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June 2, 2017

The Honorable Michael D. Thibodeau, President
MAINE STATE SENATE
3 State House Station
Augusta, Maine 04333

The Honorable Sara Gideon, Speaker
MAINE HOUSE OF REPRESENTATIVES
2 State House Station
Augusta, Maine 04333

The Honorable Amy Volk, Senate Chair
The Honorable Ryan Fecteau, House Chair
COMMITTEE ON LABOR, COMMERCE, RESEARCH AND ECONOMIC
DEVELOPMENT
The Honorable David Woodsome, Senate Chair
The Honorable Seth Berry, House Chair
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY
100 State House Station
Augusta, Maine 04333

Re: *2017 Attorney General Report to the Legislature
Under the Petroleum Market Share Act*

Dear President Thibodeau, Speaker Gideon, Senators Volk and Woodsome, and
Representatives Fecteau and Berry:

I am pleased to make this report in accordance with the Petroleum
Market Share Act (P.M.S.A.), 10 M.R.S. § 1677. The P.M.S.A. requires the
Attorney General to make a report to the Legislature describing the
concentration of retail outlets in the State, including a recommendation as to
whether additional legislation is needed to further limit or curtail the activity of
refiners operating retail outlets.

Enclosed is a report describing concentration of retail outlets in the
State. The report, which is based on data collected from wholesalers of both
motor fuel oil and home heating oil, includes maps depicting relative

concentration in designated markets throughout the State. This report is also available on the Attorney General's website at: <http://www.maine.gov/ag/docs/PMSA%20Report%202015-2016.pdf>.

Since no refiners of petroleum products operate retail outlets in this State, we recommend no legislation to limit or curtail such operations.

I appreciate this opportunity to provide this information and hope it is useful.

Sincerely,



JANET T. MILLS
ATTORNEY GENERAL

JTM/cmm
Enclosure

cc: Grant T. Pennoyer, Executive Director, Maine State Legislature
John R. Barden, Director, Maine State Law and Legis. Reference Library
Jamie Py, President, Maine Energy Marketers Association

**STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL**

Janet T. Mills, Attorney General



PETROLEUM MARKET SHARE ACT

**REPORT OF THE ATTORNEY GENERAL
TO THE MAINE LEGISLATURE
PURSUANT TO 10 M.R.S. § 1677**

**FOR THE REPORTING PERIOD
2015 – 2016**

May 2017

Retail Petroleum Outlets Concentration
10 M.R.S. § 1677
May 2017

I. INTRODUCTION

This Report is provided by the Attorney General to the Legislature pursuant to Maine's Petroleum Market Share Act ("PMSA"), 10 M.R.S. § 1677. As required by the statute, the Report describes the concentration of retail petroleum outlets. The concentration levels described in this Report reflect conditions in Maine as of the end of May 2016. The statute also requires the Attorney General to make "a recommendation to the Legislature as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets." The Attorney General does not recommend any legislative changes at this point.

The Report focusses on markets for home heating oil and motor fuel oil. The geography of petroleum markets is local. In the case of home heating oil, the market may encompass an urban area, or a segment of a county. Motor fuel markets tend to be smaller, in some instances limited to a single neighborhood or one side of a busy street. For continuity purposes, our analyses retain the longstanding geographic market proxies developed by the Attorney General in the 1990s when the PMSA reporting first began. The state has been divided into 33 home heating oil ("HHO") markets and the 16 counties have been used as proxies for motor fuel oil ("MFO") markets.

The Maine Attorney General receives data annually from home heating oil and motor fuel oil wholesalers reflecting the annual gallons supplied to each home heating oil and motor fuel retailer located in Maine. Also a requirement of the PMSA, the data enable us to determine the number of retail competitors and their percentage market shares within the pre-defined geographic markets.¹ 10 M.R.S. § 1673. Those figures in turn allow us to calculate where each of the HHO and MFO markets falls on a concentration index widely used by federal and state antitrust agencies to assess competitive conditions (usually in the context of proposed mergers and acquisitions). The Appendices to the Report show the concentration levels, and corresponding maps depicting those levels, for each pre-defined market. The tables in the Appendices also show concentration numbers for the same markets for the past ten years for comparison purposes.

II. LEVELS OF CONCENTRATION

A. Methodology

The methodology employed by the Maine Attorney General to assess levels of concentration in Maine's retail petroleum markets, as reflected in this Report, is essentially the same methodology used by the U.S. Department of Justice, the Federal Trade Commission and other state Attorneys General in evaluating the legality of a given merger or acquisition under applicable

¹ It should be noted that the Attorney General collects neither retail nor wholesale price information under the PMSA. Moreover, the data collected from individual wholesalers, which is confidential by statute, is aggregated and not identifiable by wholesaler or retailer in this report. 10 M.R.S. § 1675.

antitrust law. The Maine Attorney General has employed a similar analysis enforcing Maine's merger law for more than thirty years. 10 M.R.S. § 1102-A.

The most important factor affecting competition in a particular market is the level of concentration (how many sellers and the size of their market shares). The data the Maine Attorney General receives annually from home heating oil and motor fuel oil wholesalers reflecting the annual gallons supplied to each home heating oil and motor fuel retailer located in Maine allow us to calculate market shares of retailers within a defined geographic area based on their sales volumes.

1. Market Definition. The first step in a concentration analysis is to determine the relevant product and geographic markets. This Report focusses on two product markets, namely home heating oil and motor fuel oil. Home heating oil is defined as "#2 fuel oil sold for heating residential, industrial or commercial space or water." 10 M.R.S. § 1672(3). Motor fuel "means internal combustion fuel sold for use in motor vehicles" as more fully defined in 29 M.R.S. § 101(42). 10 M.R.S. § 1672(4).

Determining geographic markets for this Report is less straightforward. For the purposes of this Report, we are not looking to identify the geographic area within which two merging companies operate, as we would if we were reviewing a proposed merger. Rather, we are attempting to carve the state into a series of geographic markets to obtain a very broad snapshot of competition in the petroleum industry and trends across the entire state.

The Maine Attorney General has taken different approaches to defining geographic markets for home heating oil and for motor fuel oil. At the time the Attorney General initially began preparing these reports, we conducted a series of interviews with a number of persons knowledgeable in the petroleum industry in Maine. On that basis, we divided the state into thirty-three separate geographic markets intended to fairly approximate economic and competitive circumstances relative to home heating oil sales. Motor fuel markets are generally more local. However, since our task here is not to analyze a specific local merger, but rather to portray broad trends in levels of concentration across the state, we use county-wide markets. Markets are not static, of course, and economic and competitive factors over time may suggest slightly different approaches to appropriate markets at this point in time. Nonetheless, we have retained the original geographic markets to be able to compare concentration trends over time within consistent geographic areas.

Importantly, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. Each individual merger or acquisition proposal will require an evaluation of the unique competitive and economic circumstances in the areas within which both companies operate.

2. Herfindahl-Hirschman Index. Market concentration is a well-accepted tool for evaluating competitiveness within identified markets. As a general rule, the fewer the competitors, and the higher those competitors' market shares, the more concentrated (and less competitive) the market. Federal and state antitrust agencies (including the Maine Attorney General)

employ the Herfindahl-Hirschman Index (“HHI”) to measure market concentration.² The HHI concentration index is arrived at by squaring the market shares of all the competitors in a given market. This simple mathematical device expresses the insight that market power increases exponentially in proportion to market share. Federal antitrust guidelines used by the Maine Attorney General in merger enforcement indicate that a market with an index of 1000 or less should be viewed as unconcentrated (and therefore likely to function competitively).³ A market with an index between 1000 and 1800 is described as moderately concentrated; while any index over 1800 is termed highly concentrated.⁴ A market in the highly concentrated category is subject to a high degree of market power, unless the effects of high concentration are mitigated by other factors, such as ease of entry for a new competitor.

Our analysis of levels of concentration in home heating oil markets tracks the categories reflected in federal guidelines. Thus, a home heating oil market with an index under 1000 is referred to as “unconcentrated,” an index in the 1000-1800 range is described as “moderately concentrated,” and an index in the 1800-2500 range is termed “highly concentrated.” Markets above 2500 points are referred to as “extremely concentrated.”

² DOJ/FTC Horizontal Merger Guidelines (rev. ed. 2010)(available at <https://www.justice.gov/atr/horizontal-merger-guidelines-08192010>).

³ For example, ten firms with market shares of 10% each would yield an index of 1000 (10 squared x 10).

⁴ For example, a market comprising five firms with market shares of 20% each would yield an index of 2000 (20 squared x 5).

For our designated motor fuel markets we have adjusted the concentration index to reflect the fact that the large, county-level geographic markets inevitably understate levels of concentration. Thus, for motor fuel, an index below 500 is “unconcentrated,” 500-1000 is “moderately concentrated,” and 1000-1800 is “highly concentrated.” The “extremely concentrated” designation is reserved for motor fuel markets above 1800.

Appendix A lists the geographic markets within which we measure concentration at the retail sales level for both home heating oil and motor fuel oil. The HHO markets map depicts the relative concentrations in the 33 previously designated home heating oil geographic markets, based on the latest analysis of data from wholesalers. The MFO markets map depicts the relative concentrations reflected in the latest analysis of county-wide retail motor fuel markets. Again, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. The tables in Appendix B contain the latest HHI concentration analyses within both home heating oil and motor fuel markets, as well as concentration comparisons in those markets over the last ten reporting years.⁵

B. Overview - Retail Home Heating Oil Markets.

Overall, concentration levels in Maine’s home heating oil markets have remained relatively consistent. Ten out of thirty three markets are in the un- to moderately concentrated zone. While the ten counties are not precisely the

⁵ Careful observers of these PMSA reports will note that this Report has fewer tables. We have condensed the concentration data into one table each for HHO and MFO to reduce redundancy and potential confusion. We continue to include ten years of data for comparison purposes.

same ten counties in those less concentrated zones in the previous report, there is considerable overlap. The Portland, Augusta and Bangor areas, as well as the areas bordering the northern portion of Frenchman's Bay, remain the most competitive. Also similar to the last Report, Northern and Downeast Maine, as well as the northwestern and southern tip of the state remain among the most concentrated, or least competitive. And, again, the midcoast area between Brunswick and Waldoboro is also extremely concentrated, though the coastal area on either side is only moderately concentrated.

While, in general, concentration levels have remained very consistent, there are several markets that have shifted significantly. Three markets have improved from extremely concentrated to moderately concentrated, namely Markets 19, 28 and 31 (Franklin, southern Oxford and northern York Counties). On the other hand, Market 7 (slightly north of Bangor) and Market 13 (the Midcoast between Waldoboro and Northport) have deteriorated from moderately concentrated to extremely concentrated.

C. Overview - Retail Motor Fuel Oil Markets.

The concentration levels for the county-wide motor fuel markets have shifted more significantly than those levels associated with home heating oil markets. Far more counties appear to be highly or extremely concentrated than for the prior report period. Franklin, Kennebec, and Hancock appear to be the most competitive counties. One possible explanation for the seemingly significant shift in concentration levels was the discovery of several reporting gaps and analysis errors in recent reports. Unfortunately, those corrections

have revealed a less competitive landscape for motor fuel than we had previously thought, though it is difficult to determine whether there has actually been a significant recent change in the competitive landscape given the data issues mentioned above.

III. RECOMMENDATION

The Attorney General is required to recommend whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets. We do not recommend any changes on that basis, since there are no refiner retail operations in Maine in either home heating oil or motor fuel oil. Further, we recommend no changes to the law because it works relatively well for the Office as a starting point in merger enforcement. The ready availability of sales data from wholesalers enables the Attorney General to evaluate competitive conditions surrounding proposed mergers and acquisitions much more quickly in the petroleum industry than we would be able to if the data were not required under the PMSA. This makes merger enforcement in this area more nimble for the Attorney General, and less burdensome for companies wishing to engage in merger or acquisition transactions in the Maine petroleum industry.

* * *

APPENDIX A

HHO MARKETS

1. St. John Valley
2. Ashland/Presque Isle
3. Houlton
4. Lincoln
5. Woodland/Calais
6. Cherryfield/Machias
7. Old Town
8. Ellsworth
9. Bangor
10. Dover-Foxcroft
11. Pittsfield/Newport
12. Belfast
13. Rockland
14. Mid Coast
15. Augusta
16. Waterville
17. Skowhegan
18. Jackman/Greenville
19. Farmington
20. Jay
21. Lewiston/Auburn
22. Bath/Brunswick
23. Portland
24. Gray
25. Paris
26. Rumford/Rangeley
27. Bethel
28. Bridgton
29. Limerick
30. Sanford
31. Biddeford/Saco
32. York
33. Mt. Desert

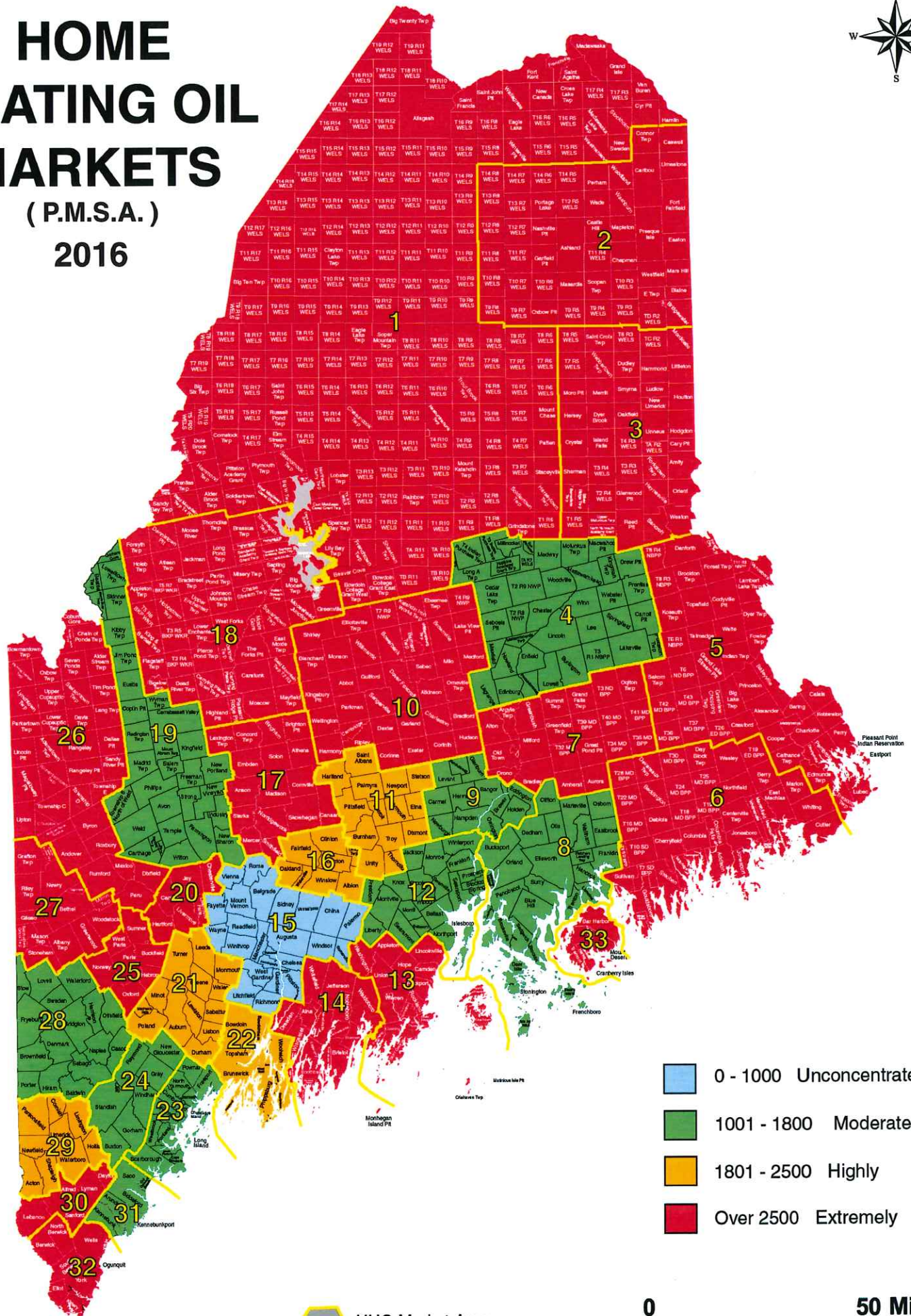
MFO MARKETS

- Androscoggin
- Aroostook
- Cumberland
- Franklin
- Hancock
- Kennebec
- Knox
- Lincoln
- Oxford
- Penobscot
- Piscataquis
- Sagadahoc
- Somerset
- Waldo
- Washington
- York

HOME HEATING OIL MARKETS

(P.M.S.A.)

2016



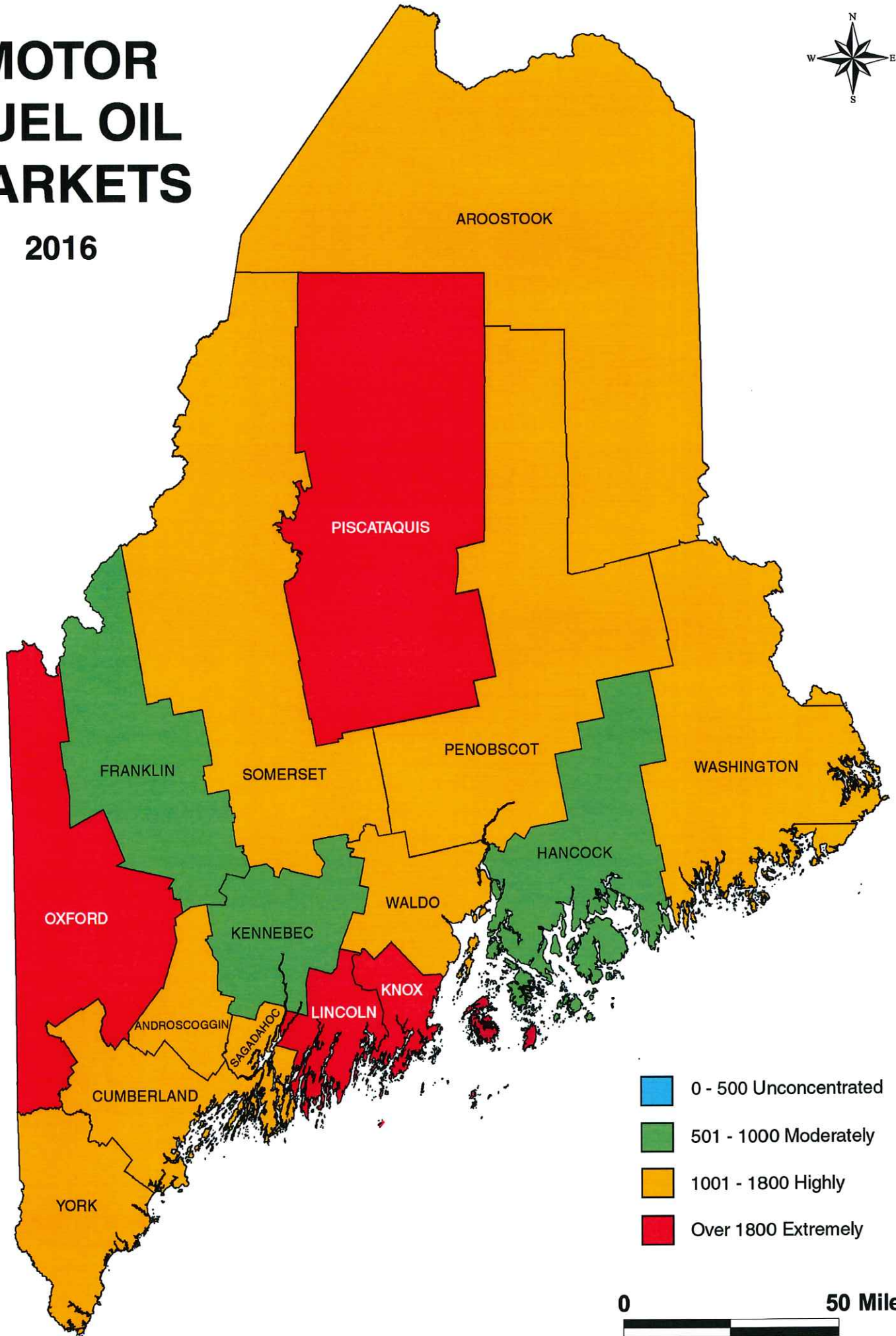
1 HHO Market Area Boundaries and Numbers

- 0 - 1000 Unconcentrated
- 1001 - 1800 Moderately
- 1801 - 2500 Highly
- Over 2500 Extremely

0 50 Miles

MOTOR FUEL OIL MARKETS

2016



- 0 - 500 Unconcentrated
- 501 - 1000 Moderately
- 1001 - 1800 Highly
- Over 1800 Extremely

0 50 Miles

APPENDIX B

HHI DATA TABLES

HHO & MFO Concentration by Market Area 2007 to 2016

