



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

March 6, 2013

Debra Lane, Town Clerk
Town of Cape Elizabeth
320 Ocean House Road, PO Box 6260
Cape Elizabeth, ME 04107 - 0060

Dear Ms. Lane:

This letter is to remind you that the town river herring rights must be approved each year as a municipal ordinance by your town selectman, fish commission, or by town vote, and sent into the Department of Marine Resources (DMR) by April 20, 2013. The town must establish these rights in order to have either a municipal river herring harvest in 2013, a conservation closure, or rules different than the state general law. Towns that plan on conducting commercial harvests must also send in their municipal harvest plan for DMR approval by April 20, 2013.

If your town was not approved for commercial harvest in 2012, it will not be considered for commercial harvest in 2013 due to management actions by the Atlantic States Marine Fisheries Commission (ASMFC). In 2010, the DMR alerted towns that maintain municipal alewife and blueback herring harvest rights of pending management action by the ASMFC. There are continued concerns about the health of river herring (alewife and blueback herring) populations along the East Coast, including those in Maine. During 2011, the DMR held public hearings concerning the suite of management options presented by ASMFC. After review of these comments and those collected from other Atlantic Coast states, ASMFC decided to establish a moratorium on all river herring fisheries that are not currently sustainable. The DMR submitted sustainability plans to ASMFC for our existing active municipal fisheries and 19 have been approved. *We encourage the town to maintain harvest rights, submitted to the DMR annually, as a current conservation measure. Moreover, if a town wishes to re-establish a harvest in the future, the rights must be held by the town for at least three years prior to establishing a harvest.*

Included in this letter are an example river herring ordinance, a model harvest plan, and current state regulations and laws concerning river herring. The town's harvest plan may deviate from the included model harvest plan, but all points included in this model plan *must* be included in your town's plan.

If you have any questions, please contact me at (207) 624-6341.

Best Regards,

Claire L. Enterline
172 State House Station
Augusta, ME 04333

EXAMPLE RIVER HERRING TOWN ORDINANCE/ARTICLE

1. Example ordinance/article for maintaining river herring rights with a *conservation closure*:
Article X. Does the town of _____ enact the “Town of _____ River Herring Ordinance”? The River Herring Ordinance reads, in its entirety: “For the year of 2013, there shall be no taking of river herring in the town of _____.”
The Article X was voted on and approved on *DATE*.
2. Example ordinance/article for maintaining river herring rights with a *commercial fishery* in certain locations and a *conservation closure* in non-harvested waterways:
Article X. Does the town of _____ enact the “Town of _____ River Herring Ordinance”? The River Herring Ordinance reads, in its entirety: “For the year of 2013, there shall be a commercial fishery on the *NAME LAKE, STREAM, OR RIVER* following the approved harvest plan, and no taking of river herring in all other town waters.
The Article X was voted on and approved on *DATE*.
3. Example ordinance/article for maintaining river herring rights with a *commercial fishery* in certain locations and following the Maine *General Law* in non-harvested waterways:
Article X. Does the town of _____ enact the “Town of _____ River Herring Ordinance”? The River Herring Ordinance reads, in its entirety: “For the year of 2013, there shall be a commercial fishery on the *NAME LAKE, STREAM, OR RIVER* following the approved harvest plan.
The Article X was voted on and approved on *DATE*.

The approved **article/ordinance** and the town **harvest plan** must be sent to DMR no later than **April 20, 2013**.

Attn: Claire Enterline
Maine Dept. of Marine Resources
172 State House Station
Augusta, ME 04333

OR by fax: 207-287-9975

OR by email: Claire.Enterline@maine.gov

If you mail or fax these items, please call or email Claire Enterline (207) 624-6341 to alert that the items have been sent.

MODEL RIVER HERRING HARVEST PLAN

TOWN OF _____ RIVER HERRING HARVEST PLAN - 2013

Regulations for the taking of river herring shall be as follows:

- A minimum unobstructed opening of two feet (2') shall be maintained at all times between the riverbank and the downstream end of the weir.
- The maximum mesh size of wire, twine, or other material used in the weir shall not exceed one inch by one inch (1" x 1").
- There shall be a 72-hour weekly closed season on river herring from sunrise each Thursday morning until sunrise the following Sunday morning. During the closed season, a minimum size unobstructed opening of three feet by three feet (3' x 3') shall be maintained in the upstream and downstream end of the trap to allow escapement of spawning river herring and other migratory fish.
- Migratory fish such as salmon, shad, or other species except alewives and blueback herring that enter the trap shall be removed and allowed to pass upstream.
- Fishing operations shall cease and all fishing gear obstructing the passage of fish shall be removed from the fishing waters not later than June 5.
- The **weekly** landings in pounds or bushels and value of the catch shall be made available to the Maine Department of Marine Resources and/or National Marine Fisheries Service on request by these agencies.

ADDITIONAL REGULATIONS **FOR STREAMS WITH ATLANTIC SALMON RUNS**

- The entrance to the dipping pen or trap shall be covered by bars, slats, or spacers with a maximum width of two inches (2") between said bars, slats or spacers.
- Dipping of river herring shall be confined to the dipping pen or trap.

12 §6131. RIVER HERRING FISHING RIGHTS

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The commissioner is authorized to develop, manage or lease river herring fishing rights as follows. [2011, c. 598, §11 (AMD) .]

1. River herring rights. The commissioner shall grant the right, exclusive or otherwise, to take river herring to any municipality entitled to those rights on January 1, 1974 and may grant the right to take river herring to any other municipality provided:

A. Any municipality that has had the right to take river herring, exclusive or otherwise, or is granted that right by the commissioner, shall take action through its legislative body and file a copy of this action with the commissioner prior to April 20th or lose that right for the remaining part of that year; [2011, c. 598, §11 (AMD) .]

B. Municipal rights that are not exercised for 3 consecutive years lapse; [2009, c. 17, §1 (AMD) .]

C. At its annual meeting the municipality may determine by vote:

(1) Whether river herring fishing will be operated by the municipality through the municipal officers or a committee; and

(2) Whether the municipal rights to take river herring will be sold by the municipal officers or committee; and [2011, c. 598, §11 (AMD) .]

D. Harvesting plans must be developed as follows.

(1) Any municipality engaged in harvesting river herring shall submit a written harvesting plan to the commissioner prior to April 20th of each calendar year. All harvesting plans must set forth in detail the exact conditions under which river herring may be taken, all in accordance with good conservation practices.

(2) The commissioner, after consultation with the appropriate municipal officers, shall approve or modify the harvesting plan as the commissioner determines necessary for the conservation of river herring and other anadromous fish, and shall file a copy of the approved plan with the clerk of the municipality. [2011, c. 598, §11 (AMD) .]

[2011, c. 598, §11 (AMD) .]

2. Limitations. The following limitations apply to any grant.

A. It is unlawful to take river herring from 6 a.m. each Thursday morning until 6 a.m. Sunday morning. Municipalities that make other provisions for escape of spawning river herring that are approved by the commissioner are exempt from this limit. [2011, c. 598, §11 (AMD) .]

B. It is unlawful for any municipality or purchaser or lessee of the municipal right to take river herring in any manner except as provided in the approved river herring harvesting plan. [2011, c. 598, §11 (AMD) .]

[2011, c. 598, §11 (AMD) .]

3. Closed period in rivers and streams not under lease agreement. In any river or stream not managed under a lease agreement, there is a 72-hour closed period on the taking of river herring and obstruction of the watercourse to allow the free passage of fish from 6 a.m. on Thursday to 6 a.m. the following Sunday.

[2011, c. 598, §11 (AMD) .]

4. **Violation of harvesting plan.** If the commissioner determines after investigation that the municipality is not following its river herring harvesting plan, the commissioner shall notify the municipality. Any municipality that fails to take corrective action within 48 hours of notification loses its river herring fishing privilege for that calendar year. Upon further notification by the commissioner of loss of river herring fishing privileges, the municipality or its agents shall cease all fishing activity and immediately remove all traps, weirs, seines or other river herring fishing gear from their river herring waters.

[2011, c. 598, §11 (AMD) .]

5. **Leasing of rights.** The commissioner:

A. When the commissioner decides to manage or lease any river herring fishing rights when a municipality has had those rights and has failed to act as provided in subsection 1, shall so notify the clerk of the municipality in writing. After the notice, the commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the river herring may be taken, all in accordance with good conservation practices; and [2011, c. 598, §11 (AMD) .]

B. May manage or lease river herring fishing rights in any river or stream where a municipality does not have those rights. The commissioner may lease any of those rights to any person, as the commissioner determines is in the best interest of the State. All leases must be in writing and approved and signed by the commissioner and the lessee and must set forth in detail the exact conditions under which the river herring may be taken, all in accordance with good conservation practices. [2011, c. 598, §11 (AMD) .]

[2011, c. 598, §11 (AMD) .]

6. **Violation of terms.** It is unlawful for any person holding such a lease to violate any of its terms or to cause the same to be done.

[2011, c. 598, §11 (AMD) .]

7. **Molesting equipment.** It is unlawful to molest the fishing equipment of any lease holder or to interfere with the fishing rights granted by the lease.

[2011, c. 598, §11 (AMD) .]

8. **Migratory Fish Fund.** All fees received by the commissioner from river herring leasing rights are allocated to the Migratory Fish Fund, as established. Expenditures from the Migratory Fish Fund must be made:

A. To build fishways for river herring and other migratory fish; [2011, c. 598, §11 (AMD) .]

B. For construction of other facilities for improving the environment of river herring and other migratory fish; [2011, c. 598, §11 (AMD) .]

C. For general propagation and conservation of river herring and other migratory fish; [2011, c. 598, §11 (AMD) .]

D. For research to enhance the fishing industry based on river herring and other migratory fish; and [2011, c. 598, §11 (AMD) .]

E. For management measures required to maintain or enhance river herring populations or populations of other migratory fish. [2011, c. 598, §11 (AMD) .]

The Migratory Fish Fund does not lapse.

[2011, c. 598, §11 (AMD) .]

SECTION HISTORY

1977, c. 661, §5 (NEW). 1977, c. 661, §5 (NEW). 1981, c. 433, §3 (AMD).
1987, c. 513, §2 (AMD). 1993, c. 731, §1 (AMD). 2009, c. 17, §§1-4
(AMD). 2011, c. 598, §11 (AMD).

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