

## NOTICE OF AGENCY RULE-MAKING ADOPTION

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 36.01; Herring Management Plan

**ADOPTED RULE NUMBER:**

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

**CONCISE SUMMARY:**

For Management Area 1A, Sub-ACL Trimester 1 (January 1 – May 31), and 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). For the purpose of this subsection, “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 to a carrier vessel at any time.

For 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 on days that have been designated landing days by 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). For the purpose of this subsection, “landing” shall be defined as follows: To come to shore, float, or a dock and offload herring.

The rule also amends sections on catch quota to prohibit the take 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, with certain exceptions included depending on the area and time of year fished. In addition, the rule would put 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. Amendment 3 pilots a new spawning closure system, and modifies the fixed gear set-aside. These measures are being implemented by ASMFC to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures. There will be an exemption for transport, allowing any herring vessel having onboard herring, caught outside of a management area under a herring spawning closure, to transit the closed or restricted area and land at a Maine port, only if all of its fishing gear has been stowed; and a fixed gear exemption allowing fixed gear (stop seines and weirs) fisheries east of Cutler to be exempt from spawning area restrictions.

**EFFECTIVE DATE:**

(TO BE FILLED IN BY SECRETARY OF STATE)

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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 ~~TAC~~ 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 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 1 (January 1 – May 31) and 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). For the purpose of this subsection, "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 to a carrier vessel at any time.

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

(c) 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

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. To mitigate the likelihood of that happening again, fishing and landing days have been combined to better control fishing effort. The rule has been modified from what was originally proposed so that the number of days is not specified, but will be the same as what is determined through the Atlantic States Marine Fisheries Commission (ASMFC) process. Additionally, this rule has struck “ASMFC” from references to Management Areas in order to be consistent with the proposed rule’s change to the definitions section, which is a minor technical change. Additional measures are being put into place based on changes to the Interstate Fishery Management Plan for Atlantic Herring developed by the ASMFC in 2016 to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures.

## Summary of Comments

*Summary of Comments made during the Public Hearing on 5/24/2016*

### Attendees at Public Hearing

<i>Name</i>	<i>Address/Fishery/Occupation</i>
Mark Bichrest	16 Winthrop
Paul York	Rockland, F/V/ Starlight, F/V Sunlight
Branden Lovejoy Columbia	J3K Lobster Bait
Kevin Lovejoy	J3K Lobster Bait
Mike Brewer	F/V Reliance Carrier
Daniel Fill	F/V Western Wave
David Osier	F/V Blue Water III/ Osier Seafood
Joel Pitcher	IMLU Maine Lobstering Union
Barry Matthews	F/V Ocean Venture
Shawn Rocket	F/V Western Sea
Brett Gilliam	F/V Pelican
Jennie Bichrest	Purse Line LLC
Rene Cloutier	Marine Patrol
Glenn Lawrence	F/V Double Eagle
Mary Beth Tooley	O’Hara Corporation
[Illegible Name]	F/V Ocean Venture
JP Bilodeau	F/V Providian
Ryan Raber	F/V Providian
Meredith Mendelson	DMR
Hannah Dean	DMR
Matt Cieri	DMR

### **Summary of Comments on Fishing and Landing Days Restrictions:**

Several commenters noted that the proposed restrictions on fishing days and landing days will prevent fishermen from fishing based on natural conditions, weather, the presence of fish, and workforce availability (Paul York, Danny Fill, Brett Gilliam, Glenn Lawrence, Ryan Raber, Jennie Bichrest, JP Bilodeau, David Osier, Mary Beth Tooley). Several commenters went on to suggest that rather than being based on days, the fishery should be restricted based on quota, and that the data is now available to adjust days throughout the season based on quota – rather than trying to set days at the beginning of the season (Brett Gilliam, Glen Lawrence, Ryan Raber, Jennie Bichrest, Mary Beth Tooley). Commenters also noted, however, that if there is flexibility built into the days based restrictions, the fishery may be able to handle these restrictions (Glenn Lawrence). Two commenters also noted that

limiting fishing days as well as landing days would potentially be an adverse impact on trucking. Finally, one commenter noted that these rules should not apply to fixed gear fishermen.

The Department received a number of public comments on the proposed rule to limit fishing and landing days to four days per week in Maine. The proposed measure is intended to address the concerns raised by many lobster harvesters and bait dealers that the Trimester 2 Atlantic herring quota and thus, the fresh bait supply, lasts well into the month of September. The Maine lobster fishery is the primary market for Atlantic herring landings and DMR feels that it is appropriate and necessary to help ensure that the supply of fresh bait is maximized. If the quota is projected not to be caught towards the end of the trimester, the fishing and landing days will be increased to ensure there is a full opportunity to harvest the Trimester 2 quota for Area 1A.

Prior to issuance of the proposed rule, the Department hosted an industry meeting and received a large number of comments related to achieving the full harvest of the Trimester 2 quota in Area 1A. As a whole the industry, both harvesters and dealers, requested that new regulations be implemented to ensure this goal is reached and to allow for as many landing days as possible per week without limiting the amount of fish that could be landed per day. This rule attempts to strike that balance.

With regards to the comments about the adverse impacts of merging fishing and landing days, DMR responded that the large capacity of the mid-water trawlers and other vessels with refrigerated seawater being used as carriers significantly increases the overall effort by enabling the seiners to begin fishing multiple days before the first landing day. Additionally the recent use of these vessels as carriers, in general, has significantly increased the daily landings. Based on the comments, the Department has removed the specific number of days (4) and replaced it with the number of days determined through the ASMFC process. The Department clarifies that fixed gear fishermen will not be subject to the fishing and landing days restriction, as they have not previously been subject to landing day restrictions.

Many public comments attribute the early closure of Area 1A in 2015 to the failure of management to respond in a timely manner to the rapid increase in early August landings. While there was a problem with the federal reporting system last year that prevented effective monitoring of landings to sufficiently slow down the fishery, there were other contributing issues including the aggregation of a large body of fish close to shore, and the increased use of large carriers. To address the delayed reporting issue, the Department intends to begin monitoring and, if allowed by federal statutory and regulatory provisions regarding confidentiality, posting the herring landings on a daily basis. Making landings data available to the public is completely dependent on full collaboration with NOAA Fisheries and thus real time data cannot be guaranteed at this time.

With regard to the comments about the adverse impact to trucking, DMR responded that the herring carriers have always been restricted to landing at a secondary port, and thus a reduced number of landing days set by the ASMFC would have the same impact on trucking. In the past, higher numbers of days out have not shown a demonstrable hardship for trucking of bait.

#### **Summary of Comments on Spawning Closures:**

In regards to the spawning closures, several fishermen objected on the grounds that the closures will close highly productive areas and, further, that rules based on tolerance levels would better serve the fishery and would prevent the fishing of spawning herring no matter where they are located along the Maine coast (Glenn Lawrence, Daniel Fill). Fishermen suggested that DMR should restrict the fishing of stage 4 and 5 spawning herring year round and that a 20 percent tolerance be maintained so that fishermen can catch juvenile herring (Daniel Fill, Jennie Bichrest, Glenn Lawrence). On the other hand, some acknowledged that the spawning closure is needed under the ASMFC, but that Maine should continue to push for better impact analysis of closures so that socio-economic factors are taken into consideration when implementing such measures (Mary Beth Tooley).



DMR responded that these measures are for compliance with the Atlantic States Marine Fisheries Commission (ASMFC), which had a separate public hearing and process to develop these measures. The ASMFC recently approved Amendment 3 to the Interstate Fishery Management Plan for Atlantic Herring which refined the spawning closure system. The Amendment allows for the use of a modified GSSI-based spawning monitoring system to track reproductive maturity in an effort to better align the timing of spawning area closures with the onset of spawning. This new method will be tested and evaluated for effectiveness during the 2016 fishing season. If the new method is found to be ineffective, the Section has the option to revert back to using the prior monitoring system. Default closure dates have been modified to late August or early October depending on the area. The spawning closure period remains four weeks.

DMR has tried for many years to get a spawning tolerance back into place, but has been unable to do so due to the disagreement of other states in the Herring Section. As only one of seven voting states, Maine cannot control the outcome of the Section's decisions. The new spawning protection measures, recently adopted by ASMFC, are a compliance measure.

***Rock Alley, President of Maine Lobstering Union, IMLU Local 207: By Lobstermen, for Lobstermen, Comment in Support of Proposed Changes to Rule 36.01, Management Area 1A, Sub-ACL, Trimester 2 (June 1-September 30) (Received by Email 6/2/2016)***

“The Maine Lobstering Union’s Executive Board has unanimously voted to support limits on fishing and landing days in Management Area 1A, during the early portion of Trimester 2 for the herring fishery as a way of ensuring a reliable supply of fresh bait for all Maine lobstermen, from June 1 through September 30. The IMLU strongly supports the 2016 herring rule amendments proposed by the Department of Marine Resources as the best means of accomplishing this goal.

It is imperative for the success of the lobster industry that lobstermen have ready access to fresh bait at a reasonable price throughout the peak lobstering season. This did not happen last year because too many fishing and landing days were permitted in Management Area 1A early during Trimester 2 of the herring fishery, resulting in the quota being reached too early during this period. This resulted in an early closure of Management Area 1A in August 2015, and a significant price hike for herring being borne by Maine lobstermen.

The proposed DMR amendments to Rule 36.01 will better protect against a repeat of this problem in 2016, ensuring a steady supply of fresh bait and stability in bait prices. In addition to providing access to fresh bait throughout the peak of the lobster fishery, the DMR proposed rule protects both the herring resource and the diversity of the herring fleet by allowing for a level playing field between small and large operators in the herring fishing fleet. These results are in the interest of both the lobster and herring fisheries and industries.

We urge the Commissioner and DMR staff to implement the rule as proposed without further amendments.”

DMR confirms the Lobstering Union commenting in support of this rule, as the rule is intended to benefit lobster harvesters and bait dealers who are seeking fresh bait into the late summer and early fall months.

***Mary Beth Tooley, F/V Starlight and F/V Sunlight (Received by Email 6/3/2016)***

“On behalf of the F/V Starlight and F/V Sunlight, I am writing to provide comments on the Proposed Rule to the Herring Management Plan, Chapter 36.01. These Maine vessels have a long history in the herring fishery utilizing both purse seine and midwater trawl gear throughout all herring management areas.

We appreciate the concern that you and your staff have expressed over management of the Area 1A allowable catch limit (ACL) in 2015 and the early closure in Trimester 2. It is appropriate to explore means to prevent these disruptive closures in the future.

I personally have participated in the Atlantic States Marine Fisheries Commission (ASMFC) annual in-season effort control meetings for setting the “Days Out” measures since its inception. In general, the process has achieved its goals to spread out the catch in 1A throughout the season to have some stability in the lobster bait market. However, in 2015 this process broke down as landings data was not readily available while catch rates increased significantly. What was not anticipated was that offshore herring fishing dried up for several weeks as the market continued to demand bait for the lobster fishery. Under normal circumstances each of these areas contribute to the bait needs here in Maine.

To address these concerns the Proposed Rule would be more conservative than the ASMFC plan by limiting fishing as well as landing to 4 days per week for Management Area 1A, Sub-ACL Trimester 2 (June 1 – September 30). We have concerns about this approach and suggest that the Department work to ensure that the mistakes from 2015 not occur again. We need to have timely data available to the States for the continued success of the “Days Out” strategy.

This approach to limit fishing time and landing days through State regulations is too restrictive and my understanding is that it could only be changed in-season through emergency action. This is a very awkward method to achieve the in-season management needed to achieve harvest of the sub-ACL while spreading catch throughout the Trimester. Additionally, it also places Maine vessels at a disadvantage with other vessels that may fish and land in other states. In past years, all purse seine vessels have landed in Maine ports, however, we have been informed of new effort for 2016 will enter the fishery from outside Maine.

It was unfortunate to see the early closure of Area 1A in 2015. Thankfully, 7,800 mt. was landed from Area 3 in September and lobster fishing was not disrupted. We encourage you and your staff to continue to work with the states of New Hampshire and Massachusetts to properly manage the fishery in Area 1A during Trimester 2. I believe your staff has taken steps to ensure access to the timely data needed to manage effort inshore. We are thankful for these efforts and were frustrated by a system that requires vessels to report daily while not having this data available to managers in the fishery.

Additionally, this Proposed Rule amends spawning regulations to be consistent with amendments to the ASMFC Atlantic Herring Plan. In this case the State must move these regulations forward to be consistent with that Plan. A major concern we expressed throughout the development of this action is the lack of impact analysis to both the fishery and end users. Maine Commissioners were successful at limiting some measures that appeared to be the most disruptive and we thank them for these efforts. However, we remain concerned and basically keep our fingers crossed that access to the fishery during high demand bait periods remains.”

DMR has addressed the majority of these comments in the responses above. DMR acknowledges the differential referenced to potential new effort in Area 1A as well as for vessels homeported in other states but notes that all vessels permitted to land in the State of Maine will be subject to these restrictions, and that the small number of New Hampshire based small mesh bottom trawlers who solely land in New Hampshire are not likely to impact the market and over all Period 2 quota.

The unknown variability of new effort as well as whether or not the mid-water trawlers will fish in Area 3 or act as carriers in Area 1A is unknown at this time. Consequently, the flexibility allowed for in the proposed rules to increase or decrease landing and fishing days is consistent with the ongoing ASMFC days out program and allows for Maine to best manage and ensure the supply of fresh bait for Maine’s valuable lobster fishery.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 36.01

STATUTORY AUTHORITY: 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARING: 5/24/2016 3:00 PM, DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: 6/3/2016

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

Based on observations made during the 2015 herring fishing season, the Commissioner determined that fishing efforts were not distributed across the open fishing season, which resulted in depletion of herring supply. To mitigate the likelihood of that happening again, fishing and landing days have been combined to better control fishing effort. Additional measures are being put into place based on changes to the Interstate Fishery Management Plan for Atlantic Herring developed by the ASMFC in 2016 to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures.

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 rule puts in place fishing effort restrictions and landing restrictions.

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]

For Management Area 1A, Sub-ACL Trimester 1 (January 1 – May 31), and 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). For the purpose of this subsection, “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 to a carrier vessel at any time.

For 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 on days that have been designated landing 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). For the purpose of this subsection, “landing” shall be defined as follows: To come to shore, float, or a dock and offload herring.

The rule also amends sections on catch quota to prohibit the take 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, with certain exceptions included depending on the area and time of year fished. In addition, the rule would put 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. Amendment 3 pilots a new spawning closure system, and modifies the fixed gear set-aside. These measures are being implemented by ASMFC to integrate recent data into management decisions and respond to changes in the stock structure and fishery. This rule will bring Maine fishing practices into compliance with ASMFC management measures. There will be an exemption for transport, allowing any herring vessel having onboard herring, caught outside of a management area under a herring spawning closure, to transit the closed or restricted area and land at a Maine port, only if all of its fishing gear has been stowed; and a fixed gear exemption allowing fixed gear (stop seines and weirs) fisheries east of Cutler to be exempt from spawning area restrictions.

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

Enforcement of this rule will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

Rulemaking statement of impact on small business  
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F, and  
Executive Order 20 FY 11/12, August 24, 2011 (replaces EO's 09, 13 & 14)

Agency: Department of Marine Resources

Chapter Number and Title of Rule: 36.01 Herring Management Plan

1. An identification of the types and an estimate of the number of the small businesses subject to the rule; and  
EO20 1.A. The impact of the rule on job growth or creation:

This rule will have no impact on job growth.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the rule, including the type of professional skills necessary for preparation of the report or record; and EO20 1.C. The cost to the public in terms of time and money required to comply with the rule and EO20 1.B. The burden imposed by any fees included in the rule:

This rule will place no additional burdens on the public.

3. A brief statement of the probable impact on affected small businesses; and EO20 1.D. The extent to which other laws and regulations already address the subject matter of the rule:

This rule will have minimal impact on small business. There are approximately 28 federally permitted Herring Category A permit holders as of 2015. These rule changes will implement modest administrative requirements for a subset of these vessels landing in Maine, as well as clarify procedures for those permit holders and implement compliance with ASMFC requirements, which will ensure permit holders ability to continue to participate in the fishery. This rule also provides protections to the herring population that will help ensure a sustainable fishery, which will in turn have a positive impact on the impacted permit holders who depend on the long term sustainability of the fishery.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the rule; and EO20 1.E. The relevant Federal standards, if any and the specific need for Maine's rules to differ from them if such a need exists:

There are no alternative methods currently available.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained: Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.