

NOTICE OF AGENCY EMERGENCY RULE-MAKING**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 11.08, Targeted Closures: (8) East Moosabec Reach LAA; (9) Upper Chandler Bay, and; (10) Upper Narraguagus Bay**CONCISE SUMMARY:**

The Commissioner adopts this emergency rulemaking to establish scallop conservation closures for East Moosabec reach LAA, Upper Chandler Bay and Upper Narraguagus Bay, all in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 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: January 8, 2023

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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. 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.

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

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.

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. East Moosabec Reach Limited Access Area

Eastern boundary: Inside and west of a line starting at the eastern tip of Kelley Point, Jonesport and running southwesterly to the eastern tip of Pig Island; and, continuing southwesterly to the northeastern tip of Great Wass Island.

Western boundary: East of the Jonesport Bridge.

9. Upper Chandler Bay within the Chandler Bay/Head Harbor Rotational Area

Southern boundary: North of a line starting at the southern tip of Bonney Point, Roque Island and running southwesterly to the southern tip of Ballast Island; continuing southwesterly to Natt Point, Jonesport.

10. Upper Narraguagus Bay within the Narraguagus/Pigeon Hill Bay Rotational Area

North of a line starting at the southern tip of Flint Island and running southerly to the R N "2" buoy, and continuing westerly to the southern tip of Bois Bubert Island; and, continuing north along the eastern shore of Bois Bubert Island to the northern tip and running north to Tom Leighton Point, Milbridge.

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 18, 2022; December 2, 3, 9, 10, 16, 17, 23, 24, 30 and 31, 2022 for areas 1, 3 and 5 in Zone 1; and, December 3, 10, 17, 24 and 31, 2022; January 7, 14, 21, and 28, 2023; February 4, 11, 18 and 25, 2023 and March 4 and 11, 2023 for area 4 in Zone 3. 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 2, 9, 16, 23 and 30, 2023; February 6, 13, 20 and 27, 2023 and March 6 and 13, 2023 in areas 1, 3, and 5 in Zone 1; and, December 5, 12, 19, and 26, 2022; January 2, 9, 16, 23 and 30, 2023; and February 6, 13, 20 and 27, 2023 in area 2 in Zone 2; and December 5, 12, 19, and 26, 2022; January 2, 9, 16, 23 and 30, 2023; February 6, 13, 20 and 27, 2023; and March 6, 13 and 20, 2023 in area 4 in Zone 3. 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 East~~ 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: ~~North and west of a line starting at the southeastern tip of Jewell Island and running northeasterly to R N "2" at Eastern Drunkers Ledge, then continuing 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. 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. East Moosabec Ridge~~

~~Eastern boundary: Inside and west of a line starting at the eastern tip of Kelley Point, Jonesport and running southwesterly to the eastern tip of Pig Island; and, continuing southwesterly to the northeastern tip of Great Wass Island.~~

~~Western boundary: East of the Jonesport Bridge.~~

2.3. 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.

3.4. 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.

4.5. 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.

Basis Statement

The Department is taking emergency rulemaking action to include targeted conservation closures in Chapter 11.08, Targeted Closures: (8) East Moosabec Reach LAA; (9) Upper Chandler Bay, and; (10) Upper Narraguagus Bay.

Additionally, there is an administrative update to the closure text for the Western Casco Bay Closure in 11.09 for clarity.

East Moosabec Reach Limited Access Area

Traditionally, this area has been productive in past seasons with observations of both high recruitment and high densities of legal scallops. During the 2019-2020 season, this area was conservatively managed to preserve a moderate recruitment event east of Sawyers Cove (Figure 1; right graphic) after 4 harvest days to encourage growth for the next rotation in 2022-2023.

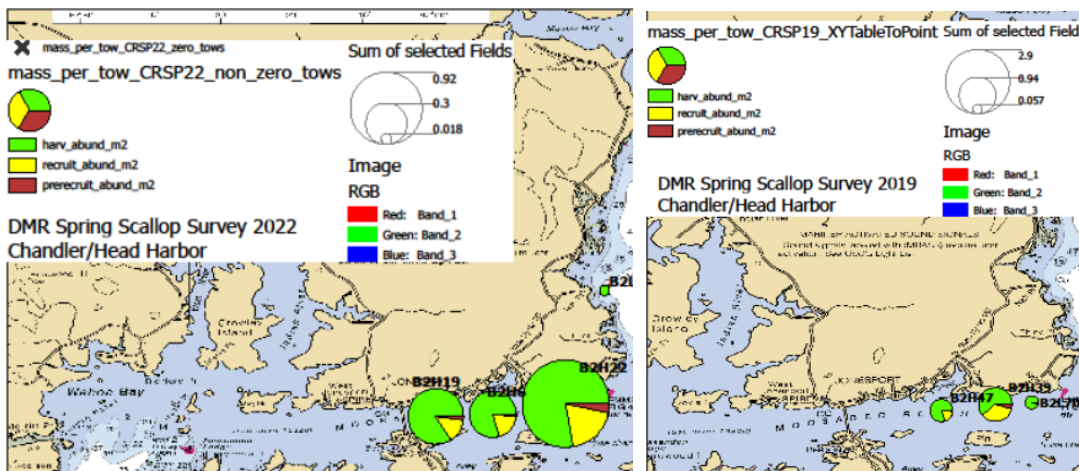


Figure 1: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2022 (left) and Spring 2019 (right) in the Chandler Bay Rotational Area highlighting the East Moosabec Reach area. Legal scallop density had increased during the three year closure. There was a continued strong presence of sublegal (recruits and seed) scallops observed in the Spring 2022 survey.

Opening day for the East Moosabec Reach Limited Access Area (LAA) was Monday, December 5, 2023, with one harvest day per week allotted for the LAA. Upwards of 40 vessels were harvesting in the area on day 1. On average, harvesters were reaching their limits of 135 lbs within 3 hours of towing and meat size was roughly U12 counts. Effort continued at a similar rate on Day 2 the following week but began to drop during the latter half of December to 20 active vessels on Day 4 on Monday, December 26 with active fishing extending into the afternoon to achieve the daily limit. This increase in fishing time, as denoted by harvester interviews and Marine Patrol observations was also noted during an analysis of total tow time from harvester landing reports (Figure 2).

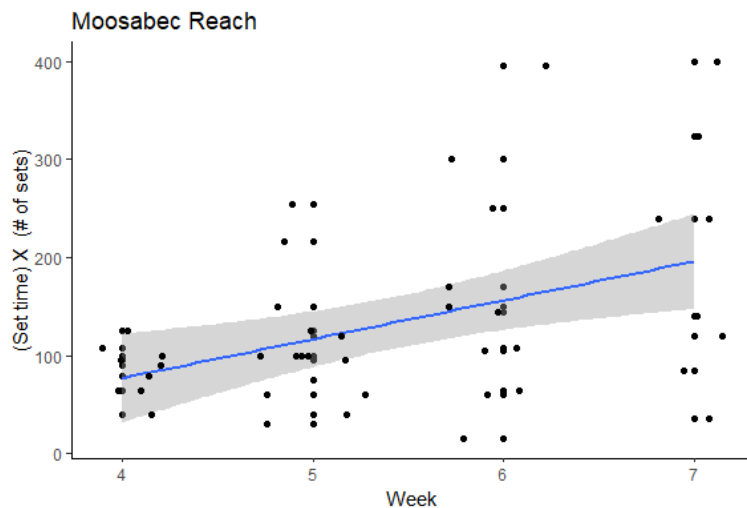


Figure 2: A jitter plot of total tow time as reported by harvesters by fishing week in the Moosabec Reach LAA. The trend line (in blue) indicates a positive increase in total fishing time as harvest progresses through December.

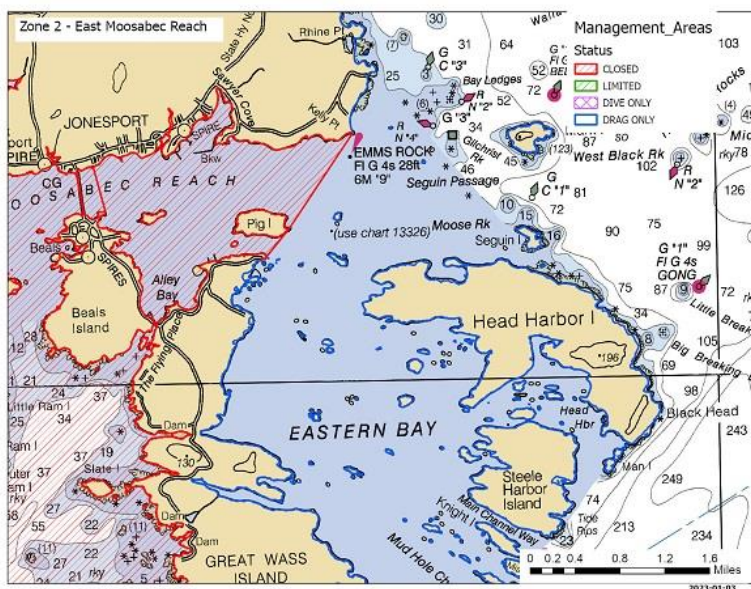


Figure 3: Chart depicts in-season conservation closure for East Moosabec Reach Limited Access Area (Zone 2) effective Sunday, January 8, 2023.

The 2022 Spring Survey documented a moderate amount of sub-legal scallops in addition to high densities of legal scallops. A 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 3).

Upper Chandler Bay

During the first week of the 2022-2023 scallop season, approximately 50 vessels were active within the Chandler Bay rotational area. Majority of the vessels targeted the upper Chandler Bay area north of Ballast Island to avoid the poor weather conditions in exposed areas. During the first few weeks of December, the number of vessels operating in the area stayed constant, with vessels targeting the LAA on Mondays and then Chandler Bay during the remainder of the week. Vessel counts began to decline during the latter half of December with many vessels having left the area prior to January 1, 2023. Meat quality and size was consistent, averaging 15 to 18 count per pound.

During the previous open rotation in 2019-2020 scallop season, this area experienced a similar amount of harvest effort over 20 open calendar days. For this current season, the area has been open for 22 days. Comparatively, there was less documented legal biomass observed in the 2022 spring scallop survey (Figure 4) than in previous years. While observed stations in the upper Chandler Bay area were reduced during the 2022 survey, there were also stations that had zero scallop observations and no indication of seed or sublegal scallops.

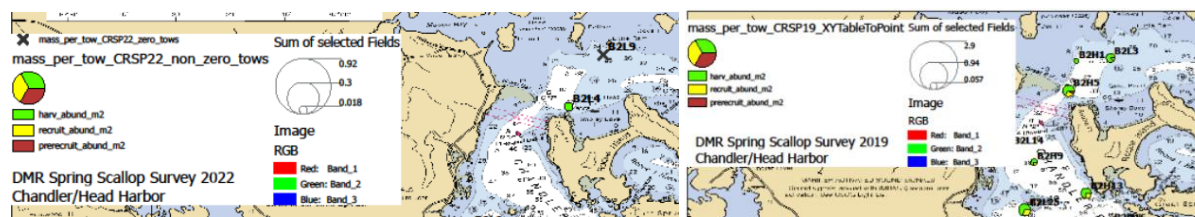


Figure 4: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2022 (left) and Spring 2019 (right) in the Chandler Bay Rotational Area highlighting Upper Chandler Bay area. There were less stations observed during the 2022 Spring Survey, but the area was already showing reduced densities of harvestable scallops.

The steady decrease in observed effort, along with a decrease in catch rate suggests the peak of harvesting within this area has been surpassed. The remaining scallop resource requires a conservation closure to allow for recruitment and recovery for the next open rotation (Figure 5).

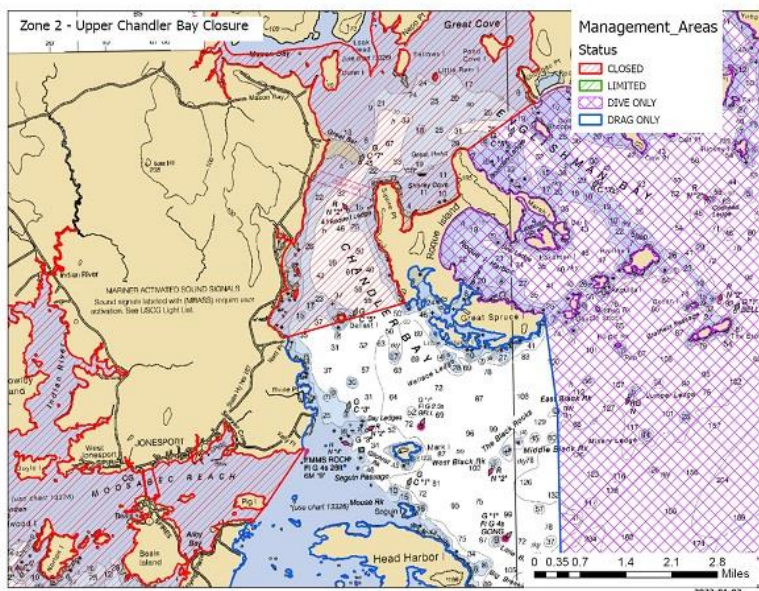


Figure 5: Chart depicts in-season conservation closure for Upper Chandler Bay within the Chandler Bay/Head Harbor Rotational Area (Zone 2) effective Sunday, January 8, 2023.

Upper Narraguagus Bay

Local vessels began harvesting in the upper portion of Narraguagus Bay on opening day, December 1, 2022. A total of 7 boats have been consistently harvesting in this rotational area in December. General comments indicate that there have been less larger scallops in the area, but more seed and sublegal scallops on gravel bottom. Tows around Douglas Island and Jordans Delight were the most lucrative with vessels easily catching daily limits before noon.

The 2022 spring scallop survey observed moderate levels of scallop biomass, with several stations highlighting hotspots of legal sized scallop resource intermixed with seed and sublegal scallops while a few nearby stations had zero scallops (Figure 6). Comparatively, there were more scallops observed overall during the most recent survey than in 2019.

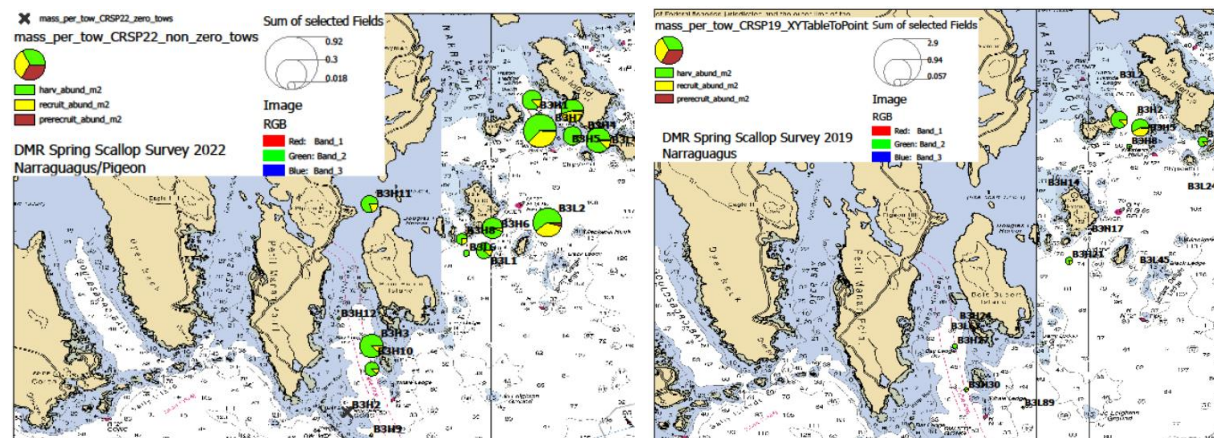


Figure 6: Bubble plots of scallop resource observations during the ME DMR Scallop Survey conducted Spring 2022 in the Narraguagus Bay Rotational Area. Multiple survey stations in 2022 (left) demonstrated a relative increase in legal scallop density when compared to the 2019 (right) survey stations.

During the previous open rotation in 2019-2020, the same upper portion of Narraguagus Bay closed after 20 open calendar days. For this current season, the area has been open for 22 days. Harvester interviews indicate the area performed better than expected and the area is showing signs of depletion from continuous effort. Additionally, harvesters suggested a closure now to allow the seed and sublegal scallops that have been observed both during scallop harvesting and lobster fishing to remain unharmed and grow for the next rotation. While information from harvesters and Marine Patrol indicate that catch rates have dropped in the upper portion of Narraguagus Bay, there is still harvest potential in the lower

half of the bay as weather improves. Establishing a conservation closure in the upper half of this rotational area coincides with the 2022 spring scallop survey for observed seed and sublegal produce in addition to fishermen observations regarding the general spread of sublegal product in the northern portion of the bay (Figure 7).

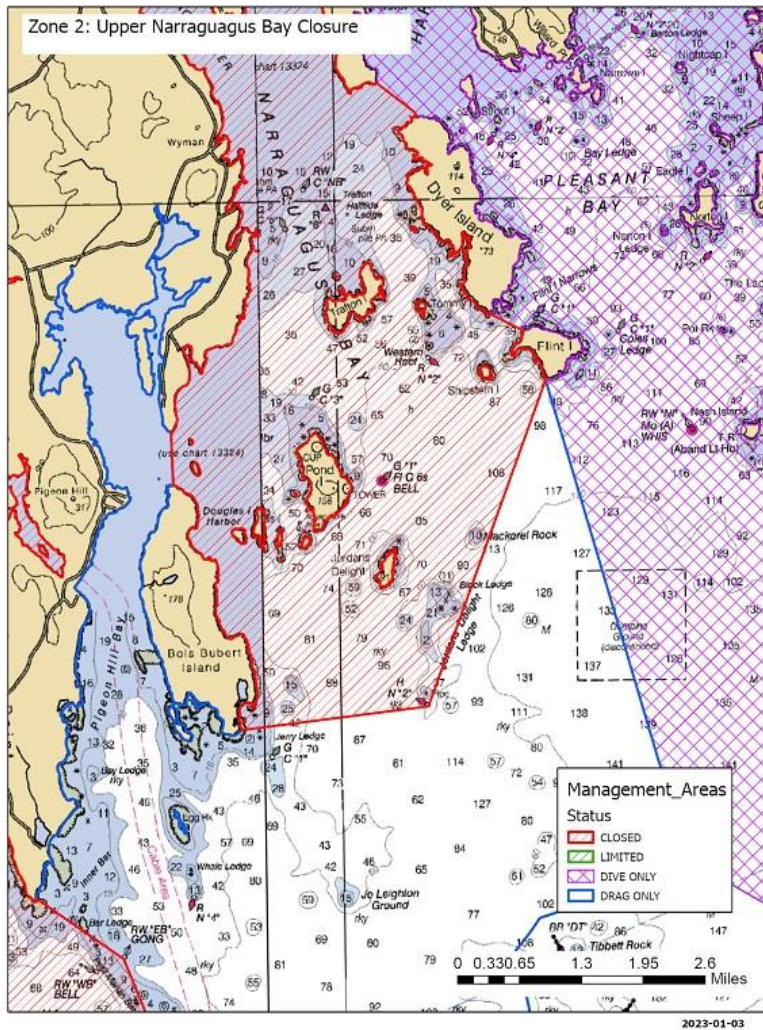


Figure 7: Chart depicts in-season conservation closure for East Moosabec Reach Limited Access Area (Zone 2) effective Sunday, January 8, 2023.

In summary, the Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 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 East Moosabec Reach, Upper Chandler Bay and Upper Narraguagus Bay, all within 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: (8) East Moosabec Reach LAA; (9) Upper Chandler Bay, and; (10) Upper Narraguagus 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 for East Moosabec reach LAA, Upper Chandler Bay and Upper Narraguagus Bay, all in Zone 2. The Department is concerned that continued harvesting for the remainder of the 2022-2023 fishing season in these areas will reduce scallop broodstock further, as well as jeopardize sublegal scallops that were observed in the 2022 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 along with landing reports and scallop survey data streams.

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.