

Department of Marine Resources
NOTICE OF AGENCY RULE-MAKING PROPOSAL
RULE TITLE: Chapter 80 Commercial Pelagic and Anadromous Fishing License

Plus: Chapter 8.20 Harvester Reporting, repeal sections (G) Whiting, (H) Herring, (K) Bait gillnet, and (M) Spiny dogfish;
Chapter 8.20(P) Pelagic and Anadromous Fishing Harvest & (Q) IVR Herring Harvester;
Chapter 34.10(1)(B)(4)(c) Whiting/silver hake (*Merluccius bilinearis*) Commercial Effort Restrictions;
Chapter 36.01(B)(2) & (3) ~~Harvester Permit~~-IVR Herring Harvester Permit;
Chapter 50.03(A)&(B) Spiny Dogfish Endorsement for ~~Harvesters and Dealers~~, License for Harvesters, Reporting Requirements and Quota;
Chapter 55.04 Maine Gillnet Bait Fishing Regulations; Chapter 55.06(A)&(B) Fish Passage regulations;
Chapter 75.03(A)(1)(d) Protected Resources, Gillnet Gear Restrictions

CONCISE SUMMARY: As established recently by a new law, the proposed regulations would finalize the new Commercial Pelagic and Anadromous fishing license which removes a subset of species from the commercial fishing license, specifically: Atlantic herring, Atlantic menhaden, whiting, spiny dogfish, alewife, Atlantic mackerel, blueback herring, squid, butterfish, scup, black sea bass, smelt and shad. The new license includes a research surcharge to be used for the collection of data on these species to support the sustainable harvest and quota management plans necessary for compliance with respective ASMFC Interstate Fisheries Management Plans. The rules would also improve the reporting standards for consistency with the Atlantic Coastal Cooperative Statistics Program.

STATUTORY AUTHORITY: 12 M.R.S. [§6171](#) and [§6502-A](#)

PUBLIC HEARINGS: Sept. 27, 2010, 6pm, Scarborough Municipal Bldg, Chamber B, 258 Rt 1, Scarborough
Sept. 28, 2010, 6pm, DMR Large Conf. Rm., 194 McKown Pt Rd, West Boothbay Harbor
Sept. 29, 2010, 6pm, Ellsworth City Hall (Auditorium), One City Hall Plaza, Ellsworth

DEADLINE FOR COMMENTS: October 9, 2010

To ensure consideration, comments must include your name and the organization you represent, if any. Please be aware that any risk of non-delivery associated with submissions by fax or e-mail is on the sender.

AGENCY CONTACT PERSON: Heidi Bray (207-633-9504)

Mail Written Comments to: Department of Marine Resources, attn L. Churchill

ADDRESS: PO Box 8, West Boothbay Harbor, Maine 04575-0008

WEB SITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL: laurice.churchill@maine.gov **TEL:** (207) 633-9584 **FAX:**(207) 633-9579 **TTY:**(207) 633-9500 (Deaf/Hard of Hearing) Hearing facilities: If you require accommodations due to disability, please contact Amanda Beckwith, at (207) 287-7578.

Additional information:

The proposed rulemaking would identify those individuals who are actually fishing for the respective species so the Department may improve the data collection regarding real effort and catches. Obtaining these records is necessary to position the state to illustrate that our current practices in several controversial fisheries are defensible, and to ensure maximum opportunity for Maine fishermen. Without these records, we are in very real jeopardy of these fisheries facing shut-downs as a result of non-compliance with the ASMFC plans. For example:

- The May 2009 Atlantic States Marine Fisheries Commission (ASMFC), Amendment 2 to the Interstate Fisheries Management Plan for Shad and River Herring (alewives) require that the State's plan meet and clearly demonstrate the new definition of sustainability through the development of sustainability targets which must be achieved and maintained.
- The February 2009 Addendum I to Amendment 2 to the Interstate Fishery Management Plan for Atlantic Sea Herring requires fishermen to report through a weekly system in order to properly monitor and manage the quotas. If Maine cannot provide the necessary information, ASMFC will require a conservative approach to estimating the quota, which will close our herring fishery before it is necessary.
- Pursuant to the Resolve developed by the Marine Resources Committee last legislative session, a pilot project was implemented to limit the take and possession of Atlantic menhaden in three areas in Southern Maine. The data collection would be used to evaluate the success of this pilot program and provide compliance with the latest Addendum I to the Interstate Fishery Management Plan for Atlantic Menhaden.

Based on the number of total individual commercial fishing license holders in 2009 (1,669) it is estimated there would be 500-800 potential license applicants who fish the listed pelagic species and would be required to obtain the new license.

The new law instructs the Department to define crew members that includes fisheries that do not utilize boats. The limit of 5 names is proposed for practical reasons for enforcement of the licensed activities as Marine Patrol Officers

must be able to confirm who is authorized under an individual license during harvest activities. Any of the 5 names may be changed at any time during the license year following instructions from the Department.

Proposed rulemaking – see underlined or deleted text below:

Chapter 80 Commercial Pelagic and Anadromous Fishing License

80.01 Definitions

- A. “Direct Supervision” means to be present and on site when the licensed activity is taking place and within close contact whereby the license holder is able to observe and interact with a listed crew member verbally without the use of electronics.

80.02 Licensed activities - crew

- A. A Commercial Pelagic and Anadromous Fishing License with crew, issued pursuant to [12 M.R.S. §6502-A](#), authorizes unlicensed crew members to engage in all commercial pelagic and anadromous fishing activities pursuant to that license when aboard the licensee’s boat .
- B. A Commercial Pelagic and Anadromous Fishing License with crew also authorizes up to five (5) unlicensed crew members to be declared when acting under the direct supervision of the license holder when no vessel is utilized for the fishing activity, such as in the alewife fishery. The list of unlicensed crew members may be amended, per instructions from the Department, to change the names of unlicensed crew members, but may never to include more than five (5) crew members.

Chapter 8 Landings Program

8.20 Harvester Reporting

P. Pelagic and Anadromous Fishing Harvest

Any person that holds a Commercial Pelagic and Anadromous Fishing License issued under [12 M.R.S. §6502-A](#) must report trip level fishing activity on forms supplied by the Department. The following data elements must be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:

1. Harvester name (as it appears on the harvesting license) and landings number
2. Boat name and state vessel registration number or Coast Guard number (if a boat was used)
3. Designate negative report period if no harvesting activity occurred
4. Date fished & landed
5. Number of crew (including captain)
6. Gear type and quantity
7. Number of sets/tows
8. Set time (the average time your gear fished)
9. Average depth
10. Latitude and longitude
11. Sea time (including travel)
12. Pounds by species of all species caught (including discards)
13. Landings number of dealer sold to, or if not sold to a licensed dealer, disposition of catch and whether catch was carried
14. Port landed
15. Signature written or electronic

Q. IVR Herring Harvester

Any person that holds a Commercial Pelagic and Anadromous Fishing License issued under [12 M.R.S. §6502-A](#) and an IVR Herring Harvester Permit under that license must submit weekly catch reports via the National Marine Fisheries Service IVR call-in system. Catches from fixed gear must be included in these reports. Any person that holds more than one Commercial Pelagic and Anadromous Fishing License with the IVR Herring Harvester Permit must report for each license they hold. Reports are required even if the herring caught during the week have not been landed. The report shall include the following data elements:

1. Reporting week number
2. Negative reporting period if no harvesting activity occurred

3. Total pounds kept
4. Total pounds discarded
5. Federal fishery management area where the fish were caught

The IVR reporting week begins Sunday at 0001 hrs (12:01 am) and ends Saturday at 2400 hrs (midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight Tuesday for the previous week. The IVR call-in system does not exempt the license holder from their Commercial Pelagic and Anadromous Fishing license report (in section P above). Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

- G. Whiting — (previously in Chapter 34.10(1)(B)(4)(c)(iv)) Intentionally blank
~~Persons who obtain a whiting endorsement pursuant to Chapter 34.10(1)(B)(4)(c)(iv) must provide copies of their required federal trip reports to the Department by the 15th day of the following month. Future endorsements in accordance with Chapter 34.10(1)(B)(4)(c)(iv) will be dependent upon reporting compliance.~~
- H. Atlantic Herring (previously in Chapter 36.01(B)(3)) Intentionally blank
~~All Maine licensed herring harvesters must report daily fishing information for herring that are landed in Maine to the Department according to written instructions and forms provided by the Department. The information for fishing vessel and fixed gear trip reports must include:~~
- ~~1. Commercial license number;~~
 - ~~2. Vessel state registration number and vessel name;~~
 - ~~3. Date/time sailed;~~
 - ~~4. Date/time landed;~~
 - ~~5. Trip type;~~
 - ~~6. Number of crew;~~
 - ~~7. Number of anglers (if a party or charter boat);~~
 - ~~8. Gear fished;~~
 - ~~9. Quantity and size of gear;~~
 - ~~10. Mesh/ring size;~~
 - ~~11. Chart area fished;~~
 - ~~12. Average depth;~~
 - ~~13. Latitude/longitude (or Loran station and bearings);~~
 - ~~14. Total hauls per area fished;~~
 - ~~15. Average tow time duration;~~
 - ~~16. Pounds (or count, if a party or charter vessel), by species, of all species landed or discarded;~~
 - ~~17. Dealer permit number;~~
 - ~~18. Dealer name;~~
 - ~~19. Date sold, port and state landed;~~
 - ~~20. Vessel operator's name, signature, commercial license number and any other information or instructions deemed necessary.~~
- ~~The reporting document serial number must be passed on to the dealer.~~
- K. Bait Gillnet — (previously Chapter 55.04(C)) Intentionally blank
~~Persons who obtain a gillnet bait fishing endorsement will be required to maintain a log that contains the following:~~
- ~~1. Name or description of all species caught whether retained or released;~~
 - ~~2. Quantity of all species caught whether retained or released;~~
 - ~~3. Date and time; and~~
 - ~~4. Place (Latitude / Longitude in dd/mm/ss or appropriate LORAN bearings) of capture.~~
- M. Spiny Dogfish Intentionally blank
~~All Maine licensed dogfish harvesters must report daily fishing information for spiny dogfish that are landed in Maine, to the Department, according to written instructions on forms provided by the Department. Fishing vessel trip reports must include the following information:~~
- ~~1. Commercial license number and harvester name~~
 - ~~2. Vessel state registration number and vessel name~~
 - ~~3. Date/time sailed and landed~~
 - ~~4. Number of crew (including captain)~~
 - ~~5. Gear fished~~
 - ~~6. Quantity and size of gear~~
 - ~~7. Number of sets~~
 - ~~8. Hours at sea~~
 - ~~9. Fishing time~~

- 10. Latitude/longitude (or loran bearings)
- 11. Species
- 12. Pounds of all species landed or discarded
- 13. Disposition
- 14. Port and state landed
- 15. Dealer name and license number sold to
- 16. Signature of harvester
- 17. Any other information or instructions deemed necessary.

Chapter 34 - Groundfish Regulations

34.10(1)(B)(4)(c) Whiting/silver hake (*Merluccius bilinearis*) Commercial Effort Restrictions

- (i) Maine Territorial Waters Gear Prohibition and Season
 - (b) Season: It shall be unlawful for any person to take, harvest or fish for whiting in Maine's territorial waters by any method from December 1 through June 30, inclusive.
Exemption: A person participating in the northern shrimp fishery may retain whiting taken as bycatch less than or equal to the amount of shrimp on board, but not to exceed 3,500 pounds. These persons must:
 - (1) possess a commercial northern shrimp license issued in accordance with 12 M.R.S.A. ~~§6804~~ and report the poundage of all species landed or discarded, including whiting, as required by Chapter 8.20(I); and
 - (2) possess a ~~commercial fishing license issued in accordance with 12 M.R.S.A. §6501~~ Commercial Pelagic and Anadromous Fishing License in accordance with 12 M.R.S. §6502-A with a whiting endorsement pursuant to Chapter 34.10(1)(4)(c)(iv).
- (iv) Endorsement, Reporting, Observers and Sampling.
To obtain a whiting endorsement, GRFT federal exempted whiting fishery participants must contact the Department of Marine Resources (DMR) before using this gear. Contact the DMR at telephone (207) 633-9595 to schedule and receive a gear inspection. Upon satisfactory completion of the gear inspection the whiting endorsement will be affixed or applied to the license holder's Maine ~~commercial fishing license~~ Commercial Pelagic and Anadromous Fishing License by DMR personnel. The endorsement shall be subject to continued compliance with the gear apparatus and reporting requirements below.

Reporting requirements: See Chapter 8.20(G-P) Landings Program. ~~All future endorsements will be dependent upon reporting compliance.~~

When fishing whiting all commercial vessels must accept observers aboard their vessels upon request from the DMR or NOAA Fisheries, National Marine Fisheries Service (NMFS).

Chapter 36 Herring

36.01 Herring Management Plan

B. Permits and reporting

(2) ~~Harvester Permit.~~

~~All herring harvesters shall obtain a herring permit supplement to the commercial fishing license issued by the Department of Marine Resources. There will be no additional charge for this permit. This permit shall be issued to any commercial fishing holder who requests a permit.~~

(2) IVR Herring Harvester Permit

All harvesters 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

Harvesters: See Chapter 8.20(H)

Harvesters: See Chapter 8.20(P) and 8.20(Q)

Chapter 50 Spiny Dogfish and Coastal Sharks

- 50.03 Spiny Dogfish Endorsement for ~~Harvesters and Dealers~~, License for Harvesters, Reporting Requirements and Quota
- A. Harvester License and Dealer Endorsement
- (1) ~~Commercial fishing license holders must obtain a dogfish harvesting endorsement in order to participate in this fishery.~~ Commercial harvesters must obtain a Commercial Pelagic and Anadromous Fishing License in order to participate in this fishery.
- (2) Wholesale license-holders must obtain a dogfish buying endorsement before April 15th in order to participate in this fishery.
- B. Reporting: See Chapter 8. Future license or endorsements will be dependent upon reporting compliance.

Chapter 55 - Gear Restrictions

55.04 Maine Gillnet Bait Fishing Regulations

- A. ~~License and Endorsement Requirement. It shall be unlawful to gillnet bait fish without a Commerical Pelagic and Anadromous Fishing License gillnet bait fishing endorsement from the Department of Marine Resources (DMR).~~ ~~To obtain the endorsement commercial license holders must contact the DMR at (207) 633-9500 to obtain an appropriate logbook and to receive instruction in logbook maintenance and reporting in accordance with Chapter 55.04(C). Upon satisfactory completion of these requirements the annual endorsement will be affixed or applied to their license by DMR personnel. No additional charge will be applied to the commercial license or recreational fishers for the endorsement.~~
- B. Gear and Marking Requirements. It shall be unlawful to fish more than 2000 feet of bait gillnet in territorial waters. Bait gillnet shall have less than 3.5 inches diamond or square stretch mesh throughout the entire net. Bait gillnets must be clearly marked at each end with buoy sticks at least 4 feet in length. The license-holder's name, homeport and Commercial Pelagic and Anadromous Fishing License number ~~DMR endorsement number~~ must be clearly displayed on every marking buoy.
1. **Note: No change to this section**
- C. Reporting: See Chapter 8.20(~~K~~ P) Landings Program

55.06 Fish Passage regulations

- A. Any net or trap set in any tidal river, brook, stream or other watercourse must:
6. be clearly marked by a floating buoy or surface marker with the owner's ~~commercial fishing~~ Commercial Pelagic and Anadromous Fishing license number and telephone number.
- B. Exceptions:
1. The holder of a ~~bait gillnet permit~~ Commercial Pelagic and Anadromous Fishing License, fishing in accordance with the bait gillnet regulations in Chapter 55.04, may use a net exceeding 30 feet in length and a mesh size of less than 3.5 inches diamond or square stretch mesh in accordance with Chapters 55.04(B) and 34.10(1)(A)(2)(b), provided that all the other gear restrictions in Chapter 55.06(A) are met.

Chapter 75 – Protected Resources

75.03(A)(1) Gillnet Gear Restrictions

- (d) The license-holder's name, homeport, ~~DMR endorsement number for bait gillnet or commercial fishing license and Commercial Pelagic and Anadromous Fishing license~~ for gillnet fishing must be clearly displayed on every marking buoy.