

**Notice of Agency Rule-making Proposal**

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 30 River Herring Pilot Project Exemption

TYPE OF RULE (*check one*):  Routine Technical  Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: This proposed rule-making adds an exemption to the existing prohibition on the taking, possession, harvest and sale of river herring to include three ponds that were approved for a pilot project by the Atlantic States Marine Fisheries Commission Shad and River Herring Management Board in October 2019. Specific harvest limitations will be established in the authorization provided by the Commissioner. The exemption is proposed to expire in December 2025, because within a five-year period, the municipal ponds selected for inclusion must meet the established sustainability criteria for harvest to continue under the sustainable fisheries management plan.

Date, time and location of PUBLIC HEARING (*if any*): No hearing scheduled.

COMMENT DEADLINE: February 28, 2020

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

NAME: Amanda Ellis

MAILING ADDRESS: 21 State House Station, Augusta, Maine 04333-0021

E-MAIL: dmr.rulemaking@maine.gov

TELEPHONE: 207-624-6573

FAX: 207-624-6024

TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

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\* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
(authorized signature)

<b>FUND</b>	<b>AGENCY</b>	<b>ORG</b>	<b>APP</b>	<b>OBJ</b>	<b>PROGRAM</b>	<b>FUNDING Profile JVC</b>	<b>FUND Pri JVC</b>	<b>FUND Line JVC</b>
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## Chapter 30: River Herring

## 30.02 Limits on River Herring

Beginning January 1, 2012 it shall be unlawful for any person to take, possess, harvest or sell river herring in the State of Maine or in waters under the jurisdiction of the State of Maine.

## Exceptions:

## A. Alewives fishing rights.

A municipality or an individual with existing river herring harvest rights granted by the Commissioner in accordance with 12 M.R.S. §6131 are not subject to Chapter 30. The Commissioner may authorize a future river herring fishery, authorized pursuant to 12 M.R.S. §6131, after submission of a sustainable fisheries management plan for that fishery by the Department, which is approved by the Atlantic States Marine Fisheries Commission (ASMFC) Management Board.

Individuals holding a valid license issued under 12 M.R.S. §6851 may buy, sell, ship or transport river herring obtained from a municipality or individual with river herring harvest rights granted by the Commissioner in accordance with 12 M.R.S. §6131. Individuals may buy river herring from a municipality or individual with river herring rights, or an individual holding a valid license issued under M.R.S. §6851, but must produce a bill of sale indicating amount of fish purchased, date of purchase, and river of origin if requested by marine patrol, and may sell those river herring in the retail trade.

## B. Tolerance for river herring as bycatch in fisheries conducted inside and outside Maine territorial waters.

No person may possess fish where more than 5% of the total by count is comprised of river herring. The 5% tolerance by count will be determined by examination of ½ bushel chosen at random by marine patrol from the bulk pile. The number of fish in the sample will be separated by species to obtain a count of river herring verses other species. The total number of river herring in the sample will be divided by the total number of fish in the sample to determine the percent composition of river herring caught.

## C. Recreational fishing limit.

Beginning January 1, 2012 an individual may take up to 25 river herring per day for recreational or personal use. If a municipality or individual has obtained exclusive river herring harvesting rights under 12 M.R.S. §6131, an individual may only take river herring for recreational or personal use if it is in accordance with the municipal harvest plan submitted annually to the Department by the municipality.

Methods for taking river herring are limited to hook and line and dip net. The possession limit is 25 fish per individual. Individuals must be properly registered or licensed.\*

\* Registry or license information is available at DMR Licensing Division, 21 State House Station, Augusta, Maine 04333-0021, Telephone (207) 624-6550 or online at the following web link: <http://maine.gov/saltwater>

D. Pilot Project

The Commissioner may authorize the harvest of river herring, subject to any necessary limitations, in the following locations as part of a Pilot Project approved by the Atlantic States Marine Fisheries Commission Shad and River Herring Management Board for river herring runs which do not currently have an approved sustainable fisheries management plan.

1. Sewell Pond, Arrowsic
2. Wight's Pond, Penobscot
3. Center Pond, Phippsburg

This exemption expires December 31, 2025.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 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 30 River Herring Pilot Project Exemption

STATUTORY AUTHORITY: 12 MRS 6171

DATE AND PLACE OF PUBLIC HEARING(S): No hearing scheduled.

COMMENT DEADLINE: February 28, 2020

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

The primary reason for proposing this rule is to authorize the harvest of river herring at three specific municipal ponds in accordance with limitations specified by the Commissioner. Harvest from these municipal ponds would otherwise be prohibited, as they do not currently have an approved sustainable fisheries management plan.

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)]

This rule is intended to allow the Commissioner to authorize the harvest of river herring from three specific municipal ponds in order to support continued river herring restoration. Harvest will be subject to limitations established as part of the harvesting authorization.

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]: Motions adopted by the Shad and River Herring Management Board at their meeting in October 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.*