

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden; 2019 Menhaden Fishery Program

PROPOSED RULE NUMBER *(leave blank; to be assigned by Secretary of State)*:

BRIEF SUMMARY:

This proposed rule-making clarifies the reporting requirements for all Atlantic menhaden fishery operations. This rule re-instates a personal use regulation for hook and line harvest. Fixed gear operations may operate under exemptions that allow for seven day harvesting practices.

Date, time and location of PUBLIC HEARING *(if any)*:

January 29, 2019 at 4:30 p.m., DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta. Snow date scheduled for January 30, 2019 at 4:30 p.m.

COMMENT DEADLINE: February 13, 2019

CONTACT PERSON FOR THIS FILING *(include name, mailing address, telephone, fax, TTY, e-mail)*:

NAME: Amanda Ellis

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Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: §6171, 6722

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* Check one of the following two boxes.

The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____

(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.05 Territorial Waters Trawl Prohibition

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

41.10 Recreational Fishery

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

41.20 Permits and Reporting

Reporting of catch

All harvesters must report landings daily to the Department via email to menhaden.dmr@maine.gov with the following information no later than noon the day after landing that includes the following information. This is in addition to monthly harvester reports required by Chapter 8.

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of herring on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch to be received, by weight, to each dealer (by dealer name and landings number)
- VTR number

Exception: Daily reporting via email to menhaden.dmr@maine.gov is not required for the Incidental Catch and Small Scale Fishery as described in 41.30 (4). Monthly logbook reporting remains a requirement.

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

Dealers: See Chapter 8.10 Landings Program

41.30 Menhaden Fishery Management Program

1. Definitions

- A. "Hogshead": one hogshead equals 17.5 lb bushels.
- B. "Bushel": one bushel equals 70 lbs of menhaden.

- C. "Barrel": one barrel equals 55 liquid gallons; or, 5 bushel of menhaden.
- D. "Truck": one truck equals 40,000 lbs of menhaden.
- E. "Landing": to come to shore, float or a dock and offload menhaden; or to transfer menhaden at sea to a vessel utilizing the menhaden for bait.
- F. "Dory": a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the catcher vessel. A dory may be used by a catcher vessel to transport menhaden the catcher vessel has taken.
- G. "Catcher vessel": the vessel that deploys the net to catch menhaden.

2. State Allocation Fishery

A. Notice

The state allocation fishery is open until such time as the Department has landings information that the quota assigned to Maine by the Atlantic States Marine Fisheries Commission has been reached or could be exceeded. At that time, the Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the state allocation fishery. It is unlawful to fish for menhaden after the closing date of the state allocation fishery, unless the Department has opened the episodic event fishery, or the incidental catch and small scale fishery.

The Commissioner may extend or reopen the State Allocation Fishery at any time with notice to Commercial Pelagic and Anadromous license holders, should a quota increase or quota transfer of menhaden be received via allocation adjustments of the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Menhaden.

B. Effort restrictions

During the state allocation fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of the state allocation fishery, and prior to the closure of the state allocation fishery, it is unlawful to fish for or land menhaden except between 12:01 AM on Monday and 11:59 PM Thursday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess more than 160,000 lbs per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 am). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

Exception: Fishing weirs, stop seines, and pound nets are not subject to the above regulations.

C. Reporting

All Commercial Pelagic and Anadromous license holders who intend to fish for menhaden during the state allocation fishery must notify the Department of their intent to harvest through email prior to landing any menhaden. License holders who have made notice to the Department must report landings daily to the Department via email to menhaden.dmr@maine.gov with the following information no later than noon the day after landing, in addition to monthly harvester reports required by Chapter 8. If the harvester did not fish, the harvester must report that they did not fish.

- ~~Name of harvester~~
- ~~Name/Vessel ID~~
- ~~Permit ID~~
- ~~Landings number of license holder~~

- ~~Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)~~
- ~~Name/Permit ID of Carrier, if transfer at-sea occurs~~
- ~~Total amount of menhaden on board~~
- ~~Date, time and location (dealer, city, state) of offload~~
- ~~Estimated catch transferred, by weight, to each dealer (by dealer name and landings number)~~
- ~~VTR number~~

3. Episodic Event Fishery

Following authorization by the Atlantic States Marine Fisheries Commission, the Department may open an episodic event fishery following the closing of the state allocation fishery.

A. Notice

The Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the episodic event fishery. When the Department receives notice from the Atlantic States Marine Fisheries Commission that the quota for the episodic event fishery has been reached or may be exceeded, the Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the episodic event fishery.

B. Effort restrictions

During the episodic event fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, it is unlawful to fish for or land menhaden except between 12:01 AM on Monday and 11:59 PM Thursday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess more than 160,000 lbs per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 am). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

Exception: Fishing weirs, stop seines, and pound nets are not subject to the above regulations.

C. Reporting

All Commercial Pelagic and Anadromous license holders who intend to fish for menhaden during the episodic event fishery must notify the Department of their intent to harvest through email prior to landing any menhaden, if they have not yet done so for the state allocation fishery. License holders who have made notice to the Department must report landings daily to the Department via email to menhaden.dmr@maine.gov ~~with the following information~~ no later than noon the day after landing, in addition to monthly harvester reports required by Chapter 8. If the harvester did not fish, the harvester must report that they did not fish.

- ~~Name of harvester~~
- ~~Name/Vessel ID~~
- ~~Permit ID~~
- ~~Landings number of license holder~~
- ~~Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)~~
- ~~Name/Permit ID of Carrier, if transfer at-sea occurs~~

- ~~Total amount of menhaden on board~~
- ~~Date, time and location (dealer, city, state) of offload~~
- ~~Estimated catch transferred, by weight, to each dealer (by dealer name and landings number)~~
- ~~VTR number~~

4. Incidental Catch and Small Scale Fishery

An incidental catch and small scale fishery for menhaden may occur following the full utilization of the state allocation of menhaden or following the full utilization of both the state allocation and an episodic event fishery.

A. Notice

The Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

B. Effort Restrictions

During the incidental catch and small scale fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. It is unlawful to fish for, take, possess or land more than 6,000 lbs per vessel per day. It is unlawful to make more than one landing per 24 hour period (12 am to 12 am). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1), except that it is unlawful during the incidental catch and small scale fishery for a catcher vessel to sell, give or transfer, at sea menhaden they have taken to any other vessel. For the purpose of this subsection, a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full equals 1/3 barrel.

C. Gear Restrictions

It is unlawful to use any gear type other than the following when targeting menhaden: cast nets, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep, ~~stretched~~. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.

Harvesters may take menhaden as incidental catch when targeting another species using the following gear types: pound nets, drift gill nets, trawls, fishing weirs, fyke nets and floating fish traps.

D. Storage Requirement

All menhaden must immediately be stored in barrels or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels or fish totes on both the catcher vessel and the dory towed by the catcher vessel, if utilized.

5. 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 (5)(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 (5)(A) & (B).

6. Area Limitations

A. Limitations in all Areas A, B & C

- (1) It shall be unlawful for any harvester vessel targeting menhaden that exceeds 50 feet in length overall (LOA) to fish for, take or possess menhaden within these restricted areas.
- (2) It shall be unlawful for any carrier vessel to possess 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.
- (3) A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity.
- (4) It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport menhaden harvested from Areas A, B & C. Any carrier vessel greater than 70 feet but not to exceed 90 feet LOA must be measured, plainly marked at a maximum 120,000 lbs capacity or equivalent volume; or marked at the maximum vessel capacity if under 120,000 lbs, and sealed* by the State Sealer of Weights and Measures.

*Sealed means receipt of the applicable Fish Carrier Calibration Report and sticker, seal or appropriate marking affixed by the State Sealer of Weights and Measures or their designee. This documentation must be obtained prior to transporting menhaden taken from these areas.

7. 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.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41 Menhaden

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 29, 2019 at 3:00 p.m., DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta. Snow date scheduled for January 30, 2019 at 3:00 p.m.

COMMENT DEADLINE: February 13, 2019

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

This proposed rule-making clarifies the reporting requirements for all Atlantic menhaden fishery operations. This rule re-instates a personal use regulation for hook and line harvest. Fixed gear operations may operate under exemptions that allow for seven day harvesting practices.

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

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seeks to improve reporting requirements for all harvesters conducting directed Atlantic menhaden trips. Ease of access for recreational and fixed gear sectors of the fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Comments received from marine patrol during the 2018 harvest season as well as an industry meeting of menhaden harvesters held at DMR in December 2018 to determine suggestions and alternatives options for the 2019 harvest season.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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