

## NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 36 Atlantic Herring; 2024 Season 2 Opens

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

**CONCISE SUMMARY:**

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m. followed by zero landing days through to Monday, November 4. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Friday at 11:59 p.m., weekly. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

**EFFECTIVE DATE:** October 1, 2024

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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.

(9) "GSI" means the gonadosomatic index calculated by the following formula:

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

(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.

Exception: Fixed gears may transfer at sea to a vessel utilizing the herring as 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) Herring Harvester Permit

All herring harvesters must possess a Herring Harvester Permit on their Commercial Pelagic and Anadromous Fishing License issued by the Department of Marine Resources.

(3) Reporting of catch

All harvesters must report all landed or retained fish daily to the Department via an approved electronic reporting option by 11:59 PM the day of landing or retention. If no landings or retention occurred on a calendar day, a negative report is required.

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, terminating at the Lubec International Bridge.

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 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 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 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 Date Ranges: If sufficient samples are not available, spawning area closures will begin and end on area specific dates as follows: Eastern Maine (August 28 – October 8), Western Maine (September 23 – November 3), Massachusetts/New Hampshire (September 23 – November 3).

(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 Board 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 30 mt of the Area 1A sub-ACL is allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) west of Cutler. 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

For the period of January 1 through May 31, 0% of the sub-ACL is allocated annually. 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 this period, 100% of the sub-ACL is allocated annually and further sub-divided into two seasonal periods. Season 1 is June 1 through September 30 and is allocated 72.8% of the sub-ACL. Season 2 is October 1 through December 31 and is allocated 27.2% of the sub-ACL. 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 Season 1 of 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 Season 2 of Management Area 1A in any Maine port will be limited to 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).

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:

Zero landing days have been designated from 12:01 a.m. on October 1 through to 11:59 p.m. on October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m., followed by zero landing days through to Monday, November 4, 2024. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Fridays at 11:59 p.m., weekly.

(A) For all harvesters issued a state Commercial Pelagic and Anadromous license with a Herring Harvester Permit that do not possess a Federal Limited Access Herring Permit:

No vessel may land, take or possess more than 25,000 lbs per week. No permit holder may land, take or possess more than 25,000 lbs per week.

Exception: Harvesters using fixed gears (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.

(C) For all vessels issued a Federal Limited Access Atlantic Herring Permit Category C:

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:

Daily trip limit shall not exceed 6,600 lbs per day.

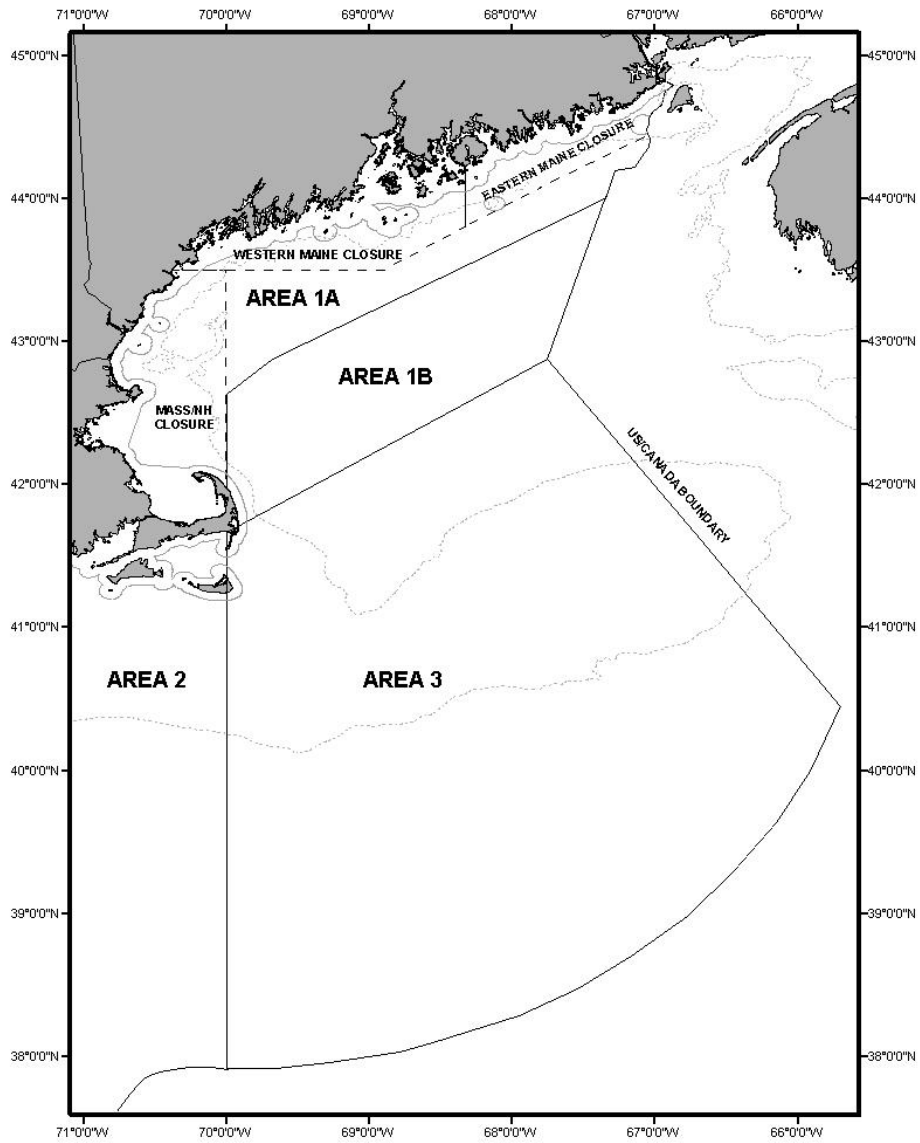
iii. Carrier Vessels:

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 and not to exceed 2000 lbs per trip.

An individual may fish or take by hook and line up to 100 Atlantic herring per day for personal use only.





## **Basis Statement**

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m. followed by zero landing days through to Monday, November 4. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Friday at 11:59 p.m., weekly.

The Eastern Maine spawning closure remains in effect until October 8, 2024. The Western Maine and Massachusetts/New Hampshire spawning closure remains in effect until November 3, 2024.

The fishery will only move to four landing days, starting on November 5, 2024 if there is remaining Season 2 quota available at that time. Quota availability will depend on how much is landed during the prior two designated landing days of October 10-11 and if the 1,000 mt reallocation of the management uncertainty buffer to the Area 1A sub-ACL occurs.

The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(C).

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 36 Atlantic Herring; 2024 Season 2 Open

STATUTORY AUTHORITY: 12 M.R.S. § 6171(3)(C)

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)]

The Days Out Commissioners have set zero landing days for October 1 through October 9, 2024 for Season 2 (Trimester 3; October 1 – December 31) of the Atlantic herring fishery. Two landing days have been designated beginning Thursday, October 10 at 12:01 a.m. through Friday, October 11 at 11:59 p.m. followed by zero landing days through to Monday, November 4. Four landing days have been designated starting Tuesday, November 5 at 12:01 a.m. through Friday at 11:59 p.m., weekly. The Commissioner has determined that it is necessary to take emergency action to comply with the changes to the interstate management of the Atlantic herring resource and to reduce the risk of an overage in the Area 1A sub-ACL that could deplete the supply of Atlantic herring.

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 rulemaking sets six landing days for Season 2 of the Atlantic herring fishery in Area 1A, allowing an early window of harvest opportunity when the Eastern Maine Spawning Area opens, and then another window of harvest when the southern spawning areas open. In light of the moderate increase in FY2024 quota, and in recognition that harvest potential occurs in all coastal areas of Area 1A, the addition of 2 landing days in October is an attempt to resume opportunity within the herring fishery, post fishery disaster.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Final action of effort control rules discussed during the Days Out meeting on September 19, 2024 have been incorporated into this regulation.

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*