

**NOTICE OF AGENCY EMERGENCY RULE-MAKING****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (7) Upper Englishman Bay RA; (8) Addison RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Frenchman Bay; (13) Damariscotta River LAA; and (14) West Casco Bay**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures in Cobscook, Whiting and Dennys Bays, Upper Frenchman's Bay, Damariscotta River and western Casco Bay; and, to expand existing closures in Englishman Bay and Addison rotational areas. In Cobscook, Whiting and Dennys Bays, there is an exception to the conservation closure to allow the harvest of scallops by drag on Monday, February 15, 2021 and to allow the harvest of scallops by diving on Saturday, February 20, 2021. 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 six 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:** February 14, 2021

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## 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. ~~Roque Island Harbor & Kennebec River within~~ 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.

~~Southern boundary. North of a line starting at the eastern tip of Great Spruce Island, following the northern shoreline of Double Shot, Anguilla and Halifax Islands; continuing to the southern tip of Calf Island, then running northeasterly to the most southerly point on Fan Island and continuing true east to shore.~~

8. ~~Harrington & Pleasant Rivers within~~ 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.

~~Southern boundary: North of a line beginning at the eastern tip on the southern shore of Northeast Cove and running easterly to the northern tip of Sheep Island, and continuing true east to shore.~~

9. Fox Islands Thorofare within East Vinalhaven Rotational Area

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 Swan's Island Rotational Area

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 southwest 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

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. Upper Frenchman's Bay

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 southwest 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: (7) Upper Englishman Bay RA; (8) Addison RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Frenchman Bay; (13) Damariscotta River LAA; and (14) West Casco Bay

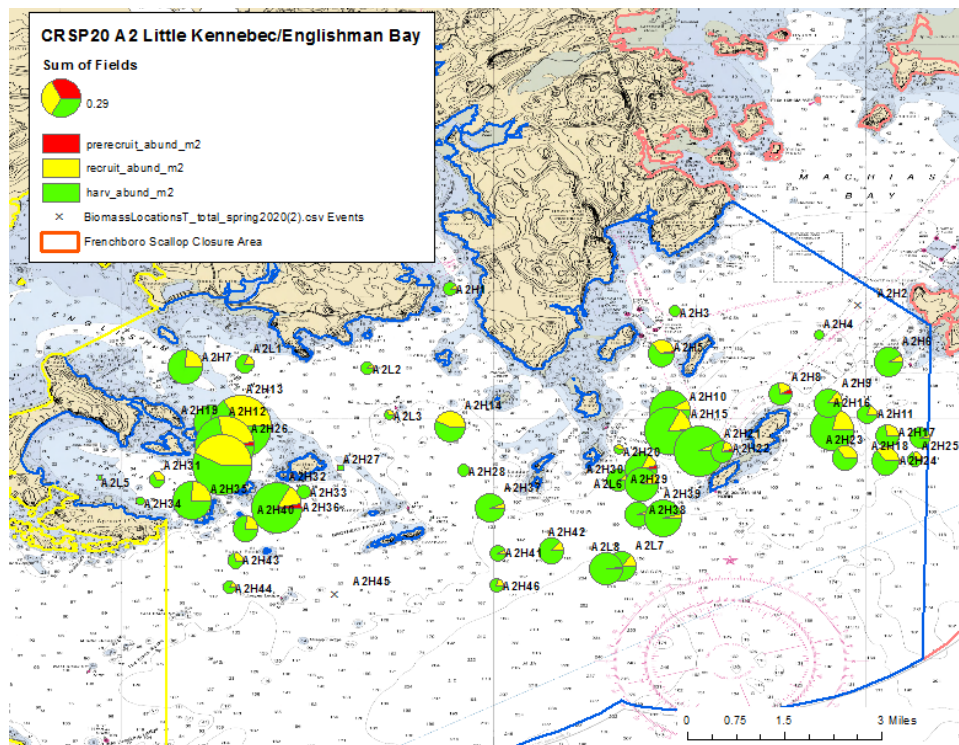
### Upper Englishman's Bay Rotational Area

DMR scallop survey for 2020 observed strong sublegal scallop presence both at the shallow stations inside of the island chain around Roque Island Harbor and to the west and east of Libby Island (Figure 1; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicate a decrease in relative legal scallop density from 3.11 g/m<sup>2</sup> to 2.20 g/m<sup>2</sup> observed during the most recent Spring 2020 survey.

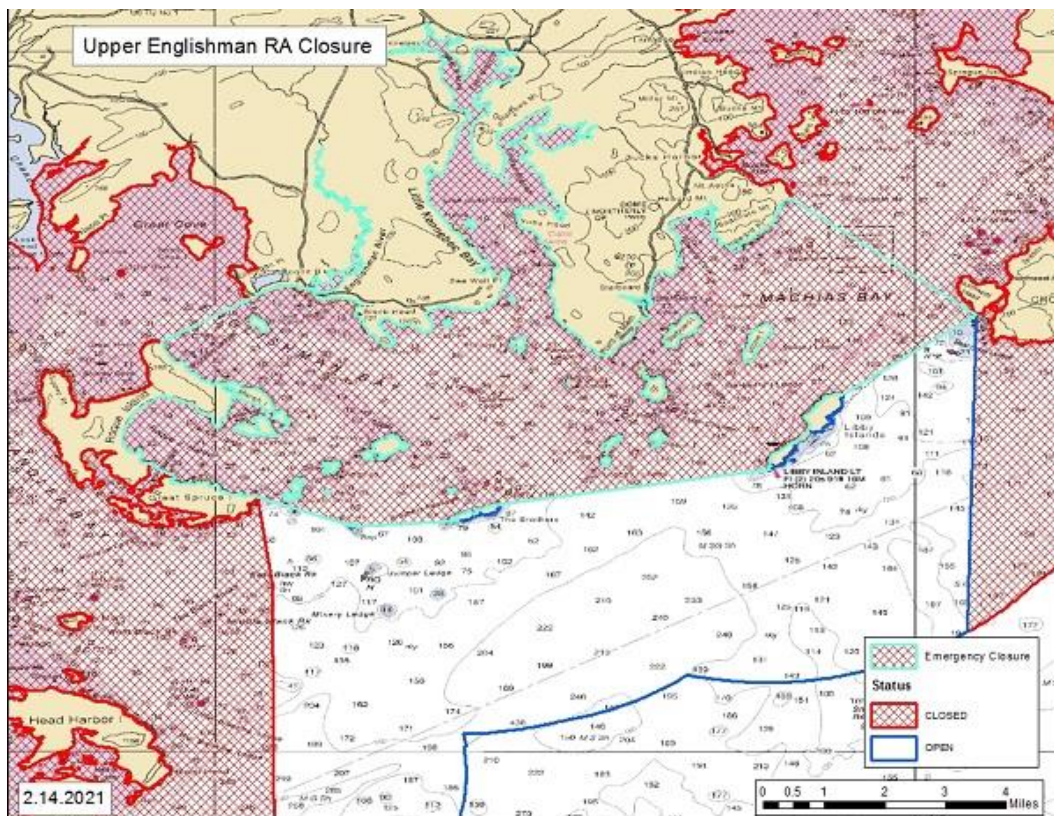
Effort has continued to dwindle as harvesters migrate to more productive areas. After the initial partial closure, approximately 34 boats remained, spread throughout the rotational area from Halifax Island, Codhead Ledge, and around Libby and Cross Islands on optimal weather days. Harvester reports have indicated the area has been fished down, with many vessels not reaching daily limits. Marine Patrol has indicated that while effort has greatly reduced, there are still harvesters working for less than daily limits. Additionally, with other closures occurring during the same timeframe, this area could not handle any increase in effort.

Density estimates of legal scallops have been trending down in the Englishman Bay RA since the 2014-2015 scallop season. As a note of comparison, during the 2014-2015 season, the initial partial closure around Roque Island (Sand Bay) was initiated December 27, 2014 followed by an expanded closure encompassing all areas inside Roque Island, Great Spruce Island, Pulpit Rock, The Brothers, Libby Island and Cross Island on February 28, 2015. During the 2017-2018 scallop season, the conservation closure that encompassed the islands within the rotational area occurred even earlier in the season, on February 4, 2018.

This closure is necessary to prohibit further reduction of the legal spawning stock in the area and to protect the sublegal scallops from any additional incidental mortality (Figure 2).



**Figure 1:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2020 in the Englishman Bay Rotational Area. Legal biomass density was estimated at 2.20 g/m<sup>2</sup> in 2020 compared to 3.11 g/m<sup>2</sup> for the 2017-18 Scallop Season.



**Figure 2:** Chart depicts in-season conservation closure for the upper portion of the Englishman Bay Rotational Area, effective Sunday, February 14, 2021.

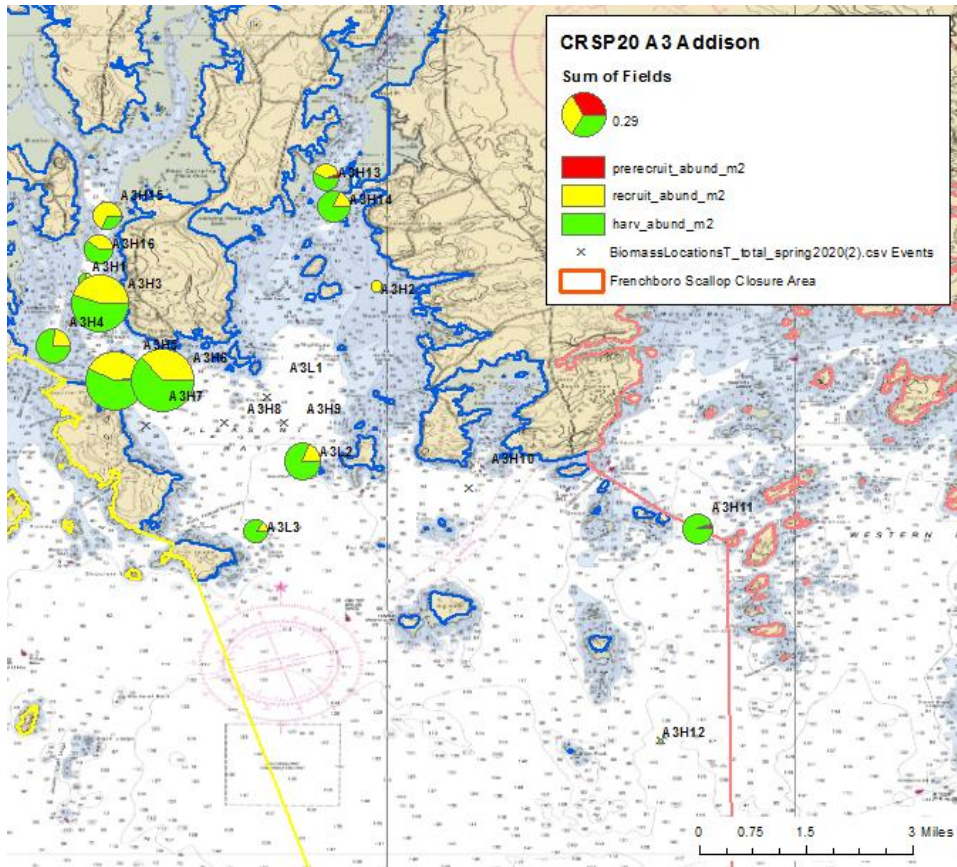
### **Addison Rotational Area**

DMR scallop survey for 2020 observed strong sublegal scallop presence around Strout Island ledges in Pleasant Bay (Figure 3; sublegal shown in yellow). Comparison with the DMR scallop survey completed Spring 2017 indicates an increase in relative legal scallop density from 0.50 g/m<sup>2</sup> to 2.06 g/m<sup>2</sup> observed during the most recent Spring 2020 survey. Additional reports from harvesters' pinpoint signs of recruitment and sublegal scallops are present around Pot Rock, east of the A3L3 station.

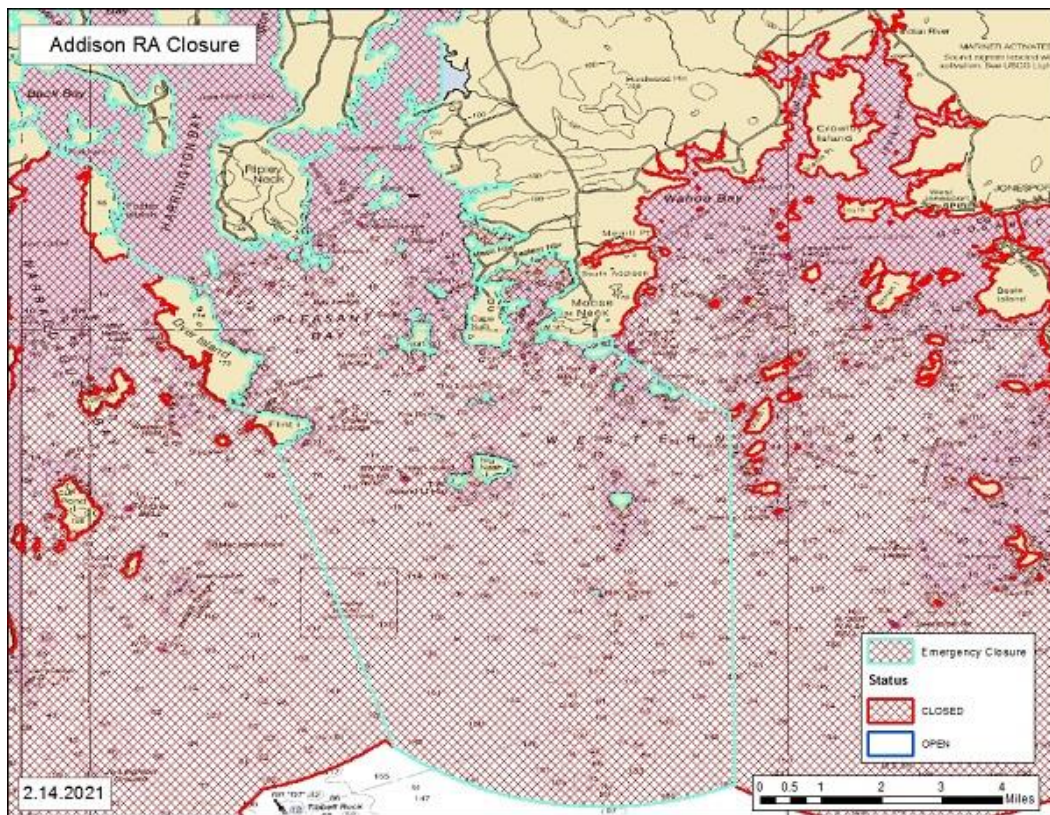
Several harvesters have reported low catch rates in the area that remained open after the initial closure and highlighted several locations where sublegal scallops were observed. This area was also fully closed during the previous rotation on March 4, 2018 and may have contributed to the overall increase in legal density that was observed during the 2020 spring scallop survey.

Current reports from Marine Patrol indicate very low effort is occurring in the area and vessels are no longer able to reach their daily limit.

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 Addison Rotational Area. Legal biomass density was estimated at 2.06 g/m<sup>2</sup> in 2020 compared to 0.50 g/m<sup>2</sup> for the 2017-18 Scallop Season. Survey observed a higher relative abundance of sublegal (recruit) scallops in 2020.



**Figure 4:** Chart depicts in-season conservation closure for the Addison Rotational Area, effective Sunday, February 14, 2021.

## Cobscook, Whiting, Dennys Bays

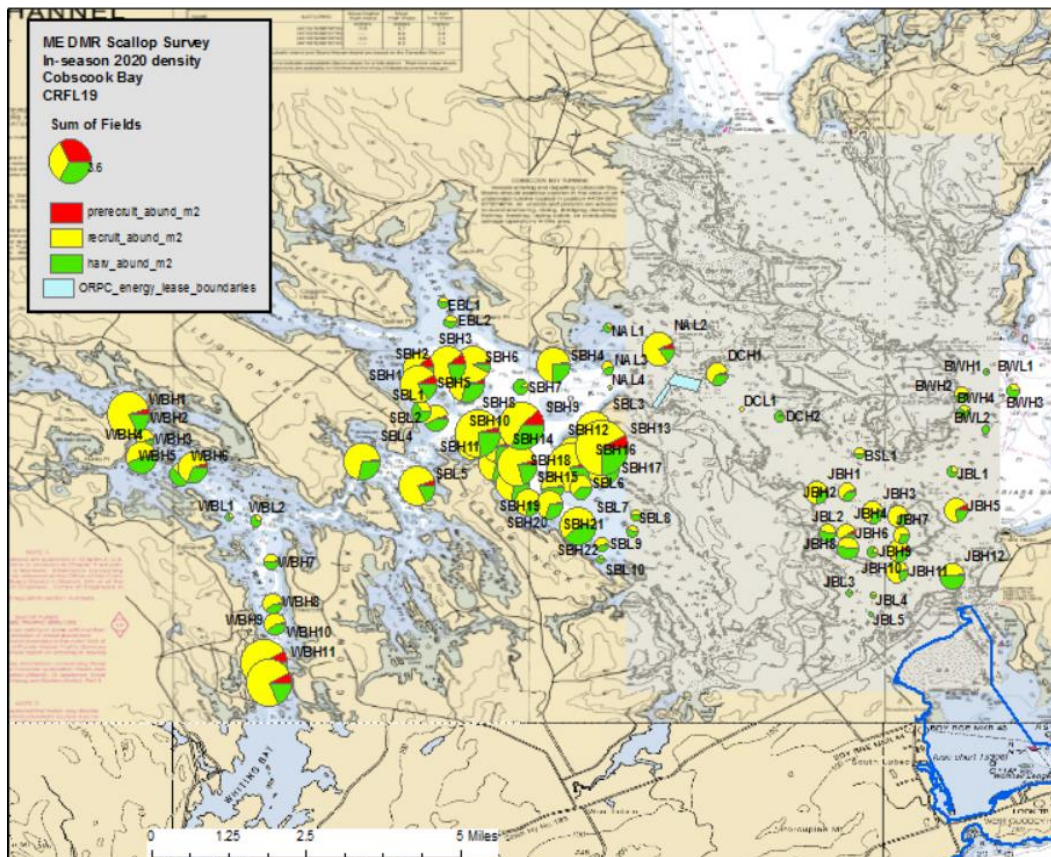
DMR pre-season scallop survey for Cobscook occurred November 15-17, 2020. Overall, the survey reported a robust presence of sublegal and legal scallops. Comparison with the DMR pre-season scallop survey completed November 2019 indicates a slight increase in relative legal scallop density from 11.05 g/m<sup>2</sup> to 12.57 g/m<sup>2</sup> observed during the November 2020 survey. During the first in-season survey, conducted January 21-23, 2021, a moderate decrease in legal density was observed (Figure 5; sublegal shown in yellow).

Marine Patrol has observed a steady rate of effort in the area since the 2020-2021 scallop season opened on December 1, 2020. For the first several weeks, 75 to 80 vessels were present with strong catches and good meat size and quality. In the latter half of December, participation increased upwards of 90 vessels and grew to 100 vessels during the month of January. The latest reports indicate approximately 120-130 vessels were harvesting in the area during the last week of January and the first two weeks of February. As a result, trip length to reach the 90 lb daily limit went from 1 hour to 3 hours in some portions of Cobscook Bay. Additionally, harvesters and Marine Patrol are reporting a rise in sublegal cut shells due to the increase of participation and harvesters unwilling to relocate to more productive areas.

Harvester reports in the month of January were very positive, indicating strong catches, large shellstock and good meat quality. However, reports during the first week of February indicated that the resource was getting depleted, more tows were needed to reach the daily limit and additional scouting was required to find larger concentrations of legal scallops. These reports, in conjunction with the results from the in-season survey from January, indicate the previous three weeks of harvesting has removed a great portion of the legal scallops from the available harvest area.

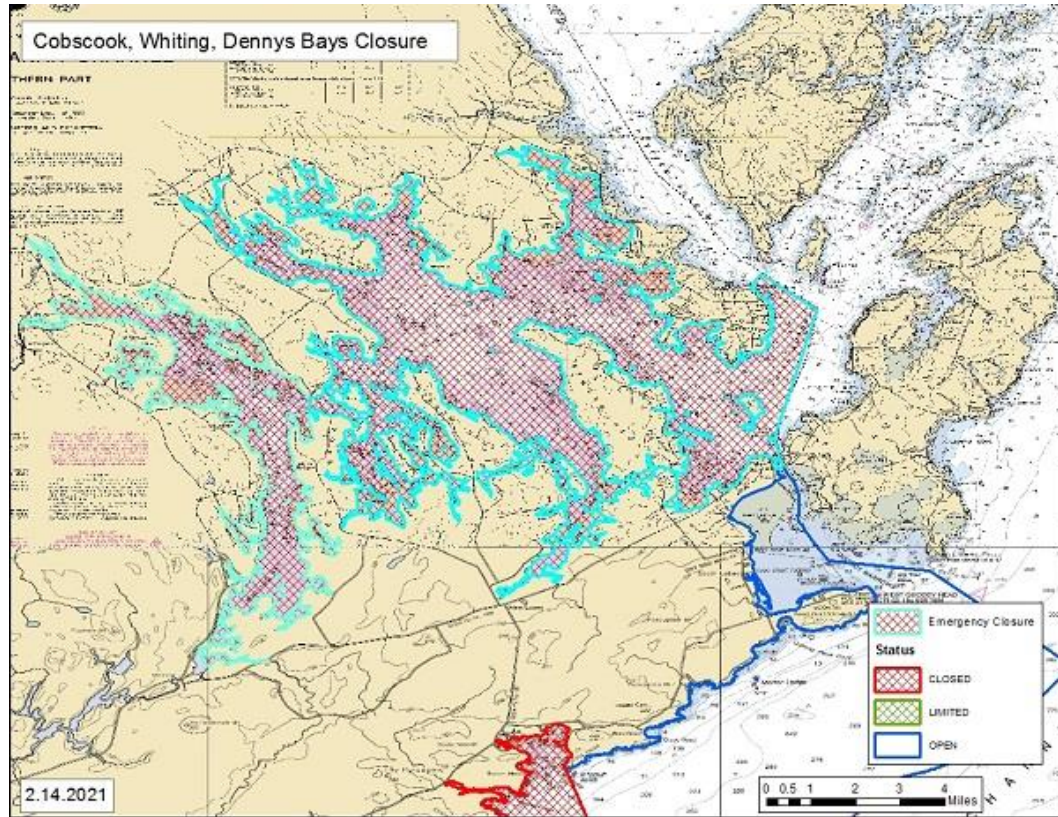
The scallop resource in Cobscook has been relatively stable in the last three seasons, and this closure occurs after 33 days of harvesting, which is on par with the previous season.

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 6).





**Figure 5:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted January 2021 in Cobscook, Whiting and Dennys Bays. Legal biomass density was estimated at 12.57 g/m<sup>2</sup> during the November 2020 pre-season survey compared to 9.15 g/m<sup>2</sup> from the January in-season survey. There was a large presence of sublegal (recruit in yellow) scallops observed during both survey trips.



**Figure 6:** Chart depicts in-season conservation closure for the Whiting & Dennys Limited Access Area and Cobscook Bay, effective Sunday, February 14, 2021.

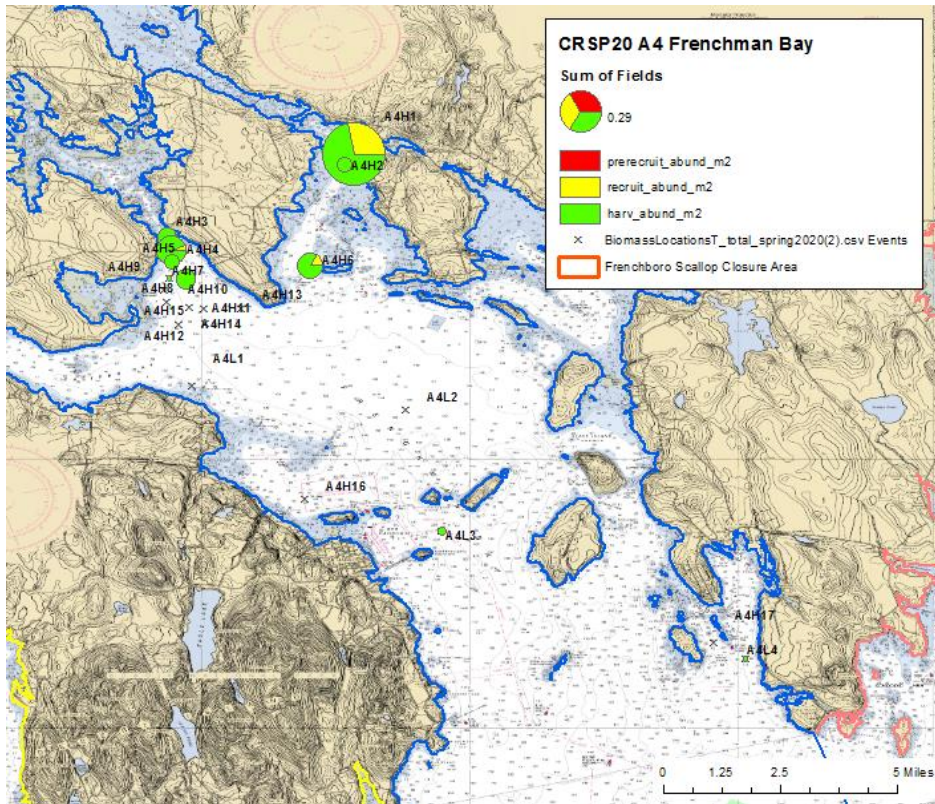
### Upper Frenchman Bay

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/m<sup>2</sup> to 0.79 g/m<sup>2</sup> 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.

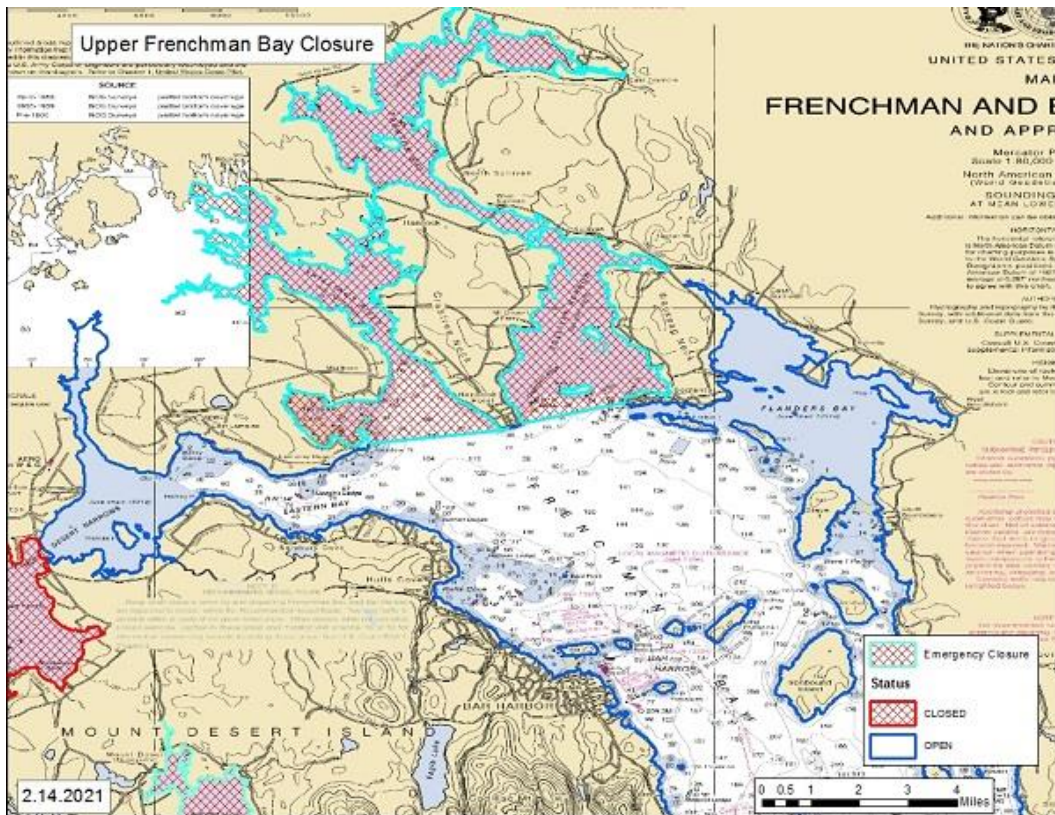
Marine Patrol reported in most of the activity in December and early January were focused inside of this closure for both drag and dive harvesters. Boat counts ranged from 7 to 10 boats during December and has decreased to 4 active vessels still harvesting in the area outside of this closure.

Meat counts ranged from 10 to 15 scallops per pound. Catch rates were moderate with harvesters reaching their daily limit before noon each day. However, the resource was patchy, resulting in harvesters having to move around and scout for harvestable densities of scallops. Several harvesters reported this area was getting fished down by the middle of January. With improved weather, vessels moved to the other parts of the rotational area for more productive tows.

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/m<sup>2</sup> in 2020 compared to 0.67 g/m<sup>2</sup> for the 2017-18 Scallop Season.



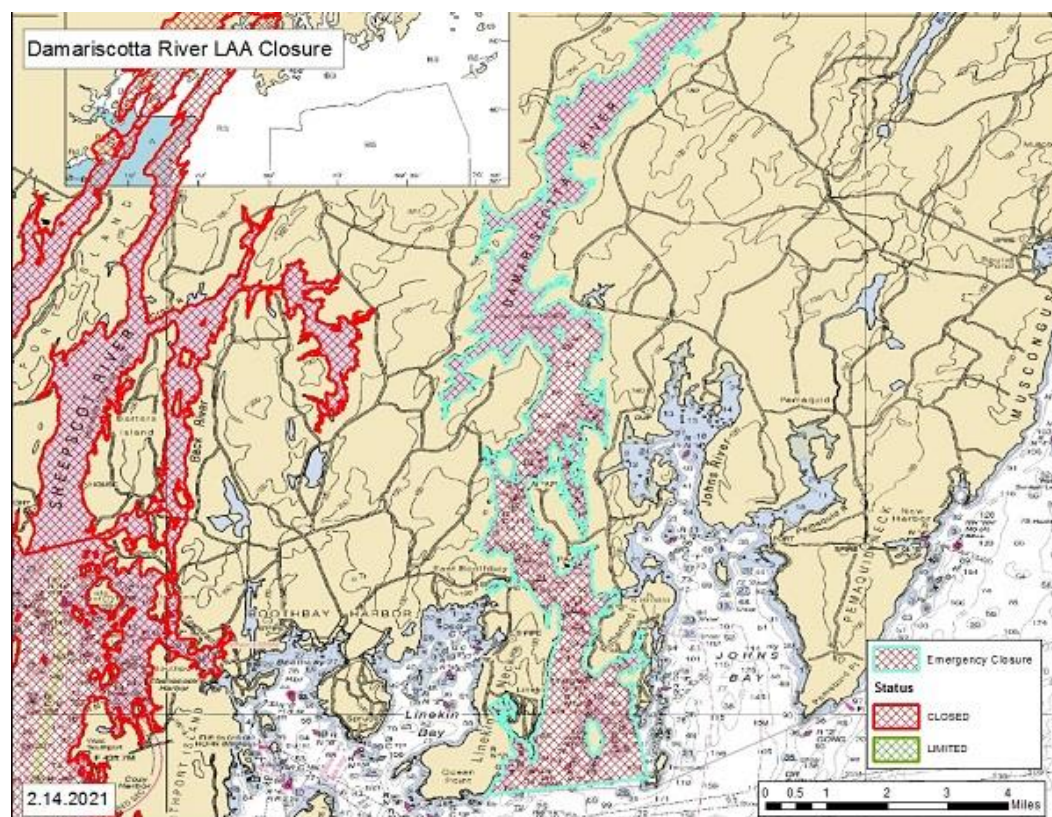
**Figure 8:** Chart depicts in-season conservation closure for Skillings River and Sullivan Harbor, the Upper portion of Frenchman Bay Rotational Area, effective Sunday, February 14, 2021.

**Damariscotta River Limited Access Area**

This area opened for the season on November 17, 2020 for dive harvest and on December 7, 2020 for drag harvest. Effort was considerably lower than in previous years, with only 3 boats in the area compared to 12 vessels harvesting during the 2016-2017 scallop season. During the month of January, both harvesters and Marine Patrol reported moderate catches with good quality meats. As harvest continued through January, a longer harvest time was needed to reach the daily limit. At the start of February, harvesters were not reaching their daily limit.

The Damariscotta River Limited Access Area has been opening every alternate year, to allow for a short recovery before harvesting again. Harvester comments have stated that the area has not shown signs of recruitment in recent years, and recovery continues to be slow, with each re-opening having a lower density of legal scallops available. One harvester has suggested that perhaps a longer closure timeframe may be helpful for the area.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect any sublegal and seed scallops from any additional incidental mortality (Figure 9).



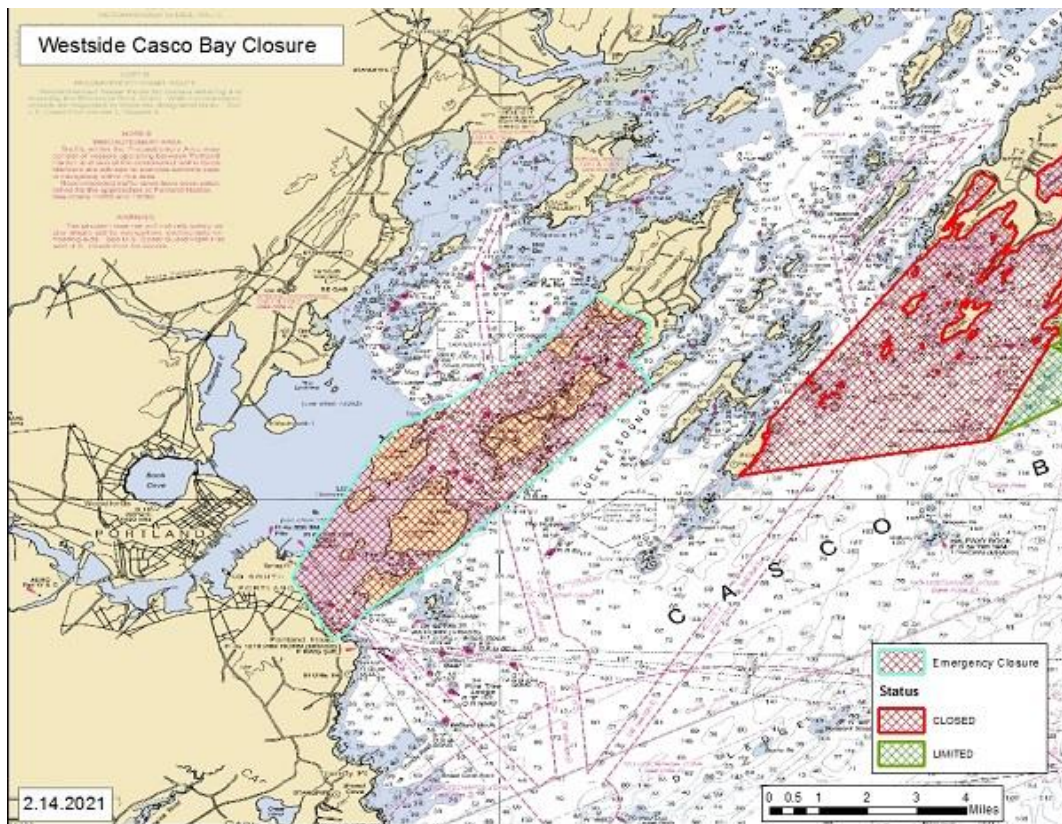
**Figure 9:** Chart depicts in-season conservation closure for the Damariscotta River Limited Access Area, effective Sunday, February 14, 2021.

### **West Casco Bay**

This area opened for the season on November 17, 2020 for dive harvest and on December 7, 2020 for drag harvest. Effort was lower than in previous years, with around than 6 boats in the area. During the month of December, reports indicated moderate catches with good quality meats. As legal product was extracted from the area, harvesters began observing additional sublegal and seed scallops in these areas in a greater amount than what has been observed previously. Harvester observations in January indicated a strong recruitment presence in the targeted conservation area. Marine Patrol has observed variable catch rates in the larger Casco Bay area with vessels within the closure having lower harvest amounts than the daily limit.

Portions of Casco Bay have been closed during previous scallop seasons to allow for grow out of sublegal scallops for future harvesting. Hussey Sound was previously closed during the 2017-2018 season, and South Portland Harbor, Hussey Sound and Chandler Cove were closed during the 2016-2017 season.

This closure is necessary to reduce further incidental mortality on sublegal scallops and additional reduction of the legal spawning stock that remains in the area (Figure 10).



**Figure 10:** Chart depicts in-season conservation closure for West Casco Bay that includes Hussey Sound and Chandler Cove, effective Sunday, February 14, 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 Cobscook, Whiting, Dennys Bays, Upper Englishman Bay RA, Addison RA, Upper Frenchman Bay, Damariscotta River LAA and west Casco Bay.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in these areas as authorized by 12 M.R.S. §6171(3)(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:

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CHAPTER NUMBER AND RULE: **Chapter 11.08, Targeted Closures: (7) Upper Englishman Bay RA; (8) Addison RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Frenchman Bay; (13) Damariscotta River LAA; and (14) West Casco 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 scallop conservation closures in Cobscook, Whiting and Dennys Bays, Upper Frenchman's Bay, Damariscotta River and western Casco Bay; and, to expand existing closures in Englishman Bay and Addison rotational areas. In Cobscook, Whiting and Dennys Bays, there is an exception to the conservation closure to allow the harvest of scallops by drag on Monday, February 15, 2021 and to allow the harvest of scallops by diving on Saturday, February 20, 2021. 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 six scallop resource areas.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [*see* §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.*