

## NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 36 Atlantic Herring; Period 4 Opens

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

**CONCISE SUMMARY:**

The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. § 6171(3).

**EFFECTIVE DATE:** October 31, 2019

**AGENCY CONTACT PERSON:** Melissa Smith  
**AGENCY NAME:** Department of Marine Resources  
**ADDRESS:** 21 State House Station  
Augusta, Maine 04333-0021  
**WEB SITE:** <http://www.maine.gov/dmr/rulemaking/>  
**E-MAIL:** Melissa.Smith@maine.gov  
**TELEPHONE:** (207) 624-6558  
**FAX:** (207) 624-6024  
**TTY:** (207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

Chapter 36 Atlantic Herring

36.01 Herring Management Plan

D. Catch restrictions.

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

(3) Effort Restrictions

(a) Management Area 1A, 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). ASMFC designates zero landing days between January 1 and May 31, annually.

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

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. 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:

Quota Period 4 opens at 12:01 a.m. Friday, November 1, 2019. For Period 4 (November – December), ASMFC designates one landing day per week beginning on Sunday, November 3, 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 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 one ~~four~~ days a week, beginning at 6:00 p.m. Sunday to 6:00 p.m. Monday Thursday. No vessel may land more than 25,000 lbs per week.

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 shall be one ~~four consecutive~~ days per week, beginning on 6:00 p.m. Sunday to 6:00 p.m. Monday 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 one ~~five consecutive~~ days per week, beginning on 6:00 p.m. Sunday to 6:00 p.m. Monday 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 one ~~five consecutive~~ days per week, beginning on 6:00 p.m. Sunday to 6:00 p.m. Monday 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 not to exceed 2000 lbs per trip.

## **Basis Statement**

The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area (HMA) 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

On Monday, October 28, 2019, NOAA Fisheries announced adjustments to the 2019 Atlantic Herring Specifications; the action increased the HMA 1A sub-ACL for the 2019 season by 1,000 mt. This was a result of the New Brunswick weir fishery landing below 4,000 mt through October 1 and thereby decreasing the management uncertainty buffer and re-allocating it to the HMA 1A sub-ACL.

The Commissioner has determined that it is necessary to take emergency action to implement these limitations to prevent the imminent depletion of the supply of Atlantic herring and to comply with the changes to the interstate management of the Atlantic herring resource. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3).

## 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; Period 2 Closes; Open Date Period 3

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): NA

COMMENT DEADLINE: NA

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

This rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The Atlantic States Marine Fisheries Commission (ASMFC) scheduled a Days Out Conference Call on Wednesday, October 23, 2019 to determine effort controls for Quota Period 4 (November – December) in the Herring Management Area (HMA) 1A. The Commissioners designate one landing day per week for Quota Period 4 to begin Sunday, November 3, 2019 at 6:00 p.m. Quota Period 4 opens at 12:01 a.m. on November 1, 2019.

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 emergency rule is intended to restrict fishing effort and eliminate harvest capacity for the remainder of Quota Period 4 such that overages in the HMA 1A sub-ACL are avoided.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Final action of effort control rules discussed during the Days Out meeting on October 23, 2019.

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*