

# NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 41.30 (3) Menhaden Episodic Event Fishery Opens

**CONCISE SUMMARY:** As provided by Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden, Maine is implementing the requirements necessary to provide for an episodic event fishery for Atlantic menhaden. Maine DMR is aware that the allocated state quota for menhaden has been met, and there is biomass still available such that an episodic event fishery is necessary. Requirements for executing an episodic event fishery include: daily trip level reporting for all harvesters, menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel. Weekly landings are limited to no more than 160,000 pounds/vessel. Landings are allowed only from 00:01 a.m. on Monday and 11:59 p.m. Thursday each week. These effort controls are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A) and (C). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

**EFFECTIVE DATE:** June 8, 2017

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Repeal Chapter 41 and replace with:

## DEPARTMENT OF MARINE RESOURCES

### CHAPTER 41

#### 41.05 Territorial Waters Trawl Prohibition

It shall be unlawful to fish for or take Atlantic menhaden by vessels rigged with a midwater, otter or beam trawl net in Maine territorial waters.

#### 41.30 Menhaden Program

##### 1. Definitions

A. "Hogshead": one hogshead equals 17.5 lb bushels.

B. "Bushel": one bushel equals 70 lbs of menhaden.

C. "Truck": one truck equals 40,000 lbs.

##### 2. State Allocation Fishery

It is unlawful to fish for, take, or possess Atlantic menhaden except in accordance with an episodic event fishery established by the Department in accordance with Chapter 41.30 below.

##### 3. Episodic Event Fishery

An episodic event fishery may be opened following the full utilization of the state allocation of menhaden.

###### A. Notice

Commercial Pelagic and Anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any openings or closing dates for an episodic event fishery.

###### B. Reporting

Any harvester landing menhaden during an episodic event fishery must declare into the fishery by notifying the Department of their intent to harvest menhaden during the episodic event fishery prior to landing any menhaden. All harvesters must report landings daily to the Department by leaving a message at (207) 633-9494 with the following information no later than noon the day after landing:

- License Holder Name
- Vessel Name
- Vessel Documentation or State Registration Number
- DMR Landings Number
- Location of Harvest
- Pounds Landed
- Phone Number where License Holder can be reached

- VTR numbers (if applicable)

This reporting requirement is in addition to the reporting requirements of Chapter 8.20 for anadromous and pelagic license holders.

#### C. Landing of menhaden

Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, all menhaden harvested from Maine territorial waters must be landed in the State of Maine between 00:01 a.m. on Monday and 11:59 p.m. Thursday each week.

##### (1) Effort Restrictions

(a) Weekly landing limit shall not exceed 160,000 lbs (4 trucks) per vessel

(b) Daily landing limit shall not exceed 120,000 lbs (3 trucks) per vessel.

##### (2) Exceptions

(a) An individual may fish or take by hook and line up to 25 menhaden per day for personal use only, daily.

(b) Any license holder landing Atlantic menhaden taken from Maine territorial waters with fixed gear are subject to a daily landing limit of 6,000 lbs and may harvest seven days a week.

#### 4. Areas

##### A. Bald Head Cliff to Cape Arundel

Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.

##### B. Biddeford Pool to Cape Elizabeth

Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.

##### C. All Maine territorial waters outside the areas defined in Chapter 41.30(A) & (B)

Shoreward of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical charts, except for those areas defined in Chapter 41.30(A) & (B).

#### 5. Area Limitations

The areas in Chapter 41.30(4)(A, B & C) are restricted to the take, possession transport, and landing of the Atlantic menhaden in accordance with the following regulations:

##### A. Harvester Vessel Limitations in all Areas (A, B & C)

It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take, or possess menhaden within these restricted areas. It shall be unlawful for any harvester vessel to fish for, take, possess or transfer greater than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM).

B. Carrier Vessel Limitations in all Areas (A, B & C)

It shall be unlawful for any carrier vessel to receive or land more than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.

(1) A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity.

(2) It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport menhaden harvested from Areas A, B & C.

6. Suspension of rules

The Commissioner has the authority to suspend all regulations in Chapter 41.30 in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email to industry members or telephone.

## **Basis Statement**

Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden was approved in December 2012. Amendment 2 enables the Atlantic Menhaden Management Board to set aside 1% of the overall total allowable catch (TAC) for episodic events. Episodic events are times and areas where Atlantic menhaden are available in more abundance than they normally occur. The set aside is designed to enable increased harvest of Atlantic menhaden during episodic events. As part of the episodic events set aside provision, the Board developed the mechanism for state(s) to use the set aside. The Technical Addendum detailing the episodic events set aside program was subsequently approved by the Board at its May 22, 2013 meeting. To participate in the episodic events program, a state must implement daily trip level harvest reporting. Each state must track landings and submit weekly reports to ASMFC staff. Episodic event harvests and landings must be restricted to state waters of the state that declares participation in an episodic event. States must implement a maximum daily trip limit no greater than 120,000 pounds/vessel.

Maine DMR is aware that the allocated state quota for menhaden has been met, and there is biomass still available such that an episodic event fishery is necessary. Requirements for executing an episodic event fishery include: daily trip level reporting for all harvesters, menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel. These effort controls are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A) and (C).

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 41

STATUTORY AUTHORITY: **12 M.R.S. §6171 (3)(C)**

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)] The Department has received reports from industry members and Department staff that the state allocation for Atlantic menhaden has been met, and potentially exceeded. However, there remains significant fishable biomass in Maine territorial waters that warrants the implementation of an episodic event fishery. Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden specifies the regulatory provisions that must be implemented in order to allow such an episodic event fishery to occur. Access to the additional menhaden biomass will provide an important source of bait for Maine's lobster fishery and minimize the risk for fish kills. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(C) to allow for the occurrence of an episodic event fishery.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? \_\_\_ YES \_\_\_  NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]: This rule seeks to permit the occurrence of an episodic event fishery for Atlantic menhaden as allowed by Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

Reports from Marine Patrol pilot flight observations, industry members, and both science and landings program staff; Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)] No fiscal impact anticipated.

**FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:**

*ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:*

[*see* §8057-A(2)(A)]

*INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED:* [*see* §8057-A(2)(B)]

*BENEFITS OF THE RULE:* [*see* §8057-A(2)(C)]

*Note: If necessary, additional pages may be used.*