

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Atlantic Menhaden; Program Update

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This rulemaking establishes separate fishery harvest control rules for harvesting menhaden under a commercial menhaden fishing license and a noncommercial menhaden fishing license. Reporting requirements are amended to reduce the frequency of submission of daily landings reports for noncommercial license holders from daily to weekly. Finally, the chapter has been reorganized for clarity.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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

Table with columns: APPROVED FOR PAYMENT, DATE, FUND, AGENCY, S-UNIT, APP, OBJT, AMOUNT. Row 1: 010, 13A, 1120, 10, 4946, regulations

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

MENHADEN

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.05 ~~Territorial Waters Trawl Prohibitions~~

1. It is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters.
2. 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.
3. It is unlawful to use a vessel to fish for or take menhaden that exceeds 50 feet overall length as shown on the vessel's current USCG documentation or State registration.
4. It is unlawful to use a vessel to transport menhaden that exceeds 90 feet overall length as shown on the vessel's current USCG documentation or State registration.

41.10 ~~Recreational Fishery~~

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

41.10 Suspension of Rules

The Commissioner has the authority to suspend all regulations 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 and/or text notice to industry members.

41.15 ~~Small Scale Personal Use No-sale Permit~~

~~An individual licensed under §6502-A may fish for or take, by bait gillnet only, three barrels of menhaden per calendar day with a permit issued by, and under the conditions of, the Commissioner of Marine Resources for the taking of menhaden during the period of June 1 to December 31. Permit requests must be received by May 15, annually.~~

~~The holder of this permit will relinquish both the right to use any gear other than a bait gillnet when fishing for menhaden and the right to sell menhaden taken under their Commercial Pelagic and Anadromous License for the duration of the harvest season. Daily reporting of landings is required when fishing during the quota fisheries and weekly reporting is required during the small scale fishery as outlined in Chapter 8.20(Q). Any violation of this regulation shall be cause for suspension of permit.~~

41.20 ~~Permits and Reporting~~

1. Commercial Menhaden Harvester Permit Fishing License

All harvesters must report daily landings ~~daily~~ to the Department via an approved electronic reporting option no later than noon the day after landing. that includes the following information. If no landings occurred on a calendar day, a negative landing report is required.

Exception: Daily reporting is not required for the ~~Small Scale Personal Use Non-commercial Permit or the~~ Incidental Catch and Small Scale Fishery as described in 41.30 ~~(3) (4)~~. Weekly electronic reporting remains a requirement. Daily reports are due weekly by 11:59 pm Sunday.

2. Noncommercial Menhaden Fishing License

All harvesters must report daily landings to the Department via an approved electronic reporting option once per week no later than 11:59 pm Sunday. If no landings occur during the week (Monday 12:01 am through Sunday 11:59 pm), a negative landing report is required.

Harvesters: See Chapter ~~8.20(Q)~~ and 8.20(M) for reporting requirements.

Dealers: See Chapter 8.10 Landings Program for reporting requirements.

41.25 Definitions

- A. Hoghead: one hoghead 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. Fish tote: a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full, equals 1/3 barrel.
- F. Crate: a crate equals two and one half bushels or 175 pounds of menhaden.
- G. Landing: to come to shore, float or a dock and offload menhaden.
- H. Harvester vessel: the exclusive vessel that deploys the net to fish for, take and possess menhaden.
- I. Carrier vessel: a vessel that is not rigged to fish and is transporting to shore menhaden that was caught by a harvester vessel.

41.30 Commercial Menhaden Fishery Management Program

1. Definitions

- A. Hoghead: one hoghead 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.
- J. Fish tote: a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full, equals 1/3 barrel.
- K. Crate: a crate equals two and one half bushels or 175 pounds of menhaden
- L. Landing: to come to shore, float or a dock and offload menhaden
- M. Dory: a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel. A dory may be used by a harvester vessel to transport menhaden the harvester vessel has taken.
- N. Harvester vessel: the exclusive vessel that deploys the net to fish for, take and possess menhaden.

~~Q. Carrier vessel: a vessel that is not rigged to fish and is transporting to shore that was caught by a harvester vessel.~~

1. 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 ~~C commercial menhaden 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 ~~C commercial menhaden 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 to 11:59 PM on Tuesday and 12:01 AM on Thursday to 11:59 PM on Friday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per harvester vessel per calendar day and it is unlawful to fish for, take or possess more than 160,000 lbs per harvester vessel per week. It is unlawful to make a transfer at sea except to a carrier vessel licensed to carry under 12. M.R.S. §6502-B. It is unlawful to transfer at sea to more than two carrier vessels per calendar day. It is unlawful to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25. 44-30(1).

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily and weekly landing limits still apply.

2. 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 ~~C commercial menhaden 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 ~~C commercial menhaden 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 to 11:59 PM on Tuesday and 12:01 AM on Thursday to 11:59 PM on Friday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per harvester vessel per calendar day and it is unlawful to fish for, take or possess more than 160,000 lbs per harvester vessel per week. It is unlawful to make a transfer at sea except to a carrier vessel licensed to carry under 12. M.R.S. §6502-B. It is unlawful to transfer at sea to more than two carrier vessels per calendar day. It is unlawful to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25. 41.30(1).

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily and weekly landing limits still apply.

3. 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 ~~C commercial menhaden 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 harvester vessel per day. It is unlawful for a harvester vessel to make more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25 41.30(1) except that it is unlawful during the incidental catch and small scale fishery for a harvester vessel to sell, give or transfer menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea.

C. Gear Restrictions

It is unlawful during the Incidental Catch and Small Scale Fishery 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. 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, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

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 these 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) 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.~~

4. 7. Carrier Vessels

A. It is unlawful for a carrier vessel to possess, transport, or land more than 120,000 lbs of menhaden per day (12:01 AM to 11:59 PM). A carrier vessel may transport and land menhaden once per calendar day at a limit of 120,000 lbs. It is unlawful for a carrier vessel to transport or land more than 160,000 lbs of menhaden per week (12:01 AM Monday to 11:59 PM Friday).

B. It is unlawful for a carrier vessel to possessing fish that it did not catch during the Incidental and Small Scale fishery.

C. It is unlawful for a A carrier vessel is prohibited from making to make a transfer at sea to another vessel.

8. ——— 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.~~

41.40 Noncommercial Menhaden Fishing

The following limitations apply to individuals holding a noncommercial menhaden license issued under 12 MRS §6502-C.

A. Season

The holder of noncommercial menhaden license may fish for, take or possess menhaden from May 1 to December 31.

B. Effort Restrictions

- (1) It is unlawful to fish for, take, possess or land more than 1,000 lbs or 3 barrels per harvester and per vessel, per day.
- (2) It is unlawful to make more than one landing per calendar day.
- (3) It is unlawful to transfer menhaden they have taken to any other vessel.
- (4) It is unlawful to receive menhaden from a harvester vessel while at sea.

C. Gear Restrictions

It is unlawful to use any gear type other than the following when targeting menhaden: bait gillnets, hand seines, and cast nets.

41.50 Recreational Fishing

An individual may fish or take, by either hook and line or hand cast net, up to 25 menhaden per day for personal use only without a license.

Basis Statement

This rulemaking establishes separate fishery harvest control rules for harvesting menhaden under a commercial menhaden fishing license and a noncommercial menhaden fishing license. Reporting requirements are amended to reduce the frequency of submission of daily landings reports for noncommercial license holders from daily to weekly. Finally, the chapter has been reorganized for clarity.

Summary of Comments

Notice of this proposed rulemaking appeared on September 9, 2020 in the five major daily newspapers as published by the Secretary of State. On September 9, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Due to the pandemic, public hearings were not held. The comment period closed October 9, 2020.

Written Comment Received:

Jeanne Fuller, Harbor Bait, received via email, October 9, 2020

I'm responding to the agency rulemaking proposal regarding Menhaden.

I'm not sure why the proposal to move from daily reporting to weekly reporting, but I disagree with it strongly. I support daily reporting for all harvesters including non-commercial. Without daily reporting, harvesters can misreport especially with the little amount of Marine enforcement that is out there. We saw the rules disregarded at every turn this past season. Multiple landings to a float, selling over the side of the boat, and three or more non-commercial permit holders working out of one boat.

It would be better for the fishery to have only commercial licenses and to increase the fee for commercial permits. Not a just a little, but double or triple. Not only would it help to pay for enforcement, it might limit the number of harvesters. If there's no way to cut the non-commercial license, they should be limited to 9 to 12 barrels per week. There are very few lobstermen who need to provide themselves with more than that on a weekly basis.

I would also be in favor of increasing the Seafood dealer permit fee. Again, doubling or tripling. Every lobsterman who fishes for Pogie's and obtains a dealer permit makes it that much more difficult for the land based bait suppliers. We can't compete with their prices when they are offloading to floats and other vessels. Our company sold very little of the Pogie's that we took in all summer. We just started to sell them in any quantity in late September. And this year was much worse than last year. It's not sustainable for established bait suppliers who are a critical support for the lobster fishery year round.

Department's response to the comments:

Reporting requirements as presented in this proposed rulemaking follow the previous season's reporting requirements for those harvesters with the menhaden permit on their commercial pelagic license: daily reporting is needed during fishery phases where quota is monitored, and weekly reporting is sufficient during the small scale or personal use fishery. When harvest is available seven days a week, the majority of harvesters are not harvesting seven days a week, and to reduce the amount of negative reports required, a weekly report of any trips taken is at a higher level than what is required by the ASMFC's Atlantic Menhaden Fishery Management Plan.

Presence of menhaden in Maine waters has been ephemeral throughout the history of the fishery. And, while menhaden are present, lobster fishermen have maintained the opportunity to harvest menhaden for their own bait needs. The noncommercial menhaden fishing license speaks to this tradition.

Any increases to licensing fees, harvester or dealer, require action through the legislature and the associated statutes.

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:

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CHAPTER NUMBER AND RULE: Chapter 41 Atlantic Menhaden; 2021 Program Update

STATUTORY AUTHORITY: 12 M.R.S. § 6171 and §6502-C

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: October 9, 2020

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

This proposed rulemaking establishes separate fishery harvest control rules for harvesting menhaden under a commercial menhaden fishing license and a noncommercial menhaden fishing license. Reporting requirements have been amended to reduce the frequency of submission of daily landings reports for noncommercial license holders from daily to weekly. Finally, the chapter has been reorganized for clarity.

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 incorporate new licensing options into the Menhaden regulatory structure.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Comments received from marine patrol during the 2020 harvest season as well as feedback from industry throughout the 2020 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