

**NOTICE OF AGENCY RULE-MAKING ADOPTION****AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** 41 Atlantic Menhaden; 2023 Season**ADOPTED RULE NUMBER:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**CONCISE SUMMARY:**

This rule specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1<sup>st</sup>, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears begin commercial menhaden harvesting on the third Monday of June, annually. This rule established daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small Scale Fishery as well as the Noncommercial menhaden fishery. The rule also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

**EFFECTIVE DATE:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**AGENCY CONTACT PERSON:**

Amanda Ellis (207) 624-6573

**AGENCY NAME:**

Department of Marine Resources

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## 41.05 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 for any vessel other than the harvester vessel that made the set to remove fish from the seine or net. If more than one vessel is used to set the seine or net, only the vessel from which the seine or net was removed may take or possess menhaden from the seine or net.
5. It is unlawful to remove Atlantic menhaden from pound net or fish weir gear that is not permanently marked with a Commercial Menhaden License-holder's name and DMR landings number. Pound net or fish weir gear markings must be legible and clearly visible for inspection at all times. Gear must be marked with a single license-holder's name and DMR landings number for the duration of a license year.
6. It is unlawful for a person, other than the license-holder whose name and DMR landings number is marked on the pound net or fish weir gear, to remove Atlantic Menhaden from the pound net or fish weir gear.
7. It is unlawful for the holder of a menhaden license to take menhaden using a gear type not authorized for their license type, as specified in either section 41.30 or 41.40. Permitted gears include anchored/staked gillnets, bait gillnets, cast nets, drift gill nets, fish weirs, floating fish traps, fyke nets, hand seines, hand lines, hook and line, stop seines, pots, pound nets, and purse seines. Permitted gears are dependent upon which commercial fishery phase is open.

## 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 direct notice to the email address and phone number provided by the license holder, and on the Department's publicly accessible website. ~~the internet on the Department's web site and by email and/or text notice to industry members.~~

## 41.20 Reporting

### 1. Commercial Menhaden Fishing License

All harvesters must report daily landings to the Department via an approved electronic reporting option by 11:59 PM the day of landing. If no landings occurred on a calendar day, a negative landing report is required.

Exception: Daily reporting is not required for the Incidental Catch and Small Scale Fishery as described in 41.30(3). Weekly electronic reporting remains a requirement. Daily Trip level reports are due weekly by 11:59 pm Sunday.

### 2. Noncommercial Menhaden Fishing License

All harvesters must report daily trip level 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(M) for reporting requirements.

Dealers: See Chapter 8.10 Landings Program for reporting requirements.

#### **41.25 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. 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 vessel that deploys the net to fish for, take and possess menhaden. A harvester vessel is in possession of fish once the net encircles and traps the fish.

I. Set: To place from a harvester vessel a purse seine or a bait gillnet in the coastal waters of the state for the purpose of taking menhaden.

J. Pound net or trap net: a type of entrapment gear that consists of an arrangement of netting or wire supported upon stakes or piles and has the head ropes or lines above the water or in a frame that is supported by floats and anchors. A pound net or trap net may consist of an enclosure known as the pound proper, crib or pocket which has a netting floor and section known as a heart from the entrance of which a straight wall known as the leader or runner extends outward. There may be several combinations of hearts, pounds or pockets. Finfish are voluntarily directed by the leader towards and into the heart and/or pound, and then into the crib or pocket where they are removed periodically by various devices and methods, such as dip nets.

K. Fish weir: any fixed type of fishing equipment that consists of fences made of wooden stakes or out of other materials constructed in such a manner so as to intercept or attempt to intercept finfish. The fences form successive enclosures called the heart, pound and pocket into which the finfish are directed by a prolonged fence known as a leader.

#### **41.30 Commercial Menhaden Fishery Management Program**

##### **1. 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 menhaden 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 menhaden 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.

Whenever landings of menhaden are occurring at a rate that the Commissioner is concerned that the entire quota for the state allocation fishery will be reached in a time frame that will negatively impact the supply and availability of bait, the Commissioner may temporarily prohibit the taking of menhaden by commercial menhaden license holders for up to fourteen days. If the Commissioner determines it is necessary to temporarily prohibit the taking of menhaden by commercial menhaden license holders, the Department will notify license holders by a notice in a newspaper circulated in the area affected, direct notice to the email address and phone number provided by the license holder, and on the Department's publicly accessible website, of the date of closing of the fishery and the date on which it will reopen.

**B. Pound net and fish weir effort restrictions**

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery which is set for pound net and fish weirs as June 1<sup>st</sup>, annually. Harvest of menhaden by pound net or fish weirs prior to the third Monday of June may occur seven days a week and is limited to 1,050 pounds or 3 barrels daily.

Starting on the third Monday of June, pound net and fish weirs may land fish seven days a week and have a weekly landing limit of 18,000 pounds or 51 barrels per harvester vessel.

**C. Effort restrictions for all other gears**

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery, starting on the third Monday of June, annually, at 12:01 AM, on Monday, June 14, 2021 at 12:01 AM. Following the opening of the state allocation fishery on Monday, June 13, 2022 at 12:01 AM and prior to the closure of the state allocation fishery, it is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays, ~~Tuesdays, Thursdays~~ Wednesdays and Fridays each week. It is unlawful to fish for, take or possess more than 18,000 ~~23,800~~ pounds or 68 ~~51~~ barrels per harvester vessel per week. It is unlawful 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. It is unlawful for a harvester vessel 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.

~~Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above and may land fish seven days a week. However, weekly landing limits still apply.~~

#### **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.

### **2. 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 menhaden 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 menhaden 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.

#### **E. Effort restrictions**

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 to 11:59 PM on Mondays ~~Tuesdays~~ and Fridays each week. It is unlawful to fish for, take or possess more than ~~14,000~~ 6,000 pounds or ~~40~~ 17 barrels per harvester vessel per day ~~week~~. It is unlawful 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. It is unlawful for a harvester vessel 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.

Exception: Pound nets and fish weirs ~~Fishing weirs, stop seines, and pound nets~~ are not subject to the harvest schedule detailed above and may land fish seven days a week. However, the daily landing limit is 6,000 pounds or 17 barrels and the total weekly landing limits still apply may not exceed 12,000 pounds or 34 barrels.

### C. 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.

## 3. 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 menhaden license holders ~~by public notice in a newspaper circulated in the area affected~~ by direct notice by email and text to the email address and phone number provided by the license holder in their license application, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

### B. Effort Restrictions

It is unlawful to fish for, take, possess or land more than 6,000 pounds or 17 barrels per harvester vessel per day. It is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays, Wednesdays, and Fridays each week. 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, 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.

~~Exception: Pound nets and fish weirs~~ Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above and may land fish seven days a week. However, the daily landing limit is 6,000 pounds or 17 barrels and the total weekly landing limits still apply may not exceed 18,000 pounds or 51 barrels.

### C. Gear Restrictions

It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following: bait gillnets (including anchored/staked gillnets or drift gill nets), cast nets, pots, hand seines, hook and line, pound nets, fish weirs, fyke nets, and floating fish traps.

Bait gillnets cannot exceed 500 feet in length. A hand seine is defined as a seine solely operated by hand with no option to be cinched or pursed by the footrope.

~~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.~~

**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.

**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 a 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 1,050 pounds or 3 barrels per harvester and per vessel, per day.

(2) It is unlawful to make more than 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 (including anchored/staked gillnets or drift gill nets), hand seines, ~~and~~ cast nets, and fish traps.

Bait gillnets cannot exceed 500 feet in length. A hand seine is defined as a seine solely operated by hand with no option to be cinched or pursed by the footrope.

**41.50 Recreational Fishing**

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

# 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 Atlantic Menhaden; 2023 Season

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

DATE AND PLACE OF PUBLIC HEARING(S): February 27, 2023: 5:00 p.m. at DMR's Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 27th hearing is cancelled due to inclement weather an alternate hearing will be held on February 28th at the same time, location, and format. Remote access information is posted to DMR's website under "Meetings."

COMMENT DEADLINE: March 10, 2023

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

This proposed rulemaking specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1<sup>st</sup>, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears are proposed to begin commercial menhaden harvesting on the third Monday of June, annually. This rulemaking proposes daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small Scale Fishery as well as the Noncommercial menhaden fishery. The proposed rule-making also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

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 proposal seeks to adjust the menhaden regulations for compliance with the updated ISFMP for Atlantic Menhaden based on final action of Addendum I to Amendment 3.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

An industry meeting was held in December 2022 to survey industry feedback in preparation for the FY2023, in addition to Marine Patrol and updated regulatory actions (Addendum I to Amendment 3 of the ISFMP for Atlantic Menhaden).

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*

### **Basis Statement**

This rule specifies a separate start date of the commercial menhaden season for pound nets and fish weirs of June 1<sup>st</sup>, annually at a reduced daily limit until the broader commercial menhaden fishery opens. Licensed operators of pound nets and fish weirs must mark their gears with buoys that include their full name and DMR Landings number and only that license holder may harvest from that marked gear.

All other gears begin commercial menhaden harvesting on the third Monday of June, annually. This rule established daily and/or weekly trip limits and open harvest days for the commercial fishery in each fishery phase: State Allocation, Episodic Event set aside, and Incidental Catch and Small Scale. Permissible gear types have been specified for the general menhaden fishery and specifically for the Incidental Catch and Small-Scale Fishery as well as the Noncommercial menhaden fishery. The rule also includes a provision that would authorize the Commissioner to prohibit the commercial taking of menhaden for up to 14 days during the State Allocation fishery, if necessary to slow the rate at which the quota is caught.

Based on public comment regarding the authority to slow the rate at which the quota is taken, the rule was amended to clarify that the Commissioner may implement such a prohibition whenever it is determined warranted by the rate of catch (i.e. more than once during the state allocation fishery if needed).

### **Summary of Comments**

Notice of this proposed rulemaking appeared on February 8, 2023, in the five major daily newspapers as published by the Secretary of State. On February 7, 2023, the rule was posted on the DMR website. Electronic notices were sent to individuals who subscribe to DMR notices and industry members. A public hearing was held on February 27, 2023 at 5:00 p.m. at DMR's Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. The comment period closed March 10, 2023.

<b>Name</b>	<b>Affiliation</b>
Patrick Keliher, Melissa Smith, Megan Ware, Deirdre Gilbert, and Amanda Ellis	Department of Marine Resources
Rick Wallace, Nick Heal, Alan Poland, Ivan Bly, Karl Pitcher, Jeromy Simmons, Kevin Glover, Ryan Miller, Doug McLennan, and Laura McLennan, Michael Dawson, Matt Clemons, Michael Roeber, Thomas McLennan, Julian Zuke, Jim Wotton, Marshall Spear, Dale Prentice, and Jimmy (last name not provided)	Members of the Public

## Public Hearing Comments

### Kevin Glover

My name's Kevin Glover and I just want to comment on the 14 day pause. I'm wondering if it's possible to do more than just one 14 day pause and maybe two 7 day pauses. Also, it would be smart to put more than 14 days in as a buffer? So if you ever needed say 21 days, if you had to do it again so you're not up against it if it's already in the regulations, you might never use it. But if you had more days there to do it, wouldn't that be a smart thing to have, just in case?

### David Noonan

Some of us are kind of worried about the 50 barrel a day per boat. Some of us don't have boats big enough to carry 50 barrel, and you have putting us in a position where we're gonna overload. Seventeen barrel, three days a week is sufficient for not only the boat and the crew. It's a big enough fishery that we can get a crew and make it happen.

But I'm worried about flooding the market all at once. If we all come in the first day with 50 barrel, all of us is gonna extremely flood the market and we're trying to help the lobstermen with this. This is lobster bait we're talking about.

### Alan Poland

It's up to the individual to pick how much they bring in on those three days. If you don't have market, you shouldn't be fishing anyway.

But the other thing on storage. If things get changed a little bit, it's up to the Commissioner on what we consider storage containers. So a fish hold, if it's measured could it be considered a measurement instead of a barrel. You got crates, totes and dories. Can that be changed to include fish holds?

Two or three years ago, we put in that it had to be in barrels or totes or crates. That was pretty much during the 17 barrel small scale. But never did lift that. You know, when we first started out, we could put them in the hold. Gotta do our estimate because we was doing 100 barrels a week that then. But we're down to 50. Same idea. Why do we have to put them in storage containers; why can't they be put loose in a fish hold that contains a certain amount? A fish hold can be documented to hold a specific amount of poundage. Could the State document a fish hold for a specific poundage? Doing more work to land the same amount of fish. When the pogies came around first, there was no requirement. This storage rule came in for the small scale fishery and now it's still in writing. But now we're under a higher state quota, so why can't it be lifted? I think it should be left up to the Commissioner how we address it. Instead of having it in writing where we can't be flexible with it? Used to hoist them out in baskets and then salt them.

### Marshall Spear

My name is Marshall Spear. I fish out of Portland, ME, I would just say I agree with the 51 barrels a day on three days a week that you proposed and I would be happy with that.

### Matt Clemons

So I just like to say that I personally would like to see the start date start sooner. I understand you're having it later and later because you're worried about flooded market and things of that sort. If you were really concerned about flooded market, maybe we could start out at 25 barrels a week, but it's just really frustrating when the fish show up the last week of May and we're using rotten bait and driving by the

schools of fish when we're headed out to haul. So it seems like the start date gets pushed back every year and I believe there is a need for those fish in the first couple weeks of June. If you're worried about too many landings, then start us out at a lower amount we're allowed to keep.

### **Jim Wotton**

Good evening, Jim Wotton from friendship. I'd like to just say that I am mainly in support of the proposal as it written. I would like to point out one aspect that I have a little concern with, and I've already talked to Melissa about this. In the definitions, it defines you as being in possession of the fish while they're in your net. Later on in the provision, it states that you are not too possess more than your daily limit or weekly limit, whatever it is. I see a little conflict there. I understand this was in the provision; this isn't new for this year. I guess it got by me last year and I'd just like to point that out, get that on the record that that is seems to be a conflict to me or possible cause for problems. I understand the reason it's that way. It's to establish ownership of the fish and prevent somebody from taking fish out of your net. I don't disagree with that. I just like to point out that there seems to be a little bit of a conflict there.

I am really in support of the 500 foot limit for gillnets. I brought that up a couple of years ago. I thought it should have been done then. Glad to see it's in there now. To Alan's point of adding measured fish holds to the approved container list, I think that's a good idea. There's not a lot of guys that would qualify for that, but I think the technology is there to measure fish holds, you know, not like they used to do it, pump them full of water. You know, I think there's scanners and they can be scanned and measured electronically. Now, I think it might take a little research and to get it done, but I think it's something that would benefit me and some other guys.

I'm in support of the temporary pause for 14 days. I agree with Kevin that it doesn't have to be 14 days; that it could be seven days one time and seven days another time. It says up to 14 days, but it might need to be utilized a couple times during the season, not just one time.

## **Written Comments**

### **Dale Prentice, submitted via email, February 14, 2023 (the submission also included images)**

I am sending this in support of doing away with the mandatory barrel ruling in last year's season.as far as I know the Idea of putting the fish in Barrels was to make it easy for MP. to check to make sure you didn't go over the daily limit of 17 barrels.

As there is no more daily limit this season and is just a 51 barrel weekly limit witch I think was put in place to try to prevent the dumping of any fish over the 6000 lb or 17 barrel daily limit during last season.it seems to me it would be to everyone's advantage to do away with the mandatory barrel regulation and let anyone that wanted to to still fill as many barrels totes or crates as they had room for and if there were fish left in the Seine bail them aboard the Boat or Dory lose as long as they didn't go over the new weekly limit then put them in barrels at the Dock.

### **Doug McLennan, received via email, February 28, 2023**

I would like to offer my comments on the proposed 2023 Menhaden season. First I would like to say I was sorry to see the purse seine removed, and gill nets added. This is exactly the opposite of what conservative groups should want for any fishery. Gill nets kill all, with no chance of a release of an unwanted, or protected fish species. I think it should have been better represented to the ASMFC. It was unanimous at the meetings that purse seines were the method of harvest choice, for obvious reasons. Done deal I guess, just wanted to mention it. Next, the idea of the 51 barrel ,one day a week idea being

proposed, I am not in favor of this scenario. We have been doing the 17 barrels for a while now, and it gives you a good days pay, and keeps the supply of fish fresh, without needing salt and refrigeration. 17 barrels is a comfortable load for most all boats to carry, with the weight of a seine aboard, so more barrels on board causes a safety concern. There are only a few boats under 50 feet, the current rule in boat size, that can safely carry 51 barrels, and seines. The rule proposal also opens up a enforcement issue. I have heard from patrol, that they are not happy with the proposal. Having two days a week to get 51 barrels will be hard for marine patrol to keep track of. If no one checks the first day, or the 51 barrels is not caught, how will marine patrol be able to monitor what is caught the next day out. We have been told in previous years that, that is why we have the rule of having all fish in containers, and 17 barrels, for easy monitoring for the officers. Its pretty easy to count 17 barrels on deck. Seems to me you are opening up a can of worms allowing this. If it is one day a week and done, it would be easier to keep track of. This could also cause problems if closures, or time outs are trying to be used to maximize the season. One boat could lose 2 days, while the other boat got all 51 barrels in one day before the time out was enacted. I have tried to understand why this option was even being proposed. Is there pressure from the bigger bait dealers to get a bigger supply, which could hurt the markets of the independent, small boat dealer.

**Jason Lord, received via email, February 28, 2023**

As a harvester in the Midcoast I would like you to take these comments into consideration

- 1 a person with multiple permits should be allowed land for both boats as long as boats are equipped for harvesting fish
- 2 do away with immediate containment of fish or leave as harvester discretion
- 3 with the growing fishery an advisory council made up of harvesters enforcement dealers regulators and knowledgeable past harvesters

**Tom Cloutier, received via email, March 3, 2023**

I propose that the menhaden fishery to start two weeks earlier or more for the up come in season. Lobsterman such as myself will be well along with lobstering by then. A more reasonable bait is needed as early as late may. Thank you

**Michael Dawson, received via email, March 5, 2023**

My comments for chapter 41 Atlantic Menhaden 2023 season - I believe you should not shut down for more then 7 days at one time. You should increase the possibility to shut down to 21 just so as to have “ more tools in the tool box” for any future issues. If it does need to be shut down fisherman need at least 2 fishing days notice . I feel 3 days at 17 barrel a day is the best option, compared to weekly limit of 51 barrel with 3 fishing days for state quota . I feel it will spread out quota more as some won't fish 3 different days as they would fish one or two an get 51 barrels. Also I think 51 weekly will flood market with multiple boats landing 51 on same day. This will also not help the quality of fish, more time exposed to hot sun as it will take longer to catch 51 and more time before it's salted and put away in coolers. The nature of a fisherman is go catch all you can as quick as you can, it is just the way we do things, quality will suffer! With 3 days @17 it will spread it out and offer 3 days with fresh unsalted fish to fisherman also. The Episodic event should stay at 51 a week with 2-3 fishing days. Later in season fish are harder to catch, more spread out, smaller bunches and effort seems to slack off some. I also feel we should NOT be required to have all the fish in barrels, trays or crates. Some boats have fish holds and would like to fill with loose fish , also the ability to fill around barrels on deck with 51 barrel limit space becomes an issue ! We put in barrels at dock anyways , then report how many we had for the day. Seems a lot fisherman support this also . Thank you

**James Clemons, received via email, March 6, 2023**

As a lobstermen and purse seine menhaden fisherman, the start date to fish is too late. I have 48 yrs experience and both the menhaden and lobsters show up before June 19th. I live and fish in Harpswell along with over 500 licensed lobstermen in my town. Traps are traditionally set the 1st of June, because the lobster population is crawling. The menhaden also show up in bulk, late May -early June, Lobstermen need these fish to bait up on. It's unfair ruling to have a June 19th start date in my area, as the need for these fish is great. I believe a change to a June 1st start date for purse seine menhaden would benefit both the lobstermen and purse seine menhaden fishermen. Especially since we have lost the purse seine fishery in the small boat quota, which will greatly hurt our lobstermen in the second run of lobsters in September-October. Hopefully you will change this unfair ruling date.

**Brandon Bezio, received via email, March 7, 2023**

My first question is, is the only person you guys talked to when setting up how this pogie season was going to run this year Jimmy Wotton? Seems like you guys are just concerned with what the hogs of the harbors want and that's about it. Have you thought what is best for the dealers and wharfs? I can tell you right now what is going to happen at most dealers and wharfs around the state and that is they are going to have 500 barrels of pogies coming in on Monday and no fresh fish the rest of the week because everyone is going to take their seine off after they get their fish Monday and go lobstering. Spread it out you are going to drive the price of a barrel of pogies to \$75 a barrel guaranteed because the big boats are going to get all the fish on Monday flood the market for the week and the guys with smaller boats are going to have to go the rest of the week and give their fish away for nothing. Did you stop to think that the best thing that ever happened to lobstering was that fisherman had another fishery to participate in in the summer. Pogie fishing has taken an unbelievably amount of effort off lobstering in the last few years. I know countless fisherman that didn't even go lobstering last year because they had pogie fishing to rely on or greatly reduced their effort because of the hassle of taking your seine off MWF go just go lobstering for one day and put it back on. And now the way you guys have set up the season guys are going to go pogieing one day a week and go lobstering 5. In a time when the department is worried about lobster stock maybe a passive way of taking pressure off the species (17 barrel a day 3 days a week fishing) is better than changing the measure. And lastly have you thought about the absolute enforcement nightmare you have created and how easy you have made it for people to cheat. As a former MPO I see it much harder to have to keep track of how many barrels each boat has 3 days a week for a weekly total then if you are caught with over 17 your over period. You are going to have guys landing some barrels on Monday for cash and if they can do that without being seen by a warden which is easier to do than to be seen by a warden then they are going to go back out Wednesday and get their 51 barrels like nothing ever happened Monday. I think the 17 barrel a day 3 days a week schedule was a fantastic idea and you should keep it that way.

**Tad Miller, received via email, March 9, 2023**

I writing to you to submit my comments regarding the proposed Rulemaking for Chapter 41 Atlantic Menhaden 2023 season. First of all as I've stated before I would prefer the fishing days to be Monday, Wednesday and Saturday. The reason I prefer a Saturday over a Friday are as follows.

1. I lobster fish Matinicus Island and the Friday fishing really mess us up on the Island as 99% of the time we (unlike the rest of the coast) typically have to steam 20 miles to access the Menhaden as they're rare visitors to our area. Generally the guys from the Island lobster fish on Monday and Tuesday, Then we seine on Wednesday to get our bait for the end of the week. Then we fish lobsters again on Thursday. But now because you have set Friday as the next day instead of Saturday we have to steam into the mainland to go seining on Friday then back to the Island to fish lobsters on Saturday. With out a Saturday or

(Sunday, which I know won't happen) fishery for Menhaden There is no way for any of us that fish Matinicus or Criehaven to participate in the Menhaden fishery without having to at least make one extra round trip a week which means that I have to burn at least an extra 50 gallons of fuel to get anymore than one day of fishing per week. No one else on the coast is subject to this as the Menhaden resource generally is located along the coves, islands and rivers close to the mainland. So by having no opportunity to fish Menhaden on the weekends you are in effect limiting our ability to participate in the fishery more than one day a week without incurring a significant expense to do so that no other fisherman on the coast has to absorb due to the fact that their homeport is located on the mainland or nearby island.

2. The second reason I prefer to have a weekend day is that I much prefer to have as fresh a bait available as possible as it fishes better and requires less resources to store it. If I have to fish on a Friday I'm going to use more salt and it's also going to require refrigeration. This will increase the cost of bait to the end users while requiring more resources to keep it in good condition to be used at a later date which also doesn't make sense with the current push to have less impact on the environment. By moving your last fishing day of the week to a weekend day there's definitely less impact when you take into consideration that a Friday fishery will definitely result in the use of more salt and cold storage.

3. I believe a 51 barrel limit is to high to start out with, I think we should start with a weekly limit of 40 barrels and assess how the quota is being used on a bi-weekly basis and make adjustments to the weekly landings accordingly (a strong case for the use of electronic reporting in my view). My reasoning for this is that you will have more boats landing the 51 barrel limit compared to how they've participated in the fishery in the past which I believe will actually boost weekly landings as compared too the past few years, which will result in using the quota at a faster than the anticipated rate. Anytime that we have ever set a limit the fleet strives to meet whatever that limit is, that has been proven through the years across the board in all fisheries with a limitation put on them. A few other reasons to slow down a little especially in the beginning is because we won't be using bait as fast in the first couple of weeks of the season so it matches the use closer to the catch which once again makes sense from a cost/ impact basis, once again less salt and cold storage required. It also pushes landings more towards the time when the need for fresh bait is increasing, so you're actually getting the "most bang for your buck" and based on last year the lobster fishery could use that helping hand. More bait, especially early in the year means more expensive bait down the road. The better we match the flow of bait to the need for it on a weekly or bi-weekly basis the better it is for everyone involved in the fishery keeping associated costs down, while lowering the environmental impacts that are derived from all aspects of the fishery. I think another thing to be aware of is that faster we land the product the easier it is for players with the ability to store large volumes of bait to hoard that bait which creates a disadvantage for the smaller wharves along the coast in being able to store bait for long term use and compete on the same footing as their large corporate neighbors and the majority of the coast is made up of these smaller wharves. It typically ends up resulting in price increases also.

4. I would like to see if there's a way to allow a legal transfer from boat to boat, the only reason I'm suggesting this is that I believe it would be better for the resource. When one boat has a good set they maybe able to share that catch with others as used to be the case with herring throughout the course of its history. This would be easier on the fish I believe as it would result in less chance of an event of discards dyeing and washing up on the shore which is the waste of a potential resource as well as a potential stinking mess which paints black eye on the industry and is something that I'm sure the Commissioner would much prefer not to have to deal with. It would result in less fish being stressed out as their repeatedly caught and released resulting in scale loss. I think it would also allow the schools of fish to stay intact better and not be broken up so much which should make it more efficient to catch them on a day to day basis. I know that there are potential enforcement problems surrounding this thought, but I

think it's an option that warrants our attention as a fishery. Maybe some sort of electronic monitoring could help in regards to this and other enforcement issues in the fishery.

**Mark Moody, received via email, March 9, 2023**

Looking forward to this coming Menhaden season. I would like to suggest a weekly quota of the 51 proposed barrel (18,000lbs) so we would have the option to land our fish in 1 day or all the fishing days given.

**Jeanne Fuller (Harbor Bait), received via email, March 9, 2023**

I was not able to listen in to the meeting, so not sure what was discussed, but these are my comments:

1. The season should begin for all on June 1 each year.

According to my records, we purchased local pogies before 6/19 every year since 2017. Specifically, 6/12/17; 6/18/18; 6/17/19; 6/8/20; 6/14/21; 6/13/22

If these are the dates menhaden are arriving in Boothbay Harbor (mid-coast), then they are showing up in southern Maine earlier. It is possible that the southern fishermen would miss harvesting them completely if they have to wait until June 19. As you are aware, the pogies are moving up the coast (DownEast) sooner each year. Last year, they were gone from BBH close to the end of August. In 2021, they left near the end of September.

Having a June 1 start date for all keeps the playing field even and at least gives southern harvesters a chance.

2. There was no mention of the Non-commercial harvester license in this Amendment. At the very least, these Permit holders should be subject to the same fishing days as outlined for each allocation. When a season closes, It should close for non-commercial also. It is not right that a non-commercial harvester could conceivably

harvest 21 barrels per week (3 barrels per day for 7 days) compared to the EESA commercial limit of 34 barrels.

**Alan Poland, received via email, March 9, 2023**

I believe that changing the rules about lugging fish in fish holes and dorys be included in a way to bring fish back to shore without crates barrels and totes be allowed.

**Tyler Bemis, received via email, March 9, 2023**

I believe that we should change the fishing days for the 2023 season to Monday, Wednesday, and Saturday. I am a fisherman on Matinicus Island and having my Monday, Wednesday, Friday fishing days burdens me to steam back and forth every other day as there are rarely fish to catch off the waters of Matinicus. Having Saturday as a fishing day instead of Friday would allow me to Lobster for two consecutive days at the tail end of the week and still catch fish for the week. Fishing off of Matinicus puts myself and my fellow menhaden fisherman at a geological disadvantage because we have to steam so far to catch fish.

I also believe that instead of 51 barrels per week we should do 40 barrels per week so that it stretches the quota how long for further season. And if needed, we could increase the catch limit per week or decrease to a daily limit. I believe that 40 barrels allowable per week would also be easier for most peoples gear to



catch in one set which would decrease the amount of schools officially get beat up on and it would also be safer.

## **Department Response to Comments**

### *Start Date*

The Department is maintaining the proposed start date of the 3<sup>rd</sup> Monday of June for the 2023 menhaden season. Four individuals commented in opposition to the 3<sup>rd</sup> Monday start date, along with a suggestion of June 1<sup>st</sup>. Regionally, menhaden do appear in Maine's southern waters in late May and early June. In previous seasons, such as 2018 or 2019, harvesting earlier in June was less of an issue due to the lower number of participants and the balance of lobstering activity to allow for the more immediate use of landed bait. This also presented a disadvantage to harvesting opportunities for commercial fishermen from eastern Maine, as quota was consumed prior to the fish migrating to eastern shores.

In the more recent seasons, there has been a documented shift of fishing activity away from lobstering towards the harvesting of menhaden during the month of June and early July that has resulted in an abundance of menhaden landed, stored frozen or salted in local coolers, that then sit until the bait demand increases. Fresh bait is more desired over frozen and salted, so the goal is to moderate the landings to better coincide with an increase in lobster activity. Additionally, it was observed in the 2022 opening day of harvesting that schools of menhaden were present in shoal waters further to the east and allowed for a more equal balance of opportunity to harvest. Reports from dealers indicate that bait stores are currently at a high level with adequate amount of bait available to begin the lobster season prior to the beginning of June 19<sup>th</sup>, 2023.

### *Trip Limit*

The Department maintains the proposed weekly limit of 51 barrels. There were 5 comments in support of the weekly limit and 4 in opposition with a preference of a daily 6,000 pound limit. The allowance of a weekly limit preserves fleet diversity and the range of business operations that occur between the bait only and lobster harvesters. The purpose of the 51 weekly barrel limit is to allow the flexibility harvesters need throughout the week to plan their harvest around other activities and weather. Understandably, there is the potential for a lot of menhaden landings on the Monday of each week. However, we encourage harvesters to be mindful of market or personal need so as to not land more product than is necessary for bait demand. The goal that was shared during the menhaden industry meeting on December 20, 2022 was to stretch out the harvest season to the end of August and possibly into September.

If the pace of harvest is at a rate that would reduce the likelihood of extending the fishery to the end of August, the Commissioner may use the proposed pause provision to execute temporary breaks in harvest. With continued electronic trip level reporting occurring on the same day as landing, quota can be monitored next to real time.

### *Harvest Days*

The Department maintains the proposed harvest days of Mondays, Wednesdays and Fridays for the state allocation fishery. The Department acknowledges the 2 comments that describe this proposed harvest schedule as difficult for those harvesters fishing on offshore islands while realizing it has worked well for the previous seasons. The increased flexibility of a weekly limit may offset the need for a shift in harvest days. Additional considerations for excluding Saturdays from the harvest schedule include conflict with

recreational fisheries. Also, the implications of staff monitoring quota on the weekends reduces the ability to quickly react with management re-adjustments if warranted.

#### *Storage Requirements*

The Department did not propose changes to the storage provisions. However, there were several comments that related to storage requirements; two comments proposed including measured fish holds as an approved container option, while three comments requested the removal of storage options within the state allocated fishery.

The storage requirement was first introduced in the 2018 menhaden season, specifically during the small scale fishery to better enforce the 6,000 pound daily limit. During the 2018 season, the state and episodic fisheries were considered high volume and generally operated by vessels specifically rigged for bait. Gradually, as effort within the menhaden fishery increased, a wider range of vessels began to participate in the fishery and, as a result of this, catch limits were reduced. During the 2021 season, the weekly limit for the state allocation fishery reduced from 160,000 pounds a week to 23,800 a week and the storage requirement was established for both the state allocation and episodic fisheries to aid in enforcement of harvest limits. The storage requirement remains a necessity for a quota based fishery with approximately 350 participants all harvesting at different rates.

There have been extensive discussions among harvesters, the Commissioner and Marine Patrol regarding the certification of fish holds. At this time, there is no path forward to allow for a vessel to achieve a certification seal by Weights & Measures. There is the additional issue that if fish holds are larger than the allotted weekly poundage of fish, it is still difficult for Marine Patrol to gauge exactly how much fish are on board. The Department recognizes this is an ongoing concern for constituents and will attempt to seek resolution in the future.

#### *Temporary Fishery Pause Provision*

The Department has amended the temporary fishery pause provision based on comments received, to ensure clarity that it may occur more than once. The Department appreciates the three comments in support for this new provision and the suggestions that 7 day increments would be optimal for harvesters. The Department will take these comments under advisement should this provision need to be utilized in-season.

#### *Gillnet Restrictions*

The Department maintains the proposal to limit the length of gillnets to 500 feet. There was one comment in support of this provision and no opposition.

#### *Non-Commercial Fishery Program*

The Department did not propose any amendments to the non-commercial menhaden license fishery program other than the updated restrictions on gillnets that pertain to that specific gear type for either license type. The tradeoff to those individuals that elect to possess the non-commercial fishery license is that they cannot sell their catch. Based on conversations with harvesters over the two previous seasons that this license type has been available, the daily trip limits may not be ideal for all participants, but it allows for the personal harvesting of bait as it was intended without impacting those participants with changes in the management of the commercial fishery. For the 2023 fishing year, landings by non-commercial licenses represent 2.3% of the total menhaden landings.

