

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (11) Johnson Bay & Eastport Breakwater**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure for Johnson Bay and Eastport Breakwater within Zone 3. 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 Fall Scallop survey 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 Johnson Bay and Eastport Breakwater area. 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 6, 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 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.

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 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.

Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08, Targeted Closures: (11) Johnson Bay & Eastport Breakwater

Johnson Bay and Eastport Breakwater

DMR pre-season scallop survey for Cobscook 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 8.83 g/m² to 11.09 g/m² observed during the November 2021 survey at Johnson Bay stations. However, there was a decrease at the Eastport Break water stations from the 2020 survey (6.96 g/m² to 4.48 g/m² in 2021).

During the first in-season survey, conducted January 21-23, 2022, a significant decrease in legal density was observed in Johnson Bay, a decrease of 55% to 4.99 g/m² (Figure 1; legal density shown in green). While Eastport Breakwater did not have a significant decrease, the legal density observed during the in-season survey in January 20221 was lower than that observed in the in-season survey of January 2021, suggesting serial decline in the legal scallop resource at those stations. This has also been observed by Marine Patrol as less activity occurs in this area annually.

Marine Patrol has observed a steady rate of effort in the Johnson Bay/Eastport Breakwater area since the 2021-2022 scallop season opened on December 1, 2021. Some vessels harvested the area at the onset of the season, but quickly moved on as product was small (meat count < 20-25 ct) and the catch rates were 2-3 bushel/tow. Other areas within Cobscook saw catch rates of 5-7 bushels/tow. However, some vessels still remained in the area to harvest, and meat count continued to decrease.

Current reports indicate that majority of vessels have moved away from the area as meat counts were nearly 30 scallops/pound. This area would benefit from an early closure (Figure 2), such that the remainder of the scallop resource would have the ability to increase yield for next season and fetch a better market price. Additionally, the remainder of legal scallop resource is needed to future recruitment.

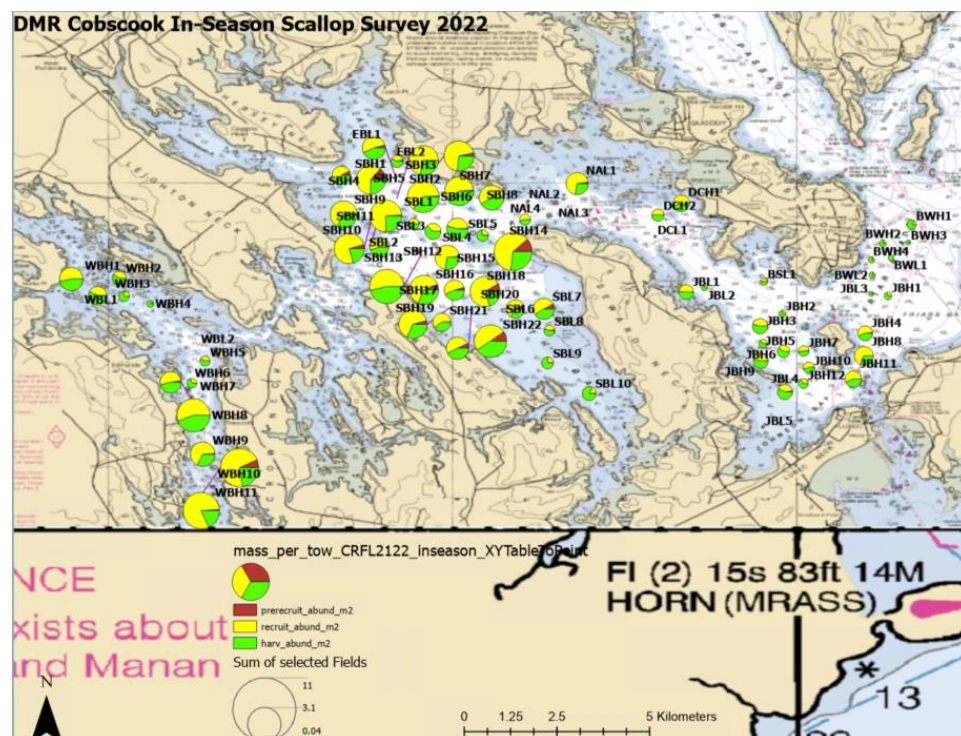


Figure 1: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Fall 2021 in Cobscook Bay (Zone 3). Legal biomass density for Johnson Bay was estimated at ~11.09 g/m² in pre-season survey compared to ~4.99 g/m² observed during the in-season survey completed the weekend of January 21, 2022.

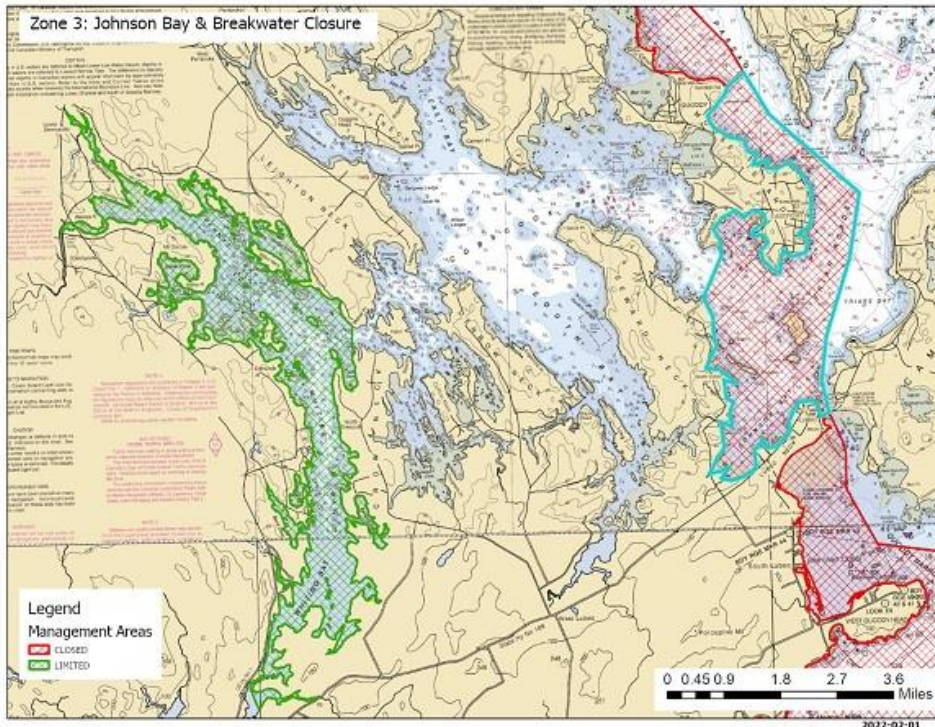


Figure 2: Chart depicts in-season conservation closure for Johnson Bay and Eastport Breakwater in Cobscook Bay (Zone 3) effective Sunday, February 6, 2022.

In summary, the Department is concerned that continued harvesting for the remainder of the 2021-2022 fishing season in the Johnson Bay and Eastport Breakwater area will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2021 Fall Scallop survey 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 Johnson Bay and Eastport Breakwater area.

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: (11) Johnson Bay & Eastport Breakwater**

STATUTORY AUTHORITY: **12 M.R.S. §6171(3)(A)**

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

The Commissioner adopts this emergency rulemaking to establish a scallop conservation closure for Johnson Bay and Eastport Breakwater within Zone 3. 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 Fall Scallop survey 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 Johnson Bay and Eastport Breakwater area.

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.