

# NOTICE OF AGENCY EMERGENCY RULE-MAKING

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 41.30 (1) Menhaden Fishery Closure

**CONCISE SUMMARY:** The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved a total allowable catch (TAC) for the 2015 and 2016 fishing seasons of 187,880 mt per year. The percentage allocated to Maine for 2016 is 0.04%, or 161,466 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on landings reports received, Maine DMR is aware that the 2016 menhaden quota has been exceeded, and is closing the menhaden fishery for 2016 in order to avoid unusual damage and imminent depletion of the menhaden resource. An exception to the closure is provided in order to allow a small amount of menhaden to be taken by hook and line for personal use only. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A). Maine DMR also anticipates that the biomass available to the State for an episodic event fishery will be met or exceeded before August 5, 2016, and this also serves as notice that the episodic event fishery is closed, as provided by 41.30(2)(A).

**EFFECTIVE DATE:** August 5, 2016

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Menhaden Program

1. State Allocation Fishery

It is unlawful to fish for, take, or possess Atlantic menhaden.

- A. Exception: An individual may fish for or take by hook and line up to 25 menhaden per day for personal use only.
- B. Exception: A vessel may fish for or take up to 6,000 pounds of menhaden per day as incidental bycatch. A vessel may not land more than 6,000 lbs per calendar day. A vessel that is taking menhaden may not transfer menhaden at sea.

~~4.~~ 2. Episodic Event Fishery

An episodic event fishery may be opened following the full utilization of the state allocation of menhaden.

A. Notice

Pelagic and anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any openings or closing dates for an episodic event fishery.

B. Reporting

Any harvester landing menhaden during an episodic event fishery must report landings daily to the Department by leaving a message at (207)624-6558 with the following information no later than noon the day after landing:

- License Holder Name
- Vessel Name
- Vessel Documentation or State Registration Number
- DMR Landings Number
- Pounds Landed
- Phone Number where License Holder can be reached
- VTR numbers (if applicable)

This reporting requirement is in addition to the reporting requirements of Chapter 8.20 for anadromous and pelagic license holders.

C. Landing of menhaden

Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, all menhaden harvested from Maine territorial waters must be landed in the State of Maine.

~~2.~~ 3. 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(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(A) & (B).

### 3. 4 Definitions

- A. "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).

### 4. 5 Area Limitations

The areas in Chapter 41.30(2)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

#### A. Harvester Vessel Limitations in all Areas (A, B & C)

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. It shall be unlawful for any harvester vessel to fish for, take, or possess greater than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM).

#### B. Carrier Vessel Limitations in all Areas (A, B & C)

It shall be unlawful for any carrier vessel to 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.

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 but may not land more than a total of 120,000 pounds per day.

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.

5. 6 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.

## **Basis Statement**

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved a total allowable catch (TAC) for the 2015 and 2016 fishing seasons of 187,880 mt per year. The TAC is made available to the states based on the allocation established by Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. The percentage allocated to Maine for 2016 is 0.04%, or 161,466 lbs. States have the responsibility to close their directed commercial fisheries in their state once their quota has been reached. Based on landings reports received, Maine DMR is aware that the 2016 menhaden quota has been exceeded, and is closing the menhaden fishery for 2016 in order to avoid unusual damage and imminent depletion of the menhaden resource. An exception to the closure is provided in order to allow a small amount of menhaden to be taken by hook and line for personal use only. A second exception to the closure is provided to allow for the incidental take of menhaden as bycatch, up to 6,000 lbs per day. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A).

## **Summary of Comments**

NA

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 41.30 (1)

STATUTORY AUTHORITY: **12 M.R.S. §6171 (3)(A)**

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)] The Department has received reports from industry members and Department staff that the 2016 state allocation for Atlantic menhaden has been met or exceeded. For this reason, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(A) to prevent unusual damage or imminent depletion of the menhaden resource.

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)]: This rule seeks to close the 2016 commercial fishery for menhaden, as required by Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

Reports from industry members, science staff, and landings program staff; Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)] No fiscal impact anticipated.

**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.*