

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 36 Atlantic Herring

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This regulation reorganizes the Atlantic herring fishery allocation into trimesters, as previously used. Updated definitions for landing, and carrier vessel are enclosed. The Fixed Gear Set Aside has been reduced from 39 mt to 30 mt to comply with 2020 specifications.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Amanda Ellis (207) 624-6573
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
 Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6573
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____					DATE: _____
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
010	13A	1120	10	4946	regulations

Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

Chapter 36 Atlantic Herring

36.01 Herring Management Plan

A. Definitions

(1) Herring.

Herring means Atlantic Sea Herring, particularly the *Clupea Harengus harengus*.

(2) ICNAF gonad stages.

ICNAF gonad stages are the official stages adopted by the International Commission for the Northwest Atlantic Fisheries in 1964.

Excerpt from ICNAF, 1964, Table 2 definitions:

Stage V. Gonads fill body cavity. Eggs large, round; some transparent. Ovaries yellowish; testes milkwhite. Eggs and sperm do not flow, but sperm can be extruded by pressure.

Stage VI. Ripe gonads. Eggs transparent; testes white; eggs and sperm flow freely.

(3) Spawn herring.

Spawn herring is a sexually mature herring (male or female) in ICNAF gonad stages V or VI.

(4) Herring harvester.

Any person or vessel operator in command of any type of gear used to harvest herring.

(5) Management Area 1.

Management Area 1 is all U.S. waters of the Gulf of Maine encompassed by the shoreline and an imaginary line beginning at the intersection of the 41° 35' N parallel with the eastern shore of Monomoy Island; thence along a straight line in a northeast direction to its intersection with the U.S.-Canada boundary at the point 42° 53' 14" N parallel of latitude and 67° 44' 35" W meridian of longitude; thence in a northerly direction along the U.S.-Canada boundary.

Management Area 1 is subdivided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

Beginning at 70° 00' W Longitude on the Cape Cod shoreline; thence due north to 42° 38.4' N Latitude, 70° 00' W Longitude; thence due northeasterly to 42° 53.0' N Latitude, 69° 40' W Longitude; thence due northeasterly to 43° 12.0' N Latitude, 69° 00' W Longitude; thence due northeasterly to 43° 40.0' N Latitude, 68° 00' W Longitude; thence due northeasterly to 43° 58.0' N Latitude, 67° 22' W Longitude at the U.S.-Canada boundary; thence northerly along the irregular U.S.-Canada boundary.

(6) Management Area 2.

South Coastal Area: All waters west of 70° 00' W Longitude and south of 41° 35' N Latitude, to include state and Federal waters adjacent to the states of Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia and North Carolina.

(7) Management Area 3.

Georges Bank: All U.S. waters east of 70° 00' W Longitude and southeast of the line that runs from a point at 70° 00' W Longitude and 41° 35' N Latitude, northeasterly to the Hague Line at 67° 44' 35" W Longitude and 42° 53' 14" N Latitude.

(8) Herring Dealer.

Any person who purchases herring directly from a herring harvester for other than their own use and then sells the herring as a wholesale or retail product, ~~and a herring harvester who sells herring to an individual(s) for personal use.~~

(9) "GSI" means the gonadosomatic index calculated by the following formula:

$(\text{Gonad Weight} / \text{Total Body Weight} - \text{Gonad Weight}) \times 100$ percent.

(10) Spawning Sample.

Sample means a batch of 100 adult herring taken randomly from commercial catch or fish surveys.

(11) Landing.

To come to shore, float or a dock and offload herring; or to transfer herring at sea to a vessel utilizing the herring for bait.

Exception: Fixed gears may transfer at sea to a vessel utilizing the herring as bait.

B. Permits and reporting

(1) Dealer Permit.

All herring dealers shall obtain a herring dealers permit as part of the Wholesale Seafood License issued by the Department of Marine Resources. There will be no additional charge for this permit. The Commissioner may require that dealer permit holders report volumes of herring bought and sold and other information as required.

(2) ~~IVR~~ Herring Harvester Permit

All harvesters, ~~except those who hold a Federal Limited Access Atlantic Herring permit, who catch 2,000 pounds or more Atlantic herring in any given week targeting herring~~ must possess an ~~IVR~~ Herring Harvester Permit on their Commercial Pelagic and Anadromous Fishing License issued by the Department of Marine Resources. For purposes of this section only, a week is defined as beginning on Sunday at 0001 hrs (12:01 am) and ending Saturday at 2400 hrs (midnight). There will be no additional charge for this permit.

(3) Reporting of catch

All harvester vessels must report through an approved electronic option ~~send an email~~ ~~to~~ ~~DMR~~ (~~herring.dmr@maine.gov~~) three hours prior to landing that includes the following information:

- ~~Name of harvester~~
- ~~Name/Vessel ID~~
- ~~Permit ID~~
- ~~Landings number of license holder~~
- ~~Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)~~
- ~~Name/Permit ID of Carrier, if transfer at sea occurs~~
- ~~Total amount of herring on board~~
- ~~Date, time and location (dealer, city, state) of offload~~
- ~~Estimated catch to be received, by weight, to each dealer (by dealer name and landings number)~~
- ~~VTR number~~

Harvesters: See Chapter 8.20(Q) and 8.20(R)

Dealers: See Chapter 8.10 Landings Program

C. Gear and vessel restrictions.

(1) Gear Type Prohibition.

It shall be unlawful to use otter trawls, beam trawls, pair trawls, or midwater trawls to fish for herring within the territorial waters of Maine.

(2) Vessel Size and Shaft Horsepower.

It shall be unlawful for any vessel that exceeds 165 feet length overall (LOA) or no more than 750 gross registered tonnage (GRT) to fish for or take herring within Maine territorial waters or to land herring in any Maine port. It shall be unlawful for any vessel possessing more than 3000 shaft horsepower to fish for or take herring within Maine territorial waters or to land herring in any Maine port.

This rule does not prohibit the landing of herring that are lawfully imported from other countries, territories or states provided the origin of fish is documented.

D. Catch restrictions.

License holders shall be informed by public notice in a newspaper circulated in the area affected of any restrictions herein.

(2) Catch quota

Fishing for herring in Management Areas 1A, 1B, 2 and 3 is subject to the sub-annual catch limit (ACL) and fishing effort restrictions specified by the ASMFC Atlantic Herring ~~Section Board~~ and the NEFMC in accordance with their respective Fisheries Management Plans (FMP). The ACL is established annually by July 1 for the following year by ASMFC and NEFMC. Any reduction in the harvest will be determined in consultation with the ASMFC and NEFMC. No person shall land herring taken from a management area when 92% of the

area's seasonal or sub- annual catch limit will be exceeded or if 95% of the coastwide annual catch limit will be exceeded.

(a) Exception. Up to ~~30~~ 39 mt of the Area 1A sub-ACL is allocated for ~~the~~ fixed gear fisheries in Area 1A (weirs and stop seines) west of Cutler. This set-aside is available for harvest by fixed gear within the fishing year until the fixed gear set aside is fully utilized. No person shall land herring taken from Area 1A with fixed gear when 92% of the fixed gear set-aside portion of the Management Area 1A sub-ACL will be exceeded.

(3) Effort Restrictions

(a) Management Area 1A, January 1 – May 31

The Atlantic herring sub-ACL in Management Area 1A is allocated by season. For the period of January 1 through May 31, 0% of the sub-ACL is allocated annually. Herring may only be landed from Management Area 1A on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC). ASMFC designates zero landing days between January 1 and May 31, annually.

(b) Management Area 1A, June 1 – December 31

The second season for Management Area 1A is June 1 through December 31; for this period, 100% of the sub-ACL is allocated annually. For 2019, Area 1A sub-ACL will be monitored and managed in trimester ~~bimonthly~~ periods as described in ASMFC's Atlantic Herring Fishery Management Plan. Atlantic herring may only be landed from Management Area 1A on days that have been designated landing days by the ASMFC. All vessels landing herring caught in Management Area 1A in any Maine port will be limited to fishing for and landing herring on days that have been designated landings days by the ASMFC.

All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6 pm to 6 pm).

i. For the purpose of this subsection, the following terms shall be defined as follows:

“At-Sea Transfer”: to transfer herring from a vessel to another vessel before the harvester vessel has landed.

“Harvester vessel”: a purse seine vessel that is required to report the catch it has aboard (along with effort data under a gear code other than CAR) as the harvesting vessel on its Federal Vessel Trip Report.

“Carrier vessel”: a vessel that has received herring from another vessel and is not required to report that catch as its own on its Federal Vessel Trip Report; and, not rigged as a purse seine vessel.

“Purse seine vessel”: a vessel currently rigged and capable of harvesting fish with an encircling net with floats on the top edge, weights and a purse line on the bottom edge, and associated gear to set, purse and haul such a net, which may include, but not limited to, a hydraulically-driven block, roller gear, and/or skiff.

“Truck”: a truck, as a unit of measurement, is equal to 40,000 lbs.

ii. Harvester vessels:

All vessels targeting Atlantic herring may commence harvest on Sunday, July 14, 2019 at 6:00 p.m. All harvester vessels are prohibited from transferring Atlantic herring at sea to a carrier vessel. All harvester vessels landing herring caught in waters within Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

(A) For all ~~harvesters vessels~~ issued a state Commercial Pelagic and Anadromous License with a Herring Harvester Permit that do not possess a Federal Limited Access Herring Permit:

All vessels may possess and land Atlantic herring four days a week, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday. No vessel may land, take or possess more than 25,000 lbs per week. No permit holder may land, take or possess more than 25,000 lbs per week.

Exception: Harvesters using fixed gears (Fishing weirs, stop seines, and pound nets) are not subject to the harvest schedule detailed above. Weekly landing limits apply.

(B) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category A:

The permit holder must have declared into the Atlantic Herring fishery by April 15th, annually, to be eligible to harvest. ~~Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category A Permit shall be four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Thursday and are limited to landing 160,000 lbs (4 trucks) weekly.~~

(C) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category C:

~~Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category C Permit shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday. Daily trip limit shall not exceed 55,000 lbs per day.~~

(D) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category D:

~~Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category D Permit shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday. Daily trip limit shall not exceed 6,600 lbs per day.~~

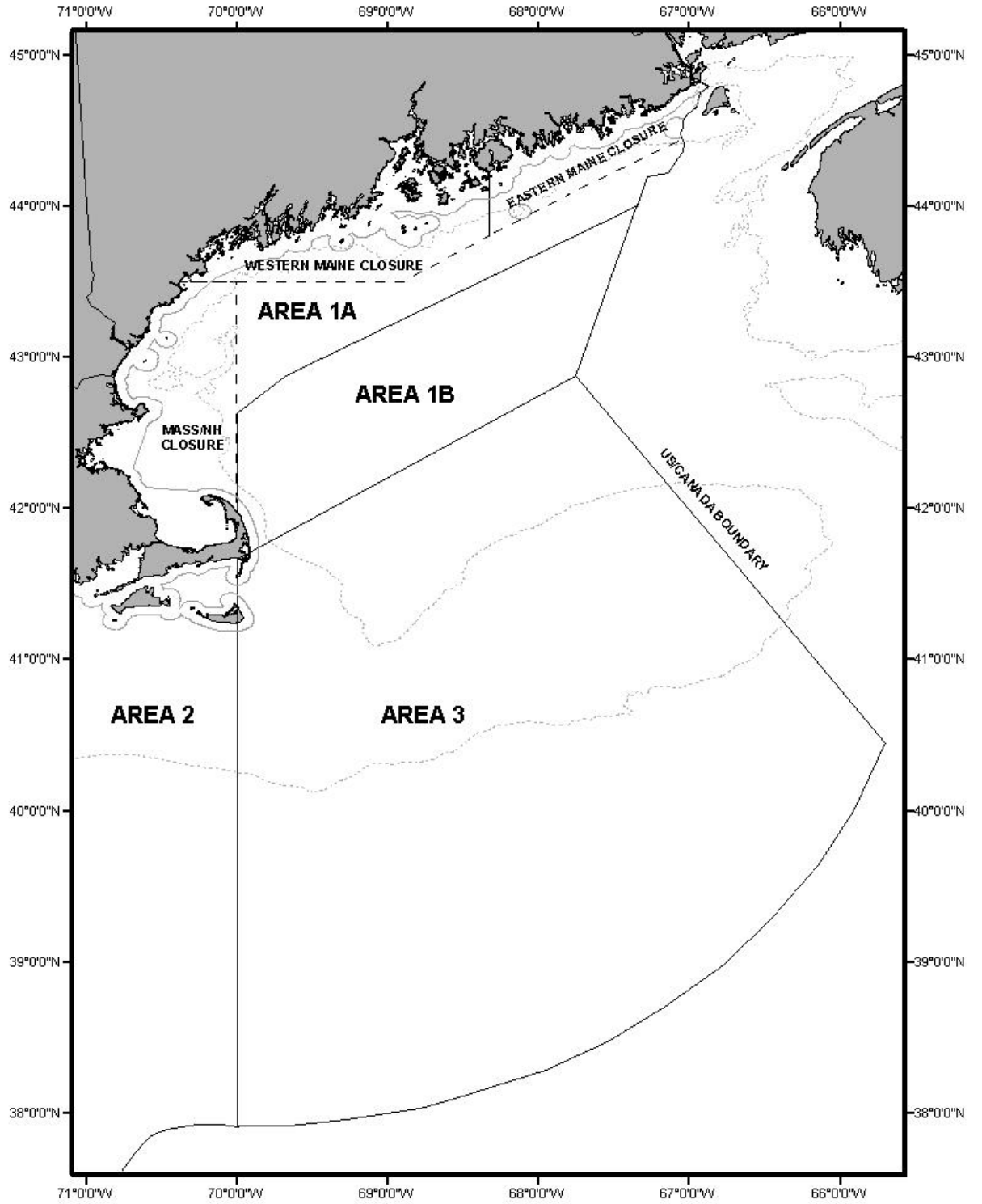
iii. Carrier Vessels:

Carrier vessels shall not operate as a harvester vessel on the same trip when operating as a carrier vessel.

(c) Exceptions.

Any vessel may possess herring as an incidental catch and land herring caught in Management Area 1A, 1B, 2 or 3, in any Maine port, as long as such herring do not comprise more than 10% of the total weight of the catch and not to exceed 2000 lbs per trip.

An individual may fish or take by hook and line up to 100 Atlantic herring per day for personal use only.



Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 36 Herring; 2020 Harvest Framework

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 27, 2020, at 4:30 p.m., Marquardt Building, Room 118, 32 Blossom Lane, Augusta. Snow date: January 31, 2020, at 4:00 p.m., Marquardt Building, Room 118, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 10, 2020

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

This proposed regulation reorganizes the Atlantic herring fishery allocation into trimesters, as previously used. Updated definitions for landing, and carrier vessel are enclosed. The Fixed Gear Set Aside has been reduced from 39 mt to 30 mt to comply with 2020 specifications.

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

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

This rule is intended to align State regulation with current federal fisheries management plans.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Final action from the NEFMC Meeting on June 11, 2019 set the specifications for the 2020 fishing year. Additionally, the ASMFC Atlantic Herring Board took final action on October 25, 2019 to set quota management periods for the 2020 fishing year.

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

Enforcement of these amendments will 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

Basis Statement

This regulation reorganizes the Atlantic herring fishery allocation into trimesters, as previously used. Updated definitions for landing, and carrier vessel are enclosed. The Fixed Gear Set Aside has been reduced from 39 mt to 30 mt to comply with 2020 specifications.

Based on the comment received, the Department has clarified that harvesters with only a Commercial Pelagic and Anadromous License fishing for Atlantic herring in State waters is subject to the 25,000 pound trip limit, regardless of gear type utilized for the taking of fish.

Summary of Comments

Notice of this proposed rulemaking appeared on January 8, 2020 in the five major daily newspapers as published by the Secretary of State. On January 8, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: 4:30 PM January 27, 2020 Rm 118 DMR Offices, Marquardt Building, Augusta. The comment period closed February 10, 2020.

I. Augusta Public Hearing

Members of the Public	DMR Staff
Earl Small, Gary Small, Glenn Lawrence, Doug Jowett, Robert Bernat, Andrew Banon, Jocelyn Runnebaum, Jeff McLean, Howard Harrington, Jeanne Fuller, Samuel Fuller, Chad Benner, Toby Benner, Cory Blackler, Robert Begin, Jim Wotton, Josh Saxton, Cova Willis, Alex Todd, Jim Clemons, Dan Miller, Tad Miller, Craig King, Barry Gibson, Larry Grimard, Jason Farris, Peter Fallon, David Pecci, Forest Faulkingham	Deirdre Gilbert and Melissa Smith

Earl Small, Augusta Public Hearing

Effort restriction on number 2.A. when you read all harvester vessels and exemptions it almost reads you can have 25,000 pounds as a purse seiner and 25, 000 pounds as fixed gear. So you are allowed 50,000. I know that’s not the way it was intended, so we need to do something to change that. The other one I want to address, under the old one, on the eastern closure, it will be under the original chapter under spawning herring protection. When you get into the eastern spawning area it doesn’t have any coordinates on the last line. It says north along the U.S. Canadian border. We need to put a category in there with latitude and longitude in there so above the Lubec Bridge isn’t included in there. The bearing for that would be 44 degrees, 50, 29 north and 66, 58, 29 west and that’s right there by Lubec spark plug.

Written Comments

Comment period closed February 10, 2020

DMR did not receive any written comments on the proposal.

DMR RESPONSE

The Department recognizes that harvesting in State waters only is conducted only for harvesters in possession of a commercial pelagic and anadromous license. Thus, language was clarified in the rulemaking to explicitly state the harvester in possession of such a license is restricted to the weekly limit, regardless of what gear type is utilized for the taking of Atlantic herring.

Additional comments regarding spawning closure designations will be addressed in future rulemaking, as it was an issue that arose in the 2019 harvest season. Additional information regarding the boundary of the Eastern Spawning Closure will be updated for clarity.