



**Massachusetts Division of Marine Fisheries**  
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## **Policies, Procedures, and Guidelines**

### **Permitting and Regulatory Guidelines for State Waters Sea Scallop Dredge Fishery**

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#### **Summary**

This policy document provides regulatory guidance for commercial mobile gear fishers using sea scallop dredges in Massachusetts. As such, it describes the various applicable requirements affecting: permitting; public health; mobile gear fishing; catch limits; primary purchase; and reporting. While much of the information in this document may be pertinent to fisher using other gear types (e.g., divers), the primary focus is on the state managed, commercial, mobile gear fishery.

#### **Nationwide Guidelines for Shellfish Sanitation.**

The National Shellfish Sanitation Program (NSSP) is a federal/state cooperative program administered by the US Food and Drug Administration (FDA) and Interstate Shellfish Sanitation Conference (ISSC) to promote the sanitary control of molluscan shellfish for human consumption. The NSSP has developed a Model Ordinance that sets nationwide standards on shellfish harvest, handling, transportation, and sale to avoid the public health risks associated with the consumption of these animals. State management authorities are to adopt conforming and enforceable rules for their shellfish to be sold into interstate commerce and state programs are evaluated by FDA annually.

In Massachusetts, DMF is responsible for the implementation of the state's shellfish sanitation program at the harvester level up through the primary purchase to a wholesale dealer authorized as a primary buyer of shellfish. The Department of Public Health (DPH) then implements the program that affects handling and sale in commerce beyond the primary purchase. DMF's harvester-level program is designed to prevent the harvest of contaminated or potentially contaminated shellfish; adopt best practices for harvest, handling, and transport to minimize the risk of illness; and create a tagging and traceability framework that will allow for the expeditious recall of shellfish product that may be non-conforming or pose a public health risk.

#### **Commercial Permitting Requirements—G.L. c. 130, §80 and 322 CMR 7.01 and 7.07**

##### *Commercial Fishing*

A commercial fishing permit and various appurtenant regulated fishery permit endorsements may be required to fish, retain, or land sea scallops in Massachusetts:

- A limited entry Mobile Gear Coastal Access Permit (“CAP”) Endorsement is needed to fish with a sea scallop dredge in the waters under the jurisdiction of the Commonwealth.
- An open entry Shellfish Endorsement (no cost) is needed to possess, retain, or land shellfish shellstock in Massachusetts—including whole in-shell sea scallops. This applies regardless of whether the shellstock were taken from state or federal waters.
- An open entry Sea Scallop Shucking Endorsement (no cost) is needed to shuck sea scallops or land shucked sea scallop product in Massachusetts. This applies regardless of whether the scallops were taken from state or federal waters.

Any person who is issued a Shellfish Endorsement is also automatically issued a Shellfish Transaction Card. In combination, the Shellfish Endorsement and Shellfish Transaction Card allow the named individual to sell shellfish shellstock to wholesale dealers authorized as primary buyers of shellfish. If another person other than the named permit holder (e.g., hired captain) is operating the commercial fishing vessel in possession of shellstock or will be conducting the primary transaction of shellstock, then that person needs to hold a DMF-issued Shellfish Captain Permit and Employee Shellfish Transaction Card tied to the parent permit. The Shellfish Captain Permit and Employee Shellfish Transaction are provided by DMF at no cost.

A valid Shellfish Transaction Card or Employee Shellfish Transaction Card must be presented to the primary buyer at any primary purchase of shellstock. The primary buyer is to match the name on Shellfish Transaction Card or Employee Shellfish Transaction Card to the name on the state issued identification card for the person present at the transaction. The primary buyer must also run the Shellfish Transaction Card or Employee Shellfish Transaction Card at every transaction to create a hard record documenting the sale of shellstock. This is necessary for the state to comply with the NSSP’s Model Ordinance.

Lastly, in order to obtain the Shellfish Endorsement or Shellfish Captain Permit, the named individual is required to annually sign a “Shellfish Harvest and Handling Affidavit”. This document describes the state’s NSSP-conforming requirements for the harvest, handling, transport, and sale of shellfish and the affidavit requires the permit holder acknowledge they understand the rules and regulations governing commercial shellfish fishing.

*Wholesale Dealers Acting as Primary Buyers*

DMF jointly manages seafood dealers with DPH. DMF is the primary permitting authority, whereas DPH is the primary regulatory authority. To purchase shellfish in Massachusetts directly from commercial fishers—including shellstock and lawfully shucked product—a business must be: (1) permitted as a wholesale dealer by DMF; (2) obtain from DMF a primary buyer authorization to purchase shellfish; and (3) have a facility in Massachusetts approved by DPH to purchase and handle shellfish.

**Mobile Gear Closures—G.L. c. 130, §17A and 322 CMR 4.06**

DMF regulates the use of mobile gear, including sea scallop dredges, in certain nearshore waters of the Commonwealth. This is done to prevent gear and user group conflicts and protect important inshore habitats. Maps and coordinates depicting these closures are available on [DMF’s website](#). The seaward boundary of these closures approximates the municipal boundary and thereby aligns with extent of municipal waters. Bulleted below are the mobile gear closures north and east of Cape Cod that may affect sea scallop fishing; there are similar mobile gear closures south and west of Cape Cod, but exploitable abundances of sea scallops are generally not observed in these areas of state waters.

- Area 1 – Winthrop to New Hampshire. This area is closed year-round to mobile gear fishing with two exceptions.

- Area 1A – Gloucester/Rockport. Seasonally open from February 1 – May 15 (or the date that the seasonal fixed gear closure to protect right whales is lifted should this occur between May 1 and May 15) and June 15 – September 30.
- Area 1B – Ipswich Bay. Seasonally open from December 15 – April 30.
- Area 2 – Boston Harbor (Hull to Winthrop). This area is closed from April 1 – December 31.
- Area 3 – South Shore (Hull to Plymouth). This area is closed from May 1 – October 31.
- Area 4 – Cape Cod Bay (Plymouth to Provincetown). This area is closed from May 1 – October 31.
- Area 5 – Eastern Cape Cod and Nantucket Sound (Eastham to Mashpee). This area is closed from May 1 – October 31.

### **Shellfish Classification and Sea Scallop Fishing—G.L. c. 130, §§ 74-75 and 322 CMR 6.05 and 16.03**

To conform to the NSSP’s Model Ordinance, DMF has conducted sanitary surveys of the 1.7 million acres of the overlying waters under the jurisdiction of the Commonwealth. These waters have been divided into about 300 designated shellfish growing areas (DSGAs) based on hydrographical or geographic features. DMF then classifies each DSGA based on observed contamination (e.g., presence of fecal coliform) or potential sources of contamination (e.g., sewage outfalls). There are five classifications that may be issued: Approved, Conditionally Approved, Restricted, Conditionally Restricted, and Prohibited. This classification determines what shellfish harvest activity may occur. DSGAs may also be divided into sub-areas with each sub-area having a distinct classification. Maps of each DSGA and its classification(s) are published on DMF’s [website](#).

DSGAs (or sub-areas thereof) that are classified as Approved or Conditionally Approved have water quality that is sufficient to allow for the harvest of shellstock when the area is in an “Open Status”. An Approved DSGA or a Conditionally Approved DSGA may enter a “Closed Status” in response to changes in environmental conditions that may render shellfish unfit for consumption (e.g., biotoxin, pollution event). Additionally, Conditionally Approved DSGAs may toggle between an Open Status or a Closed Status based on rainfall or predictable seasonal changes in water quality (e.g., increased septic runoff in summer) and these status changes are managed by the municipal shellfish authority pursuant to a Conditional Area Management Plan.

DSGAs (or sub-areas thereof) that are classified as Conditionally Restricted, Restricted, or Prohibited contain shellfish that are not fit for direct human consumption. This may be because the water quality is persistently poor due to contamination or pollution or because of its proximity to a pollution source that may unpredictably alter water quality and contaminate the shellfish contained therein (e.g., sewage treatment plant outfall). In fact, the NSSP’s Model Ordinance requires areas around sewage outfalls to be classified as Prohibited and the size of this prohibited area is to be based on flow rates of the outfall, decay rates of the contaminants, dispersion and dilution of the contaminants, the location of shellfish resources in adjacent waters, and identifiable landmarks and boundaries.

With regards to sea scallops, whole in-shell product may only be retained and landed when the product is harvested from a DSGA classified as Approved and in the Open Status. However, sea scallop fishing may occur in DSGAs with classifications other than Approved (e.g., Conditionally Approved, Prohibited), but the product must be shucked at sea and only the adductor muscles retained and landed. This is allowed because adductor muscles do not present the same public health risk as the bivalve digestive organs and other tissues that process and retain contaminants.

For law enforcement purposes, if multiple DSGAs are fished during the same trip then all sea scallops must be shucked (i.e., most restrictive rule applies). However, exempt from this is fishing activity that occurs exclusively across DSGAs classified as Approved (e.g., N3—Plum Island and N6—Cranes Beach

during the December 15 – April 30 Area 1B—Ipswich Bay mobile gear fishery) and in the Open Status. In such instances, whole inshell sea scallops may be retained and landed provided the shellstock harvested from each DSGA is separately stored and tagged (see “Shellfish Tagging” below).

Please note that these sanitary harvest requirements affecting the disposition of sea scallops are layered on top of the above-described mobile gear closures. In combination, these requirements create several spatio-temporal restrictions on sea scallop dredging, which include (1) Area Closed to Sea Scallop Dredging; (2) Area Seasonally Open to Sea Scallop Dredging for Shucked Product Only; (3) Area Seasonally Open to Sea Scallop Dredging for Whole In-Shell Sea Scallops; (4) Area Open Year Round to Sea Scallop Dredging for Shucked Product Only; and (5) Area Open Year Round to Sea Scallop Dredging for Whole In-Shell Sea Scallops. DMF has developed a series of maps (attached) that depict these various categorizations. Note that shucked product may also be retained from any DSGA where the retention of whole in-shell product is allowed.

### **Shellfish Tagging—G.L. c. 130, §§82 and 92 and 322 CMR 16.05**

DMF has also adopted NSSP-conforming regulations governing the tagging of containers of shellstock. Upon landing, each container of shellstock must bear a shellfish harvester tag (“tag”). Each tag must be at least 2 <sup>5</sup>/<sub>8</sub>” height by 5 <sup>1</sup>/<sub>4</sub>” width. The following information is to be legibility written onto the tag in indelible ink: (1) full name of permit holder; (2) DMF permit number; (3) date and time of harvest; (4) type of shellfish harvested; (5) quantity of shellfish harvested; (6) initials of the state of harvest (“MA”); (7) the most specific alpha-numeric sequence for the area where the shellfish were harvested from; (8) the aquaculture grant site (if applicable); and (9) the following statement in bold and capitalized letters: **“THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RERTAGGED AND THEREAFTER KEPT ON FILE FOR 90-DAYS”**.

When fishing for whole in-shell sea scallops within the waters under the jurisdiction of the Commonwealth, all containers of shellstock are to be tagged in compliance with these requirements. Therefore, if a commercial fishing operation landing ten totes of whole in-shell sea scallops, each tote must bear a separate tag. If multiple DSGAs classified as Approved are fished during a single trip, then the product must be segregated in separate containers by the DSGA of harvest and tagged accordingly. The harvest area component recorded on the tag is to be the most specific alpha-numeric DSGA identifier (e.g., N11.0), not the state of federal statistical reporting area (e.g., DMF SRA 4 or NMFS SRA 514). If fishing in federal waters, the whole in-shell sea scallops harvested in federal waters are to be segregated in containers separate from whole in-shell sea scallops harvested in Massachusetts’ waters and tagged in compliance with federal rules. Please consult NOAA Fisheries. Shucked sea scallops do not need to be segregated in separate containers based on harvest area (either DSGA or state/federal waters), nor do they need to bear a shellfish harvester tag as described here.

Primary buyers are prohibited from receiving or purchasing any shellstock from a commercial fisher unless compliantly tagged. Upon taking possession, primary buyers are required to keep the harvester tag on the container until the container is empty or it is retagged with a dealer tag. The harvester tags are to remain on the premise of the primary buyer’s facility for a period of at least 90-days after the primary purchase and are to be made available for inspection by Law Enforcement or officials from DPH or DMF during normal business hours. These tags (along with transaction slips created from the Shellfish Transaction Card), create a system of traceability to safeguard public health and enable public health related product recalls.

### **Shellfish Harvest, Handling, and Transport—322 CMR 16.04**

DMF also regulates handling and transport of shellfish shellstock, including whole in-shell sea scallops, consistent with the NSSP’s Model Ordinance. The regulations are designed to avoid degrading the quality

of shellfish and affecting public health by cross-contamination and time-to-temperature abuse. While much of this section focuses on practices common to quahog and oyster fishers, certain provisions are broadly applicable to all shellstock. The provisions most relevant to the whole inshell sea scallop fishery are: (1) maintaining shellstock in smooth and easily cleanable containers impervious to water that are kept separate from debris, bilge water, fuel, oil, and other chemicals; (2) avoiding direct exposure to the sun and defecation by birds; (3) washing shellstock with potable water or water from a growing area classified as Approved and in the open status to keep it clean from bottom sediments; (4) icing shellstock only with ice from a potable source; and (5) selling shellfish only to a wholesale dealer authorized as a primary buyer of shellfish and conducting this sale on the same calendar day as harvest during the period of November 1 – April 30 and within 18 hours of initial time of harvest (as identified on the Shellfish Harvester Tag) during the period of May 1 – October 31.

These requirements do not apply to vessels shucking sea scallops at sea and retaining only the adductor meats. This is allowed because adductor muscles do not present the same public health risk as the bivalve digestive organs and other tissues that process and retain contaminants.

#### **Catch Limits—G.L. c. 130, §17A and 322 CMR 6.05**

It is unlawful to possess, retain, or land any sea scallop with a shell less than 3 ½ diameter, except that DMF accommodates an undersized tolerance of up to 10%. This 10% tolerance is to be determined by numerical count taken at random from the entire lot and represent not less than one peck and not more than four pecks of the catch.

The trip limit for shucked product is 200 pounds of meats or 2,000 pounds of whole in-shell sea scallops. If a vessel possesses both shucked and whole in-shell product then the weight of the whole in-shell product will be multiplied by 10% to determine compliance with the trip limits. Additionally, DMF has adopted volumetric equivalency for whole in-shell sea scallops whereby 1-level filled fish tote is the equivalent of 100 pounds of whole in-shell product. Exempt from these trip limits are federally permitted vessels who are transiting Massachusetts' waters in possession of sea scallops lawfully taken in federal waters. Any federally permitted vessel fishing in waters under the jurisdiction of the Commonwealth is required to comply with state trip limits.

#### **Reporting—G.L. c. 130, §21 and 322 CMR 7.07**

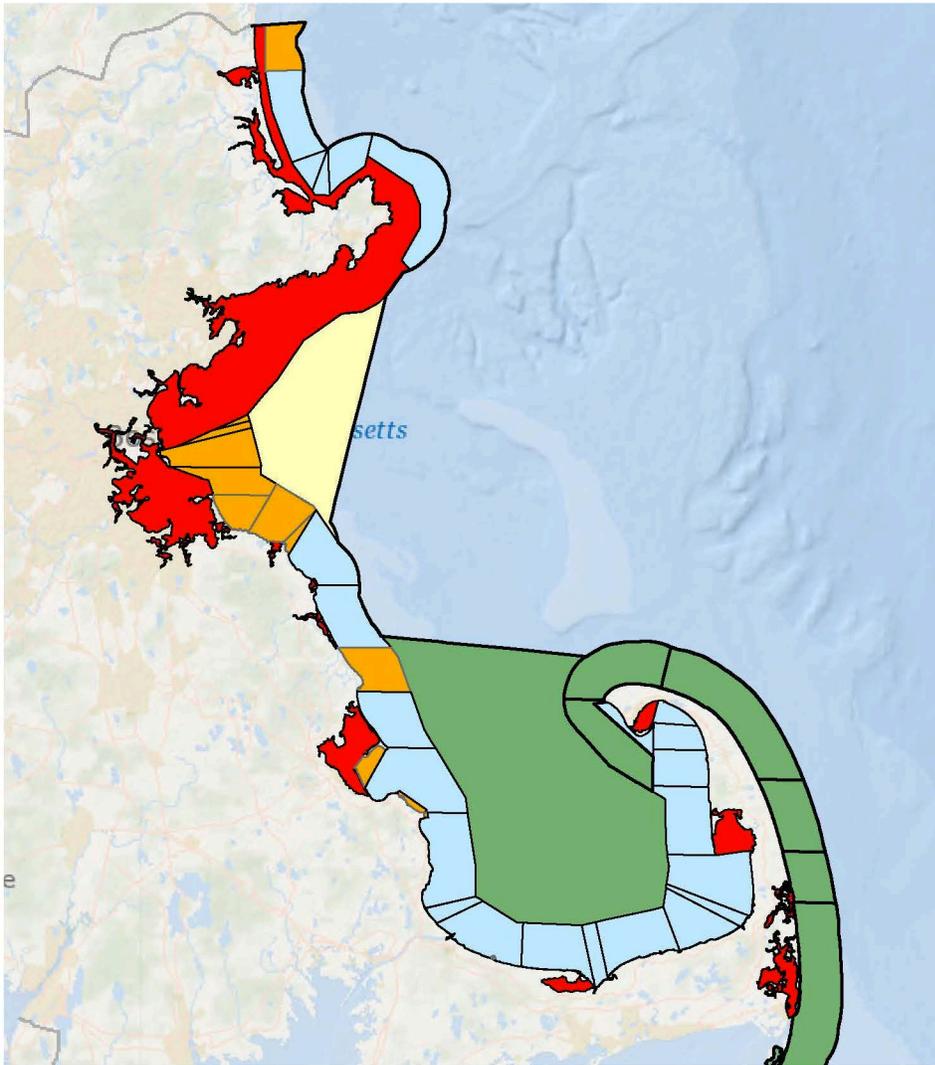
All commercial fishers are required to submit to DMF monthly, comprehensive, standardized trip-level data for all commercial trips and landings conducted under the authority of their Massachusetts commercial permits. Both paper and electronic forms are accepted. Those individuals holding a federal permit with comprehensive reporting requirements to NOAA Fisheries, (e.g., Vessel Trip Report “VTR”) are exempt from reporting to DMF on those activities occurring on their federally permitted vessel. Instead, trips are reported electronically to NOAA Fisheries and must be completed before offloading. For both state and federal reports, collected elements include trip start and end dates, gear information, harvest area (shellfish growing area for state-only reporting vessels or statistical reporting area as required by NOAA Fisheries for federal reporting vessels), species, estimated quantities and units of measure, intended disposition of the landing, and the dealer to whom the product was sold if applicable.

Primary purchasers of all marine species landed in Massachusetts must have a facility within the state, be endorsed as a primary buyer on their seafood dealer permit, and are required to submit weekly, comprehensive, standardized, electronic, purchase-level reports. Prior to permit issuance, all permit holders are also required to complete paperwork confirming their buying intentions and their commitment to the dealer reporting requirements. Federally permitted and state permitted dealers report using the same reporting application and this single report satisfies both jurisdictional requirements. Reported elements include landing date, purchase date, fisher and vessel information, species, market and grade categories,

unit of measure, quantity purchased, price paid to the fisher, and for shellfish species, the shellfish growing area (if harvested in state waters).

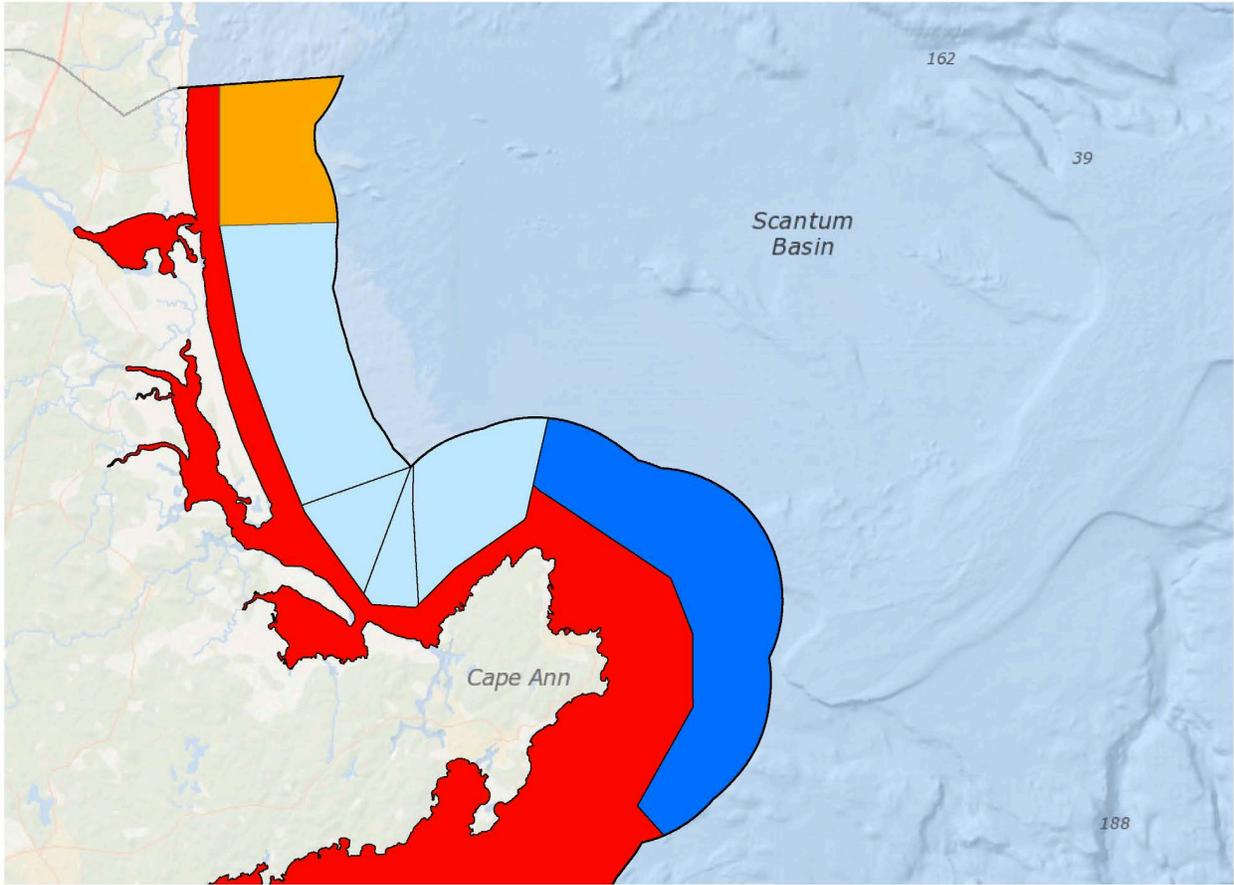
At primary purchase, primary buyers are required to create a transaction slip using the Shellfish Transaction Card or Employee Shellfish Transaction Card. Similar to harvester tags, these transaction slips are to remain onsite at the dealer facility for a period of at least 90-days after the primary purchase and are to be made available for inspection by Law Enforcement or officials from DPH or DMF during normal business hours.

**Map of Sea Scallop Dredging Activity by Area North and East of Cape Cod**



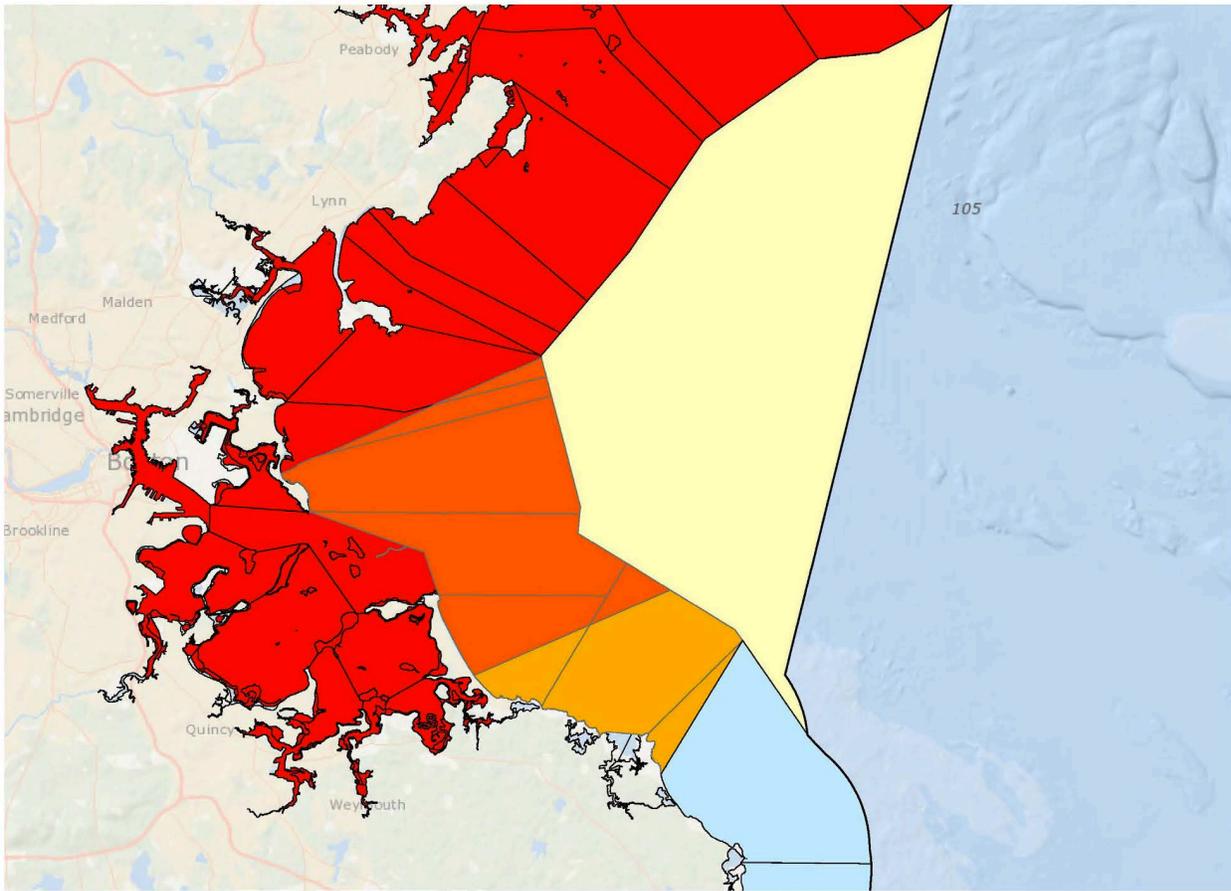
| Area Designation  | Color Code   |
|---|--|
| Open Year Round to Dredging for Shellstock or Shucked Product |  |
| Open Year Round to Dredging for Shucked Product Only          |  |
| Open Seasonally to Dredging for Shellstock or Shucked Product |  |
| Open Seasonally to Dredging for Shucked Product Only          |  |
| Closed Year Round to Dredging – No Fishing Allowed            |  |

### Map of Sea Scallop Dredging Activity in Ipswich Bay



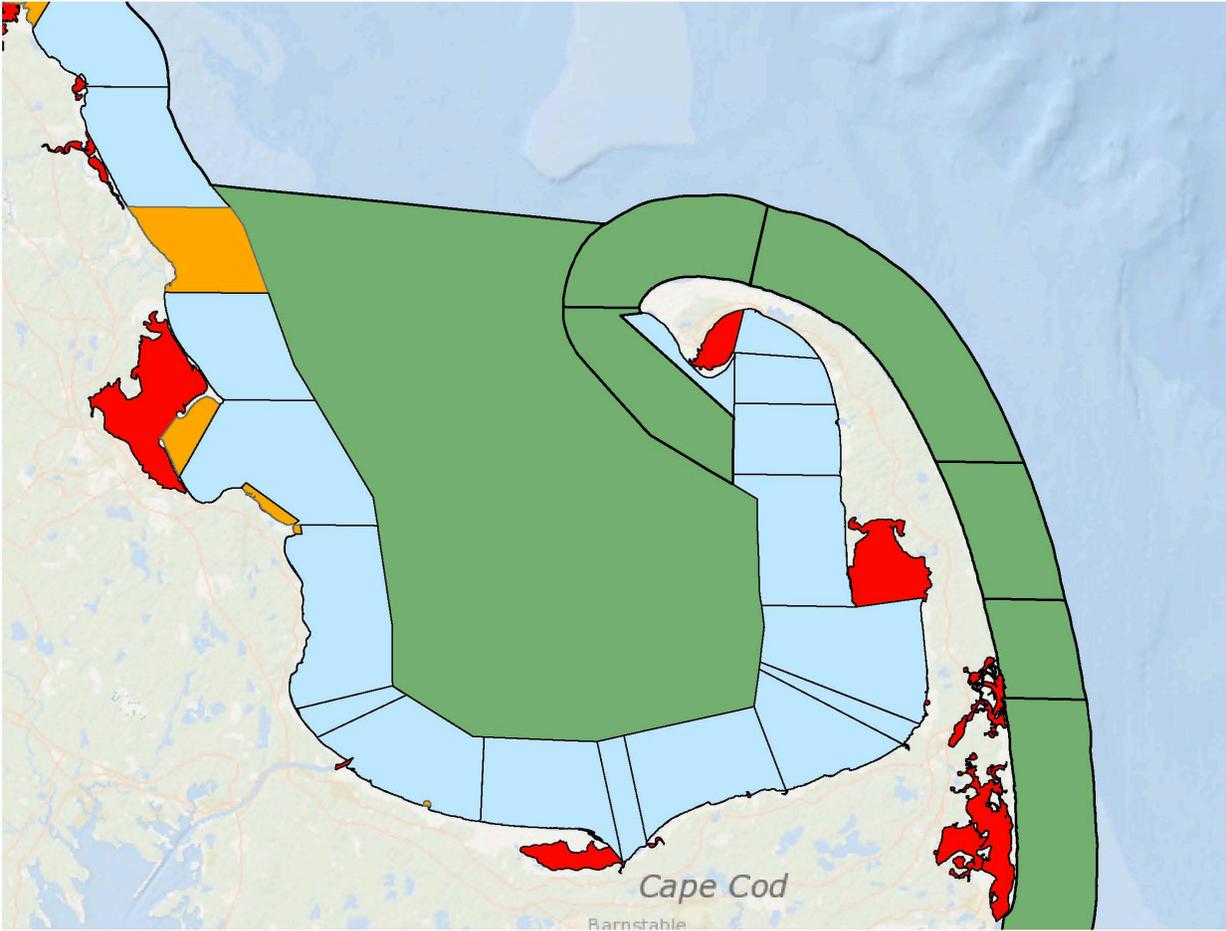
| Area Designation   | Color Code   |
|--|--|
| Area 1A – Open February 1 – End of Trap Closure and June 15 – September 30 to Dredging for Shellstock or Shucked Product |  |
| Area 1B – Open December 15 – April 30 to Dredging for Shellstock or Shucked Product                                      |  |
| Open Seasonally to Dredging for Shucked Product Only   |  |
| Closed Year Round to Dredging – No Fishing Allowed   |  |

### Map of Sea Scallop Dredging Activity in Massachusetts Bay



| Area Designation  | Color Code   |
|---|--|
| Open Year Round to Dredging for Shucked Product Only                              |  |
| Area 2 – Open January 1 – March 31 to Dredging for Shucked Product Only           |  |
| Area 3 - Open November 1 – April 30 to Dredging for Shucked Product Only          |  |
| Area 3 - Open November 1 – April 30 to Dredging for Shellstock or Shucked Product |  |
| Closed Year Round to Dredging – No Fishing Allowed                                |  |

**Map of Sea Scallop Dredging Activity in Cape Cod Bay**



| Area Designation   | Color Code   |
|--|--|
| Open Year Round to Dredging for Shellstock or Shucked Product                            |  |
| Area 3/Area 4 - Open November 1 – April 30 to Dredging for Shellstock or Shucked Product |  |
| Area 3/Area 4 - Open November 1 – April 30 to Dredging for Shucked Product Only          |  |
| Closed Year Round to Dredging – No Fishing Allowed                                       |  |