

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Atlantic Menhaden; 2021 Harvest Rules

TYPE OF RULE (*check one*): Routine Technical Major Substantive

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

BRIEF SUMMARY:

This proposed rulemaking amends the effort restrictions for the commercial menhaden fishery management program. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Wednesdays, Thursdays and Saturdays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Wednesdays and Saturdays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Saturdays with a daily vessel limit of 6,000 pounds. Transfers at sea to either a harvester or carrier vessels are prohibited during the State Allocation, Episodic Event and Small Scale fisheries. During all three fishery phases, menhaden must immediately be stored in barrels, crates, exactic boxes or fish totes, or a combination thereof, upon harvest and remain stored either on the harvester vessel and the dory towed by the harvester vessel, if utilized.

The use of carriers is prohibited. The transferring of nets while at sea is prohibited. The harvester vessel may utilize one tender (i.e. bug boat) vessel, not to exceed 20 feet in length, to assist in the deploying, tending, and retrieving of the net. Same day reporting is required by commercial menhaden harvesters during the state allocation and episodic event fisheries.

The noncommercial menhaden fishery daily limit has been amended from 1,000 pounds to 1,050 pounds to reflect the amount landed in three barrels.

Date, time and location of PUBLIC HEARING (*if any*): A remote public hearing will be held as follows: Tuesday, March 16, 2021 at 4 p.m.; the hearing may be continued as necessary on Thursday, March 18, 2021 at the same time and format. Persons interested in participating the hearing need to register no later than 5pm on Monday, March 15th. The registration form can be accessed on DMR's website (under "News") at: maine.gov/dmr

COMMENT DEADLINE: March 28, 2021

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

NAME: Amanda Ellis

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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: § 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

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 to use a vessel to transport menhaden that exceeds 90 feet overall length as shown on the vessel's current USCG documentation or State registration.
5. The use of carrier vessels is prohibited.
6. The transferring of nets while at sea is prohibited.

41.10 Suspension of Rules

The Commissioner has the authority to suspend all regulations in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email and/or text notice to industry members.

41.20 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. ~~no later than noon the day after landing.~~ no later than noon the day after 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 reports are due weekly by 11:59 pm Sunday.

2. Noncommercial Menhaden Fishing License

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

Harvesters: See Chapter 8.20(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. Exactic box: a standard insulated bait fish box, measuring 48 inches long x 43 inches wide by 47 inches tall has a capacity of 2,100 pounds.
- G. F: Crate: a crate equals two and one half bushels or 175 pounds of menhaden.
- H. G: Landing: to come to shore, float or a dock and offload menhaden.
- I. H: Harvester vessel: the exclusive vessel that deploys the net to fish for, take and possess menhaden. This vessel may have one tender vessel, not to exceed 20 feet in length, to assist in the deploying, tending, and retrieving of the net.
- J. I: Carrier vessel: a vessel that is not rigged to fish and is transporting to shore menhaden that was caught by a harvester vessel.

41.30 Commercial Menhaden Fishery Management Program

1. 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.

B. Effort restrictions

Following the opening of the state allocation fishery on Monday, June 14, 2021 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, Wednesdays, Thursdays and Saturdays each week. It is unlawful to fish for, take or possess more than 23,800 pounds or 68 barrels per harvester vessel per week. It is unlawful to transfer at sea to either a harvester or carrier vessel. It is unlawful to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

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

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, ~~daily and~~ weekly landing limits still apply.

C. Storage Requirement

All menhaden must immediately be stored in barrels, crates, exact boxes or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, exact boxes 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.

B. 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 Wednesdays and Saturdays each week. It is unlawful to fish for, take or possess more than 14,000 pounds or 40 barrels per harvester vessel per week. It is unlawful to transfer at sea to either a harvester or carrier vessel. It is unlawful to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

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

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, ~~daily and~~ weekly landing limits still apply.

C. Storage Requirement

All menhaden must immediately be stored in barrels, crates, exactic boxes or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, exactic boxes 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, 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 ~~lbs.~~ pounds per 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 Saturdays 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: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily and weekly landing limits still apply.

C. Gear Restrictions

It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following when targeting menhaden: cast nets, fixed traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.

~~Harvesters may take menhaden as incidental catch when targeting another species using the following gear types: pound nets, drift gill nets, trawls, fishing weirs, fyke nets and floating fish traps.~~

D. Storage Requirement

All menhaden must immediately be stored in barrels, crates, exactic boxes or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, exactic boxes 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.

~~4. **Carrier Vessels**~~

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

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

~~C. It is unlawful for a carrier vessel to make a transfer at sea to another 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 ~~4,000 lbs~~ 1,050 pounds or 3 barrels 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, hand seines, and cast nets.

41.50 Recreational Fishing

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

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 41 Atlantic Menhaden; 2021 Harvest Rules

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S):

COMMENT DEADLINE: March 28, 2021

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

This proposed rulemaking amends the effort restrictions for the commercial menhaden fishery management program. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Wednesdays, Thursdays and Saturdays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Wednesdays and Saturdays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Saturdays with a daily vessel limit of 6,000 pounds. Transfers at sea to either a harvester or carrier vessels are prohibited during the State Allocation, Episodic Event and Small Scale fisheries. During all three fishery phases, menhaden must immediately be stored in barrels, crates, exactic boxes or fish totes, or a combination thereof, upon harvest and remain stored either on the harvester vessel and the dory towed by the harvester vessel, if utilized.

The use of carriers is prohibited. The transferring of nets while at sea is prohibited. The harvester vessel may utilize one tender (i.e. bug boat) vessel, not to exceed 20 feet in length, to assist in the deploying, tending, and retrieving of the net. Same day reporting is required by commercial menhaden harvesters during the state allocation and episodic event fisheries.

The noncommercial menhaden fishery daily limit has been amended from 1,000 pounds to 1,050 pounds to reflect the amount landed in three barrels.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X ___ NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

The adopted rule(s) seeks to incorporate updated effort restrictions pertaining to commercial menhaden license holders to allow for a controlled harvest of the available Atlantic menhaden quota that is available to the State of Maine for the 2021 fishing year.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Comments received from marine patrol during the 2020 harvest season as well as feedback from industry that was gathered during an open virtual meeting held on Wednesday, February 10, 2021 that was well attended by over 100 harvesters.

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