

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 36 Herring; 2019 Season

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

CONCISE SUMMARY:
This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is exempt from the weekly harvest schedule, but is subject to a weekly landing limit of 25,000 pounds.

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

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

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DEPARTMENT OF MARINE RESOURCES

Chapter 36 Atlantic Herring Regulations

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:

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

(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.

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 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 send an email hail 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.

(1) Spawning herring protection.

It shall be unlawful to fish for, take, possess, transfer or land in any State of Maine port or facility, or to transfer at sea from any Maine registered vessel, any catch of herring harvested from the following described areas within Management Area 1A during a spawning area closure:

(a) Spawning Area Boundaries:

Eastern Maine Spawning Area means:

All waters bounded by the following coordinates:

Maine coast 68° 20.0' W,

43° 48.0' N 68° 20.0' W,

44° 25.0' N 67° 03.0' W,

North along the U.S./Canada border.

Western Maine Spawning Area means:

All waters bounded by the following coordinates:

43° 30.0' N Maine coast,
43° 30.0' N 68° 54.5' W,
43° 48.0' N 68° 20.0' W,
North to Maine coast at 68° 20.0' W.

Massachusetts/New Hampshire Spawning Area means:

All waters bounded by the Massachusetts, New Hampshire and Maine coasts, and 43° 30.0' N 70° 00.0' W.

(b) Closure Timing. To protect spawning sea herring, the commissioner shall close the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas to directed Atlantic herring fishing effort when it is determined that sea herring are in later stages of maturity just prior to spawning. A closure date will be projected based on a formula and process set forth in the Atlantic States Marine Fisheries Commission's Amendment 3 (Section 4.2.6) Interstate Fishery Management Plan for Atlantic Herring.

- i. Closure Duration. Once the closure is enacted, it shall remain in effect for 28 days.
- ii. Closure Extension. Sampling of Atlantic herring taken from Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Areas shall begin during the last week of the initial closure period or at the end of the initial closure period. If one sample taken from the Eastern Maine or Western Maine Spawning Areas is comprised of 25% or more spawn herring then the closure may be extended for an additional 14 days.
- iii. Closure Prohibitions. During the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area Closure or an extension thereof, it shall be unlawful for any vessel to possess or land more than 2,000 pounds of sea herring caught within the Eastern Maine, Western Maine, or Massachusetts/New Hampshire Spawning Area.
- iv. Closure Procedure. The initial closure date shall be announced 5-days prior to the closure being enacted and any closure extension shall be announced immediately to be enacted the day following the announcement.
- v. Default Closure Dates: If sufficient samples are not available, spawning area closures will begin on area specific dates as follows: Eastern Maine (August 28), Western Maine (October 4), Massachusetts/New Hampshire (October 4)

(c) Exemptions

- i. Transport. Any herring vessel having onboard herring, which were caught outside of a management area that is under a herring spawning closure, may transit the closed or restricted area and land at a Maine port, only if all of its fishing gear has been stowed.
- ii. Fixed gear. The fixed gear (stop seines and weirs) fishery east of Cutler is exempt from spawning area restrictions.

(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 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 ~~295 mt~~ 39 mt of the Area 1A sub-ACL is allocated for the fixed gear fisheries in Area 1A (weirs and stop seines). 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, ~~Sub-ACL Trimester 1~~ (January 1 – May 31)

Atlantic 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). ~~Atlantic States Marine Fisheries Commission (ASMFC)~~ designates zero landing days between January 1 and May 31, annually.

(b) Management Area 1A, ~~Sub-ACL Trimester 2~~ (June 1 – ~~December 31~~ September 30)

For 2019, Area 1A sub-ACL will be monitored and managed in 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. ~~by vessels issued a Federal Limited Access Atlantic Herring Category A Permit on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (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:

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

(A) For all vessels issued a state Commercial Pelagic and Anadromous license that do not possess a Federal Limited Access Herring Permit:

All harvester 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 more than 25,000 lbs per week. At-sea transfers to carrier vessels are limited to one carrier vessel only and no more than ~~120,000 lbs~~ 25,000 lbs per week. All harvester vessels landing herring caught in territorial waters within Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

Exception: 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 for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30) shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday and are limited to landing 680,000 lbs (17 trucks) weekly; and, harvester vessels may transfer to only one carrier vessel per week up to 120,000 lbs. All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

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

All harvester vessels may possess and land Atlantic herring seven days a week. Daily trip limit shall not exceed 55,000 lbs per day and at-sea transfers to carrier vessels are limited to one carrier vessel only and no more than 120,000 lbs per week. All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24-hour period (6 pm to 6 pm).

All harvester vessels must send an email hail 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~~

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

All harvester vessels may possess and land Atlantic herring seven days a week. Daily trip limit shall not exceed 6,600 lbs per day and all at-sea transfers to carrier vessels are limited to one carrier vessel only and no more than 46,200 lbs per week. 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).

iii. Carrier Vessels:

All carrier vessels landing herring caught in Management Area 1A in any Maine port are limited to receiving at-sea transfers from one harvester vessel per week with a weekly landing limit of 120,000 lbs (3 trucks). All carrier vessels landing herring caught in Management Area 1A in any Maine port are limited to making one landing per 24 hour period (6 pm to 6 pm). Carrier vessels shall not operate as a harvester vessel on the same trip when operating as a carrier vessel.

All carrier vessels must send an email hail 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 amount of herring aboard
- Harvester vessel name from whom carrier received catch
- Date, time and location (dealer, city, state) of offload at port
- Estimated amount to be received by weight to each dealer (by dealer name and landings number)
- VTR number (and any VTR numbers for harvester vessels from whom carrier has received at-sea transfer)

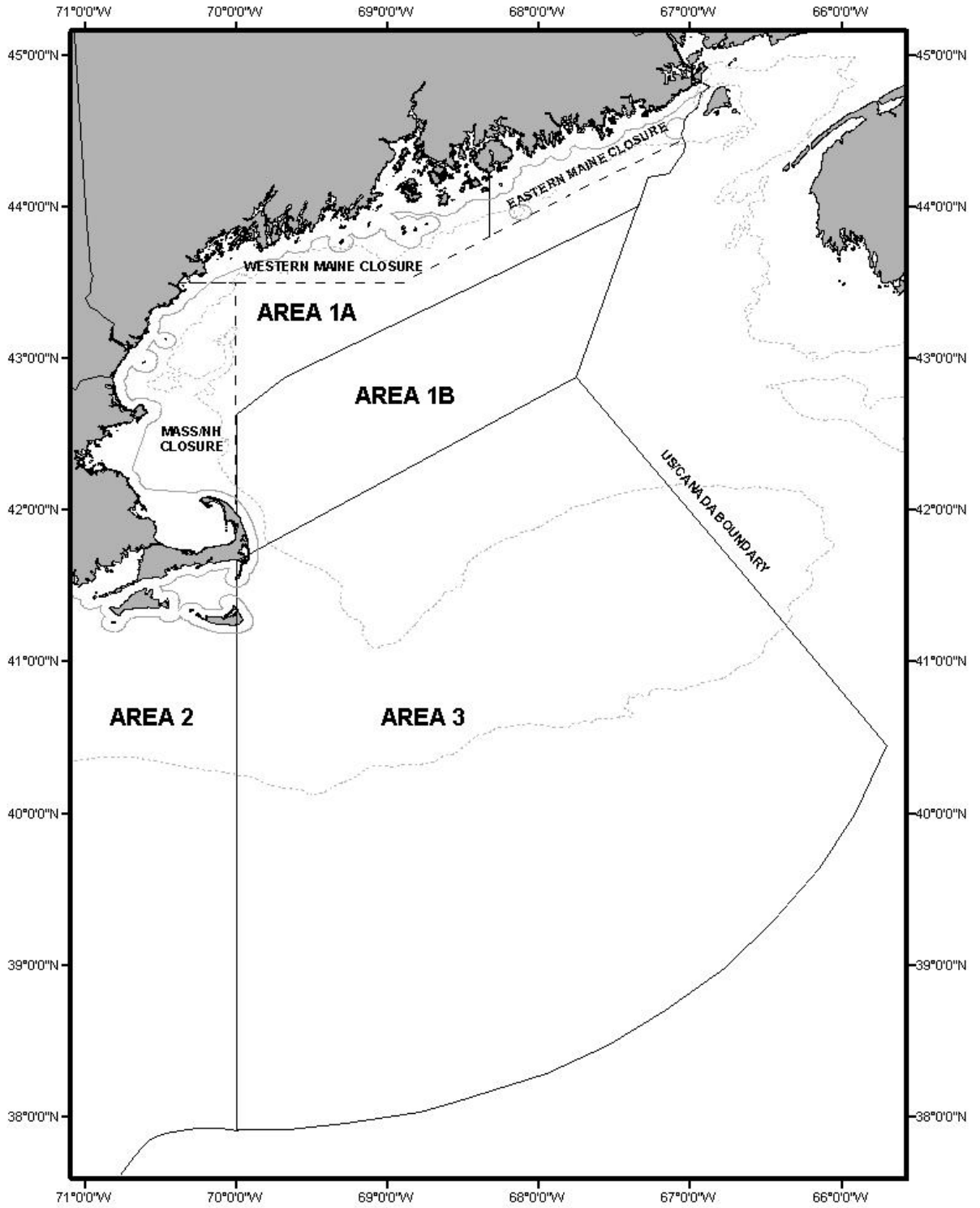
~~(c) Management Area 1A, Sub-ACL Trimester 3 (October 1 – December 31)~~

~~Atlantic 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). Atlantic States Marine Fisheries Commission (ASMFC) designates seven landing days between October 1 to December 31. Harvester vessels do not need to declare into the Atlantic Herring fishery for Trimester 3.~~

(c) ~~(d)~~ 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 not to exceed 2000 lbs per trip.

~~Any license holder or vessels landing herring taken from Management Area 1A with fixed gear are not subject to effort restrictions imposed by this subsection.~~



Basis Statement

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is exempt from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

Specifications for the Atlantic herring fishery for the 2019 fishing year have been set by the Greater Regional Atlantic Office (GARFO) of NOAA Fisheries and were effective on February 8, 2019. The annual catch limit (ACL) for domestic harvest is 15,065 mt; the sub-ACL allotted to Herring Management Area 1A is 4,354 mt with a fixed gear set aside (FGSA) of 39 mt. This represents an 84% decrease from the 2018 sub-ACL of 27,743 mt for Area 1A.

A reduction in harvest limits will be experienced by all permit holders directing on Atlantic herring. Specific effort restrictions pertaining to Federal Limited Access Atlantic Herring Category A and C permits will not be finalized until the Days Out Conference Meeting of the Atlantic Herring Board commissioners that is scheduled annually in the spring.

Several commenters suggested that transitioning to a weekly landing limit, as opposed to a daily landing limit, would be more practical and economical for those participating in the mobile state waters fishery. These comments, in conjunction with the enforcement challenges associated with a weekly limit, factored into the Department's decision to adopt a weekly landings limit, but to reduce harvest days from seven days a week to four days a week. This will still maintain harvest opportunity while providing Maine Marine Patrol an effective enforcement schedule.

Based on comments received during the rulemaking process and discussion at the DMR Advisory Council, the Department has made the following changes:

- Fishing weirs, stop seines and pound nets will be exempt from the harvest schedule and may operate seven days a week. Fixed gear harvesting is subject to a weekly limit of 25,000 lbs.
- Harvesting of Atlantic herring by state permit holders will be limited to a weekly landing limit of 25,000 pounds, instead of a daily limit of 6600 lbs. Additionally, the harvest schedule is restricted to Sunday at 6:00 p.m. through to Thursday at 6:00 p.m.

The discussion at the DMR Advisory Council meeting on March 6, 2019 highlighted additional details that contributed to the final rulemaking. These details included anticipated increase in landed value for Atlantic herring, the exceptional need for bait products at smaller wharves and a greater understanding of mobile state Atlantic herring participation and landings over the previous several years. With the understanding that the Atlantic herring resource is in a depleted state, this is the appropriate timeframe to maintain historical participation while conservatively allowing harvest to occur within state waters. The result of this discussion, the DMR Advisory Council passed a motion to accept the Chapter 36 rulemaking conditional on amending the weekly landing limit to 25,000 lbs. Based on 2018 landings information, and the projected value of bait, the Advisory Council concluded that this weekly limit would minimally reduce harvesting opportunity weekly for the 2019 fishing year but not seasonally. That is, a weekly limit may result in lower catches when compared to 2018, but still would allow ample opportunity for the duration of the Atlantic herring season when the fish are present in state waters.

Summary of Comments

Notice of this proposed rulemaking appeared on January 9, 2019 in the five major daily newspapers as published by the Secretary of State. On January 9, 2019, 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: 4:00 PM January 29, 2019 Rm 118 DMR Offices, Marquardt Building, Augusta. The comment period closed February 13, 2019.

I. Attendance Augusta Public Hearing:

Members of the Public	DMR Staff
Darren Turner, Earl Small, Gary Small, Corey Prock, Robert Begin, Linc Simmons, Drew Wallace, Glenn Robbins, Jared Spofford, Dustin Delano, Wayne Delano, Arthur Farnham, Josh Saxton, Chris Hole, Robert Berat, and Bernard Johnson III.	Melissa Smith, Amanda Ellis, and Rene Cloutier

Earl Small, submitted via email, January 21, 2019

My main concern is the daily catch limit this is not feasible for my operation. We've been purse seining for 5 years and many years in the past. I just purchased a new seiner / carrier all in one and with 6600 lbs we won't be able to make any money. I need five people minimum to run this operation. Just using last year's numbers - \$0.25 a lbs. for herring at this quota would amount to \$1650.00. I have heard it's a seven day a week herring fishing so if we could have a cumulative weekly limit of 46,200 Lbs. (as opposed to a daily catch limit) at \$0.25 a lbs. (using this quota) would total \$11,550. This would leave us some profit. But when the investment is \$50,000 to \$100,000 plus the cost of fuel, insurance, crew shares, etc., there's not much left over at the end. As a career commercial fisherman, I do understand the cuts that have to be made to this industry. But they don't just affect the fisherman. Every piece of the puzzle is trying to make a profit. For example, the company we sold herring to will need a minimum of 25,200 Lbs. to send a truck for them and truthfully would rather send a wheeler that carries 39,600 Lbs. to make it profitable to them.

My second concern is being under the same quota inside 3 miles as outside 3 miles. If the state has to be limited to this quota, in the interest of fairness, it should be all of Zone 1A or consideration should be made for a divided Quota of 1/3 dedicated to inside 3 miles. If were limited to 46,200 a week and outsides 3 mile (Federal) can still catch 120,000 lbs, that is a very lopsided margin to be coming out of the same quota considering the small amount of inside 3 mile (State) fishermen. If this is not feasible after true consideration then State and Federal fisherman should be all on the same weekly catch quota.

Darren Turner, submitted via email, January 24, 2019

I am a commercial fisherman from Washington County. As a stakeholder in the herring fishery, I have concerns with the proposed daily trip limit rule for 2019 of 6,600 lbs. I am a "state only" permitted fisherman since NMFS revoked my federal permit on a technicality in 2005. The daily limit will cripple my ability to sustain any activity in the herring fishery. I am not a large, full time herring vessel. On a local level in Down East Maine, herring fishing is opportunistic fishery. A 6,600 lb daily limit essentially shuts it down because the expenses are so high. I understand there is concern that if the state only permitted vessels are left unchecked, there could be quota issues. However, consideration needs to be given to those of us with substantial investments. I have over \$100,000 invested in equipment that will be rendered useless if I am limited to 6,600 lb per trip. A landings history needs to be used to grandfather the few fishermen like myself into the fishery. Since the fishery is opportunistic, a generous time frame needs to be used. For example, a fisherman that has landed 100,000 lbs in any year since 2005 and has a current herring license should be held to a different standard than fishermen with no landings and no gear. Those fishermen who qualify should have weekly landing limits, not daily limits. A

blanket rule across the board is an irresponsible way to manage. Fishing regulations can have unintended consequences. If these concerns can't be addressed through the DMR's rulemaking process, then it will have to be addressed through the legislature. Precedence shows that regulations should be designed in a way that do not render prior investments useless. Please consider fishing history and landings to keep this fishery available to small vessels.

Herring don't show up this far East until August. Then, the spawning closure shuts is down for 4-weeks. When the Eastern Maine Spawning Closure lifts, it's late September. Then, the weather is getting bad and the quota is almost caught. Realistically, best case is that we get six weeks to try and fish, if there is even fish in our area. Therefore, our income from the fishery will be a factor of six of the weekly limit. Herring fishing equipment is very expensive, and fishing it is labor intensive. A common fish hold size and decent set for us is 100 hogshead, or 125,000 lbs. That's about three trucks. A weekly quota any less will make herring fishing unviable. Also, a daily limit will not work it needs to be weekly. Fishermen with a landings history need to be treated differently than those with no investment and history. Please give people with 100,000 lbs of herring landings in any year since 2005 at least 120,000 lbs per week.

John-Paul Bilodeau, submitted via mail, dated January 27, 2019

I am writing to provide comments on behalf of the FN Providian. The F/V Providian fishes for Atlantic Herring throughout the range of the fishery using both midwater trawl and purse seine gear. The F/V Providian harvests herring for the lobster bait markets in Maine, New Hampshire and Massachusetts.

The title change of Chapter 36 is a good idea because it is more specific to the manage species. The proposed addition to Section B, Part 3 (Reporting of Catch) will help regulators manage the limited quota and weekly limits. We have no problems with clarifications in the effort restrictions section.

It is a good idea to change the daily limit of non-federally permitted to 6,600 pounds a day and 46,200 pounds a week. Unfortunately, all vessels are going to be affected by the reduction in the quota.

Earl Small, Augusta Public Hearing, January 29, 2019

I've been purse seining for about the last five years. Before that, I was a herring fisherman back in the 80s and we built weirs and did a lot of stop seining so I got a lot of background in herring fishing. Within the last few years we've been growing more and more as the herring comes back. My landings grow more and more each year. Well, this year we actually bought a 60-foot boat so we have something to carry herring with. Also, we're going to set it up as a seiner. I only have a state license. With this daily proposed trip limit of 6,600 pounds you will absolutely put me out of business. Me and at least five or six other guys will be without a job. Most guys do lobster, so they are trying to offset their bait. The other problem is we're still getting under the same quota, so your federal fishermen are getting all the herring quota and the state fishermen don't have any. We get 6,600 per day, or 46,000 per week where the other ones are looking at 180,000 pounds. It is not fair. We either got to split the quota up in-state or out of state, in three miles or off three miles. You got to do that then we can talk about your 46,000 pounds per week. You absolutely have to eliminate that 6,600 pounds per day. It's not going to work for me. The 46,000 we could probably break even, but we won't make any profit. The trucks that come get the herring won't even come up unless I've got 25,200 pounds of herring. They are not going to be impressed if I hold my herring all week. It's not going to work for me.

Darren Turner, Augusta Public Hearing, January 29, 2019

My concern is with the 6600 pounds per day. This rule is not conserving fish. It just decides who gets them. I do take issue with the fact we haven't done an impact study, but I feel like this is more a scoping timeframe. I do feel comfortable with the comments that this isn't a done deal and there is some room to talk about this. I have a lot of equipment I have invested in. Where we fish in eastern Maine it is opportunistic we don't start in June and chase herring. We're small we don't catch a lot of herring compared to the big boats. It is very opportunistic. You have to deal with fish, markets, and rules. The spawning closures? We don't even see fish until August. Half way through August we shut down for four weeks, which puts you to nearly the end of September. Then you deal with weather

and quota issues. When they took the 20% tolerance away from us during the spawning closure it pretty much put a nail in our coffin. We're dealing with rules, market, and are the fish even there. We don't have a lot of landings through the years, so I don't think it's going to be a big impact on the fishery, if we get some kind of exemption. I really feel that historical participation, if someone can prove landings over the last ten years, and they have an active permit then I think they should be held to a different standard from the rest of the state. There are some people that don't have an investment in the fishery. I understand we can't let the whole state run rampant catching herring, but I am asking we take into consideration people who have a history and investment. That we treat them differently. A daily limit kills it. It has to be a weekly limit. For me, I am a part timer. I might be lobstering on Monday and Tuesday. It would be best for me, operationally, if it were a weekly limit. To me anything less than 120,000 pounds is unfeasible for profit reasons.

Arthur Farnham, Augusta Public Hearing, January 29, 2019

6,600 is not enough. Weekly is probably the best way. I think they ought to do an owner/operator in state waters. The big boats are cleaning all the fish up, coming into state waters. I've never seen spawning herring in the state waters. I don't understand why we got to get shut down for them too.

Gary Small, Augusta Public Hearing, January 29, 2019

I have been fishing many, many years way back. We built a lot of weirs. I did a lot of purse seining. A few years, back in the past there was hardly any herring around. In the past few years there have been a lot more herring showing up. The Bishops are building weirs again. We're getting into stop seining again and we're getting a seiner. On this daily limit of 6,600 pounds it's not enough. I really feel a weekly limit is the way we should go. I think it should be more fair. I understand these bigger boats want a bigger catch, but it needs to be more fair for the state people versus the federal. You're giving your state, the guys that pay the taxes, the fishermen only 6,600 pounds a day. I feel it should be a weekly limit and you should make it more fair for state fishermen.

Glenn Robbins, Augusta Public Hearing, January 29, 2019

I hate to see these guys on a 6,600 daily limit. That's not going to work. You got to have a weekly limit for these guys to do anything at all. Especially the guys that have invested in a bigger boat. A weekly limit will make it so that they can get the trucks there. They're not going to go every day because they are lobstering. These are lobstermen.

Tad Miller, submitted via email, February 13, 2019

I strongly urge you to consider to allow a weekly limit for State waters herring fishing of one truck, instead of the 6,600 pound daily limit. I fully understand what's happening to the federal herring fishery quota, it will obviously impact that sector the industry dramatically. I find this to be all the more reason to encourage those interested in the State waters fishery by setting a workable catch limit, which is not the case with daily limit of 6,600 pounds. Any seining operation is going to struggle to make those numbers work, large or small. Given the current status of the federal quota we need to everything possible to access bait for the lobster industry in the upcoming year. Contrary to what science is showing, I have witnessed what appears to me to be more small herring very year for the last half a dozen years in the area that I fish around Matinicus Island and also while I steam back and forth to Tenants Harbor. All of these waters are within State waters. As a matter of fact, the seine fleet fished on these herring for over a month late last summer.

I don't know if you're getting any pressure from the existing seine fleet to set a lower daily limit in State waters rather than do an aggregate of the daily limit once a week. But if that's the case you would be effectively eliminating any of the State licensed boats for the most part from being able to cost effectively participate in this fishing. The herring fleet as it exists now is a trickle down of a situation that has taken place over many years. We've gone from a very diverse fleet of seiners to a select few. We as lobstermen surely need that fleet, but we also need the ability to have a viable State waters fishery that more vessels have an opportunity to participate in. Some of these seiners are currently investing in boats and gear slated for the menhaden fisheries is their right. It is for these reasons and others that I believe it is the DMR's responsibility to create a viable situation for State

waters herring fishing. At a 6,600 pound fishery you have basically shut the door to that fishery on any State waters boat.

Department's response to the comments:

Most of the comments received were not in support of a 6,600 lbs limit citing that such a restriction would be unprofitable, difficult to effectively harvest the exact amount, and hinder the flexibility needed to operate a dynamic fishery. Several commenters offered the suggestion of a weekly limit to offset negative impacts previously mentioned.

Landing reports of the 2018 fishing year indicate that both fixed and mobile fishing occur within state waters; total landings combined were reported at 323,770 lbs (15,455 lbs landed by fixed gear and 308,315 lbs landed by mobile gear). The average trip was 1,288 lbs and 11,858 for fixed and mobile gears, respectively. Fixed gear harvesting spans over a longer period of months, while mobile fishing was concentrated in July and August 2018.

Based on 2018 state landings, a weekly limit of 40,000* lbs would allow for small scale harvesting of Atlantic herring while it is present in state waters from June through December.

The specifications set by the Greater Regional Atlantic Office (GARFO) of NOAA Fisheries for the 2019 fishing year cite a fixed gear set aside (FGSA) at 39 mt. As such, harvesters using fixed gears (fish weirs, stop seines and pound nets) may utilize this set aside until such time that it is consumed, as 2018 landings were well below this number.

*This number was updated during the DMR Advisory Council after discussion to reflect a weekly landing limit of 25,000 lbs. The response to comments was written prior to the discussion at the DMR Advisory Council.

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

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 29, 2019 at 4:00 p.m., DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta. Snow date scheduled for January 30, 2019 at 4:00 p.m.

COMMENT DEADLINE: February 13, 2019

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

This rule clarifies the reporting requirement such that all directed herring trips must report daily using the herring.dmr@maine.gov landings email. Additionally, this regulation implements a weekly limit on state only permitted vessels directing on Atlantic herring of 25,000 pounds. State waters fishing may occur from Sunday at 6:00 p.m. to Thursday at 6:00 p.m. Fixed gear harvesting in state waters is except from the weekly harvest schedule, but is also subject to a weekly landing limit of 25,000 pounds.

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 seeks to maintain state permit holder access to the Atlantic herring fishery under a reduced quota. The rule is intended to provide harvest opportunity that will allow either fixed gear or mobile gear operations to pursue harvest of Atlantic herring that would be profitable while supplying bait needs to the lobster fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

The 2019 Atlantic herring allowable biological catch (ABC) will be reduced from previous years and will require additional reporting requirements to ensure accurate catch monitoring. Harvester comments received during an industry meeting held December 2018 at DMR's Augusta location in combination with public comments during the proposed rulemaking.

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

Enforcement of these proposed 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