

DEPARTMENT OF MARINE RESOURCES
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 declared crew member (maintained on a list in accordance with Chapter 80.02(B)) 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 holder of this license with crew must keep a written record of the names of all declared crew members on his/her person during each day's fishing activities, i.e. listed crew members. This written list must be available for inspection by Department personnel at all times. This list may be changed daily, but may never include more than five (5) crew members.

Chapter 8 Landings Program

8.20 Harvester Reporting

P. Pelagic and Anadromous Fishing Harvest

Any person who 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. §6504 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 Commercial 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 or 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.

Basis Statement

Chapter 80 Commercial Pelagic and Anadromous Fishing License

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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

As established recently by a new law, these regulations 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 also improve the reporting standards for consistency with the Atlantic Coastal Cooperative Statistics Program.

In response to comments regarding the requirement to list names of crew when no vessel is used and changing those names, Chapter 80.02(B) has been modified similarly to depuration harvest crews whereby the license holder with crew license would be required to have a written list of that day's crew members on their person and be available for inspection upon request. This eliminates the potential paperwork and or call in process for changing names and is not considered a substantive change as the list of names would still be available and would still be allowed to be changed.

Summary of Comments

Three public hearings were held September 27, 28 and 29, 2010 in Scarborough, West Boothbay Harbor and Ellsworth respectively. The summarized comments and Department's responses follow the individual summarized comments below.

An announcement was made at each hearing regarding a technical correction to the proposed changes in Chapter 55.06 whereby the requirement for a Commercial Fishing license should not be removed. In this section a license holder fishing any net or trap would be required to hold either a commercial fishing license or the new Pelagic/Anadromous license to meet the marking requirements as well as all the requirements in Chapter 55.06. This section particularly would pertain to sucker hoop nets.

Hearing attendees, Scarborough

Jake Kritzer, Environmental Defense Fund, NE Regional Office, Boston, fishery scientist, Alewife Harvesters Association of Maine, Board member

Arnold (Joe) Nickerson IV, Arundel

Thomas Casamassa, Saco

DMR: H. Bray, MPS Granata, L. Churchill

Hearing attendees, W. Boothbay Harbor

Jeffrey Pierce, Dresden, Alewife Harvesters Association of Maine <http://www.alewifeharvesters.org/>

Pete Mayo, Dresden, Alewife harvester

Jim Brinkler, Newcastle, Alewife harvester

Robert Bernat, Woolwich/Harpswell, purse seine, fish trap

DMR: H. Bray, Lt. Cornish, L. Churchill

Hearing attendees, Ellsworth

Richard J. Welch, Eastbrook, Alewife Harvesters Association of Maine

DMR: H. Bray, L. Churchill

Written Comments

Jim Coffin, Brunswick

Jim Brinkler, Alewife harvester, Damariscotta Mills

Summarized comments and responses:

Names of crew (no vessel) and changing those names:

Chapter 80.02(B) talks about being able to amend your crew member's names. What is the time frame for that? You don't need the names of the crew, why should this matter?

There are times when only one person is available for the entire harvesting operation. When this occurs we rely on local lobstermen (customers) to help with harvesting and loading trays.

Response:

The requirement for the names of crew members to be listed with the Department for licensing reasons, when no vessel is used, was proposed as being necessary for enforcement purposes. However, upon review as to this purpose the names of the crew has changed to be handled similarly to depuration harvest crews whereby the license holder with crew would be required to have a written list of that day's crew members on their person for inspection upon request. This eliminates the potential paperwork and or call in process for changing names.

Regarding the issue about extra help from fishermen when the fish are already taken this type of help is not a problem. (Also see Lt. Cornish's response to Robert Bernat's similar question in his comments.) Lobster fishermen, urchin fishermen, etc., do the same in every fishery, so this would be the same and is not an issue. At an alewife harvesting site if there's a net involved and they help to pull in the net then that is part of the "take" process and is not allowed. Dipping out of the net is also part of the take process. However, carrying the fish totes over the plank up to the truck, this would not be necessary to be considered part of the crew or a license holder.

License holder with crew and direct supervision issue:

Chapter 80.01(A) there should be some provision for the municipalities to be able to have a daily supervisor. Could the name of the supervisor be changed daily for the municipal direct harvest sites? [Chapter 80.02(A)] There are 41 towns and there are 18 municipalities with alewife rights. This would be for those towns with municipal alewife rights.

Suggestions: Direct Supervision means that a crew licensed holder is responsible for the crew when the licensed activity is taking place. Also another licensed resident operator without crew may act as direct supervisor in the absence of the crew licensed resident operator.

Direct Supervision means to be on site when the licensed activity is taking place.

Response:

For enforcement reasons the request to allow an exception for municipalities with alewife rights to not have to the license holder present is considered too difficult to enforce as well as inconsistent with similar license holders with crew that must be present.

It is noted that if you have a 3 person crew and each buys their own individual license, this costs less than the crew license and the problem of who is the direct supervisor is eliminated as any one of these license holders could be on site at any time. However, if you are a non licenses crew member then the license holder must be present. See changes to text in Chapter 80.01(A) and 80.02(B).

Reporting, Data element 1:

For harvesting operations with 2 or more individual resident licensed people on site only one harvesters name needs to be on the MDMR logbook. Also, same comment with the signature block, only one licensed harvester needs to sign logbook form. We don't want to chase people to get a signature.

Response:

The Landings Program does not know who works together at one site; and it could change throughout the season for a number of reasons. Therefore, whoever obtains this license must report to the DMR. In order to reduce the paperwork required from harvesters, the Landings Program will allow more than one name and signature on one form if multiple people harvested together the entire month. In this case, the names, landings numbers and signatures of all licensed fishermen who participated in the harvest needs to be on the same report form in order to be in compliance with the proposed regulation. Because licenses may be withheld from those who have not reported, it is imperative that the license holders are given credit for their catches submitted to DMR.

Reporting, Data element 3:

Land based harvesting operations are controlled by the harvesting plan which limits the harvesting days. Also the harvesting season is less than 8 weeks out of a year. Therefore there is no need for negative reporting for months when harvesting is not allowed.

Response:

There is no indicator on the license to let DMR know a license holder is only harvesting alewives. Because the license holder is legally able to harvest other species throughout the year, all license holders must report for all 12 months. In order to reduce the paperwork required from harvesters, a harvester can indicate on one form the months which they are not harvesting and submit it anytime throughout the year.

Individual summarized comments and questions:

Jake Kritzer

Here tonight as a board member of the Alewife Harvesters Association of Maine. I know some of the harvesters have passed along **concern about the direct supervision [definition]**. Given that a lot of those fisheries are monitored and operated around the clock, waiting for fish to show up before they start harvesting. Whoever it is that has the

municipal rights and then the people who work for them will take turns checking nets, checking harvest pens and when they've got fish they start working. It might be a bit much to ask one guy to be standing there 24 hours rather than taking turns with the rest of his crew. We're used to thinking about fishermen as being on boats and that is one of the few that isn't.

As a scientist could there be some kind of provision or exemption added that would allow researchers to be working with fishermen? I have gone out with fishermen either for research purposes, tagging fish, collecting samples, but also to just learn about their fishery and if I wasn't listed as one of the 5 it would mean I couldn't do that, working under this kind of license. Just to keep scientists and fishermen cooperating and working more closely together could there be an opportunity for this? [L. Churchill: Research scientists may apply for a special license in accordance with 12 M.R.S. §6074.]

[Does he have an alternative suggestion for the direct supervision rule?] Regarding the 5 person limit I know a few of the alewife harvesting operations but there is one I know well, visit often during the spring, and have helped those guys fishing. It is primarily 3 guys who fish it so the 5 person limit is not an issue. Myself and one or 2 other scientists have joined them to help move totes around or pull nets out of the water. It is more the direct communication. It is whoever the license holder is [needing to be present]. Whoever you have watching around the clock to know when it is time to start fishing, one might be sleeping, one might be off working elsewhere, and have one of his crew hanging out by the harvest site checking things out, and will get on the phone when he sees fish. Then everyone gets there pretty quickly and starts working. It is not the crew limit it is **the direct supervision requirement and prohibition on electronic communication**. I'm just pointing out this is an anomalous fishery in some ways as most fisheries everyone hops in a boat... This could be an undue burden on those municipal harvesters.

Jeffrey Pierce

I'm with the Alewife Harvesters Association of Maine. We have a couple comments on the definitions [**Chapter 80.01(A)**]. I realize these rules are written for boats primarily. There are directed fisheries in the municipalities, [that are] land based. Under the direct supervision rule some of the things that could be struck or added to make it friendlier for the municipalities [as] sometimes the supervisor changes from day to day or half days on and half days off. The direct supervision [could] be from the acting person in charge that day for directed fisheries. Or the municipalities can have different people, we change shifts, if we're there 24 hours a day one man can't do it. So there should be some **provisions for the municipalities to be able to have a daily supervisor**.

Chapter 80.02(A) talks about the anadromous license, and fishing activities aboard the licensee's vessel or directed harvest site might be something you want to add into the language as we feel that might help cover us as it is a conflict. **"Directed harvest" site is a municipality run site**. [They aren't all run by municipalities.] Directed harvest according to Terry Stockwell is a harvest site on a river bank, like a municipal run, like Dresden Mills. That's the site where you harvest. It's the same place every day for the season of the alewife or river herring run. A "directed harvest site" is a municipal run. There are 41 towns and there are 18 municipalities with alewife rights. [I'm talking about **this for those 18 towns with municipal alewife rights**.]

Chapter 80.02(B) talks about being able to **amend your crew member's names**. **What is the time frame for that?** You can change the list of your crew members. ...Is there a time frame; such as Pete, Jeff and Mike are working today but tomorrow it will be Pete, Mike and Sam. Somebody has to sleep! One of the things to clarify this would be we have to keep daily records. Maybe we could list the name of the people that day because we have to submit these records. This is for the direct harvest sites [for the 18 municipalities], not for the boat guys. If you don't need the names of the people on the boat then why is this in there? It's usually the same list of names but who is there will differ from day to day. Some of the bigger alewife runs might have 5 guys, rarely do they run longer than 24 hours. These guys might need sleep and they could change names out. But there wouldn't be more than 5 that is why this is a sticky paragraph.

Jim Brinkler

You don't need the names of the crew, why should this matter?

Jeffrey Pierce cont'd

...I'm not against the list of names for the crew, I think that is a smart thing to do because instead of us all buying individual licenses one guy buys the license and the others don't have to buy licenses. You buy one and whether the crew shares the cost... [Names are important] as we've had poachers bad. [Our local Marine Patrol Officer] needs to know who you are on this crew. There has to be a mechanism to change names and what is the time frame. **Maybe the name of the supervisor's name could be changed daily**.

[Lt. Cornish: if you changed names on weekends, you won't get anyone in the office but MPO's are working and likely will have a system where a phone call could get you by for the short time then follow up with something more official later on... Once you get outside the confines of a boat the crew presents a problem] [L. Churchill (LC): If you have a 3 person crew and each buys their own individual license, this costs less than the crew license and you don't have the problem of who is the direct supervisor.]

On a boat you know when you leave and can do this but sometimes in a municipal run we'll have guys who come to help us load and there might be only 2 of us there but if you have 2 guys waiting for bait they help load out or they help you empty the trap or whatever it is. Where do we draw the line with 5 crew because these guys just want to get their bait

and go get it iced down. Sometimes they help and if they don't have this license [what happens]? We've been treated very fairly by Marine Patrol. If they saw what was going on I don't believe they'd find it as an infraction but we want to make sure we're not falling through these cracks.

Robert Bernat

Questions on who is considered crew: This only pertains to the harvesting of the species not the handling of it? [LC: In the statute: it reads: fish for or take or possess, ship, transport or sell.] I fall into to lot of the same problems as Jeff was just explaining as once we get to shore side we never know who is going to be on a wharf helping us unload the product. They sometimes get aboard the board or they're up on the wharf with us handling the product. The product comes to the wharf and a lot of times I take one guy as crew and we'll get in to a wharf...the fish are taken but they are still aboard the boat and being handled. [Lt Cornish: They're already taken so that's not a problem. Lobster fishermen do the same, urchin fishermen, every fishery, so this would be the same and is not an issue.... At an alewife harvesting site if there's a net involved and they are helping to pull in the net then that is part of the "take" process. Dipping out of the net is part of the take process. As far as lugging the fish totes over the plank up to the truck, no.]

Now I run into a different situation. What about the fish trap itself, the weir? A lot of times we'll harvest the product and me and my crew will take it from the trap and place it into a dory. A lot of times a lobster fisherman will come along the dory one at a time and while we're busy tending the trap they will get in the dory with the live fish being bailed in and bail it into their boat. Does that make them part of my crew? [Lt. Cornish: Are they bailing the fish from the water or from the dory?] Sometimes they help... [Lt Cornish: It depends on if the fish are taken or not. If the fish are on the dory and they're sitting in the dory and take them from the dory and put the fish on their lobster boat in a barrel that's ok. But if they are harvesting, taking them out of your net, part of that process, no.] So that is where I need to draw the line. Ok.

Jeff Pierce cont'd

If each person held an individual license then we don't have a problem with folks helping with dead fish once they've been hauled from the trap; just toting fish on the wharf.

Jim Brinkler cont'd

Questions cont'd on who is considered crew: All the fisheries are different in the way we operate. We use mechanical dippers and they are electric; hoist goes up and down. Once in a while a lobster man will help us push the button raising it up trying to move the fish in. So in a way he's harvesting because he's trying to push the fish into the dippers to give us a hand. We probably couldn't do that anymore. [Lt Cornish: He's pushing a button?] Yes, we do two things. They are mechanical harvesters, metal trays, and we push the fish in the tray with the screens. That fills up a tray. Then we push a button that lifts the hoist up and that tray goes up and is dumped out. [Lt. Cornish: I think the way to look at this is anything that is part of the harvest process or fits into the definition of take is someone who needs to be licensed. Once those fish are taken out of the water being toted up over the dock or trucked up over the dock, I don't think we'd have a problem but if they are in the water pushing the fish into a place that is going to capture them then they need a license.]

Jeff Pierce cont'd

But they guy pushing the button, he's standing there and you say hey can you push that button? [Lt Cornish: If there is someone there who is not part of the process and you ask them to hit the button, they will likely hit the button and won't have a license. We're not likely to worry about that but if there is someone down there on a regular basis working with you then they need to be licensed.]

Jim Brinkler cont'd

Most of these guys who help us are lobstermen. It is the same crew every day. They want to get in and get out as quickly as possible.

Richard Welch

Questions:

Has the closed time that allow for fish passage changed in this rule? Answer: No (12 M.R.S. §6131(3) is not affected by the proposed rulemaking or by the new statutes in §6502-A)

Is the bycatch regulated by this proposed rule? Answer: No. The Atlantic States Marine Fisheries Commission Technical Committee for the River Herring Management Plan will be discussing this issue at their upcoming meetings in October and November.

Jim Coffin

Regarding the proposed rule-making, Chapter 80 License for Harvesters, surcharge etc., I am opposed to all this.

Answer: This rulemaking does not have the authority to repeal or amend the new license requirement or fees, which would require a legislative change.

Jim Brinkler

First comment deals with Chapter 80 section 80.01, definition of direct supervision.

The direct supervision definition needs to be more flexible. Direct supervision as proposed is too restrictive for a land based harvesting operation with a licensed resident operator with crew. The definition as proposed in chapter 80.01 is focused on ease of enforcement rather than the practical operation of the harvesting activity. The definition as stated means harvesting stops if licensed supervisor goes to the store, goes to the bath room, takes a sick day, walks to top of fish ladder for an inspection, or walks to the tray loading area (approx. 100' from harvesting location).

At the Damariscotta Mills fishery we have a harvesting area and a tray loading area. Both areas are operating at the same time with one person at each area. During the harvesting activity we rotate people between work areas. With the proposed direct supervision definition the licensed holder would only be able to work at the harvesting area. The problem is that the financial transactions take place at the tray loading area. It's important to have the flexibility to allow the licensed supervisor to move anywhere within the harvesting operation while fish harvesting is in progress.

Suggested definitions Options:

- 1) Direct Supervision means that a crew licensed holder is responsible for the crew when the licensed activity is taking place. Also another licensed resident operator without crew may act as direct supervisor in the absence of the crew licensed resident operator.
- 2) Direct Supervision means to be on site when the licensed activity is taking place.

Second comment: Since we are a small voluntary group of harvesters there are times when only one person is available for the entire harvesting operation. When this occurs we rely on local lobstermen (customers) to help with harvesting and loading trays. We need flexibility to allow lobstermen to help with harvesting (taking of fish).

Third comment: Reporting:

Data element 1: For harvesting operations with 2 or more individual resident licensed people on site only one harvester's name needs to be on the MDMR logbook. Also same comment with the signature block, only one licensed harvester needs to sign logbook form. We don't want to chase people to get a signature.

Data element 3: Land based harvesting operations are controlled by the harvesting plan which limits the harvesting days. Also harvesting season is less than 8 weeks out of a year. Therefore there is no need for negative reporting for months when harvesting is not allowed.

Fourth comment: Changing crew names

Because we don't always know who is available to assist us with harvesting we need to have a seamless way to change crew names daily during the harvesting period. Also since we typically start harvesting at 5 AM, the name changing process needs a great deal of flexibility.