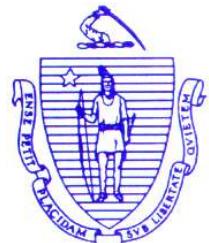




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Deputy Commissioner

MEMORANDUM

TO: Marine Fisheries Advisory Commission (MFAC)

FROM: Daniel J. McKiernan, Acting Director *Daniel J. McKiernan*

DATE: December 13, 2019

SUBJECT: Management of Sea Herring in Area 1A

Proposal

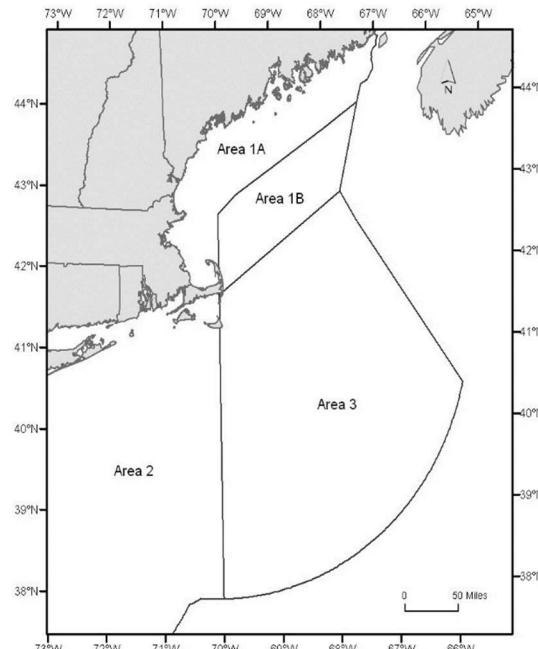
DMF is proposing amendments to its sea herring regulations at 322 CMR 9.00. These proposed changes are essentially housekeeping measures to: (1) streamline how the state manages the commercial fishery in the Inshore Gulf of Maine Area 1A (Figure 1); and (2) update the regulatory language to better conform state rules to the Atlantic States Marine Fishery Commission's Fishery Management Plan (FMP).

Effectively, the proposed regulations will set a 2,000 pound incidental catch and small scale fishery limit, which will apply to state-only permit holders and federal category permit holders during closed periods. The regulations will not address directed fishery landing days and landing limits. Instead, DMF will continue to set these limits via permit conditions, as it has done in recent years.

Background

Herring Management Area 1A includes federal waters, as well as the inshore waters under the jurisdiction of the states of Maine, New Hampshire and Massachusetts. Accordingly, the commercial fishery for Atlantic sea herring in Area 1A is jointly managed by the ASMFC and the New England Fishery Management Council (NEFMC). The NEFMC sets an annual catch limit (ACL) for the herring stock, which is divided into sub-ACLs for each management area, including Area 1A. The NEFMC also establishes the overarching FMP for Atlantic sea herring, which affects Area 1A as well as the other management areas. The ASMFC then manages the state component of the Atlantic sea herring fishery. This is done through the ASMFC's Atlantic Sea Herring Board ("Board") which develops interstate FMPs to complement and supplement the federal FMP. The Section - comprised of the delegations from Maine, New Hampshire, and Massachusetts - manages how the commercial fishery is conducted in Area 1A.

Fig. 1 – Sea Herring Management Areas



Specifically, the Section works to constrain landings in a manner that allows the Area 1A sub-ACL to remain available throughout the season, thereby ensuring there is a supply of bait for the lobster fishery. As the fishery is conducted in both state and federal waters, the Section's management tools are generally limited to controlling the landing of fish (i.e., open landing days and landing limits). The Section meets periodically throughout the open season (June 1 – December 31) to review landings and adjust landing days and landing limits.

Over the past two seasons, in response to low herring ACLs and resulting concerns about bait availability, the Section has been more active in managing the Area 1A fishery. As a result, the Section has made frequent in-season adjustments to landing rules with the expectation that states can readily implement them. To accommodate this, DMF has not been able to utilize the prescribed specification process set forth in its regulations. Instead, DMF has taken action to close the fishery in Area 1A and then rely on the use of permit conditions to allow certain vessels to participate.

The current management approach is necessary to implement Section actions. It requires fishermen to apply to participate in the fishery and DMF to enroll them in the program based on what (if any) category of federal permit is held. Then DMF staff has to coordinate and issue permit conditions based on federal permit category when management changes are made in-season by the section. With few viable management options available, DMF continue this process for setting landing days and landing limits during the directed fishery for federal category permit holders. However, to streamline some of the management process, DMF will establish a 2,000 pound incidental catch and small scale fishery limit. This limit will apply to state-only permit holders and federal category permit holders during closed periods. This will reduce some of the administrative burden associated with this management protocol.

Anticipated Adjustments to Interstate FMP

ASFMC's Herring Board initiated an addendum to address management measures in Area 1A at their annual meeting in October 2019. All three states in the Section expressed the need for additional flexibility in setting the in-season management measures in order to be more responsive to filling the low quotas and meeting the needs of the bait industry. The addendum will be developed in early 2020 with implementation at the start of the Area 1A season on June 1, 2020. Options under consideration include extending weekly landing limits through the entire fishing season, varying landing days, and adjusting trimester quotas. While these measures will not require additional regulatory changes, it underscores the need for the proposed streamlined process to adjust regulations and notify fishing participants.

Attachments

Proposed Strikethrough Regulations

9.01: Definitions

For purposes of 322 CMR 9.00 only, the following words shall have the following meanings:

Commercial fisherman means any person who may catch, possess and land Atlantic sea herring for the purpose of sale barter or exchange or keeps for personal or family use any Atlantic sea herring taken under the authority of a commercial fishing permit and regulated fishery permit endorsement for sea herring issued by the Director under the authority at 322 CMR 7.01.

Division means the Division of Marine Fisheries.

Fish for means to harvest, catch or take, or attempt to harvest, catch or take any sea herring by any method or means.

Gonad somatic index or GSI means the calculation of female herring gonad mass as a proportion of total body mass used to measure maturity, ~~for female herring the percentage~~ obtained by the formula: [Gonad weight/(total body weight - gonad weight)] x 100.

Land means to transfer the catch of any sea herring from any vessel onto any land or dock, pier, wharf, or other artificial structure.

Management Area means one of ~~the four~~ **three** Management Areas – **1A, 1B, 2 and 3** - as specified in the Atlantic States Marine Fisheries Commission Atlantic Herring Fishery Management Plan (FMP) and NOAA Fisheries federal fishery management plan.

Management Area Quotas means that portion of the quota that is allocated to a Management Area as specified by the Atlantic States Marine Fisheries Commission under the authority of the interstate and federal management plans.

Massachusetts/New Hampshire Spawning Area means all waters north of Cape Cod bounded by the Massachusetts, New Hampshire and Maine coasts and 43°30' north latitude and 70°00' west longitude.

Primary Buyer means any dealer authorized by the Director, pursuant to M.G.L. c. 130 § 80 and 322 CMR 7.07, to purchase Atlantic sea herring directly from commercial fishermen.

Quota means the allowable annual commercial harvest of Atlantic sea herring as specified by the Atlantic States Marine Fisheries Commission under the authority of the interstate and federal management plans.

Sample means a batch of ~~100~~ **80 or more** adult herring taken randomly from commercial catch or fish surveys.

Sea Herring means that species of Atlantic sea herring known as *Clupea harengus*.

Southern Gulf of Maine means that portion of Management Area 1A south of 43° 32' N parallel of latitude.

Spawn Herring means mature sea herring in ICNAF gonadal stages V and VI.

Trip means the period of time that begins when a fishing vessel departs from a dock, berth, beach, seawall, ramp or port to carry out commercial fishing operations and that terminates with the return to a dock, berth, seawall, ramp or port.

Vessel means any waterborn craft registered under the laws of the state as that term is defined in M.G.L. c. 130, § 1.

Vessel Fishing for Mackerel means any vessel whose catch on board at any given time is at least 75% mackerel (*Scomber scombrus*) by weight.

9.02: Management Area Boundaries

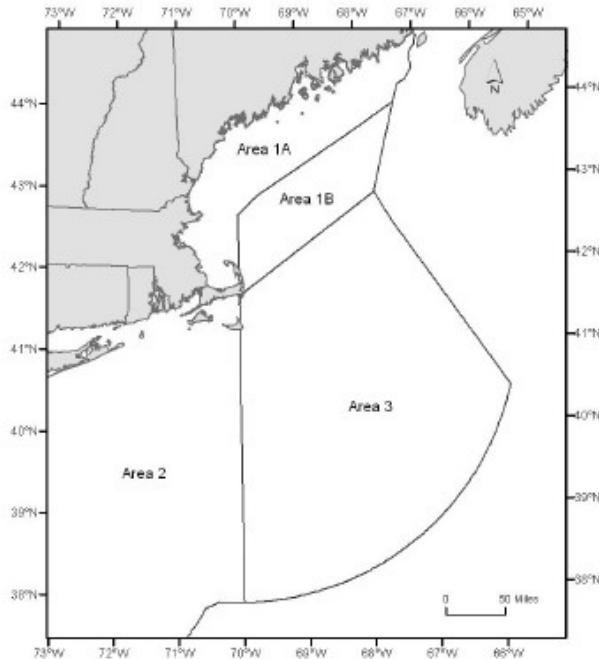
(1) Management Area 1: All U.S. waters of the Gulf of Maine (GOM) north of a line extending from the eastern shore of Monomoy Island at 41° 35' N latitude, 70° 00' W longitude, thence northeasterly to a point along the Hague Line at 42° 53' 14" N latitude, 67° 44' 35" W longitude, thence northerly along the Hague Line to the U.S. Canadian border, to include state and Federal waters adjacent to the States of Maine, New Hampshire, and Massachusetts. Management Area 1 is divided into Area 1A (inshore) and Area 1B (offshore). The line dividing these areas is described by the following coordinates:

N Latitude	W Longitude
41° 58'	70° 00' at Cape Cod shoreline
42° 38'	70° 00'
42° 53'	69° 40'
43° 12'	69° 00'
43° 40'	68° 00'
43° 58'	67° 22' (the U.S.-Canada Maritime Boundary)

(2) Management Area 2: All waters west and south of the Cape Cod shoreline at 70° 00' W longitude, 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.

(3) Management Area 3: 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.

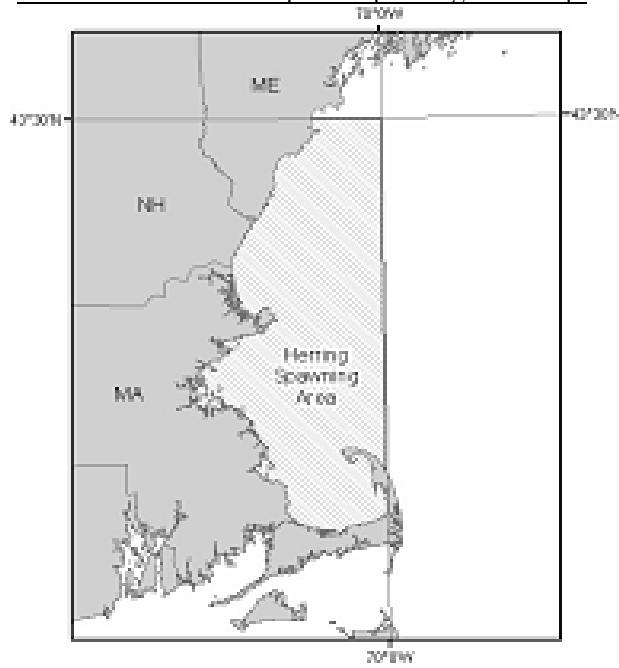
(4) Management Area Map:



9.03: Spawning Herring Protection

(1) Massachusetts/New Hampshire Spawning Area

a. Massachusetts/New Hampshire Spawning Area Map



b. Massachusetts/New Hampshire Spawning Area Closure. To protect spawning sea herring, the Director shall close the Massachusetts/New Hampshire Spawning Area to sea herring fishing, as provided in 322 CMR 9.03(1)(f), when it is determined that sea herring are in **spawning condition** **later stages of maturity just prior to spawning**. The closure date will be projected in accordance with the formula and process set forth in the Atlantic States Marine Fisheries Commission's Interstate Fishery Management Plan for Sea Herring.

- c. Closure Duration. Once the closure is enacted, it shall remain in effect for six weeks ~~28 days~~, unless extended pursuant to 322 CMR 9.03(1)(d).
- d. Closure Procedure. The closure date shall be announced ~~5 days~~ prior to the closure being enacted by:
 - i. Filing a Notification of Closure with the Secretary of State;
 - ii. Publishing the Notification of Closure through the Division's electronic listserv and on the Division's website; and
 - iii. Providing a Notification of Closure directly to all primary buyers by e-mail or facsimile.
- e. Closure Extension. Sampling of sea herring taken from the Massachusetts/New Hampshire Closure Area 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 Massachusetts/New Hampshire Spawning Area is comprised of ~~25%~~ ~~20%~~ or more spawn herring then the closure shall be extended for an additional 14-days. Any closure extension shall be announced in accordance with 322 CMR 9.03(d)(i-iii).
- f. Limits on Sea Herring During the Closure. During the 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 Massachusetts/New Hampshire Spawning Area.

9.04: Vessel Size Limit

It shall be unlawful for any vessel greater than 165 feet in overall length and 3,000 horsepower to land sea herring in the Commonwealth.

9.05 Fishing Limits for Management Area 1A

- (1) January 1 – May 31. During this period the commercial fishery for Atlantic sea herring in Management Area 1A is closed and it shall be unlawful for any commercial fisherman to retain, possess or land any Atlantic sea herring taken from Management Area 1A, except as authorized at 322 CMR 9.05(4).
- (2) June 1 – December 31. During this period it shall be unlawful for any commercial fisherman to retain, possess or land any Atlantic sea herring taken from Management Area 1A, except if the commercial fisherman holds a federal category Atlantic sea herring permit and has been issued a Statement of Permit conditions by the Director implement those landing limits approved by the Atlantic States Marine Fishery Commission's Sea Herring Section.
- (3) Quota Closure.
 - a. Management Area 1A Fishery. Once 92% of any seasonal quota allocation for Management Area 1A, established by the ASMFC Atlantic Sea Herring Board, is projected to be landed, the Division shall close the Atlantic sea herring fishery in Management Area 1A in accordance with 322 CMR 6.41(2).
 - b. Coastwide Atlantic Sea Herring Fishery. Once 95% of the annual Atlantic sea herring quota, as established by NOAA Fisheries, is projected to be landed, the Division shall close the Atlantic sea herring fishery in Management Area 1A in accordance with 322 CMR 6.41(2).
- (4) Incidental Catch and Small-Scale Fishery Allowance During Closed Periods. During any closed period established at 322 CMR 9.05 commercial fishermen may land up to 2,000 pounds of Atlantic sea herring during any trip or calendar day, whichever period of time is longer.

9.05: Fishing Restrictions & Annual Specifications

(1) Annual Specifications

- a. Declaration of Limits. For Management Areas 1A, 1B, 2 and 3, as defined at 322 CMR 9.02, the Director may declare and adjust Atlantic sea herring commercial possession and landing limits, seasons, and no-fishing days to correspond to the limits established by the Atlantic States Marine Fisheries Commission, in accordance with 322 CMR 9.05(1)(b).

b. Declaration Process. The Director shall make such declarations and adjustments described at 322 CMR 9.05(1)(a), as follows:

- i. obtain written approval by a majority of the members of the Massachusetts Marine Fisheries Advisory Commission;
- ii. file a Notice of Declaration with the Secretary of State;
- iii. publish a Notice of Declaration through the Division's electronic listserv and on the Division's website; and
- iv. provide a Notice of Declaration directly to all primary buyers by e-mail or facsimile.

(2) Commercial Fishery Limits.

- a. General Provisions. It is unlawful for a vessel to possess or land Atlantic sea herring taken from Management Areas 1A, 1B, 2, or 3, as defined at 322 CMR 9.02, once the Director has closed the commercial Atlantic sea herring fishery in Massachusetts, in accordance with quota closure procedure 322 CMR 6.42. The Director will close the fishery in response to a written determination by the Atlantic States Marine Fisheries Commission, after its review of Atlantic sea herring landings, that the Atlantic sea herring quota has been landed by the commercial fishery.
- b. Rules Specific to Management Areas. It shall be unlawful for any vessel to possess or land Atlantic sea herring taken from Management Area 1A, 1B, 2, or 3, as defined at 322 CMR 9.02, under the following circumstances:
 - i. Contrary to Management Area specific limits established by the Atlantic States Marine Fisheries Advisory Commission and implemented by the Director through a Declaration in accordance with 322 CMR 9.05(1); or
 - ii. Once the Director has closed the commercial Atlantic sea herring fishery in Massachusetts for that specific management area, in accordance with quota closure procedure 322 CMR 6.42. The Director will close the fishery in response to a written determination by the Atlantic States Marine Fisheries Commission, after its review of Atlantic sea herring landings, that the Atlantic sea herring management area quota for Management Areas 1A, 1B, 2 or 3 has been landed by the commercial fishery.

(3) Exceptions.

- (a) Any vessel may land or possess up to 2,000 lbs. of sea herring during prohibited times established by 322 CMR 9.05.