

**NOTICE OF AGENCY EMERGENCY RULE-MAKING****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for Cobscook, Whiting, and Dennys Bays (Zone 3), Upper Machias Bay Rotational Area (RA), Gouldsboro & Dyers Bays RA and West Vinalhaven Islands in the Lower Penobscot RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Scallop surveys that are 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 four important scallop harvest 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 20, 2022

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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. Eastern Casco Bay

Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "2" at Eastern Drunkers Ledge.

Western boundary: East and North of a line draw from R N "2" at Eastern Drunkers Ledge to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43° 42.950N Longitude 70° 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43° 43.043N Longitude 70° 00.128W.

3. Back 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.

Northern boundary: West and south of a line drawn from the southern tip of Davis Island, running southwest to Clough Point, Westport Island.

Eastern boundary: West of a line drawn at the most northern tip of Soldier Point running north to the most southern tip of Westport Island.

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. Damariscotta River

North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

8. St. Croix River

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

Eastern boundary: West of the international maritime boundary line.

Southern boundary: North and east of a line drawn from the northern tip of Kendall Head, Eastport to the southern tip of Cummings Cove, Deer Island, Canada.

9. Gouldsboro and Dyers Bay Rotational Area ~~Limited Access Area~~

~~North of a line starting at the eastern most tip of Youngs Point, Corea, continuing to the western most tip of Sheep Island and following the southern shoreline to the eastern-most tip of Sheep Island; and then running easterly to the southern tip of Petit Manan Point.~~

Eastern boundary: South and west 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.

Western boundary: North and east of a line starting from the southern most tip of Schoodic Point True South to the three mile limit (western boundary of the Zone A lobster management zone).

10. Wahoa Bay including West Moosabec Reach Limited Access Area

North of a line starting at the eastern tip of Tibbett Island and running northeasterly to Seaduck Point, Beals Island.

11. ~~Johnson Bay & Eastport Breakwater (Cobscook, Whiting & Dennys Bays Bay)~~

~~Northern boundary: South and west of a line drawn from the northern tip of Kendall Head, Eastport to the southern tip of Cummings Cove, Deer Island, Canada.~~

~~Eastern boundary: West of the international maritime boundary line.~~

~~Western boundary: East and south of a line from the northeastern most tip of Comstock Point, North Lubec to the southeastern most point of Shackford Head, Eastport.~~

~~Southern boundary: North of the International Bridge between Lubec and Campobello Island.~~

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.

12. Upper Machias Bay Rotational Area

Western boundary: East of a line starting at Bucks Head, Machiasport and running southeasterly to the southern end of Northwest Head on Cross island.

Southern boundary: North of a line starting at the most eastern tip of Scotch Island and running northeasterly to the southeastern tip of Cape Wash Island, then running northeasterly to Western Head, Cutler.

13. West Vinalhaven Islands within the Lower Penobscot Bay Rotational Area

South and east of a line starting at the most southwestern tip of Crockett Point, Vinalhaven, heading southwesterly to red nun "RN4", then running southeasterly to James & Willies Ledge green can "GC1" and continuing to Colt Ledge red nun "R2"; and then due true east to the closure boundary.

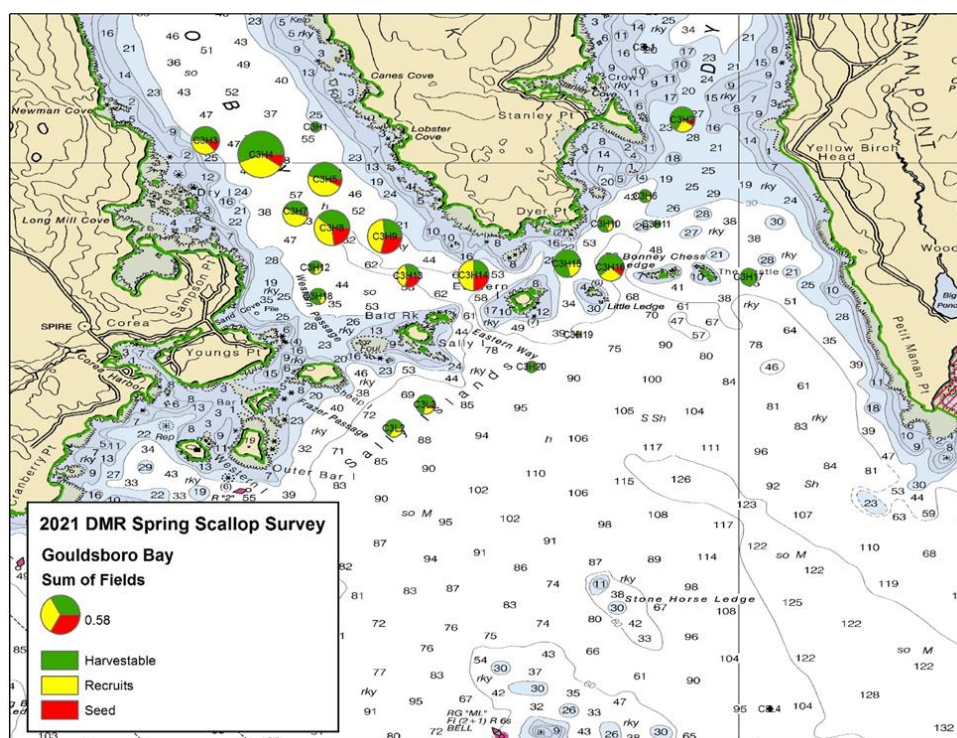
## Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands.

### Gouldsboro and Dyers Bay Rotational Area

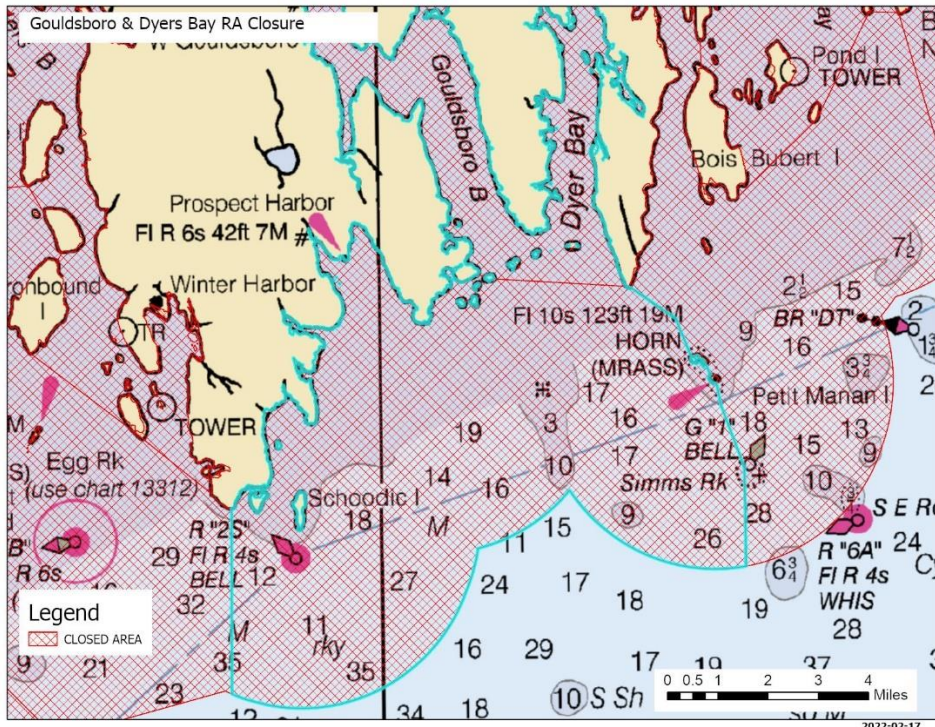
The initial closures within this rotational area occurred on January 2, 2022 that encompassed the limited access portion of Gouldsboro and Dyers Bay, north of Youngs Point to Petit Manan Point. Since then, harvest had continued outside of that closure line. Approximately 10-12 boats were in the outer portion of the rotational area early in January, with vessels reaching daily limits early afternoon. However, in the last two weeks, the number of active vessels has reduced to 2-3 vessels with catch rates greatly diminished.

DMR scallop survey for 2021 observed strong sublegal (recruit and seed) scallop presence primarily in Gouldsboro Bay and moderate observations in Dyers Bay (Figure 1; sublegal scallop categories shown in yellow and red). These stations were primarily located within the Limited Access Area. The few survey stations that were observed outside of the Limited Access Area boundary indicated presence of legal sized scallops for harvest, but not in any great abundance and would not persist for the full season.



**Figure 1:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2021 in the Gouldsboro & Dyers Bays Rotational Area. Legal biomass density was estimated at  $\sim 1.4 \text{ g/m}^2$  in 2021 compared to  $\sim 2.5 \text{ g/m}^2$  for the 2018-19 Scallop Season. There was a strong presence of sublegal (recruits and seed) scallops observed in the Spring 2021 survey that was not present during the previous rotation.

The scallop resource in outer portion of the Gouldsboro & Dyers Bay Rotational Area has been relatively low in the last several seasons, and this closure occurs after 36 days of harvesting, which is on par with the previous rotation. 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 2).



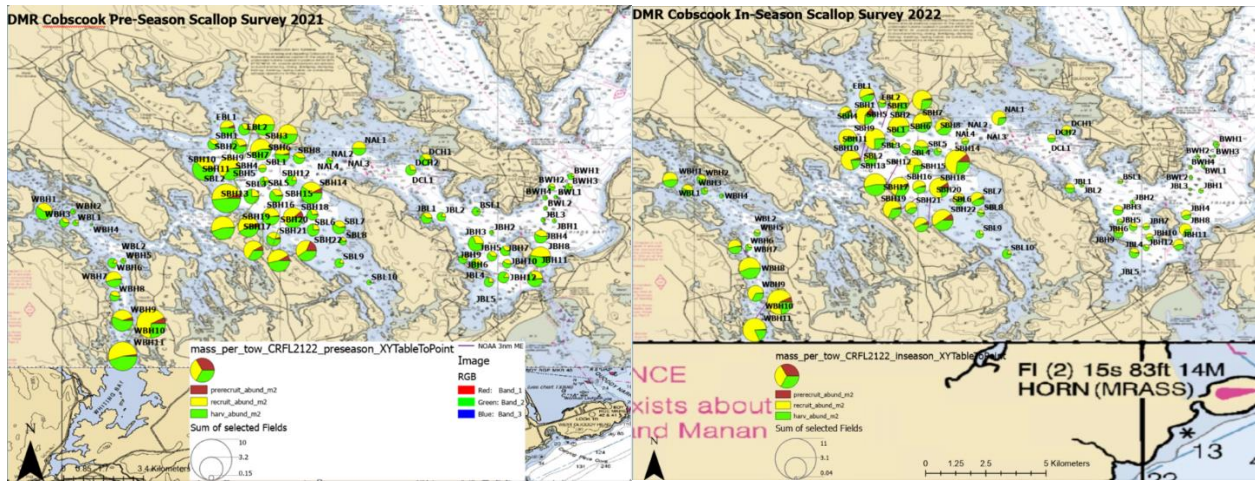
**Figure 2:** Chart depicts in-season conservation closure for Gouldsboro & Dyers Bay Rotational Area (Zone 2) effective Sunday, February 20, 2022.

**Cobscook Bay, including Whiting & Dennys Bay**

DMR pre-season scallop survey for Cobscook Bay occurred November 19-21, 2021. Overall, the survey reported a robust presence of sublegal and legal scallops. Comparison with the DMR pre-season scallop survey completed November 2020 indicated a slight increase in relative legal scallop density from 12.27 g/m<sup>2</sup> to 14.27 g/m<sup>2</sup> observed during the November 2021 survey.

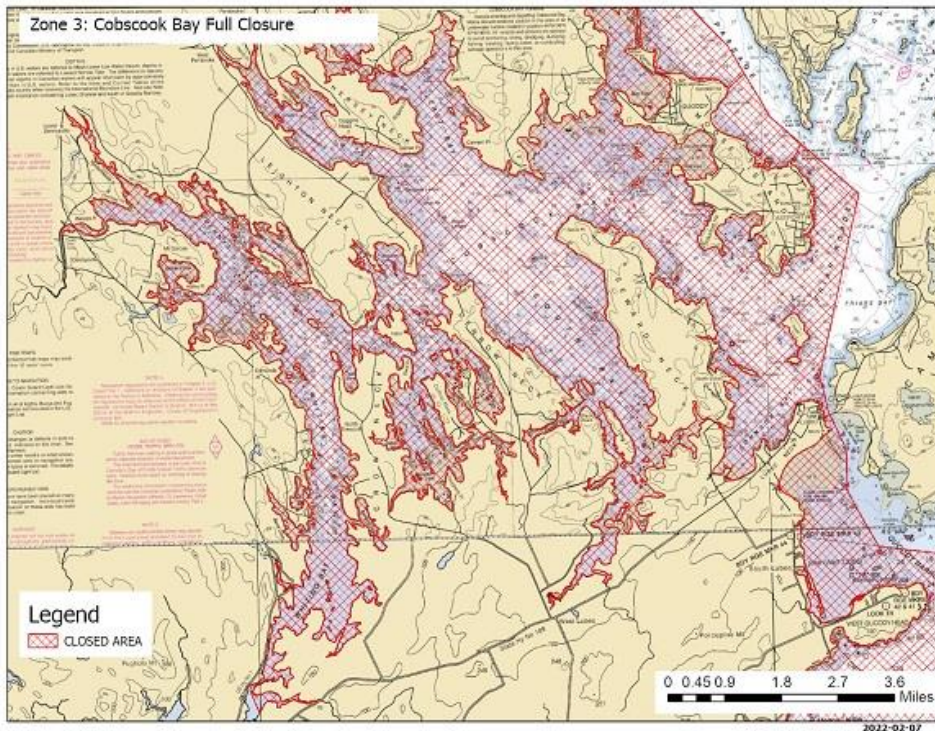
During the in-season survey, conducted January 21-23, 2022, a moderate decrease in legal density was observed in Cobscook Bay; a decrease of 37% from 14.27 g/m<sup>2</sup> to 8.99 g/m<sup>2</sup> (Figure 3; legal density shown in green). Johnson Bay experienced the greatest decline and was closed separately on February 6, 2022. Since the completion of the in-season survey, an additional twelve harvest days have occurred with approximately 110 vessels in the area. It is estimated, based on current harvest rates, that the additional twelve harvest days have resulted in a 56% decrease in legal density.

Marine Patrol has observed a steady rate of effort in the area since the 2021-2022 scallop season opened on December 1, 2021. For the first few 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 110-120 vessels were harvesting in the area during 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.



**Figure 3:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Fall 2021 in Cobscook Bay (Zone 3; left figure). Legal biomass density for Cobscook Bay was estimated at  $\sim 14.27 \text{ g/m}^2$  in pre-season survey compared to  $\sim 8.99 \text{ g/m}^2$  observed during the in-season survey completed the weekend of January 21, 2022 (right figure).

Harvester reports in the month of January were very positive, indicating strong catches, large shellstock and good meat quality. Recent reports from harvesters suggest signs of depletion of legal densities as shellstock becomes smaller and additional tow time is needed. These reports, in conjunction with the results from the in-season survey conducted in January 2022, indicate the previous four weeks of harvesting has removed a considerable portion of the legal scallops from the available harvest area. Harvester observations concerning smaller meat counts, observations of small cut shells and tow time having increased in the last two weeks indicated general support for closures to occur.



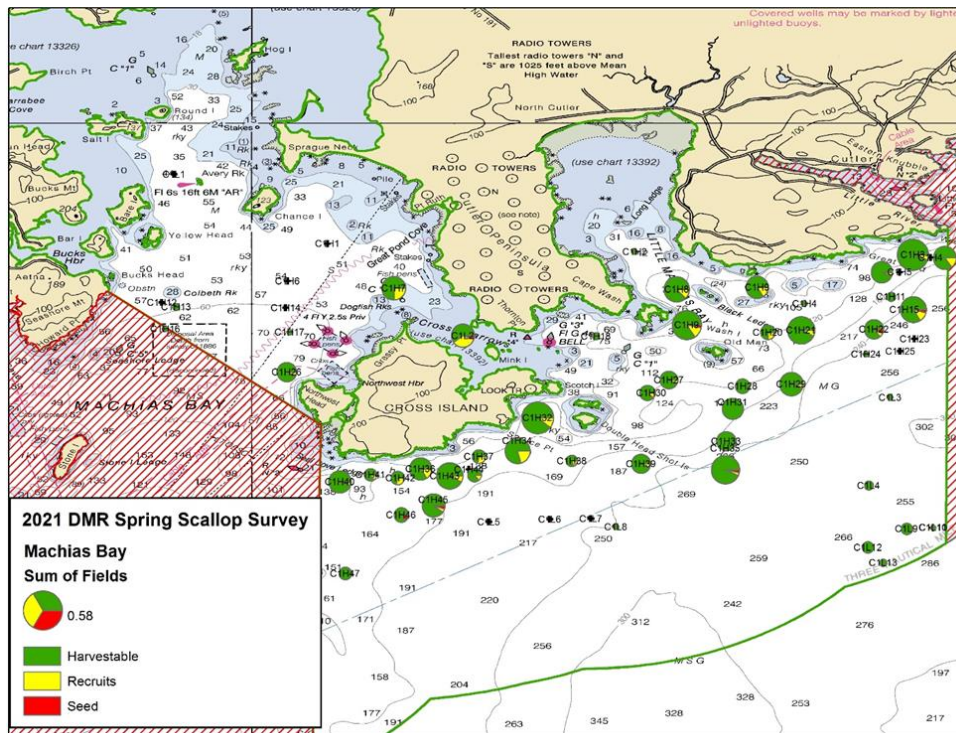
**Figure 4:** Chart depicts in-season conservation closure for Cobscook Bay (Zone 3) effective Sunday, February 20, 2022.

The scallop resource in Cobscook has been relatively stable in the last three seasons, and this closure occurs after 34 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 4).

## Upper Machias Bay Rotational Area

This area opened for harvest on December 1, 2021 with approximately 15 to 25 boats, most concentrated within Machias and Little Machias Bay areas. Overall catch rates were moderate, with vessels reaching a daily limit by noon, but overall legal abundance of scallops in the shallow waters was lower than anticipated. Vessels were prospecting early with legal scallops spread within the area in small patches.

The 2021 spring survey had stations within Machias Bay that did not observe scallops (Figure 5) while a few stations were predominately indicating legal scallops present. Overall, the legal density in this rotational area decreased from 4.30 g/m<sup>2</sup> to 1.25 g/m<sup>2</sup> for the 2021-2022 season; with little signs of recruitment observed in several of the previous spring surveys. The majority of stations showing moderate to high abundance of legal shellstock exist outside of this closure boundary. Stations within the closure boundary indicated low or zero presence of scallops.

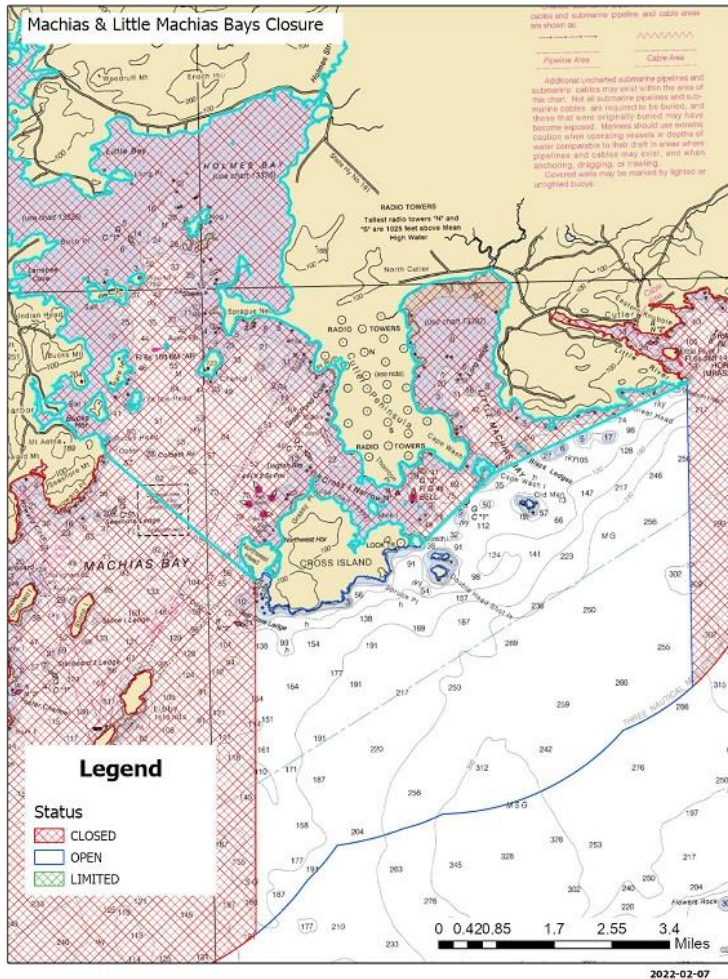


**Figure 5:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2021 in Machias Rotational Area (Zone 2). Legal biomass density for Machias Rotational Area was estimated at ~1.25 g/m<sup>2</sup> in spring survey compared to ~4.30 g/m<sup>2</sup> observed during previous spring scallop survey conducted in 2018.

Reports from Marine Patrol indicated that 6-8 harvesters remained in the area at the end of December with the majority of vessels having moved to Cobscook Bay. The vessels that remained focused harvesting on the outside Cutler shore or remained sheltered on poor weather days but did not reach their daily limits when harvesting in either bay.

This closure is necessary to prohibit further reduction of the legal spawning stock that remains in the area and to protect the sublegal and seed scallops from any additional incidental mortality (Figure 6).



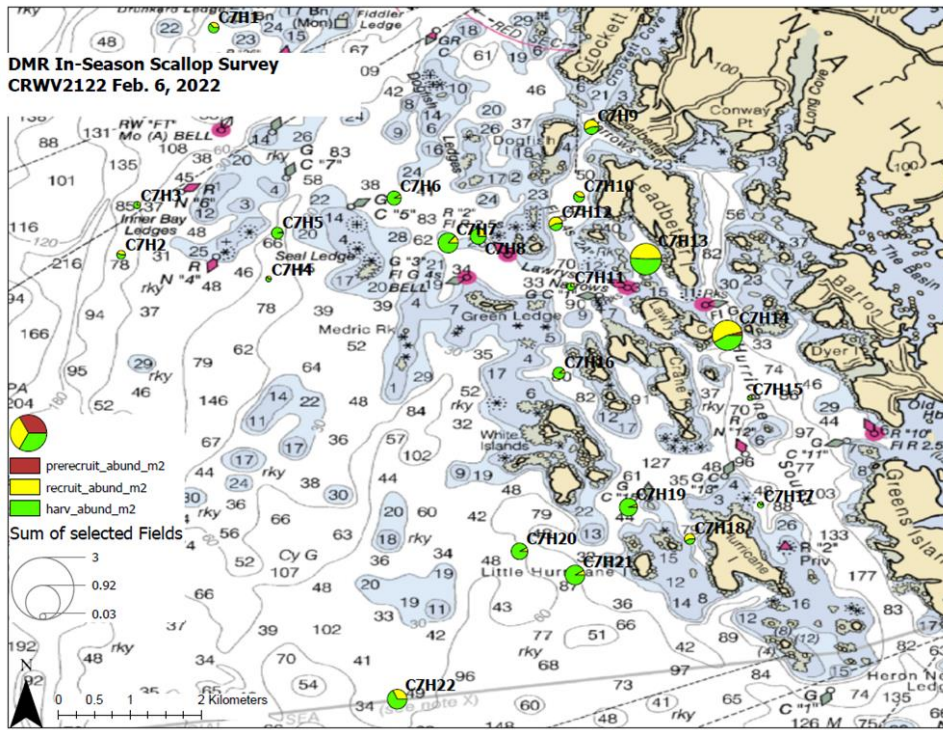


**Figure 6:** Chart depicts in-season conservation closure for Machias and Little Machias Bays (Zone 2) effective Sunday, February 20, 2022.

### West Vinalhaven Islands

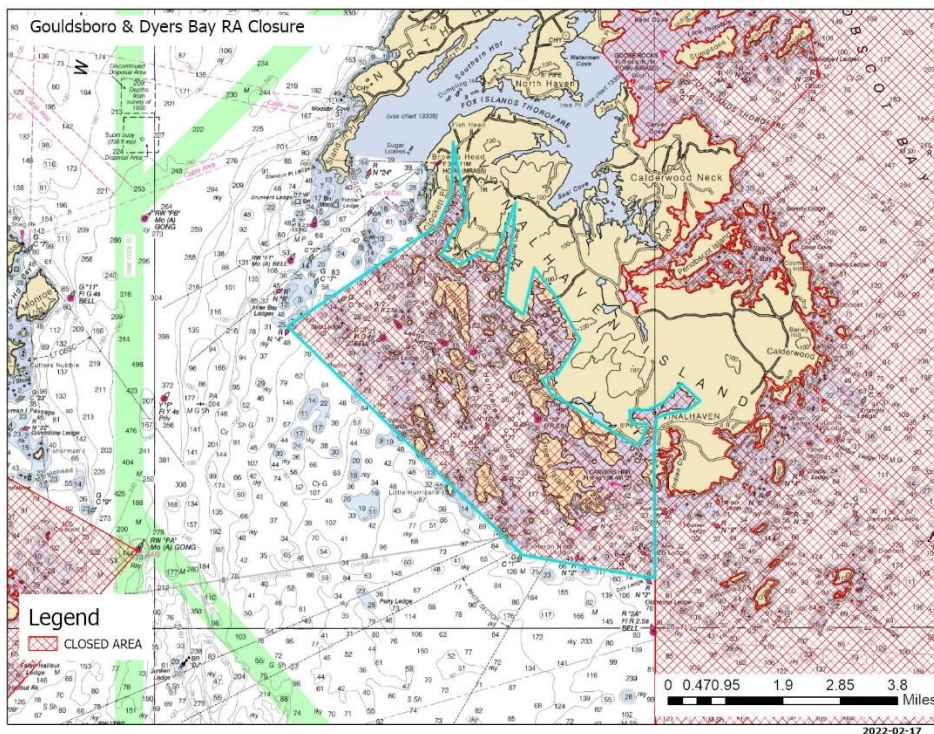
This area opened for harvest on December 1, 2021 with approximately 8 to 12 boats concentrated within the islands west of Vinalhaven. By week four, effort remained consistent with 10 to 15 boats that spread from the inner islands to west and south of the area. This range of 10 – 15 boats, depending on weather, has maintained effort in the open portion of the Lower Penobscot Bay rotational area for the duration of January with vessels harvesting around islands inside this closure and prospecting outside of the island when weather permits.

Twenty-two survey stations were concentrated inside the inner islands for the in-season survey assessments. This also represents where most the effort had taken place during December 2021 and January 2022. During the in-season survey, conducted February 6, 2022, a significant decrease in legal density was observed in West Vinalhaven; a decrease of 48% from 5.20 g/m<sup>2</sup> to 2.69 g/m<sup>2</sup> (Figure 3; legal density shown in green). Since the completion of the in-season survey, an additional eight opportunity days have occurred, however, it's been noted by Marine Patrol that most vessels have left the area seeking better catch rates.



**Figure 7:** Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted February 6, 2022 in Lower Penobscot Bay Rotational Area (Zone 2) focusing on West Vinalhaven islands. Legal biomass density for this area during pre-season survey was estimated at  $\sim 5.20$  g/m<sup>2</sup> compared to  $\sim 2.69$  g/m<sup>2</sup> observed during the in-season scallop survey conducted February 6, 2022.

The scallop resource in West Vinalhaven islands has been relatively strong in the last few rotations, with signs of moderate recovery between open seasons. However, starting harvestable density has slightly decreased when compared across several open seasons. This closure occurs after 36 days of harvesting, which is slightly longer than the previous season as harvest effort was lower in 2021/2022. 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 8:** Chart depicts in-season conservation closure for West Vinalhaven Islands in the Lower Penobscot Bay Rotational Area (Zone 2) effective Sunday, February 20, 2022.

In summary, the Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Scallop surveys that are 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 Cobscook, Whiting, and Dennys Bays (Zone 3), Upper Machias Bay Rotational Area (RA), Gouldsboro & Dyers Bays RA and West Vinalhaven Islands in the Lower Penobscot RA (Zone 2).

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: (9) Gouldsboro & Dyers Bay RA; (11) Cobscook, Whiting & Dennys Bays; (12) Upper Machias RA; (13) West Vinalhaven Islands**

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 for Cobscook, Whiting, and Dennys Bays (Zone 3), Upper Machias Bay Rotational Area (RA), Gouldsboro & Dyers Bays RA and West Vinalhaven Islands in the Lower Penobscot RA (Zone 2). The Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Scallop surveys that are 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 four important scallop harvest areas.

MATERIAL INCORPORATED BY REFERENCE IN THE RULE?  YES  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seek to maintain the recovery of the scallop resource within the State of Maine. The rule is intended to have a long-term positive impact on the scallop fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

Input from DMR science staff, Maine Marine Patrol, and scallop industry members.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

***FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[*see* §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [*see* §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [*see* §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*