

NOTICE OF AGENCY RULE-MAKING ADOPTION**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 36 Herring; 2019 Harvest Rules**ADOPTED RULE NUMBER:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:

This rule amends the existing seasonal spawning closures in accordance with the recently approved Addendum II of Amendment 3 to the Interstate Fishery Management Plan for Atlantic herring: the initial closure period is extended from 28 days to 42 days; the default closure date for both the Western Closure and the Massachusetts/New Hampshire Closure has been modified from October 4 to September 23; and, the re-closure protocol may be initiated with a lower percentage of spawning fish present in the population, from 25% to 20%.

This rule amends the start date for the mobile Atlantic herring fishery to commence on Sunday, July 14, 2019 and also sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 3, 2019. The Days Out Commissioners designated zero landing days for Period 1 (June 2019). The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit for Period 2 (July – August 2019. These vessels are limited to landing 160,000 lbs (4 trucks) weekly). The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24 hour period (6:00 p.m. to 6:00 p.m.).

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON:

Amanda Ellis

AGENCY NAME:

Department of Marine Resources

ADDRESS:

21 State House Station

Augusta, Maine 04333

WEB SITE:<https://www.maine.gov/dmr/rulemaking>**E-MAIL:**dmr.rulemaking@maine.gov**TELEPHONE:**

(207) 624-6573

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

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:

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

(10) Spawning Sample.

Sample means a batch of 100 adult herring taken randomly from commercial catch or fish surveys.

(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~~ Atlantic 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~~ 42 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%~~ 20% 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~~ September 23), Massachusetts/New Hampshire (~~October 4~~ September 23)

(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 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, 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:

All vessels targeting Atlantic herring may commence harvest on Sunday, July 14, 2019 at 6:00 p.m. Harvester vessels shall not operate as a carrier vessel on the same trip when operating as a harvester vessel. 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 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 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~~ four consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. ~~Friday~~ Thursday and are limited to landing ~~680,000 lbs (17 trucks)~~ 160,000 lbs (4 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. Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category C Permit shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday. 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).~~

(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. Designated landing days for all vessels issued a Federal Limited Access Atlantic Herring Category D Permit shall be five consecutive days, beginning on 6:00 p.m. Sunday to 6:00 p.m. Friday. 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:

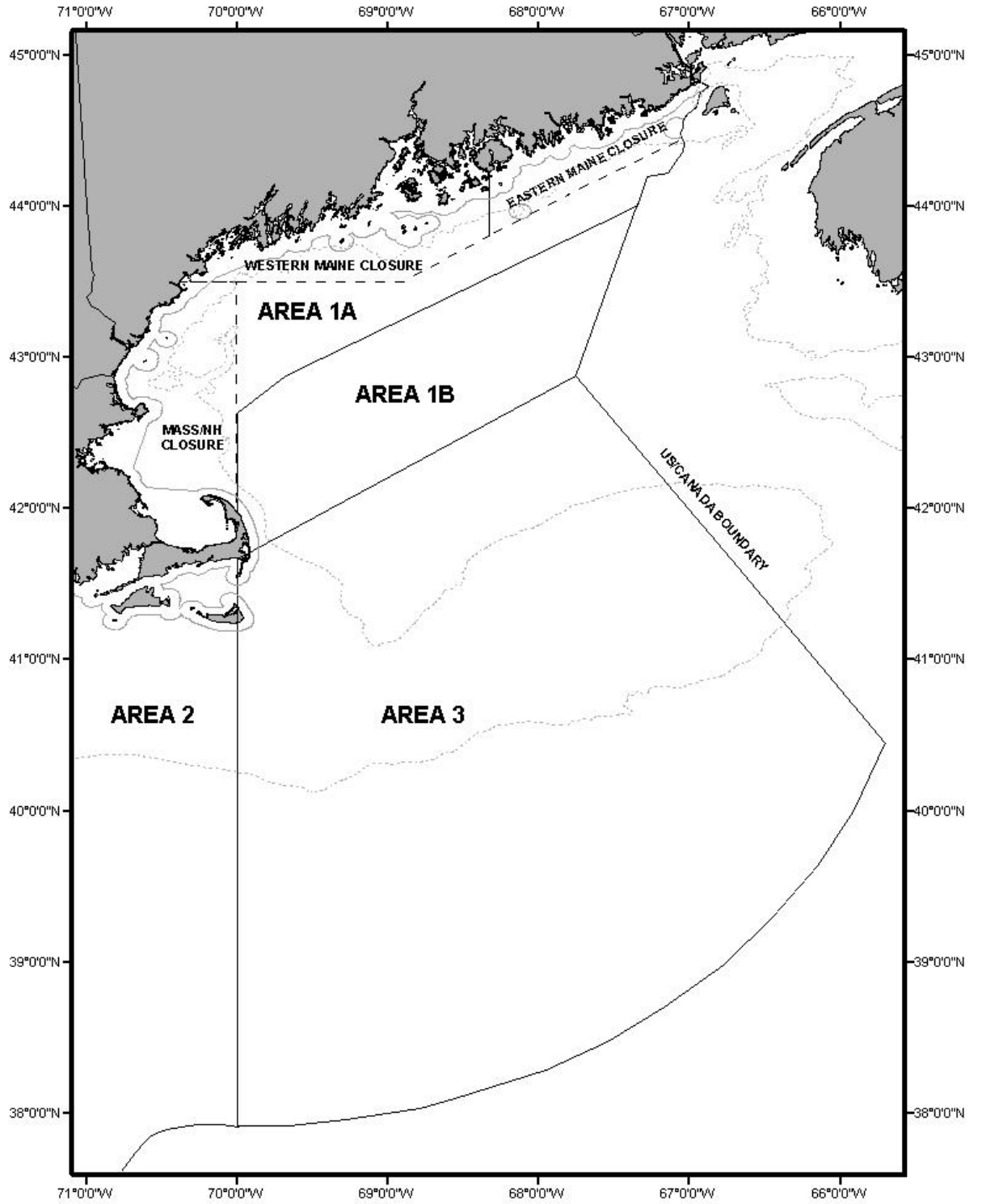
~~All carrier vessels landing herring caught in Management Area 1A in any Maine port are limited to receiving at-sea transfers from one harvester vessel per week with a weekly landing limit of 120,000 lbs (3 trucks). All carrier vessels landing herring caught in Management Area 1A in any Maine port are 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) 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:

This rule amends the existing seasonal spawning closures in accordance with the recently approved Addendum II of Amendment 3 to the Interstate Fishery Management Plan for Atlantic herring: the initial closure period is extended from 28 days to 42 days; the default closure date for both the Western Closure and the Massachusetts/New Hampshire Closure has been modified from October 4 to September 23; and, the re-closure protocol may be initiated with a lower percentage of spawning fish present in the population, from 25% to 20%.

This rule amends the start date for the mobile Atlantic herring fishery to commence on Sunday, July 14, 2019 and also sets harvest parameters for the Atlantic Herring fishery as determined at the Days Out meeting held April 3, 2019. The Days Out Commissioners designated zero landing days for Period 1 (June 2019). The Days Out Commissioners designated four consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Thursday for vessels issued an Atlantic Herring Limited Access Category A Permit for Period 2 (July – August 2019). These vessels are limited to landing 160,000 lbs (4 trucks) weekly). The Days Out Commissioners designated five consecutive landing days, beginning at 6:00 p.m. Sunday to 6:00 p.m. Friday for vessels issued an Atlantic Herring Limited Access Category C Permit. Limited access harvester vessels may transfer Atlantic herring at-sea to other limited access harvester vessels. All harvester vessels are prohibited from at-sea transfers of Atlantic herring to carrier vessels. All vessels landing herring caught in Management Area 1A in any Maine port are limited to one landing per 24-hour period (6:00 p.m. to 6:00 p.m.).

Summary of Comments:

Notice of this proposed rulemaking appeared on May 22, 2019 in the five major daily newspapers as published by the Secretary of State. On May 23, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. A public hearing was held on June 12, 2019 at 5:00pm in Augusta, Maine. Except for DMR staff, no other stakeholders attended the public hearing. The comment period closed June 24, 2019. DMR did not receive any comments regarding the proposed rule.

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; 2019 Harvest Rules

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): June 12, 2019 at 5:00 p.m., Deering Building, Room 101, 90 Blossom Lane, Augusta.

COMMENT DEADLINE: June 24, 2019

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

This proposed rule-making is intended to align State of Maine regulations with those set forth by the Atlantic States Marine Fisheries Commission. The harvest control rules were determined by the Commissioners at the Days Out meeting held April 3, 2019. Additionally, Addendum II to Amendment 3 of the Interstate Fisheries Management Plan for Atlantic herring amended the requirements surrounding the protection of spawning herring; this proposed rule reflects final action taken by the Atlantic Herring Board on April 30, 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 rule is intended to conserve and protect the Atlantic herring resource during a low spawning stock biomass period by expanding on the existing seasonal spawning closures. This rule also sets a shortened harvest season to allow for a higher level of landing over a shorter period of time to balance bait need with economic viability.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Final action of effort control rules discussed during the Days Out meeting on April 3, 2019 in addition to the final action resulting in a completed Addendum II to Amendment 3 of the ISFMP for Atlantic Herring on April 30, 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