

NOTICE OF AGENCY EMERGENCY RULE-MAKING

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 2 (June 1 – September 30), all vessels landing herring caught in Management Area 1A in any Maine port will be limited to fishing for herring on three consecutive days only (6 pm Saturday to 6 pm Tuesday) and landing herring for two consecutive days only: 6 pm on Sunday night to 6 pm Tuesday. 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). The rule also defines harvester vessel and carrier vessel, and imposes reporting requirements for both types of vessels. Seiners may transfer fish to another seiner (who is required to report the received catch as their own), but may only transfer fish to one carrier vessel per week. Vessels operating as harvester vessels may not operate as carrier vessels on the same trip. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B) to prevent the depletion of the supply of herring. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3).

EFFECTIVE DATE: July 9, 2016

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DEPARTMENT OF MARINE RESOURCES

Chapter 36 Herring Regulations

36.01 Herring Management Plan

D. Catch Restrictions

(3) Effort Restrictions

(a) 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 herring on three days, beginning at 6 pm on Saturday and ending at 6 pm on Tuesday. ~~and All vessels landing herring caught in Management Area 1A in any Maine port will be limited to landing herring for one day only: on two days, beginning at 6 pm on Sunday night to and ending at 6 pm Monday on Tuesday.~~

- i. For the purpose of this subsection, the following terms shall be defined as follows:
 - "Landing": to come to shore, float, or a dock, and offload herring.
 - "At-Sea Transfer": to transfer herring from a harvester vessel to a carrier vessel
 - "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 will not report that catch as its own on its Federal Vessel Trip Report.
 - "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 a hydraulically-driven block, roller gear, and/or skiff.

ii. Harvester vessels:

All harvester vessels landing herring caught in Management Area 1A in any Maine port are subject to a weekly landing limit of no more than 600,000 lbs (15 trucks). All harvester vessels landing herring caught in Management Area 1A in any Maine port are limited to making at-sea transfers to only one carrier vessel 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).

All harvester vessels shall send an email hail to DMR (herring.dmr@maine.gov) three hours prior to landing that includes the following information:

- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- 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

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 vessel per week. 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). ~~For the purpose of this subsection, "landing" shall be defined as follows: to come to shore, float, or a dock, and offload herring.~~ Carrier vessels may not operate as a harvester vessel on the same trip when operating as a carrier vessel.

All carrier vessels shall send an email hail to DMR (herring.dmr@maine.gov) three hours prior to landing that includes the following information:

- 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)

Basis Statement

During the 2015 herring season, concentrated fishing effort early in the season resulted in depletion of available herring quota before the end of the second trimester. To avoid the same outcome in 2016, the Department has been monitoring effort in the herring fishery and the catch, and has taken multiple emergency actions previously to slow the fishery. Due to increased fishing and carrying capacity in the herring fleet, the Department initially limited fishing and landing days to four days, then further restricted fishing and landing days to just one day. However, those actions have resulted in a very constrained bait supply to the lobster fishery. At this time, the Department intends to modify its emergency regulatory strategy but maintain the same objective of maintaining a steady bait supply throughout July and August and into September if possible. To achieve this objective, the Department is imposing weekly landing limits on the harvest of herring, as well as providing additional fishing and landing opportunities (three days of fishing, and two landing days) to increase the likelihood that the weekly landing limits will be met, providing a steady bait supply to the lobster fishery. These actions are intended to prevent an unusual concentration of fishermen from depleting the supply of herring. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B).

Summary of Comments

NA

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 36.01

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

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)] The Department has received reports from industry members and Department staff who are port sampling that there remains considerable fishing and carrying capacity in the herring fleet that exceeds previous years, but there is also a bait shortage. Additional capacity could cause the landings to far exceed the projections that were anticipated to ensure the distribution of the resource throughout Trimester 2. Through an emergency rule the Department had initially limited fishing and landing days to four days, then to one day which sufficiently prevented the depletion of the supply of herring but did not provide adequate herring for the lobster bait market. The emergency rule adopted on July 2nd limiting the fishing and landing days to one day is repealed. A modification to the regulatory strategy is necessary to ensure the herring supply is not depleted while also providing adequate bait supply. The rule puts into effect a weekly landing limit for harvester vessels, limits fishing to three days (6 pm Saturday to 6 pm Tuesday) and limits landing to once per day for two days (6 pm Sunday to 6 pm Tuesday). The rule also limits harvester vessels to transferring catch to one carrier vessel per week and imposes new reporting requirements on both harvester and carrier vessels. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(B) to prevent the depletion of the supply of 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 rule seeks to conserve the herring resource for utilization throughout Trimester 2.

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]

Reports from herring industry members, marine patrol, and science staff; federal landings information (Vessel Trip Reports)

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] No fiscal impact anticipated.

Note: If necessary, additional pages may be used.