

**Notice of Agency Rule-making Proposal**

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden

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

BRIEF SUMMARY: This rule-making establishes the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery. The state allocated fishery will operate under the quota assigned to Maine by the Atlantic Menhaden Management Board of the Atlantic States Marine Fisheries Commission (ASMFC) until such time that the quota is near to or is achieved. Notification will be then given that this fishery is closed. An episodic events fishery with a daily landing limit of 120,000 lbs and a weekly landing limit of 160,000 lbs may be subsequently opened by notice to license holders, provided there is sufficient evidence of substantial resource remaining in territorial waters. Under both the state allocation and episodic fisheries, vessels may fish for and land menhaden from territorial waters Monday through Thursday, only. Daily reporting of Atlantic menhaden landings will be required for both the state allocated and the episodic events fisheries. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic events fishery, with a daily landing limit of 6,000 lbs under gear restrictions. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

Date, time and location of PUBLIC HEARING *(if any)*: January 31, 2018 at 1:00 p.m.: DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 14, 2018

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

NAME: Amanda Ellis

MAILING ADDRESS: 21 State House Station, Augusta, Maine 04333-0021

E-MAIL: dmr.rulemaking@maine.gov

TELEPHONE: 207-624-6573

FAX: 207-624-6024

TTY: 207-624-6500 (Deaf/Hard of Hearing)

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: 12 M.R.S. § 6171

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
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## DEPARTMENT OF MARINE RESOURCES

### Chapter 41 Menhaden Regulations

#### 41.05 Territorial Waters Trawl Prohibition

It ~~shall be~~ is unlawful to fish for or take Atlantic menhaden by vessels rigged with a mid-water, otter or beam trawl net in Maine's territorial waters.

#### 41.30 Menhaden Fishery Management Program

##### 2-1. Definitions

- A. ~~"Daily catch limit or Daily limit" For purposes of this section (Chapter 41.30) means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from areas A and B between 00:01 AM to 11:59 PM. There is no daily catch limit or daily limit in Area C for harvester vessels.~~
- B. ~~"Carrier vessel 120,000 lbs capacity" For purposes of measuring 120,000 lbs or capacity in a vessel hold the volumetric measure (in hogshead) of 120,000 lbs of menhaden is equivalent to 98 hogshead. One hogshead equals 17.5 lb bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 120,000 lb divided by 1225 lb (or 17.5 hogshead) equals 98 hogshead, which is within the 5 hogshead tolerance used in §6544(3).~~
- 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.

##### 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.

###### 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 make more than one landing per 24 hour period (12 am to 12 pm). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

### 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 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](mailto: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 pm). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

#### C. 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 via email to [menhaden.dmr@maine.gov](mailto: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 to be received, 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, or 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 pm). 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 to transfer menhaden from any vessel to any other vessel at sea.

##### 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.

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.

#### 4-5. 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).

### ~~3-6.~~ Area Limitations

~~The areas in Chapter 41.30(15)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:~~

#### ~~A. Limitations in Areas A & B~~

~~(1) Harvester and Carrier Vessel Daily Catch Limit — It shall be unlawful for harvester vessels and carrier vessels to catch and possess greater than 120,000 lbs of menhaden per day.~~

#### ~~B. Limitations in Area C~~

~~(1) Carrier Vessel Daily Limit — It shall be unlawful for carrier vessels to possess greater than 120,000 pounds (lbs) of menhaden per day.  
For purposes of this section (Chapter 55.90) “daily catch” means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from these areas between 00:01 AM to 11:59 PM.~~

#### ~~C. Limitations in all Areas A, B & C~~

- ~~(1) 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.~~
- ~~(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.~~

~~Exception: Any carrier vessel less than 70 feet length overall (LOA) is exempted from the number of landings per day limitation in Chapter 41.30(3)(C)(3).~~

- ~~(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.~~

### ~~4-7.~~ 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 31, 2018 at 1:00 p.m.: DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 14, 2018

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

This rule is intended to align State of Maine menhaden fishing regulations with those set forth in the Amendment 3 to the Atlantic Menhaden Interstate Fishery Management Plan. Amendment 3 was adopted by the ASFMC Atlantic Menhaden Management Board's on November 14, 2017.

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)]

The adopted rule(s) seeks to expand opportunity in the Atlantic menhaden fishery in Maine territorial waters while remaining within limits established for the fishery by the Atlantic States Marine Fisheries Commission. The rule is intended to have a long-term positive impact on both the Atlantic Menhaden and Lobster fisheries.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

New compliance measures as specified by Amendment 3 of the Interstate Fishery Management Plan for Atlantic Menhaden as determined by ASMFC's Atlantic Menhaden Management Board define three fishery programs that pertain to Maine territorial waters with respect to the harvest of the Atlantic menhaden resource.

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*