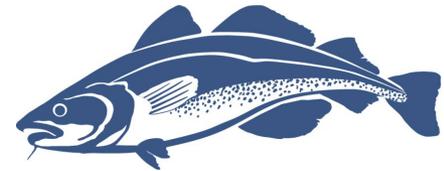




River Herring Management

Marine Fisheries
Commonwealth of Massachusetts



- Towns managed river herring runs until the 20th century
- Massachusetts General Laws in the 1930s and 1940s established DMF as the regulatory authority to manage coastal diadromous fish runs
- MGL Chapter 130, Section 94, allows Local Control of Herring Runs

River Herring Fish Management History in MA

- **1623** – Plymouth Colony Fish Law; 1st US fisheries law was for river herring
- **1709/1727** – Colonial laws prohibit obstructions to fish passage
- **1741** – Colonial law repeals previous laws but requires passageways
- **1745** – Colonial law overturns 1741 law: no passage requirements with framework for private water and land rights

- **1750s through 19th century:** Dam construction for hydropower increase with little consideration for fish passage. Fish passage was managed by on a Town-by-Town basis with common privatization. Herring gains value as groundfish bait and is overfished in coastal weirs and at some private runs

- **20th Century** – Increased State involvement as public rights diminish
- **1934** – DMF Fishway Crew established
- **1941** – MGL Chapter 130 sets DMF management with directive to work with Towns

- **1985** – ASMFC 1st coast-wide management plan for river herring
- **1989** – DMF prohibits direct harvest in state waters except dipnet
- **2006** – DMF prohibits harvest and possession of river herring
- **2012** – ASMFC bans coastwide river herring harvest without Sustainable Harvest Plan

Massachusetts Fish Passage Statutes

MGL 130, Section 19: broad authority of DMF Director to make written determinations on fish passage, remove passage impediments, require fishways and O&M plans

MGL 130, Section 93: opening of waterways to create fish runs and lease harvest

MGL 130, Section 94: “Local Control” -- Towns can petition the DMF Director to regulate harvest of a public river herring run

MGL 130, Section 95: sets fines (\$5 – 50) for taking sea-run fish; “takes, kills, ...obstructs passage... in a fishery”

Massachusetts Fish Passage Regulations

322 CMR Sections 7.01 4(d) and 14(m): DMF Fishway Permit needed for any fish passageway. Includes check-off on engineering plans and O&M

322 CMR Sections 6.17 3 (a): State-wide harvest and possession ban on river herring imposed to rebuild populations

322 CMR Sections 6.17 3 (b): Exception process for runs with ASMFC approved Sustainable Fishery Harvest Plans

MGL Chapter 130, Section 94

Local Control – Town government can petition the Director of DMF to regulate a public river herring run.

- Section 94 language is focused on harvest in the fishery
- Silent on managing the run or fish passage
- In recent practices, relationships with dam owners and DMF MOU and O&M language has been used to connect local management to passage operations and maintenance

MGL Chapter 130, Section 94

Process – Town petitions DMF for local control. Formal review of proposed regulations and public hearing. Any changes in harvest regulations must be submitted to and approved by DMF.

--River herring remains a Commonwealth resource. Towns cannot limit harvest to town residents only.

Recent – The state-wide ban for spawning run harvest in 2006 has essentially paused local control. Towns can request a Sustainable Fishery Harvest Plan from DMF. These approved plans would allow local control to resume.

- Last Local Control petition was granted to Marshfield in 2004

- Three SFMPs have been approved: Nemasket River, Herring River, Harwich, and Herring Brook, Pembroke

MGL Chapter 130, Section 94

Conflicts

Plymouth – Changed regulations to allow commercial lobstermen to take 6 bushels/day, twice a week. Rescinded by DMF in 1990 to revert back to small allowance of recreational harvest

Nemasket River – Two rounds of legal review related to Special Law Chapter 135 and MGL Chapter 130. Questions remain.

Taunton – Received Local Control in 1943. Rescinded by DMF in 1998 for lack of response on regulations and harvest

Brewster/Harwich – Legal review after Towns imposed resident only harvest regulations around 2000. Overturned by DMF.

Fish Passage Responsibilities

- Fishway maintenance
- Stream maintenance
- Fishway O&M plans
- Fishway MOUs



How can we better connect these features into Local Control?



Resource Management Dilemma

- Local Control is legally all about harvest. In an era of no-harvest, there has been a reduction in Town stewardship at some locations, along with a loss of institutional knowledge on how to manage a run.

Options:

1.) Change Chapter 130 Section 94 to include more responsibilities than harvest.

Don't give up on Local Control.....

2.) Bolster local management process through Herring Wardens and Herring Commissions.

This is what worked in years past....

3.) Recognize that passage responsibilities rest with property owners. DMF augments regulatory role through MOUs, O&Ms and enforcement

Part of the story.....still need local support