

DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.10 Atlantic Sea Scallops - Limitations

1. Size, Harvesting and Conservation Zone Regulations
- H. Closed Areas

It shall be unlawful to fish for, ~~or 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 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.

(9) 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. This section Chapter 11.10(1)(H)(10) sunsets May 1, 2011.

~~(6) Eastern Closure:~~

~~Western boundary: Beginning at Western Head thence due south 180° magnetic to the three-mile limit. Eastern boundary: The United States/Canada Border to the 3-mile limit, as identified on National Oceanographic and Atmospheric Administration nautical charts, including all of Cobscook Bay.~~

11.19 Cobscook Bay Limits and Restrictions.

1. Cobscook Bay.

(E) Closed area: See Chapter 11.10(1)(H)(10)

11.20(1) *No changes to text, strike (remove) chart*

Chapter 26.19 Closed Area: See Chapter 11.10(1)(H)(10) Whiting Bay and Denny's Bay Area

Basis Statement

Chapter 11.10(1)(H)(10) Closed Areas, Whiting Bay and Denny's Bay Area and technical amendments in:

Chapter 11.19(1)(E) - add reference to section (H)(10)

Chapter 26.19 - add reference to Chapter 11.10(1)(H)(10)

Chapter 11.20(1) – remove graphic for technical cleanup

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than 400,000 pounds each year since 2001. Although landings data show a small increase in 2006 and 2007, this may reflect an increase in dealer reporting rather than in resource abundance. Numbers also declined slightly from 158,000 pounds in 2007 to 137,000 pounds in 2008. DMR began a dredge-based fishery-independent survey of the state scallop resource in 2002. Survey results from 2005 to 2008 indicate a significant decline in scallop abundance in most areas. 2006 and 2007 surveys indicated Cobscook Bay had by far the highest scallop density in the state; it is the only area exhibiting relatively high scallop production in recent years. Because of this relative abundance, the fishery in Cobscook Bay has been intensive with over 100 boats participating in some years. There is concern that unrestricted fishing effort at this level will result in the depletion of the scallop resource.

In December of 2007, most boats in Cobscook Bay caught their 135 lb daily limit throughout first three weeks of the fishery, with catches dropping off sharply by January. In December of 2008 the decline came far more rapidly; before the end of the first week fewer than half the boats were reaching their limit. By early December 2008, Marine Patrol and fishermen interviews indicated the fishing was so poor many fishermen had “given up” fishing in Cobscook Bay. Anecdotal information suggested much of what remained in the Bay was sublegal.

Concern that continued fishing pressure would threaten potential recruitment prompted the Commissioner to enact six emergency closures (including all of Cobscook Bay) for the second half of the 2008/2009 scallop season. These emergency closures were enacted due to the risk of unusual damage and expired on May 1, 2009.

The Department announced in January 2009 that the 2009/2010 scallop season would not be opened unless substantial conservation closures of at least three years were established. Six public meetings were held in April to solicit closure recommendations from area fishermen, and these recommendations were shared with the SAC. During this process, the Commissioner announced that because of the unique properties of Cobscook Bay, an alternate approach to closures was warranted in that area. A large area of productive bottom should be closed to allow sublegal scallops to grow and reproduce prior to harvest. This would follow the path of a “rotational closure” as opposed to the “conservation closures” recommended in the rest of the state. The statewide conservation closures are being pursued in a separate concurrent rulemaking.

This regulation closes all of Whiting and Denny’s Bay to the harvest of both **urchins and scallops** for two years. The chair of the Cobscook Bay Fishermen’s Association presented this proposal to the Scallop Advisory Council at their May 21, 2009 meeting. The reasons for this closure include:

- This area contains many small scallops that would be more valuable if they were allowed to grow to a greater size prior to harvest.
- Allowing this area to rest without significant bottom disturbance should boost reproductive success and therefore provide benefits outside the closure (via spillover effect).
- Urchin fishing should also be prohibited. Given the geographic layout of the area, the abundance of scallops, and the many possible take-out points, enforcement of a scallops-only closure would be problematic.
- Closing to urchin fishing should also provide benefits to the urchin resource within the area, and may provide “spillover effects” for the rest of the Bay.

This closure will last for **two years**, during which time the Department, the Scallop Advisory Council and the Sea Urchin Zone Council will work to implement a pilot program in area management. This program will involve the establishment of management to prevent the depletion of the scallop and urchin resource in the area upon reopening.

This closure differs from the concurrent coastwide rulemaking to establish conservation closures in the following ways:

- It will last for two years as opposed to three.
- It will close the area to the harvest of both urchins and scallops.
- It is being pursued as part of a pilot program in area management.

A clarification has been made in the first sentence in section (10)(1)(H); with the addition of the term possess for enforcement purposes.

Summary of Comments

Public hearings were held in Yarmouth, Machias, Ellsworth and Rockland August 20, 21, 23 and 24, 2009 respectively. A summary of the comments and questions pertaining to the proposed rules with the Department's responses follow the list of hearing attendees. Most comments received were opposed to the proposed rules or suggested alternatives. Hearing attendees who provided comments at the hearings are identified in bold.

Individual's written comments or summarized individual hearing comments are available to download from the web site <http://www.maine.gov/dmr/council/dmradvisory/agenda/2009/sept162009.htm> or contact laurence.churchill@maine.gov or 207-633-9584 for a copy.

Hearing Attendees - Yarmouth:

George Freeman, Scarborough, SAC member
David Header, Portland
Annie Tselikis, Stonington, Penobscot East Resource Center (PERC)
Terrence Kenney, Harpswell, SAC member
Brian Preney, Falmouth
Brian Soper, Harpswell
Dana Temple, Cape Elizabeth, SAC chair
DMRL T. Brawn, Lt. Cornish, L. Churchill

Hearing Attendees - Machias:

Bruce Porter, Cutler, dragger
Maurice Alley, Beals
Katrina Giese, Stonington, PERC
Anne Tselikis, Stonington, PERC
Leo Murray, Lubec
Tom Pottle, Perry
Scott Emery, Eastport
Ernest Kelley Jr., Jonesport, SAC member
Tracey Sawtelle, Lubec
James Ackley, Machias
Robert Holland, Jonesboro
Jeremy Holland, Jonesboro
Ivory Preston, Roque Bluffs
Michael S. Murphy II, Machiasport
Mike Danforth, Addison
David Cline, Cutler
Farrell Beal, Beals
Brent Griffin, Edmunds
Carroll Dinsmore Jr., Lubec
Will Hopkins, Eastport
Heidi Leighton, Pembroke
Senator Kevin L. Raye, Perry
Isaac Beal, Beals
Jason Alley, Jonesport
Owen Moody, Roque Bluffs
Paul Cox, Dennysville
Byron Matthews, Lubec
DMR: T. Brawn, L. Churchill, MPO Wright

Hearing Attendees - Ellsworth:

Dennis Sargent Sr., Steuben
Dana Black, Orland
Christine Howe, Orland
Robert Ray, Stonington
Derek Jones, Stonington
Frank Jones, Stonington
Tim Harper, SW Harbor, SAC member

Anne Tselikis, Stonington, PERC
James West, Sorrento
DMR: T. Brawn, L. Churchill, Lt. Talbot

Hearing Attendees - Rockland:

Jim Wotton, Friendship
Paul Farmer, Cushing
Doug Wilshire, Friendship
Mike Hutchings, Lincolnville
Kenneth Weed, Lincolnville
Doug McLennan, Spruce Head
Mike Keating, Owls Head
Travis Fogg, Spruce Head
Kendall Smith, Lincolnville
Brian Preney, Falmouth
DMR: T. Brawn, L. Churchill, Sgt Cloutier

Written comments:

Closures and season written comments:

Justin Boyce, Stonington
Brian Soper, Gurnet Trading, Harpswell
Christine Howe, Orland [2]
Christine Howe and Dana Black, Orland
**169 signatures from Christine Howe, Orland
Brian Preney, Falmouth
Mike Hutchings, Lincolnville
**117 signatures from James Ackley, Machias
Dana Temple, Chair, Scallop Advisory Council
Andy Mays, Southwest Harbor, SAC member

Cobscook area – Whiting and Denny's Bay closure:

David J. Cline, [no address]
Joyce M. Cline, [no address]
Rita Landeen, [no address]
Adam Brooks, [no address]
Gina Bryant, [no address]
Kadie L. Brooks, [no address]
Kevin Brooks, [no address]
David W. Cline, [no address]
Laurie E. Cline, [no address]
Forest Atwater, [no address]
Virginia McGuire, [no address]
**21 signatures, [no addresses]

** A copy of the signatures for each petition is available to download from:

<http://www.maine.gov/dmr/council/dmradvisory/agenda/2009/sept162009.htm>

Summarized comments and responses:

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

An announced was made at each hearing regarding a clarification in the proposed Cobscook rulemaking. In the public notice the information and rule titles indicated that the proposed rulemaking would include urchins, as well as scallops, in the proposed closed area. This is in part why this is being proposed in a separate rulemaking. As a clarification the term urchins would be added to the proposed rule text to follow through on this intent.

Cobscook – support/oppose/alternative lines:

- They know the area down there that they feel needs to be closed; I respect their decision.
- On Cobscook rules I/we support of the closure.
- Support the closure in Cobscook with the sunset clause; the sunset is better than leaving to a later date as nothing would happen.
- Oppose the Cobscook closure; urchin harvesting should remain open
- If you close all these areas in our area a lot of us are going to have to go to Cobscook – oppose.
- A petition with 21 names plus another 11 individuals wrote letters to oppose the closure in Denny's Bay and Whiting Bay [in Cobscook Bay] for scallop and urchin fishing in the seasons of 2009 and 2010.
- Close it from the end of Raft Cove Point to at tip off the end of Williams Island going north to the far end of Little Dram Island we could close off all the scallop industry and not interrupt the urchins. There are no scallops in this reopened area just sea urchins; when reopened it will be destroyed. This would keep the deep water around Dram Island open for urchins; there are no scallops in there.

Response:

The proposed change to the Whiting/Denny's Bay closure was rejected by the Department due to enforcement reasons. As currently drawn, enforcement officers will have clear lines of sight. The suggested change lacks such lines of sight, and as such would be far more difficult to enforce.

Season:

In Cobscook there should be a straight 35 day season and that is it. If you go in there for 35 days you have all the big stuff picked up. Then it should be shut down.

Cobscook Bay in December will have already been closed for 11 months into this 2-year closure.

Response:

Having a shorter season in Cobscook Bay would result in a substantial change from the original proposed rule, and would require additional rulemaking. The Department does not favor a separate season length for Cobscook Bay at this time.

The closure lengths recommended are designed to begin with the onset of the 2009/2010 season, regardless of which areas were closed for the second half of the last season.

Paints scallop and urchin divers to be criminals:

I do not support the closure for urchins in Denny's Bay and Whiting Bay simply for the fact that the proposed rulemaking states urchin fishing "should also be prohibited given the geographic layout of the area and the abundance of scallops it would be easy for urchin fishermen to illegally take scallops and evade detection by dumping contraband scallops should they see the Marine Patrol". This paints scallop fishermen as criminals by the DMR. For that reason and multiple other reasons but that is just bad.

Response:

This rule is not intended to portray fishermen as criminals. It is designed to increase the effectiveness of the closures by acknowledging the practical limitations of enforcement. The suggestion to close the area to urchin as well as scallop fishermen was made by the Cobscook Bay Fishermen's Association (CBFA), whose members include both (active) scallop and urchin fishermen. Marine Patrol noted the following factors: the abundance of both scallops and urchins; the remoteness of the area; and the many potential landing points. All of these would make enforcement of a scallop-only closure difficult. The Department originally favored a larger closure, but decided to accept the CBFA's recommendation because it contained less urchin habitat.

Clarify council positions/process:

The DMR claims that the SAC supported closing both scallop and urchin fishing in this area but that is false. It was referred to the Sea Urchin Zone Council (SUZC) and the SUZC voted unanimously not to involve closures with scallops and urchins; the SAC did not recommend that scallops and urchins be closed together; they supported it but the SAC wanted to refer any urchin issues to the SUZC.

Response:

At the April Sea Urchin Zone Council meeting, Togue Brawn mistakenly stated that the SAC had expressed interest in closing some areas to urchins as well as scallops. At the next meeting, she noted that this statement was incorrect: some of the SAC members had expressed support for this idea. Minutes of the prior meeting were corrected. In their May 21 meeting, the SAC discussed potential support for closing Whiting and Denny's Bay to scallops exclusively. However in the end they voted to support the closure of Whiting and Denny's Bay to both urchins and scallops. The minutes reflect the original discussion which includes their hesitation to vote on urchin issues as well as the final vote in which they did so in order to support the request of the CBFA.

Sets bad precedent / Urchins and scallops should be managed separately:

- This rule would set a bad precedent for the rest of the state; probably 90-95% of the urchin landings come out of the Tenants Harbor, Rockland area and if you had urchins and scallops managed the same way in each proposed closure now that area would be closed to urchin harvesting also, which would cut the landings back in Zone 1 to almost nil.
- The limited support that is for these closures in especially Downeast Maine is out of pure fear that the Commissioner would close the season down totally if we don't go along with those.
- This rulemaking should be rejected because it has no industry support, especially from the urchin industry, and because it would set a bad precedent for the future
- Denny's & Whiting Bay proposed rulemaking; I think they should be completely separated, so one has no bearing on the other. So the scallop can't do anything with the urchins. My fear is the scallop can have precedent over where the urchin is for a closed area
- Scallops and sea urchins are two distinctly different species with no similar characteristics. Therefore they should be managed entirely separately.
- Scallop and urchins should be completely separated, so one has no bearing on the other; so the scallop can't do anything with the urchins.

Response:

The only closure that will include urchin harvesting is the Whiting Bay and Denny's Bay Area, the reasons for which are given in an earlier response. The Department reiterates its stance that it will be important to work with other fishermen, as we have with scallop fishermen, should closures be considered in other fisheries.

Scallops and urchins have similar habitats, seasons, and life histories. Many fishermen hold both licenses, and the fisheries are prosecuted by similar means (drag and dive). Although the Department makes every effort to manage them separately, it is naïve to suggest these fisheries do not impact each other.

The Sea Urchin Zone Council has suggested a joint meeting with the Scallop Advisory Council, and the Department supports such a meeting. Although we will continue to manage the two fisheries separately, we believe it advantageous to investigate possible synergies between the two fisheries in terms of management, enhancement, enforcement, and other possible areas.