

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay LAA;
(10) Wahoa Bay & West Moosabec Reach LAA

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for the Gouldsboro and Dyers Bays limited access area and Wahoa Bay including the West Moosabec Reach limited access area all within 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 Spring 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 these three 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: January 2, 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 point of Tibbett Island and running northeasterly to Seaduck Point, Beals Island.

11.09 Limited Access Areas

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 November 24 and 27, 2021; December 3, 4, 10, 11, 17, 18, 23, 24 and 31, 2021 in Areas 1, 2, 3 and 5; except for November 24, 26, and 27, 2021; December 16, 17 and 18, 2021; and January 6, 7, and 8, 2022 in Areas 6 and 7; except in Whiting and Dennys Bays (Area 4) on December 4, 11, 18, and 24, 2021; January 1, 8, 15, 22

and 29, 2022; February 5, 12, 19 and 26, 2022; and March 5, 12 and 19, 2022. 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 3, 10, 17, 24 and 31, 2022; February 7, 14, 21 and 28, 2022; and March 7 and 14, 2022 in Areas 1, 2, 3 and 5; except for December 6, 7, 8, 27, 28 and 29, 2021; and January 17, 18 and 19, 2022 in Areas 6 and 7; except in Whiting and Dennys Bays (Area 4) on December 6, 13, 20 and 27, 2021; January 3, 10, 17, 24 and 31, 2022; February 7, 14, 21 and 28, 2022; and March 7, 14 and 21, 2022. 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 through 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. Western Casco Bay

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

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.

2. Sheepscot River

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

Northern boundary: East 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 from Cross Point, Edgecomb, running easterly to the northern tip of Barters Island and continuing southerly along the western shore of Barters Island to the southern most point of Barters Island and continuing southeasterly to the most northwestern tip of Sawyer Island.

Eastern boundary: West and North of the Townsend Gut Bridge connecting Southport Island and West Boothbay Harbor.

3. Western Penobscot Area:

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 and then from the west shore of Mosquito Island to the most southern tip of Marshall Point, Port Clyde.

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. Muscle Ridge

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.

~~6. Gouldsboro and Dyers Bay 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.~~

~~7. West Moosabec Reach Area~~

~~Eastern boundary: West of the Jonesport Bridge.~~

~~Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.~~

Basis Statement

The Department is taking emergency rulemaking action to amend targeted conservation closures in Chapter 11.08, Targeted Closures: (9) Gouldsboro & Dyers Bay LAA; (10) Wahoa Bay & West Moosabec Reach LAA.

Gouldsboro & Dyers Bay Limited Access Area

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). Sublegal biomass was relatively higher than what was observed during the 2018 scallop survey, however, legal scallop biomass available for harvesting had declined. Comparison with the DMR scallop survey completed Spring 2018 resulted in relative legal scallop density of ~ 2.5 g/m² versus ~ 1.4 g/m² observed during the most recent Spring 2021 survey.

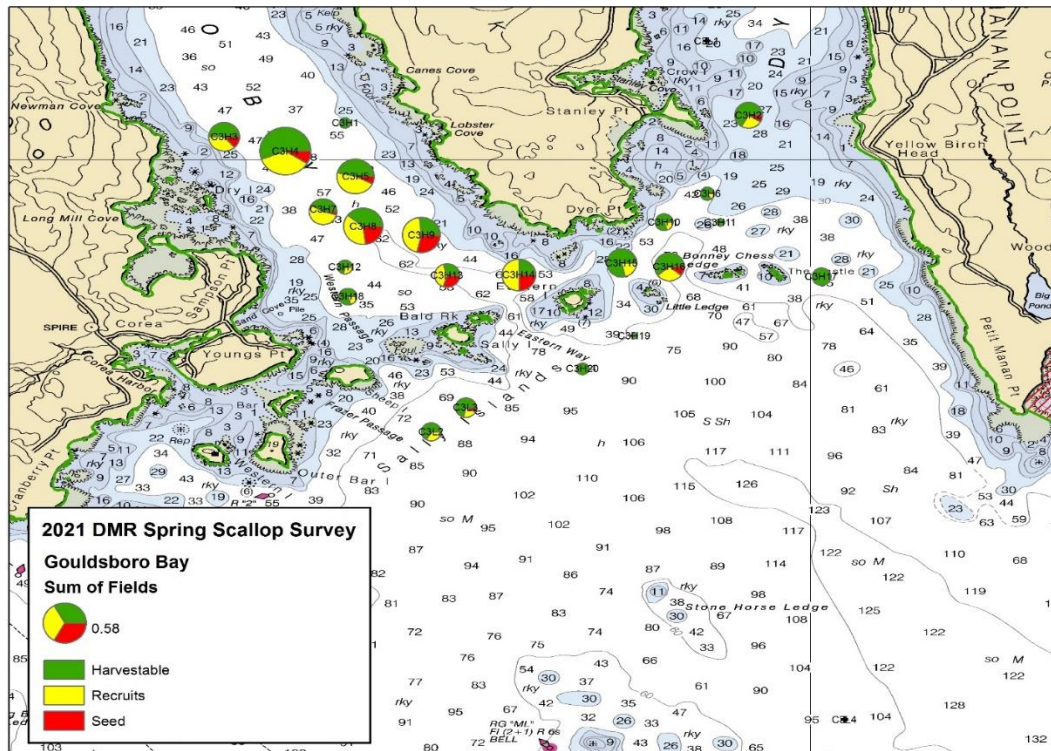


Figure 1: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2021 in the Gouldsboro & Dyers Bays Rotational Area. Legal biomass density was estimated at ~ 1.4 g/m² in 2021 compared to ~ 2.5 g/m² for the 2018-18 Scallop Season. There was a strong presence of sublegal (recruits and seed) scallops observed in the Spring 2021 survey that was not present during the previous rotation.

This area transitioned to a limited access management for the 2021-2022 season considering effort trends from previous seasons and updated survey results. The harvest schedule allowed for three consecutive days of harvesting for each gear sector spaced in biweekly blocks. Drag harvesting commenced on December 6, 2021 with approximately 15 to 20 vessels in the total area with the majority of vessels in Gouldsboro Bay. Catch rates were moderate, with most harvesters reaching their daily limit of 15 gallons within four hours of harvesting using short 15 minute tows averaging 2 trays of legal shellstock per tow. Meat count ranged from 15 to 20 counts per pound.

During the second week of limited access entry starting on December 27, 2021, catch rates declined slightly, with many harvesters taking an extra 1 to 2 hours to reach their daily limit and tows averaging 1 tray of legal shellstock. Active harvesters in the area increased slightly to approximately 26 boats working both Gouldsboro and Dyers, with the majority still on the Gouldsboro side of the LAA. Meat counts stayed similar to the first week of harvest, however, it was observed by harvesters that approximately a third of the catch was sublegal and immediately returned to waters. A few harvesters did not reach daily limits by mid-afternoon during this second week of harvest.

Several harvesters commented on the strong presence of sublegal shellstock ranging from 1 to 3 inches and did not observe many of the larger shellstock that has been present in the area during previous seasons. A few harvesters commented that an early closure would be best for the existing resource to continue growing.

This closure is necessary to reduce incidental mortality that is occurring on sublegal scallops and to cease further reduction of legal scallop spawning stock that remains in the area (Figure 2).

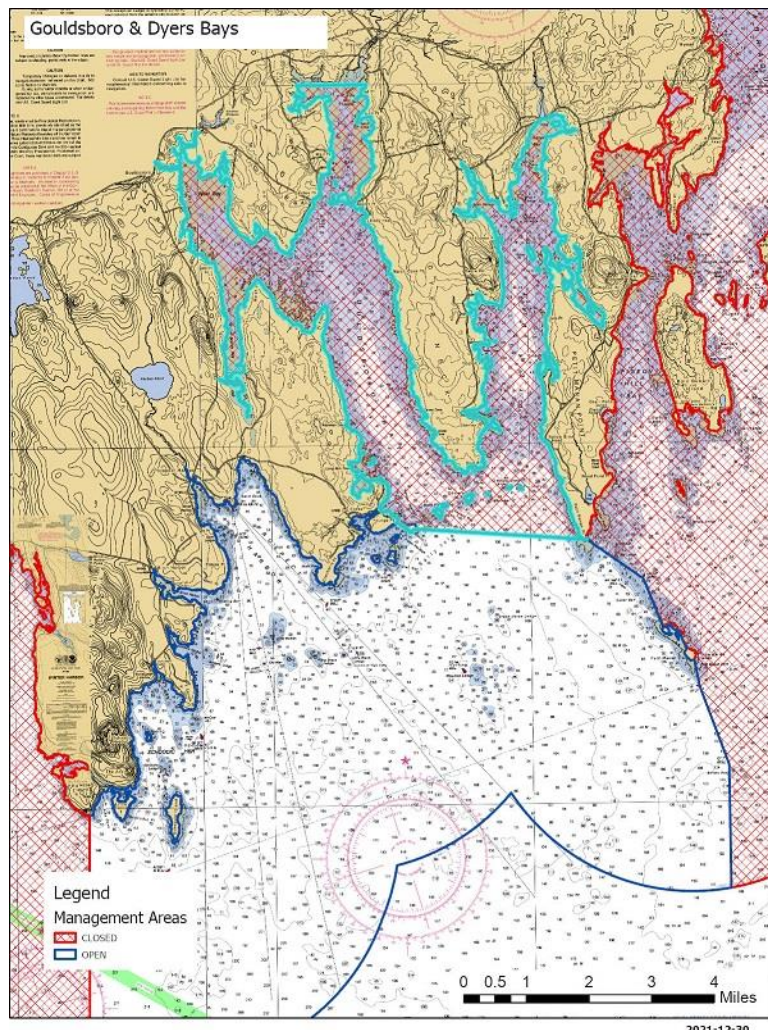


Figure 2: Chart depicts in-season conservation closure for the Gouldsboro & Dyers Bay Limited Access Area, effective Sunday, January 2, 2022.

Wahoa Bay including West Moosabec Reach Limited Access Area

DMR scallop survey for 2021 observed very few sites showing low to moderate levels of sublegal scallops (Figure 3; sublegal scallop categories shown in yellow and red). Sublegal biomass was highest at the station nearest Tibbets Island. Overall, legal scallop biomass available for harvesting had declined. Comparison with the DMR scallop survey completed Spring 2018 resulted in relative legal scallop density of $\sim 0.75 \text{ g/m}^2$ versus $\sim 0.60 \text{ g/m}^2$ observed during the most recent Spring 2021 survey.

Moosabec Reach has been under limited access management in previous seasons to reduce harvest rates when the area has shown to have presence of legal scallop biomass but low quantities. Opening on December 6, 2021, the area had 9 harvest vessels that made several tows but left the LAA after only a few hours. There was not enough biomass to sustain the LAA for the full three days it was open.

In open waters between the Reach and Wahoa Bay, upwards of 20 vessels have been active in the area since opening on December 1, 2021. During the first two weeks of December, catches were moderate, with several harvesters reaching daily limits in 2 or 3 hours and meat counts ranging from 12 to 15 scallops per pound.

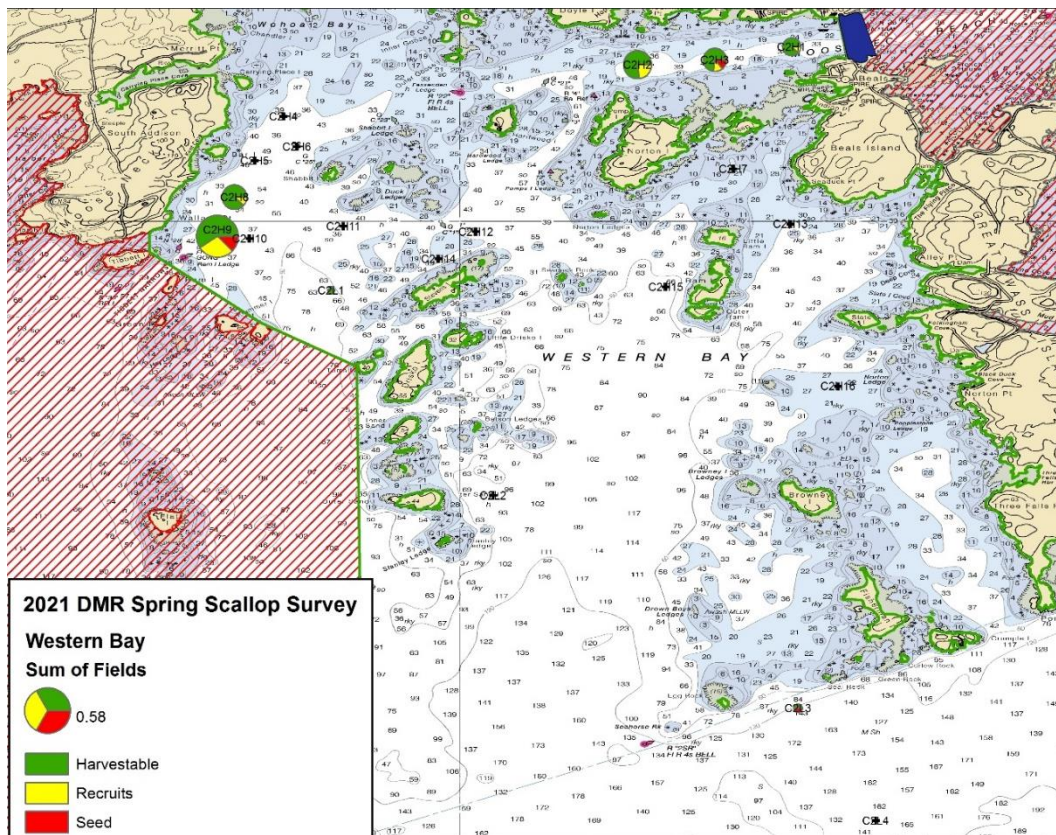


Figure 3: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2021 in the Western/Wahoa Bays Rotational Area. Legal biomass density was estimated at $\sim 0.6 \text{ g/m}^2$ in 2021 compared to $\sim 0.75 \text{ g/m}^2$ for the 2018-19 Scallop Season. The only observations of seed scallops were noted southeast of Hopkins Point, Jonesport and east of Tibbets Island.

By the third week of December, the majority of boats that harvested this area either moved east to Machias or west to Gouldsboro or Lower Jericho areas. Marine Patrol observations during the week of December 27, 2021 indicate no vessel activity in the upper portion of the rotational area.

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).

In summary, the Department is concerned that continued harvesting for the duration of the 2021-22 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 Gouldsboro and Dyers Bays, Wahoa Bay, and western Moosabec Reach.

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.

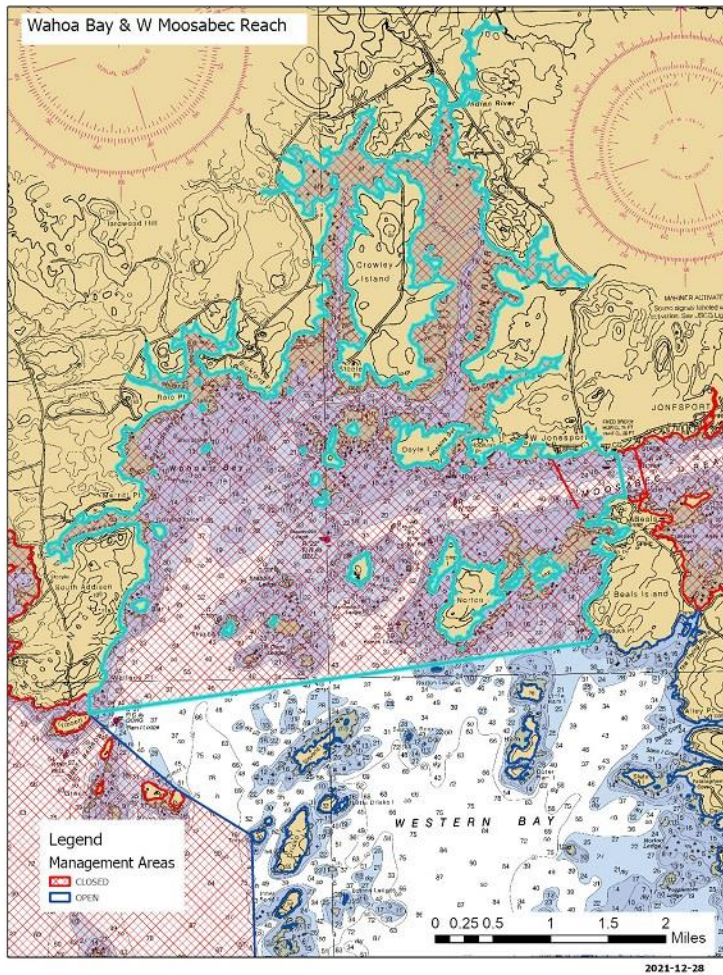


Figure 4: Chart depicts the in-season conservation closure for the Wahoa Bay and West Moosabec Reach Limited Access Area, effective Sunday, January 2, 2022.

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 LAA; (10) Wahoa Bay & West Moosabec Reach LAA**

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 the Gouldsboro and Dyers Bays limited access area and Wahoa Bay including the West Moosabec Reach limited access area all within 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 Spring 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 these three scallop resource areas.

IS 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.

