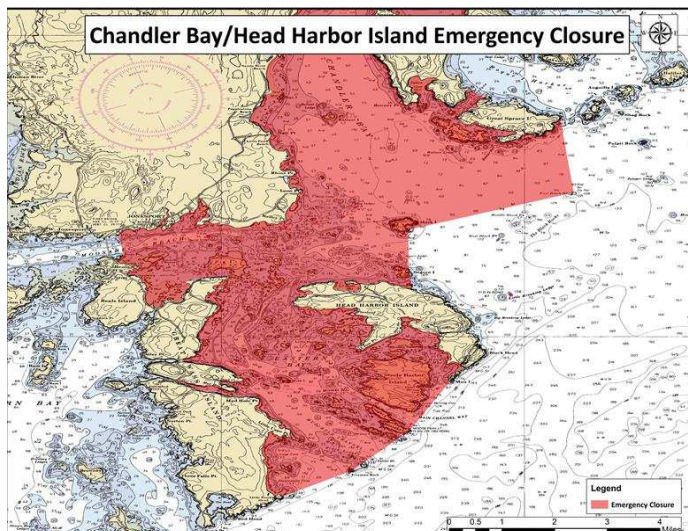


Figure 6. Chart of the Chandler Bay/Head Harbor Island emergency closure, which was implemented on February 5, 2017.

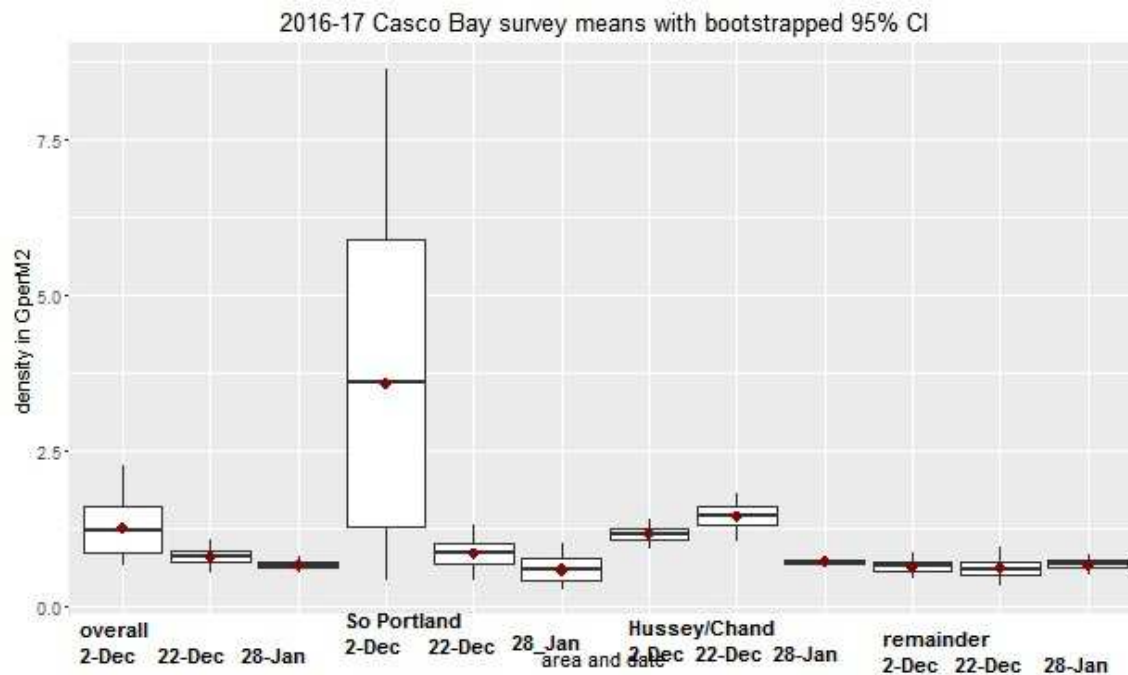


Figure 7. Mean harvestable scallop biomass density with bootstrapped 95% confidence intervals by area (overall, So. Portland, Hussey/Chandler and remainder) and date, Casco Bay area, 2016-17.

Estimates of harvestable scallop biomass density (g/m ²) for Casco Bay				
	Casco Bay overall (17 stations)	South Portland (3 stations)	Chandler/Hussey (3 stations)	remainder (11 stations)
12/02/16	1.23	3.59	1.17	0.66
12/22/16	0.8	0.86	1.46	0.61
01/28/17	0.67	0.6	0.73	0.68
% change	46%	83%	38%	-3%
= increase (negative value = increase) >40% between 30-40% <30%				

Table 1. Estimates of harvestable scallop biomass density, Casco Bay, 2016-17.

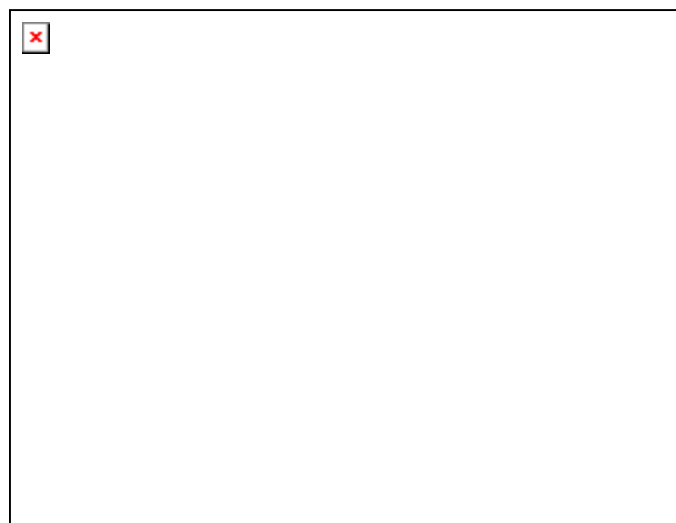
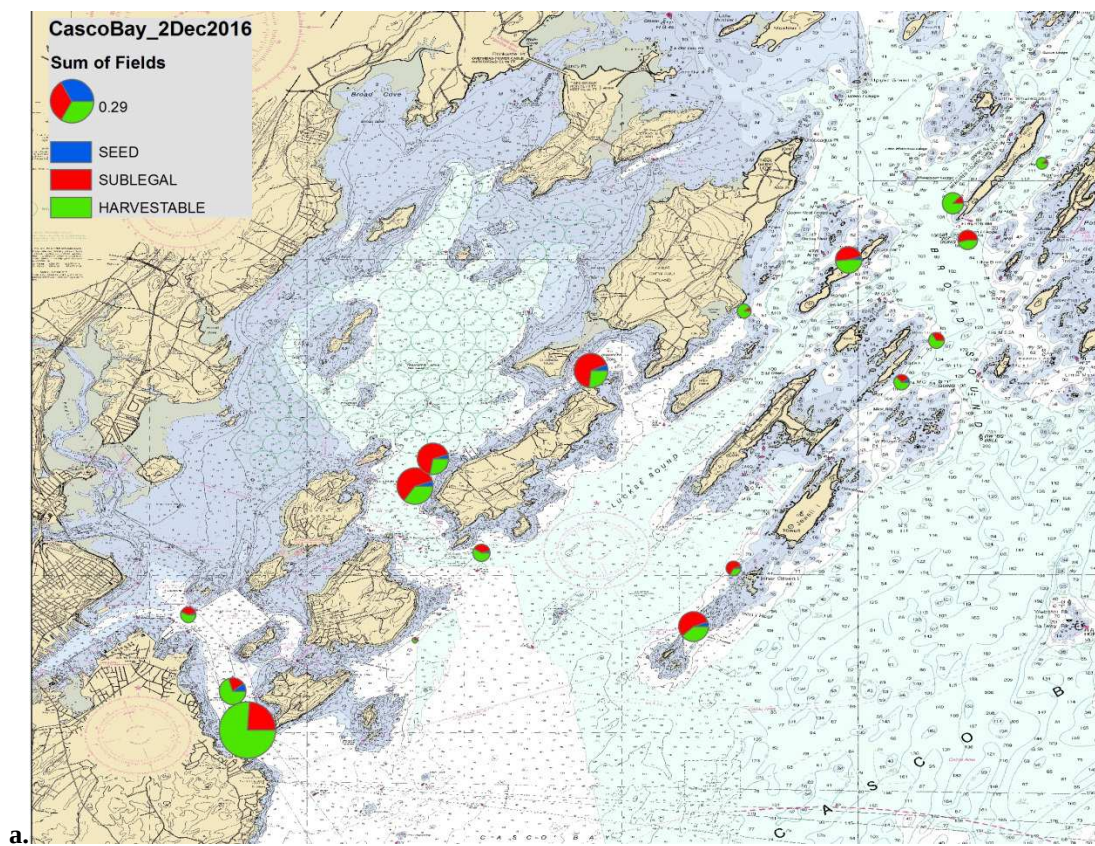
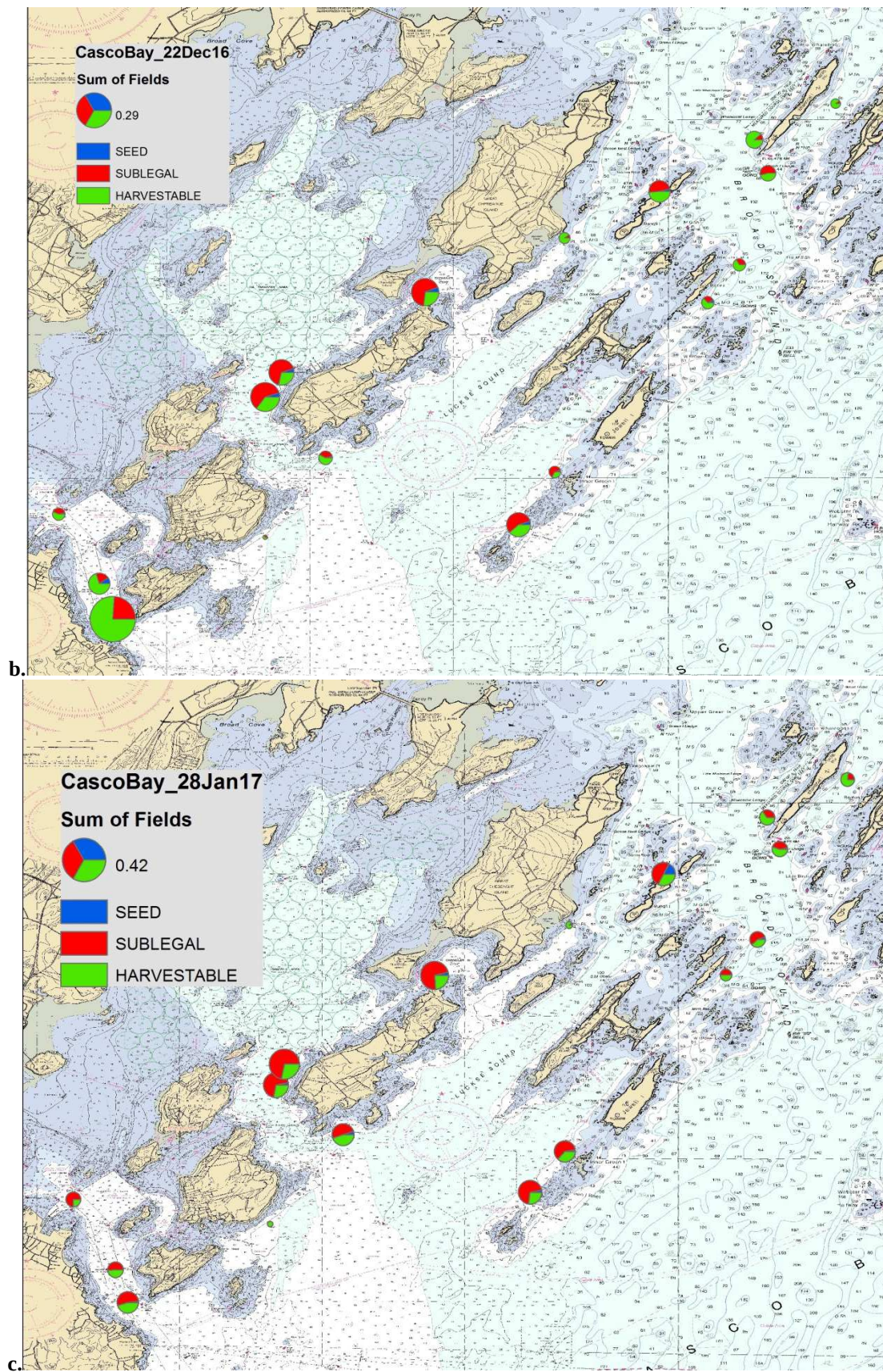


Figure 8. Portland Harbor targeted closure, which has been effective since January 1, 2017 for the remainder of the 2016-17 fishing season.



Figure 9. Hussey Sounds/Chandler Cove targeted closure, which has been effective since January 1, 2017 for the remainder of the 2016-17 fishing season.





Figures 10a-c. Density of scallops and size class composition by tow and location (Casco Bay area), 2016-17. Circles represent relative densities of scallops (*seed* = less than 2.5 inches shell height, *sublegal* = 2.5-3.9 inches, *harvestable* = 4 inches or greater).

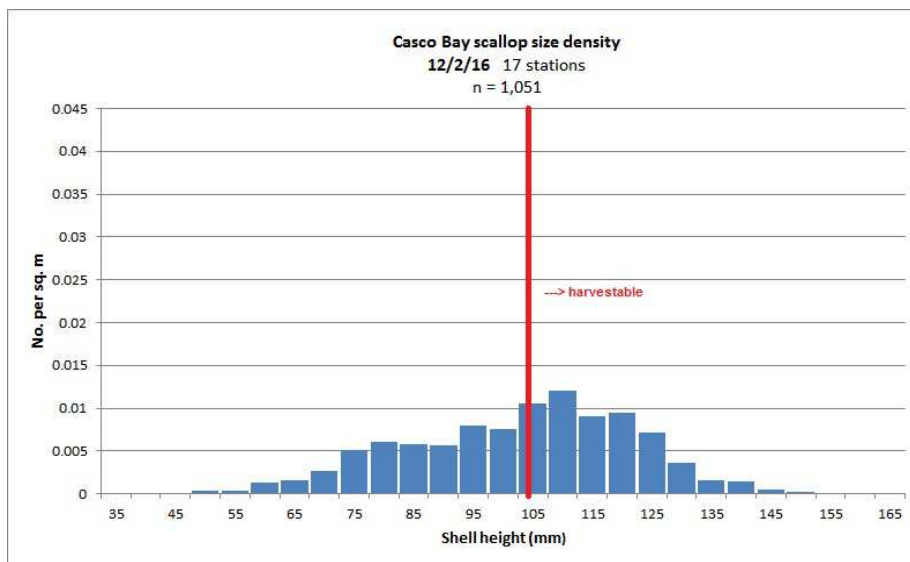


Figure 11. Scallop density by 5 mm shell height size bin, Casco Bay overall, 12-2-16.

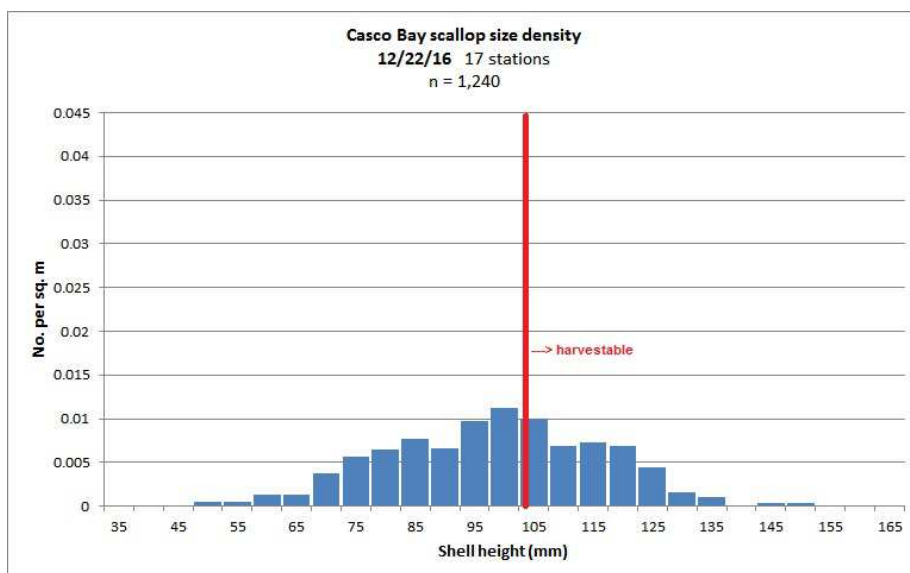


Figure 12. Scallop density by 5 mm shell height size bin, Casco Bay overall, 12-22-16.

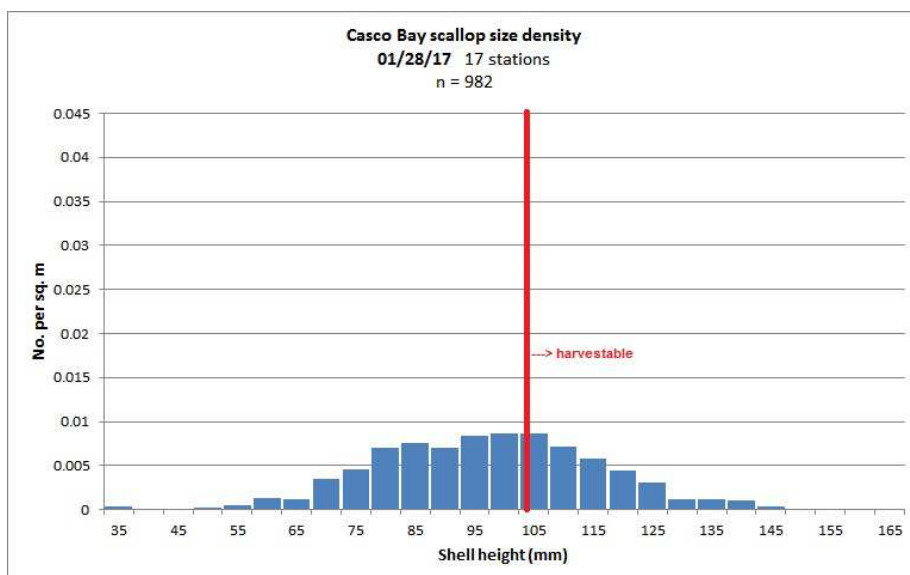


Figure 13. Scallop density by 5 mm shell height size bin, Casco Bay overall, 1-28-17.

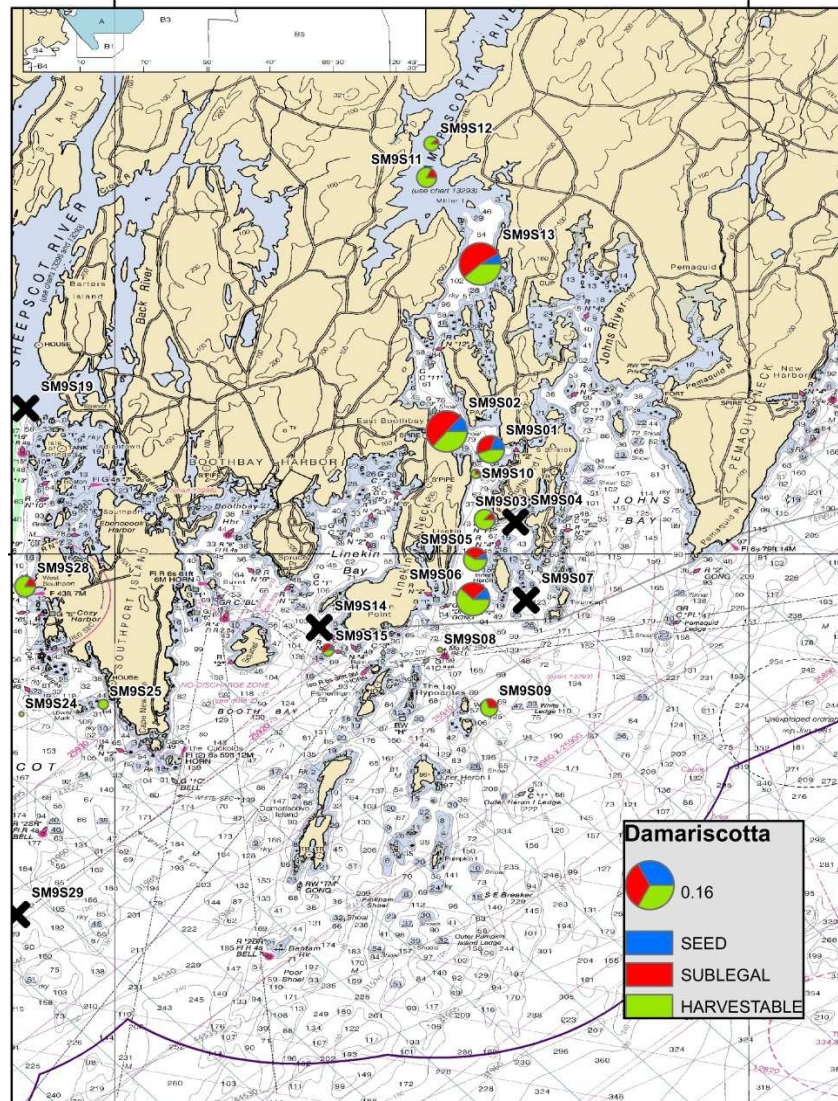


Figure 14. Density of scallops and size class composition by tow and location (Damariscotta R. area), spring 2015. Circles represent relative densities of scallops (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches or greater).

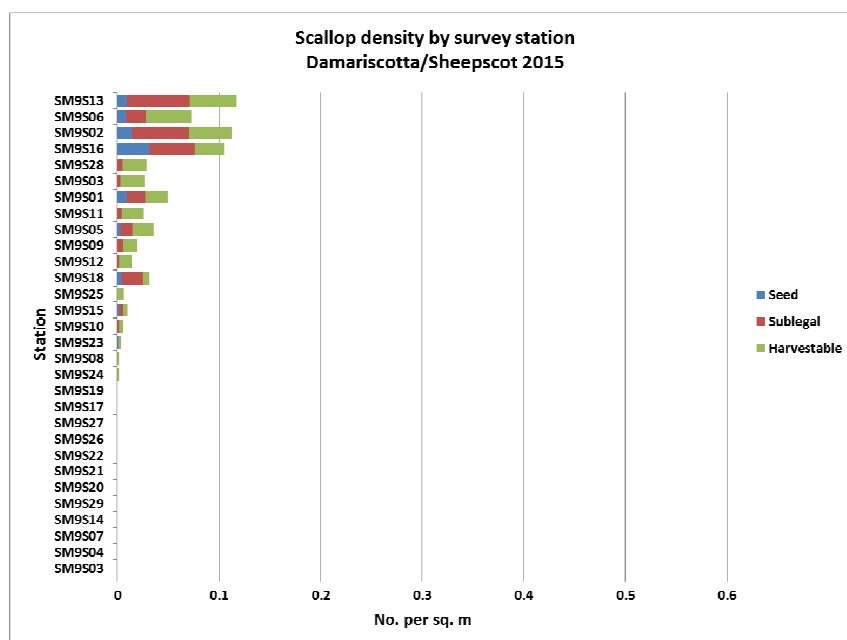


Figure 15. Density of scallops by size class by tow, ME DMR survey, spring 2015.

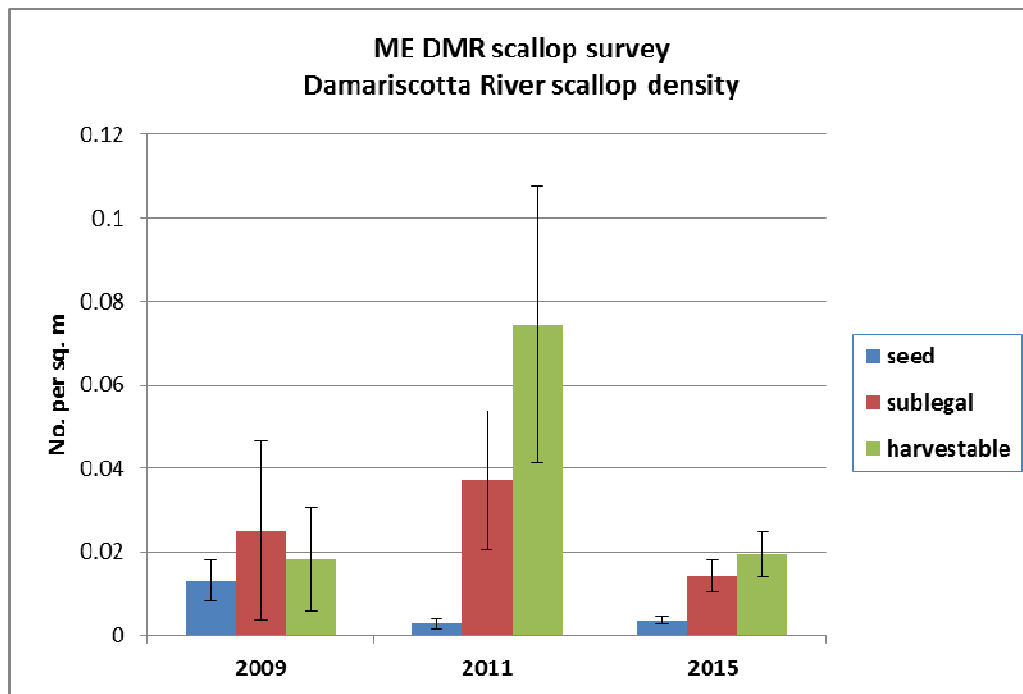


Figure 16. Density of scallops by size class, Damariscotta R., 2009, 2011, 2015.

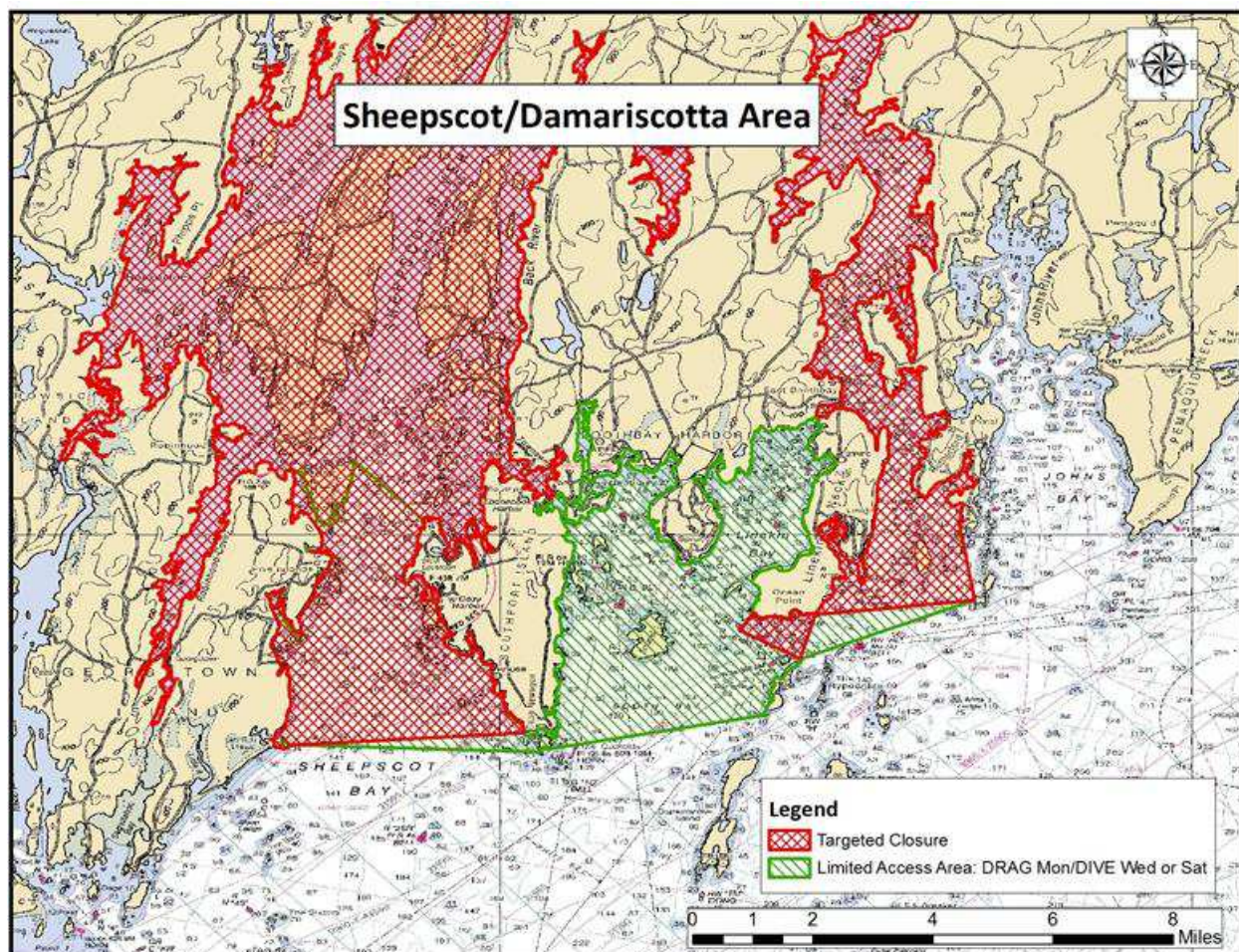


Figure 17. Sheepscot/Damariscotta Limited Access Area, which in the 2015-16 season included a targeted closure of Damariscotta and Sheepscot Rivers.

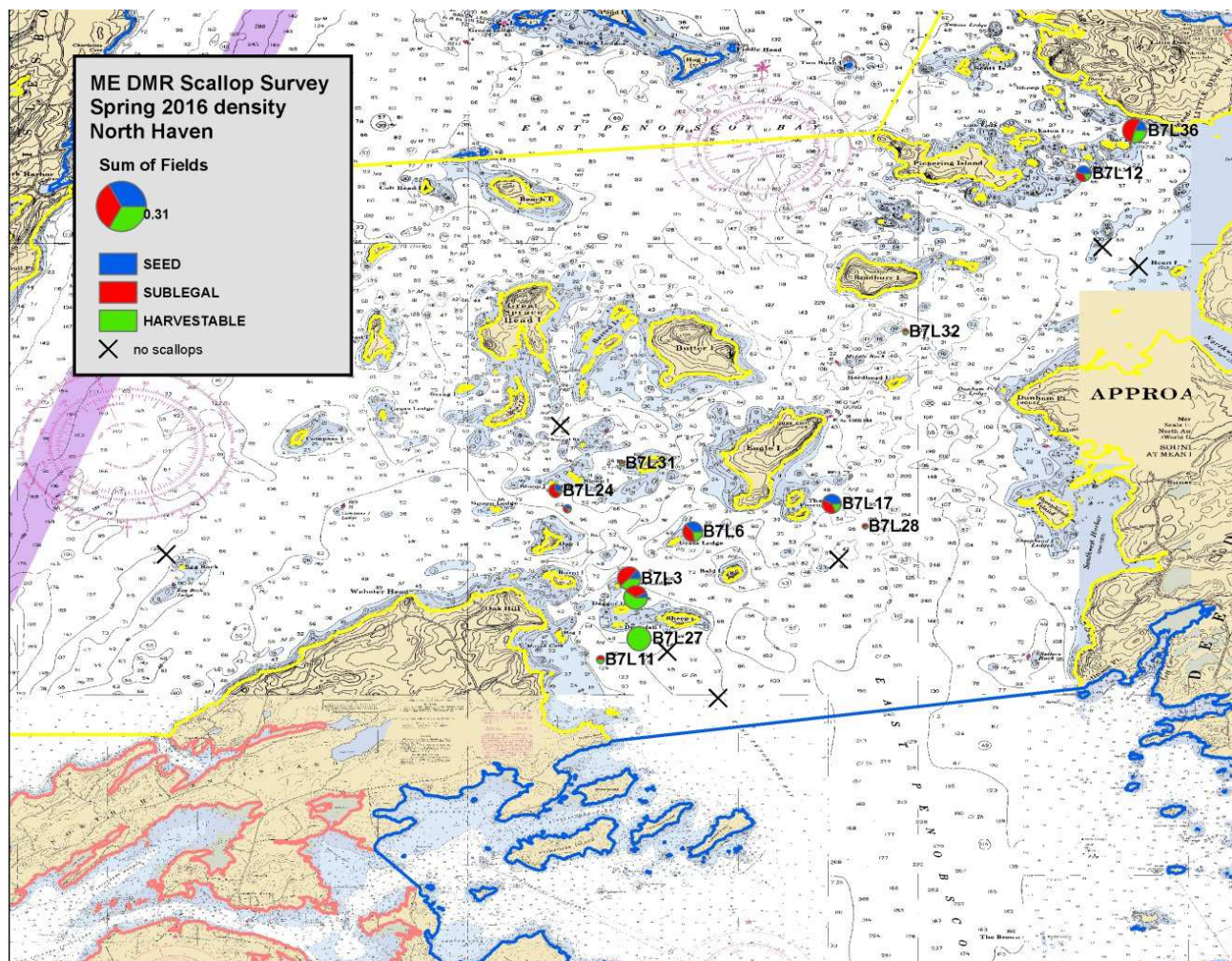


Figure 18. Density of scallops and size class composition by tow and location (North Haven rotational area), 2016-17. Circles represent relative densities of scallops (seed = less than 2.5 inches shell height, *sublegal* = 2.5-3.9 inches, *harvestable* = 4 inches or greater).

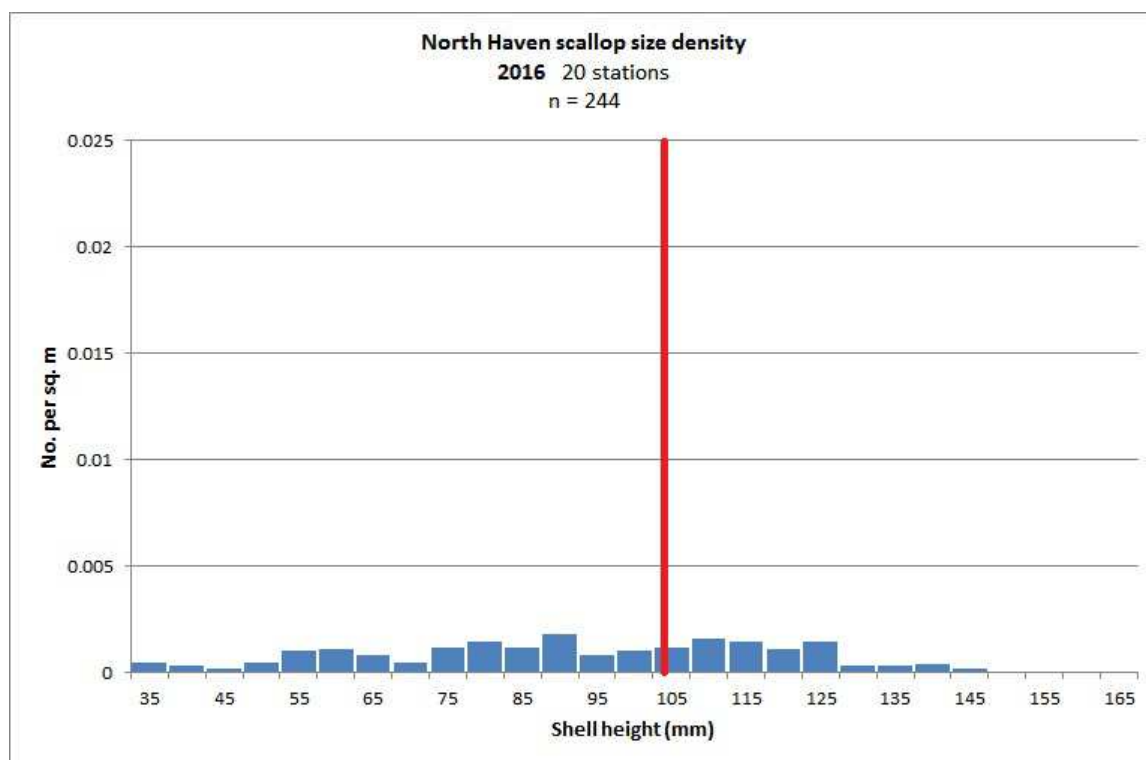


Figure 19. Scallop density by 5 mm shell height size bin, North Haven, spring 2016.

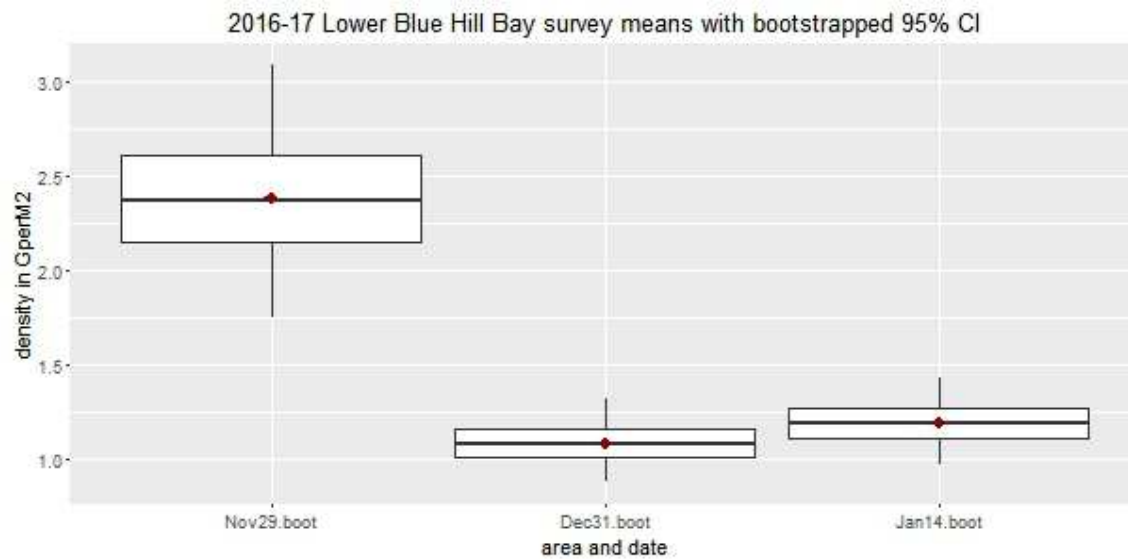


Figure 20. Mean harvestable scallop biomass density with bootstrapped 95% confidence intervals, Lower Blue Hill Bay rotational area, 2016-17.

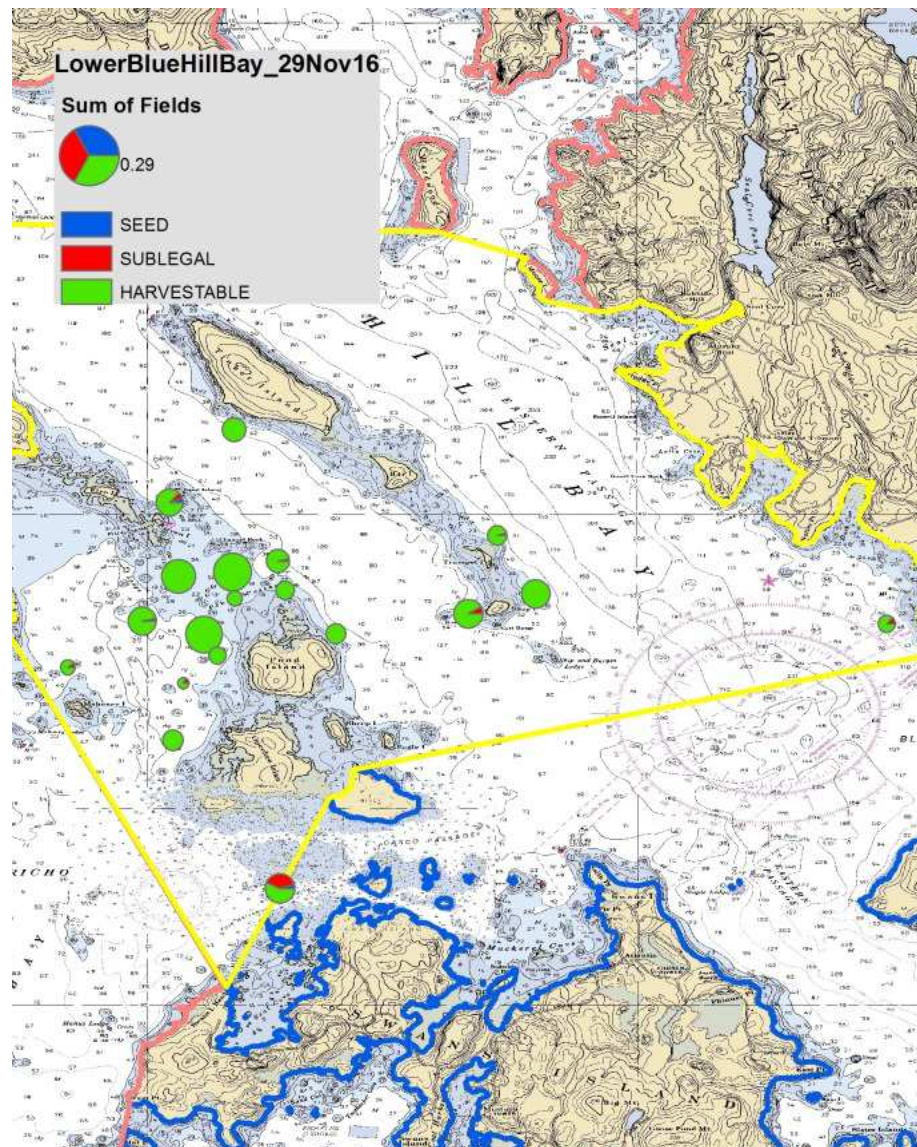


Figure 21. Density of scallops and size class composition by tow and location (Lower Blue Hill Bay rotational area, 2016-17) observed on the November 29, 2016 preseason survey. Circles represent relative densities of scallops (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches or greater).

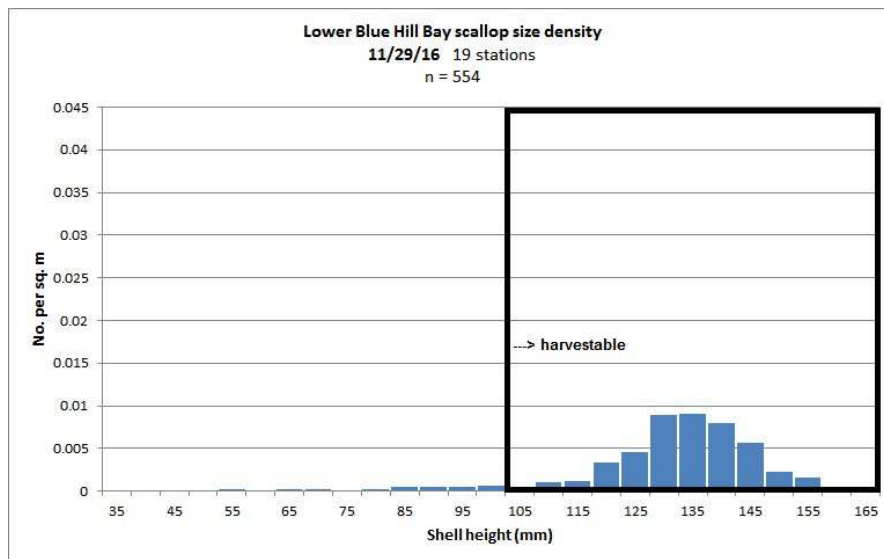


Figure 22. Scallop density by 5 mm shell height size bin, Lower Blue Hill Bay, November 29, 2016 .

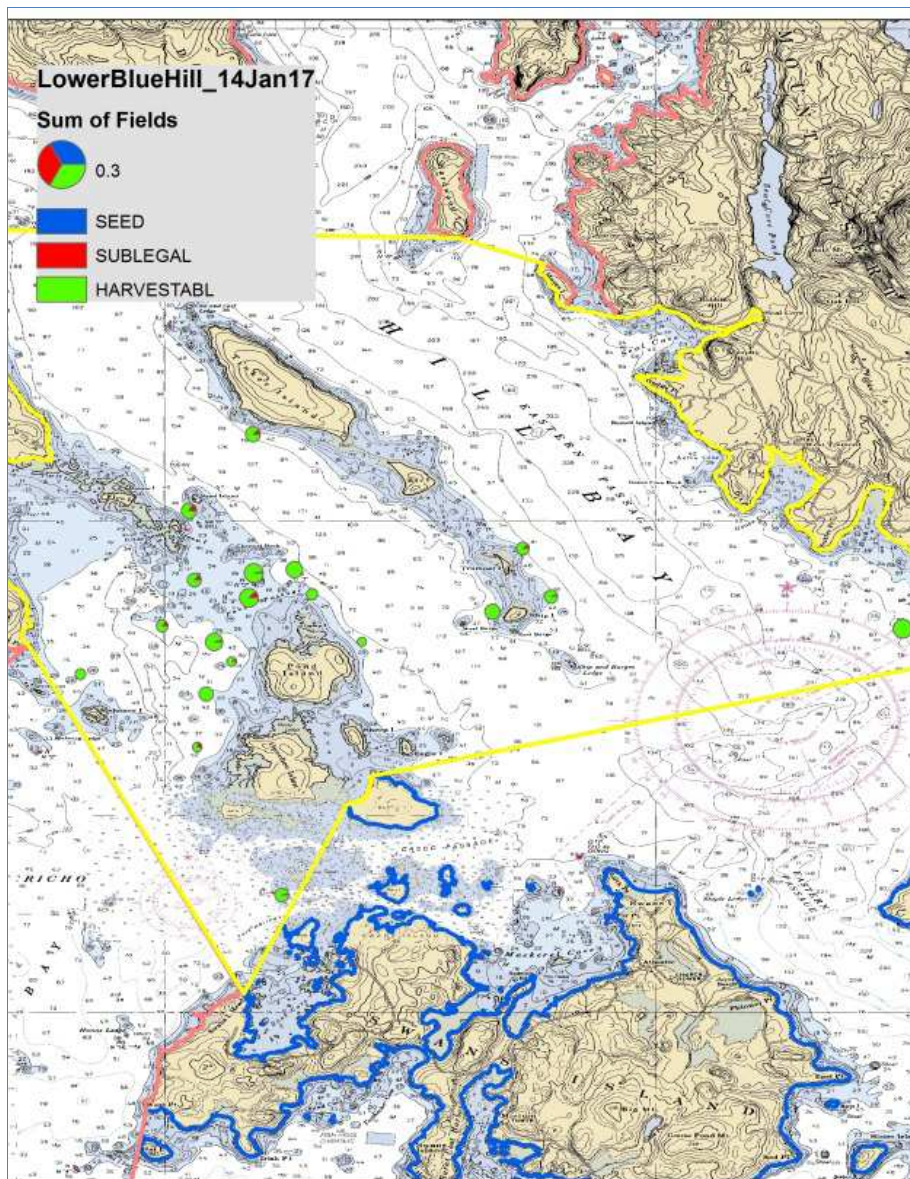


Figure 23. Density of scallops and size class composition by tow and location (Lower Blue Hill Bay rotational area, 2016-17) observed on the January 14, 2017 in-season survey. Circles represent relative densities of scallops (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches +).

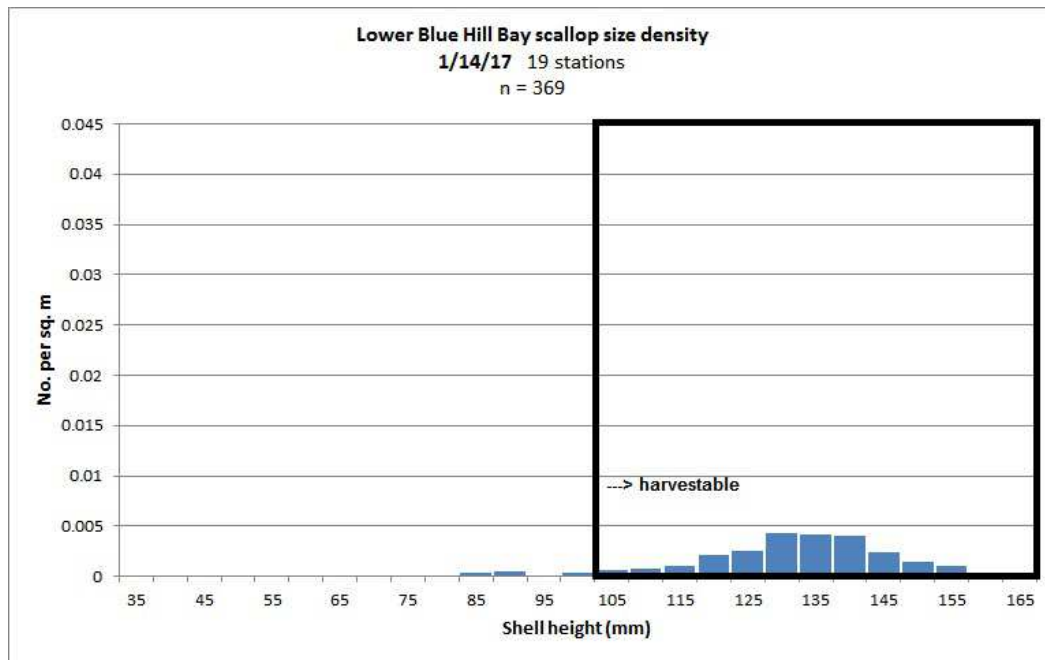


Figure 24. Scallop density by 5 mm shell height size bin, Lower Blue Hill Bay, January 14, 2017 .

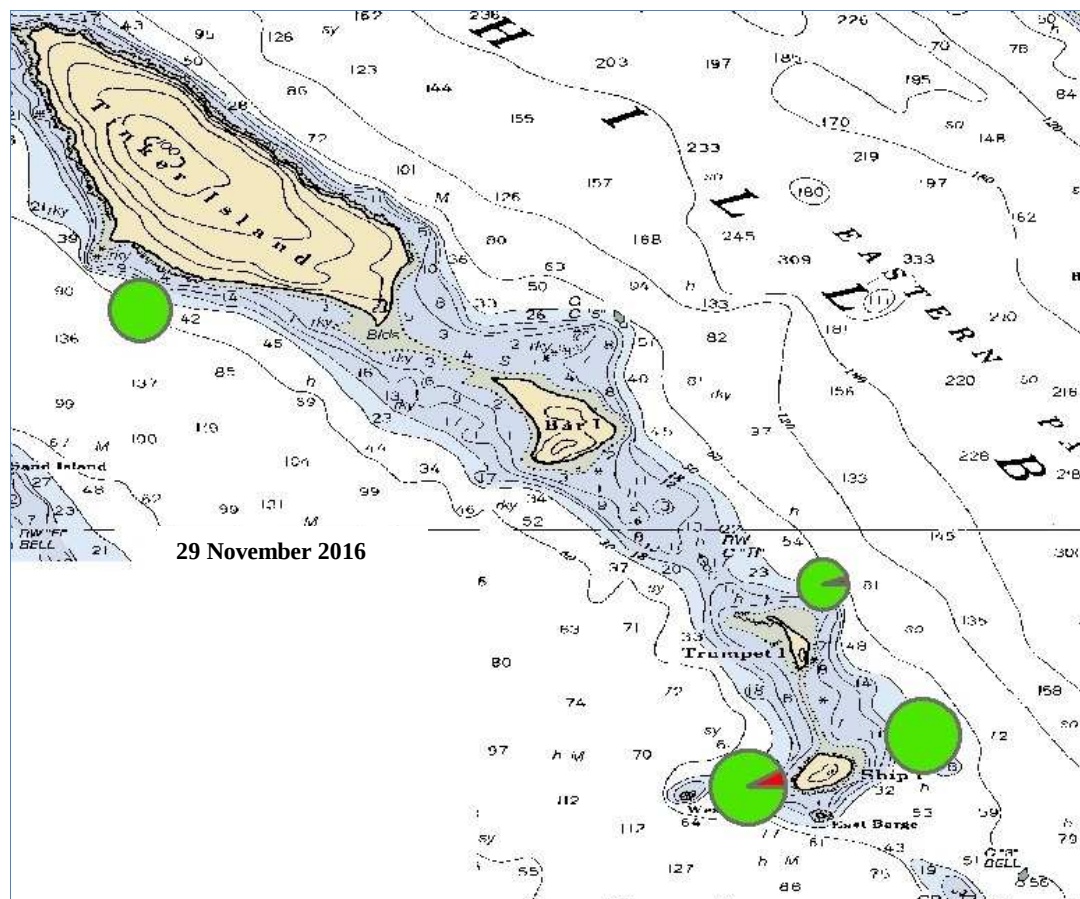


Figure 25. Density of scallops and size class composition by tow and location (Tinker/Bar Is. portion of Lower Blue Hill Bay rotational area, 2016-17) observed on the November 29, 2016 preseason survey.

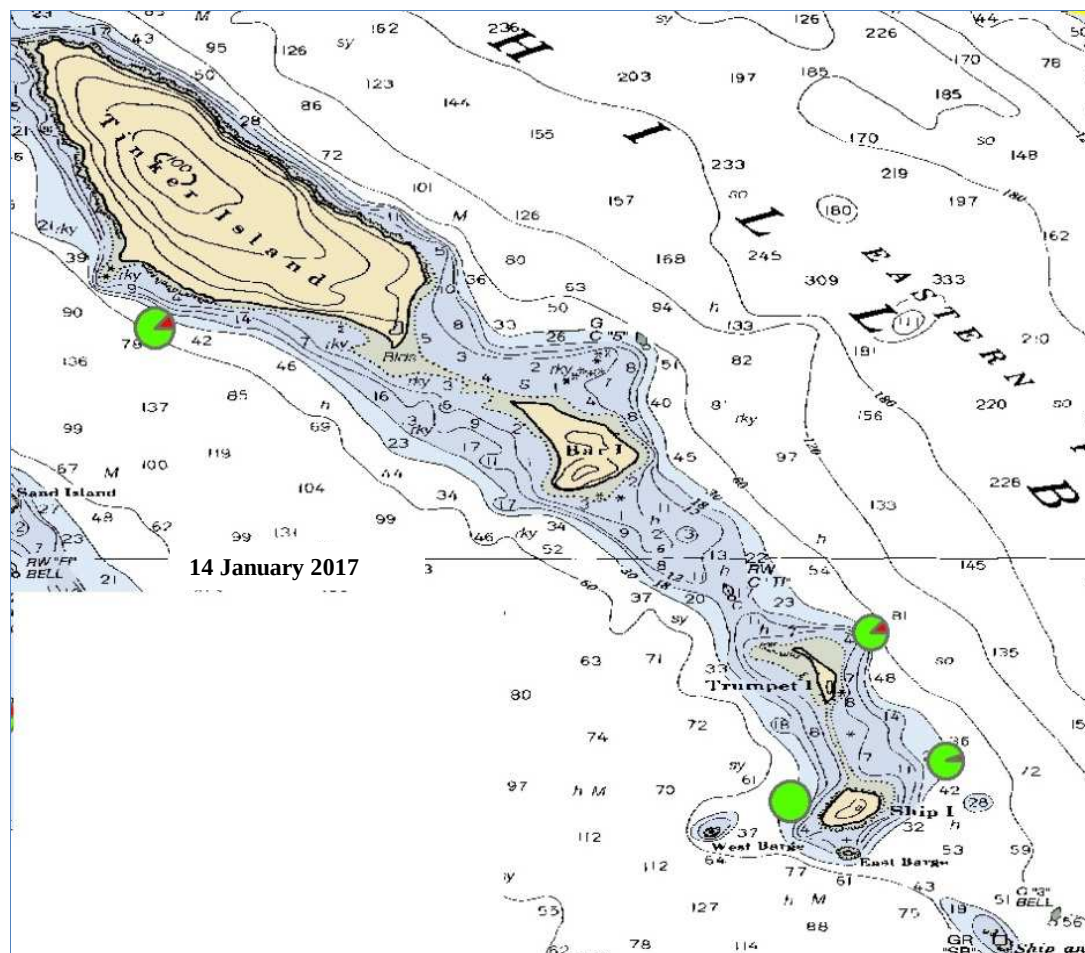


Figure 26. Density of scallops and size class composition by tow and location (Tinker/Bar Is. portion of Lower Blue Hill Bay rotational area, 2016-17) observed on the January 14, 2017 in-season survey.

	2. 5%	25%	50%	75%	97. 5%
Dec 3 overall Chandler Bay					
1.148506	2.077424	2.175165	2.919502	3.865017	
Dec 20 overall Chandler Bay					
0.9223018	1.3217626	1.5964790	1.8956612	2.545315C	
Jan 7 overall Chandler Bay					
0.9121004	1.1055610	1.2342398	1.3705630	1.6546042	
Dec 3 above Ballast Is					
0.8201249	1.7238822	3.4962382	4.9704464	7.6465597	
Dec 20 above Ballast Is					
0.3320094	0.5097221	0.6534820	0.7503277	1.0325213	
Jan 7 above Ballast Is					
0.2662634	0.3888230	0.4827641	0.5767051	0.6914085	
Dec 3 below Ballast Is					
1.261903	1.827063	2.156738	2.496269	3.155505	
Dec 20 below Ballast Is					
1.079720	1.597684	1.942592	2.333466	3.163851	
Jan 7 below Ballast Is					
1.081620	1.277998	1.414236	1.570399	1.897551	

Figure 27. Chandler Bay biomass density survey quantiles (overall, and above and below Ballast Island; 50% represents the mean which is compared to observe the change in biomass density over time from the inseason surveys.

estimates of g/m² for Chandler Bay

	All n=15	Above Ballast n=4	Below Ballast n=11
12/3/16	2.48	3.5	2.16
12/20/16	1.6	0.65	1.94
1/7/17	1.23	0.48	1.41
% change	50%	86%	35%

=not all tows completed

Figure 28. Harvestable biomass density estimates for Chandler Bay inseason surveys, along with percent change.

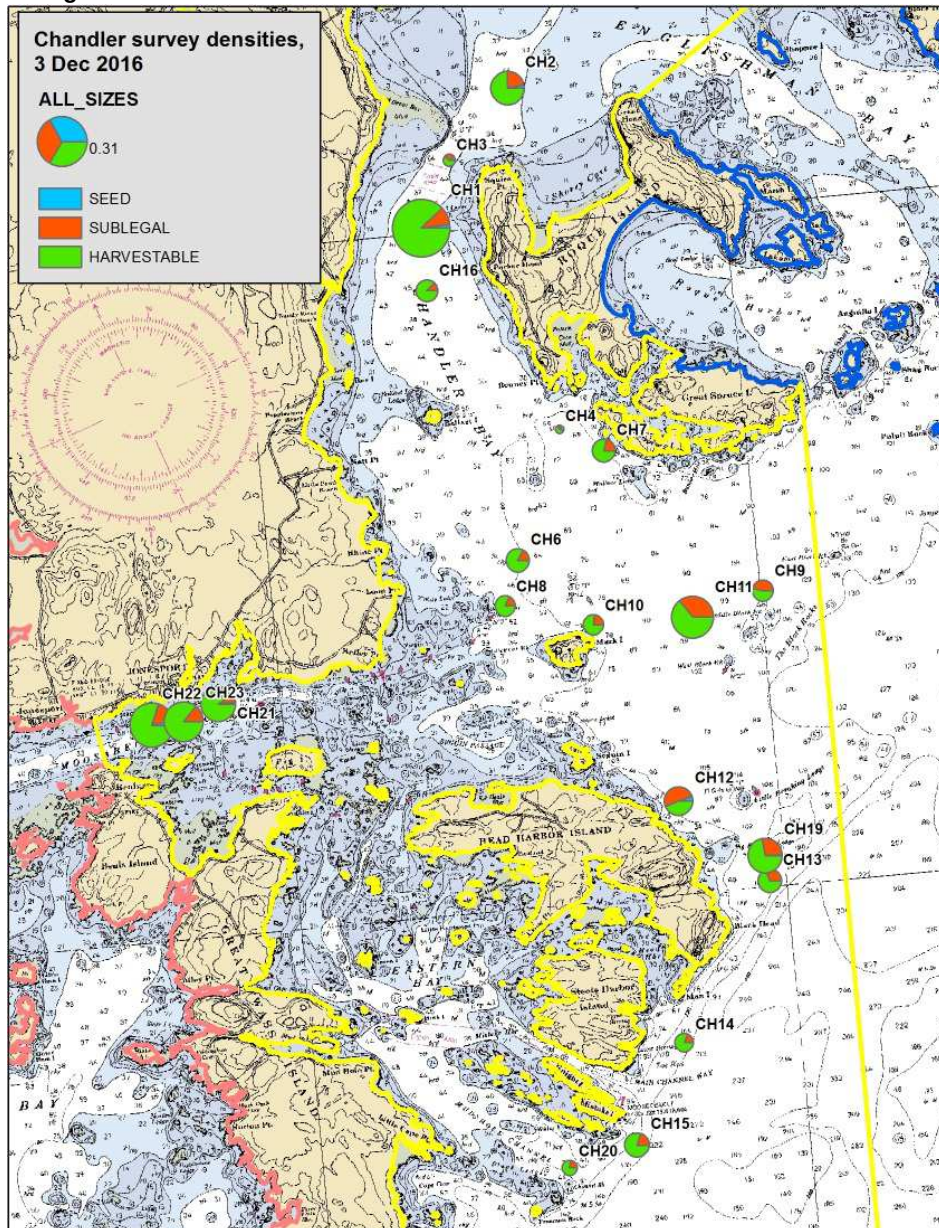


Figure 29. Density of scallops and size class composition by tow and location in the December 3, 2016 survey (Chandler Bay Rotational Area). The circle represent density of scallop (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches or greater).

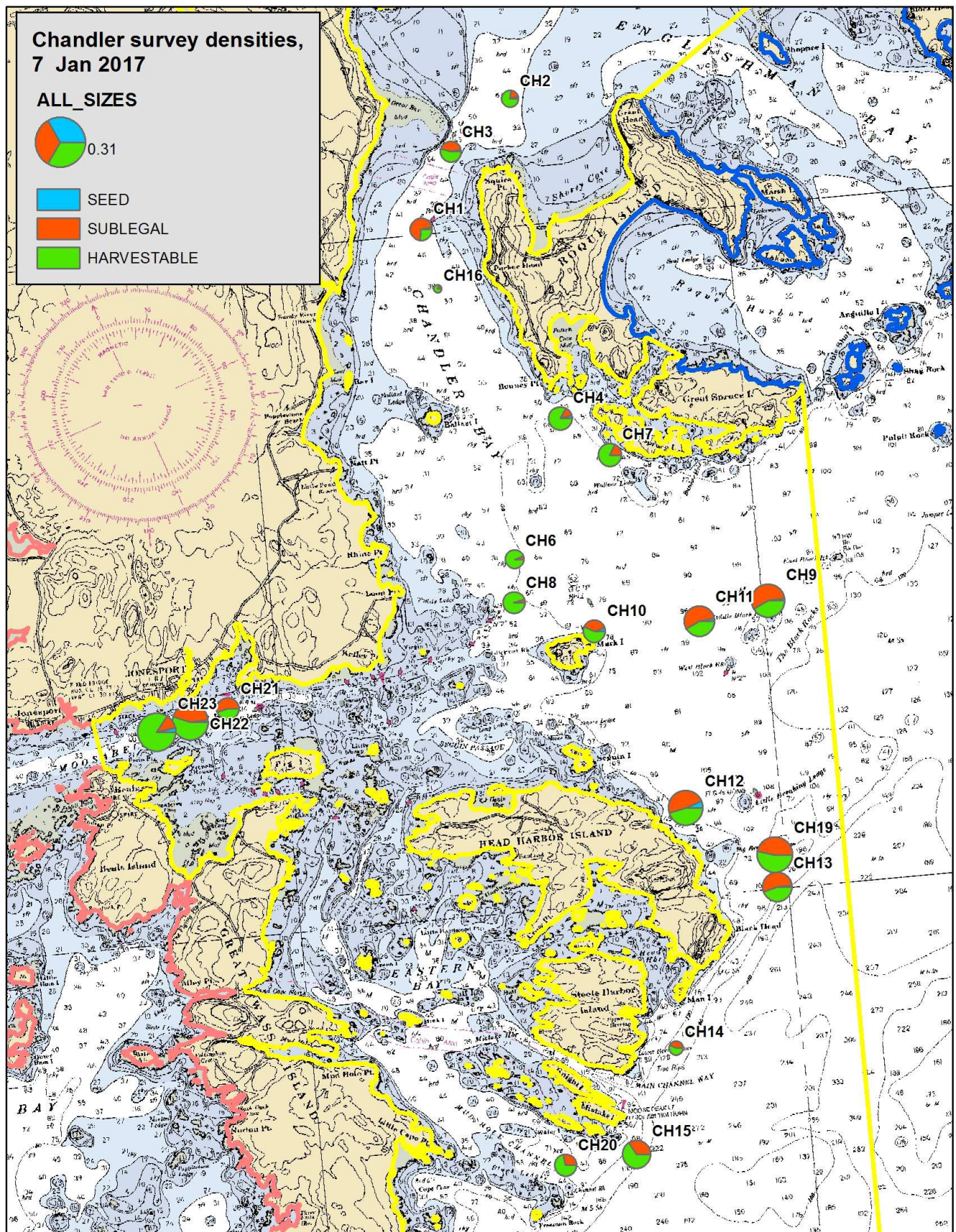


Figure 30. Density of scallops and size class composition by tow and location in the January 7, 2017 survey (Chandler Bay Rotational Area). The circle represent density of scallop (seed = less than 2.5 inches shell height, sublegal = 2.5-3.9 inches, harvestable = 4 inches or greater).

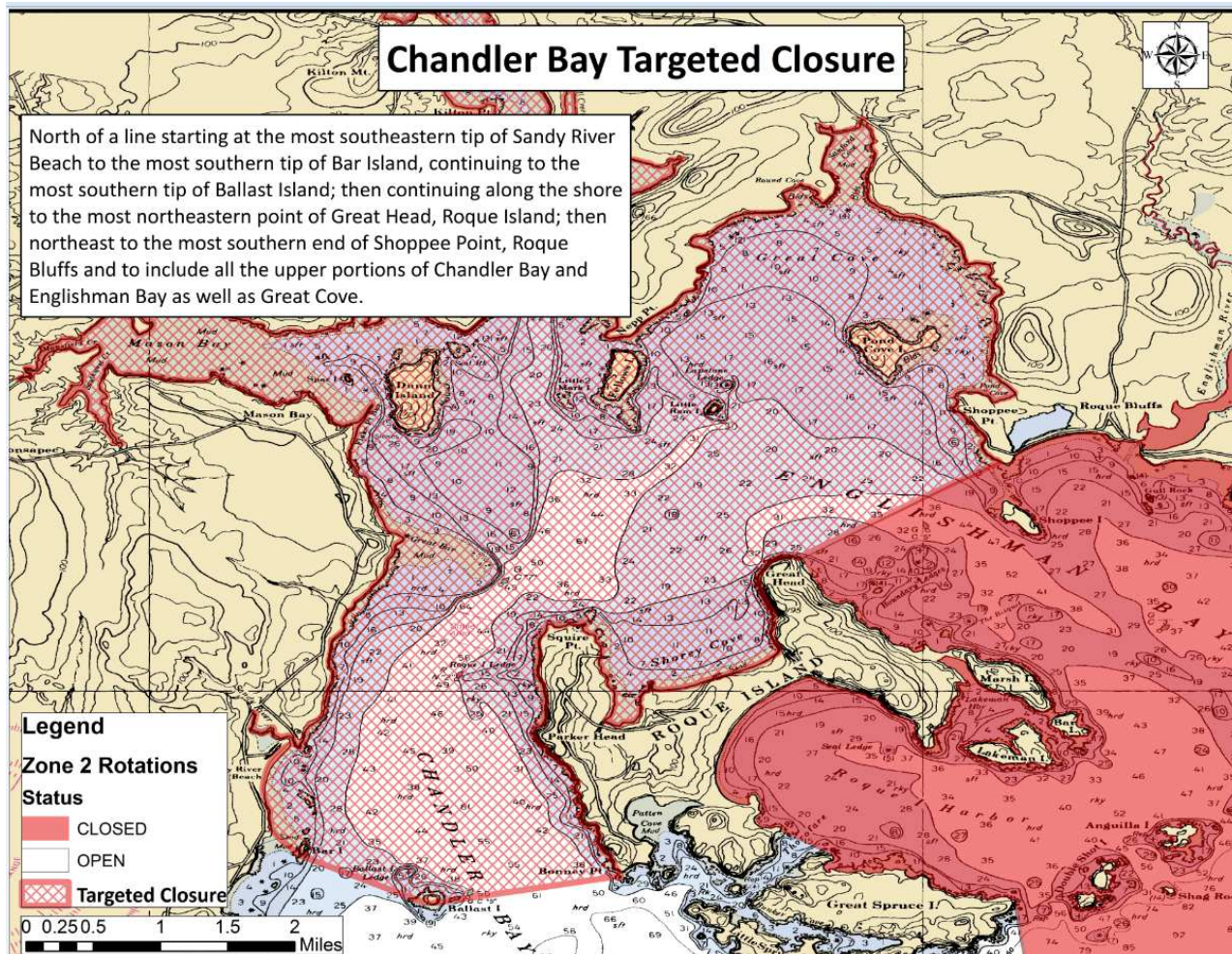


Figure 31. Chart of the Chandler Bay Emergency closure, which was implemented on January 1, 2017

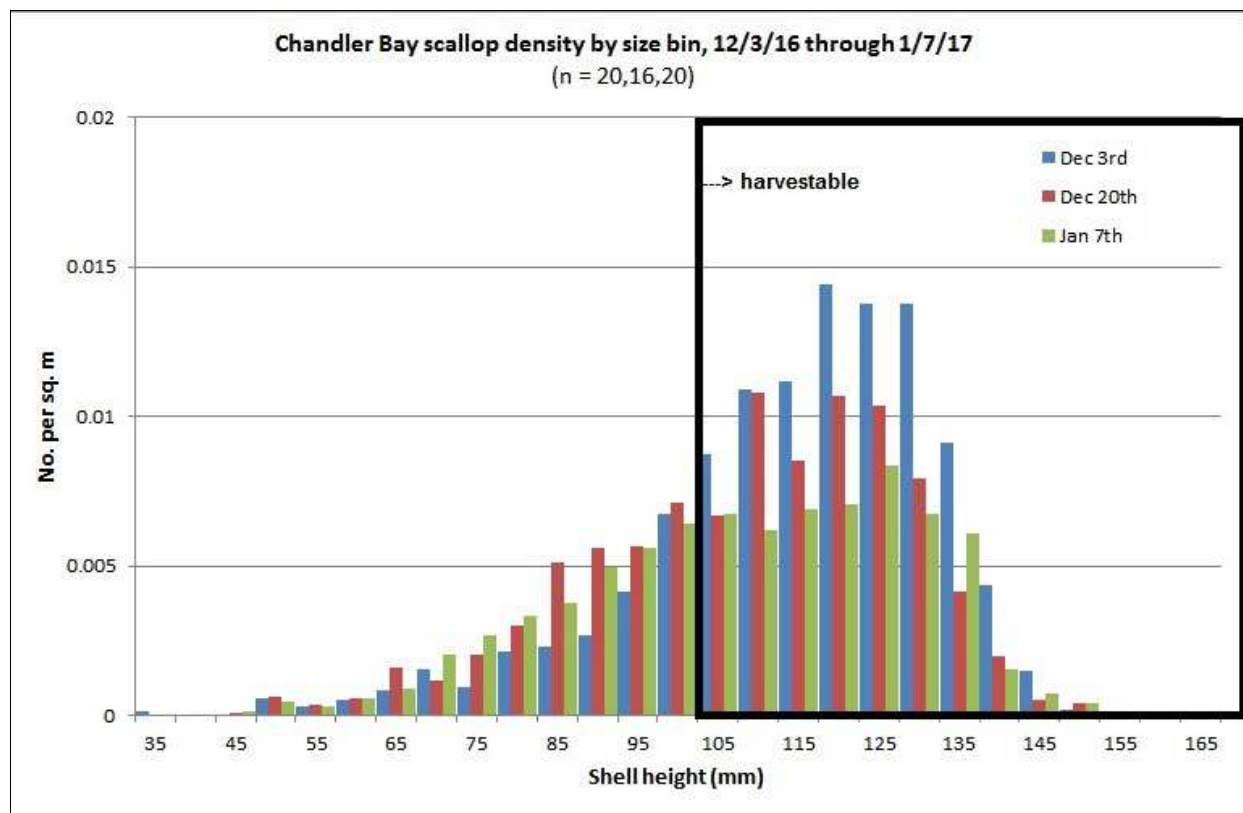


Figure 32. Scallop density by 5 mm shell height size bin, Chandler Bay Area, December 3, 2016 through January 7, 2017.

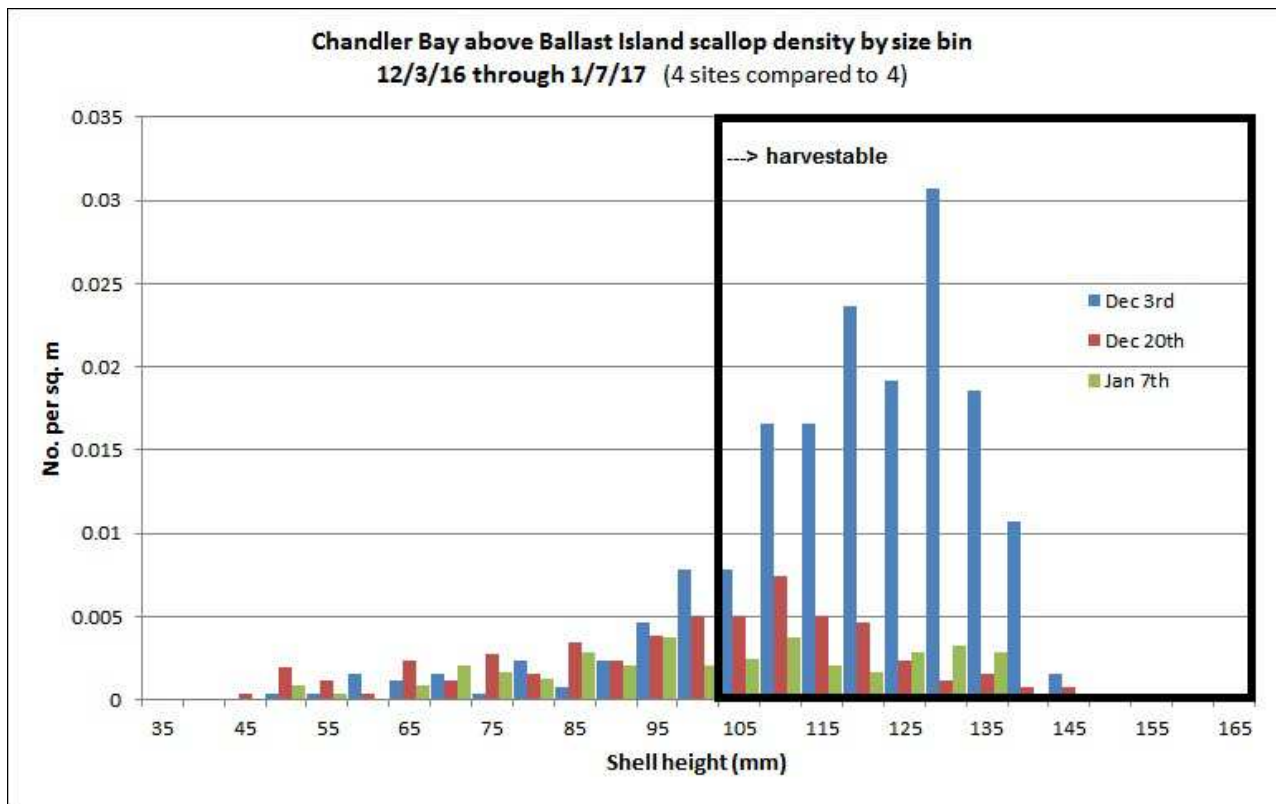


Figure 33. Scallop density by 5 mm shell height size bin, Chandler Bay Area above Ballast Island, December 3, 2016 through January 7, 2017.

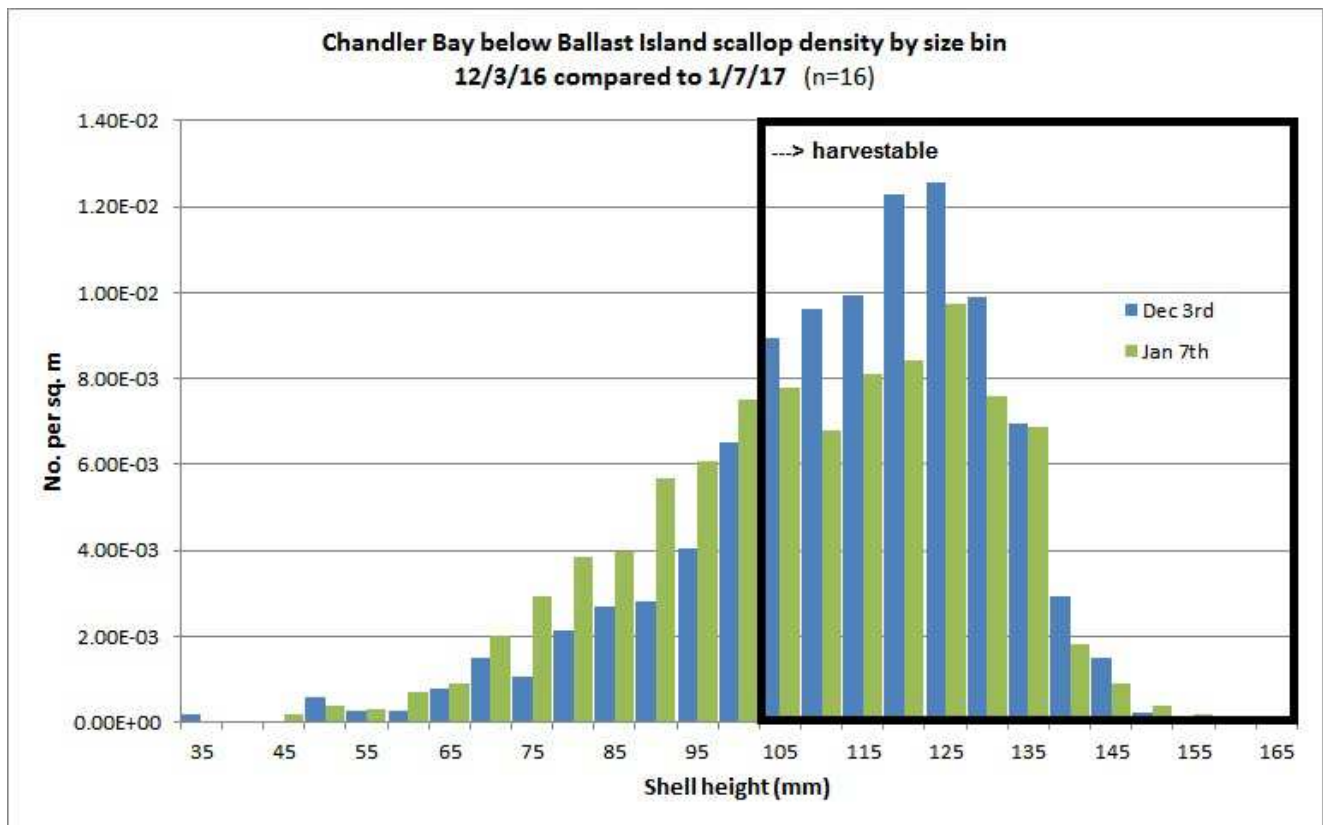


Figure 34. Scallop density by 5 mm shell height size bin, Chandler Bay Area below Ballast Island, December 3, 2016 through January 7, 2017.

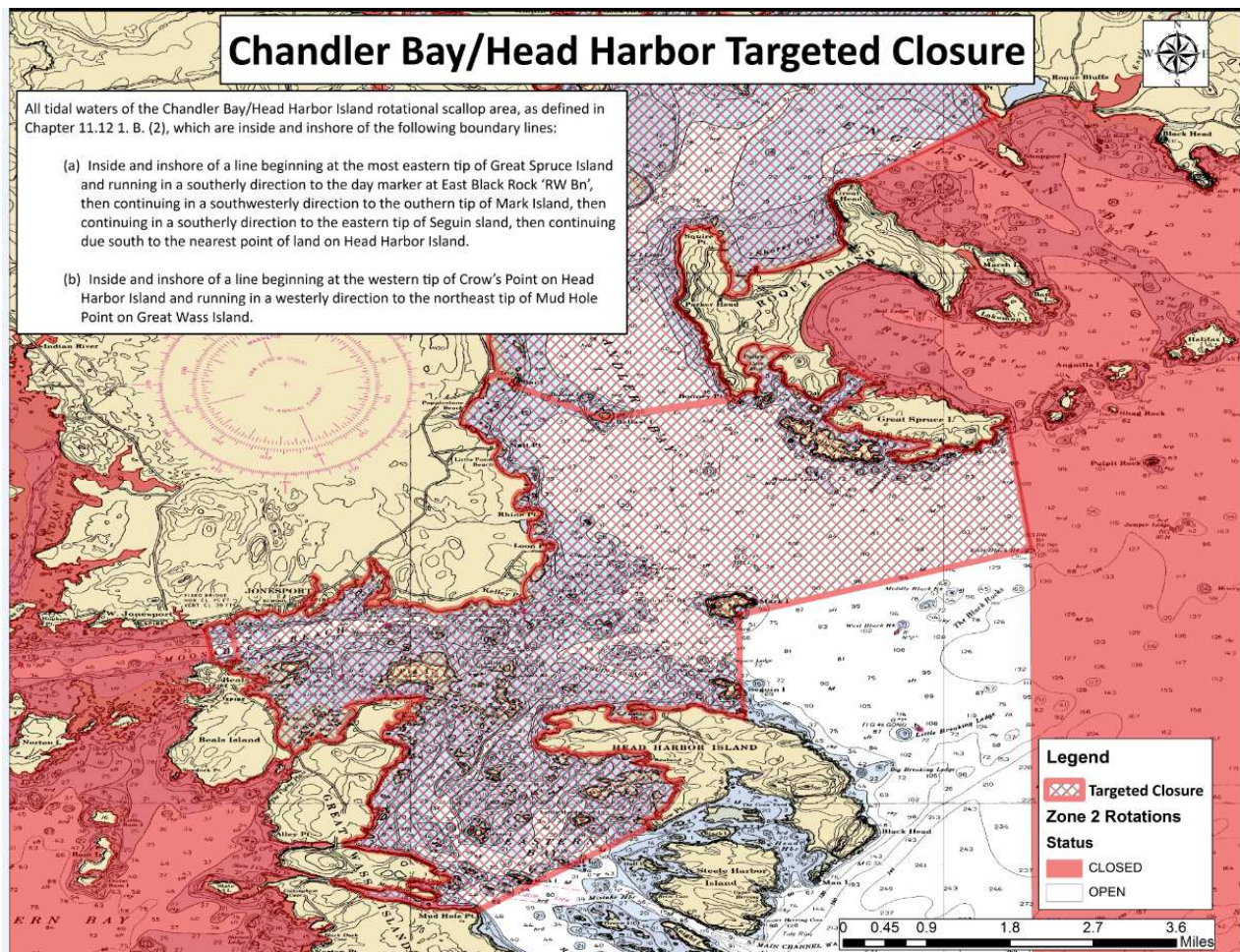


Figure 35. Chart of the Chandler Bay/Head Harbor Emergency Closure, which was implmented on January 22, 2017.

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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<http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 11 Scallop Regulations and Chapter 11.08 Targeted Closures
(11)(13)(15)(16)(17)(18) Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay and Lower Blue Hill Bay/Jericho 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 Casco Bay, Chandler Bay/Head Harbor Island, Upper Damariscotta River, North Haven, Mid Penobscot Bay, and Lower Blue Hill Bay/Jericho Bay in order to protect Maine's scallop resource as authorized by 12 MRS §6171(3) due to the risk of imminent depletion and unusual damage. The Department is concerned that unrestricted harvest during the remainder of the 2016-2017 fishing season in these specific areas may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing broodstock essential to a recovery. 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 areas during the fishing season has exceeded the 30% removal target that ensures the fishery continues to rebuild. In addition, high concentrations of sublegal scallops in Casco Bay require protection from incidental mortality caused by drag gear. Due to the negligible impacts divers have to sublegal product, diving in this area will be allowed to continue when the Zone 1 dive season resumes on March 1. Divers will also be allowed continued access in North Haven, Upper Damariscotta River and Lower Blue Hill Bay/Jericho Bay until such time as further management actions are necessary.

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.