

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 36.01; Herring Management Plan

CONCISE SUMMARY:

For Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30), all vessels landing herring caught in Management Area 1A in any Maine port will be limited to fishing for and landing herring for one day only: 6 pm on Sunday night to 6 pm Monday. 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). “Landing” is defined to mean to come to shore, float, or a dock and offload herring. The rule also puts into effect certain measures required under the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan (FMP) for Atlantic Herring in February 2016. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B) and (C) to prevent the depletion of the supply of herring and to achieve compliance with changes to the interstate fisheries management plan. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3).

EFFECTIVE DATE: July 2, 2016

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DEPARTMENT OF MARINE RESOURCES

Chapter 36 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) ~~ASMFC~~ Management Area 1.

~~ASMFC~~ 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) ~~ASMFC~~ 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) ~~ASMFC~~ 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.

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 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

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

Dealers: See Chapter 8.10(F) 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 area restrictions.

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 ~~ASMFC~~ Management Area 1A during a spawning area closure ~~at the following times:~~

(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.

~~(a) Determination of starting dates for spawning areas.~~

~~Closures in a given area will begin based on a pre-determined spawning condition of Atlantic herring indicated by commercial catch samples. This spawning condition will be defined as: female herring greater than or equal to 28 cm in length having reached a mean gonadosomatic index (GSI) of 20%; or female herring greater than 24 cm and less than 28 cm in length having reached a mean GSI of 15%. Closures in a given area will begin seven (7) days after the GSI determination is made. If sufficient samples are not available, closures will begin on area specific dates as follows: Eastern Maine August 15, Western Maine September 1, Massachusetts/New Hampshire September 21.~~

~~(b) Duration of spawning area restrictions.~~

~~The closure will extend for four (4) weeks. If catch sampling after the end of the initial restricted period determines that 25% or more mature herring, by number, have yet to spawn then the spawning restrictions would resume for an additional two weeks. The 20% tolerance shall be determined by examination of at least one hundred herring selected at random from the catch.~~

(2) Catch quota and effort restrictions.

Fishing for herring in ~~ASMFC~~ Management Areas 1A, 1B, 2 and 3 is subject to the sub-annual catch limit (ACL) Total Allowable Catch (TAC) and fishing effort restrictions specified by the ASMFC Atlantic Herring Section and the NEFMC in accordance with their respective Fisheries Management Plans (FMP). The ~~TACL~~ 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 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.

~~Herring permitted license holders shall be informed by public notice in a newspaper circulated in the area affected of any effort reduction dates.~~

~~Atlantic herring may only be landed on days that have been designated landing days by the Atlantic States Marine Fisheries Commission (ASMFC) as described in Chapter 36.01(D)(2) above. For the purpose of this section, "landing" shall be defined as follows: 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. Harvester vessels may offload herring to a carrier vessel at any time.~~

(3) Effort Restrictions

(a) Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30)

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). All vessels landing herring caught in Management Area 1A in any Maine port will be limited to fishing for and landing herring for one day only: 6 pm on Sunday night to 6 pm Monday.

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). For the purpose of this subsection, "landing" shall be defined as follows: To come to shore, float, or a dock and offload herring.

(b) Exceptions.

~~Any vessel may possess herring as an incidental catch and land herring caught in ASMFC 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. This section is subject to the provisions of Chapter 36.01(D)(1).~~

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.

~~(3) Transport exemption.~~

~~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.~~

Basis Statement

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch to determine if it is necessary to take emergency action to slow the fishery. At this time, the Department has received reports from industry members and Department staff who are port sampling that landings remain exceptionally heavy, and there is considerable additional fishing and carrying capacity in the fleet. This additional capacity could cause the landings to far exceed the projections that were anticipated to ensure the distribution of the resource throughout Trimester 2. The Department initially limited fishing and landing days to four days, but that was not sufficient to prevent the depletion of the supply of herring. The emergency rule adopted on June 22 limiting the fishing and landing days to four days is repealed and replaced by this emergency rule. A further restriction on the fishing and landing days to one day (6 pm Sunday to 6 pm Monday) is necessary. The rule also puts into effect certain measures required under the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan (FMP) for Atlantic Herring in February 2016. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B) and (C) to prevent the depletion of the supply of herring and to achieve compliance with changes to the interstate fisheries management plan.

Summary of Comments

NA

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 36.01

STATUTORY AUTHORITY: **12 M.R.S. §6171 (3) and §6192**

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)] The Department has received reports from industry members and Department staff who are port sampling that landings remain exceptionally heavy, and there is considerable additional fishing and carrying capacity in the herring fleet. This additional capacity could cause the landings to far exceed the projections that were anticipated to ensure the distribution of the resource throughout Trimester 2. Through an emergency rule the Department had initially limited fishing and landing days to four days, but that was not sufficient to prevent the depletion of the supply of herring. The emergency rule adopted on June 22 limiting the fishing and landing days to four days is repealed. A further restriction on the fishing and landing days to one day (6 pm Sunday to 6 pm Monday) is necessary. The rule also puts into effect certain measures required under the Atlantic States Marine Fisheries Commission (ASMFC) approved Amendment 3 to the Interstate Fishery Management Plan (FMP) for Atlantic Herring in February 2016. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B) and (C) to prevent the depletion of the supply of herring and to achieve compliance with changes to the interstate fisheries management plan.

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 seeks to conserve the herring resource for utilization throughout Trimester 2.

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]

Reports from herring industry members, marine patrol, and science staff; federal landings information (Vessel Trip Reports); Amendment 3 to the Interstate Fishery Management Plan for Atlantic Herring (February 2016).

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] No fiscal impact anticipated.

Note: If necessary, additional pages may be used.