

NOTICE OF AGENCY RULE-MAKING ADOPTION**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 41 Menhaden**ADOPTED RULE NUMBER:**
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)**CONCISE SUMMARY:**

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

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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DEPARTMENT OF MARINE RESOURCES

Chapter 41 Menhaden Regulations

41.05 Territorial Waters Trawl Prohibition

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

41.30 Menhaden Fishery Management Program

2-1. Definitions

- A. ~~"Daily catch limit or Daily limit" For purposes of this section (Chapter 41.30) means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from areas A and B between 00:01 AM to 11:59 PM. There is no daily catch limit or daily limit in Area C for harvester vessels.~~
- B. ~~"Carrier vessel 120,000 lbs capacity" For purposes of measuring 120,000 lbs or capacity in a vessel hold the volumetric measure (in hogshead) of 120,000 lbs of menhaden is equivalent to ~98 hogshead. One hogshead equals 17.5 lb bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 120,000 lb divided by 1225 lb (or 17.5 hogshead) equals ~98 hogshead, which is within the 5 hogshead tolerance used in §6544(3).~~
- A. "Hogshead": one hogshead equals 17.5 lb bushels.
- B. "Bushel": one bushel equals 70 lbs of menhaden.
- C. "Barrel": one barrel equals 55 liquid gallons; or, 5 bushel of menhaden.
- D. "Truck": one truck equals 40,000 lbs of menhaden.
- E. "Landing": to come to shore, float or a dock and offload menhaden; or to transfer menhaden at sea to a vessel utilizing the menhaden for bait.
- F. "Dory": a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the catcher vessel. A dory may be used by a catcher vessel to transport menhaden the catcher vessel has taken.
- G. "Catcher vessel": the vessel that deploys the net to catch menhaden.

2. State Allocation Fishery

A. Notice

The state allocation fishery is open until such time as the Department has landings information that the quota assigned to Maine by the Atlantic States Marine Fisheries Commission has been reached or could be exceeded. At that time, the Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the state allocation fishery. It is unlawful to fish for menhaden after the closing date of the state allocation fishery, unless the Department has opened the episodic event fishery, or the incidental catch and small scale fishery.

The Commissioner may extend or reopen the State Allocation Fishery at any time with notice to Commercial Pelagic and Anadromous 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

During the state allocation fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of the state allocation fishery, and prior to the closure of the state allocation fishery, it is unlawful to fish for or land menhaden except between 12:01 AM on Monday and 11:59 PM Thursday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess more than 160,000 lbs per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 pm). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

C. Reporting

All Commercial Pelagic and Anadromous license holders who intend to fish for menhaden during the state allocation fishery must notify the Department of their intent prior to landing any menhaden. License holders who have made notice to the Department must report landings daily to the Department via email to menhaden.dmr@maine.gov with the following information no later than noon the day after landing, in addition to monthly harvester reports required by Chapter 8. If the harvester did not fish, the harvester must report that they did not fish.

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of menhaden on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch transferred, by weight, to each dealer (by dealer name and landings number)
- VTR number

3. Episodic Event Fishery

Following authorization by the Atlantic States Marine Fisheries Commission, the Department may open an episodic event fishery following the closing of the state allocation fishery.

A. Notice

The Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the episodic event fishery. When the Department receives notice from the Atlantic States Marine Fisheries Commission that the quota for the episodic event fishery has been reached or may be exceeded, the Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the closing date for the episodic event fishery.

B. Effort restrictions

During the episodic event fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, it is unlawful to fish for or land menhaden except between 12:01 AM on Monday and 11:59 PM Thursday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess

more than 160,000 lbs per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 pm). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

C. Reporting

Any harvester landing menhaden during an episodic event fishery must declare into the fishery by notifying the Department of their intent to harvest menhaden during the episodic event fishery prior to landing any menhaden. All harvesters must report landings daily to the Department via email to menhaden.dmr@maine.gov with the following information no later than noon the day after landing, in addition to monthly harvester reports required by Chapter 8. If the harvester did not fish, the harvester must report that they did not fish.

- Name of harvester
- Name/Vessel ID
- Permit ID
- Landings number of license holder
- Total catch retained (including all catch transferred to any vessel who will not report it as their own catch)
- Name/Permit ID of Carrier, if transfer at-sea occurs
- Total amount of menhaden on board
- Date, time and location (dealer, city, state) of offload
- Estimated catch to be received, by weight, to each dealer (by dealer name and landings number)
- VTR number

4. Incidental Catch and Small Scale Fishery

An incidental catch and small scale fishery for menhaden may occur following the full utilization of the state allocation of menhaden or following the full utilization of both the state allocation and an episodic event fishery.

A. Notice

The Department will notify Commercial Pelagic and Anadromous license holders by public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

B. Effort Restrictions

During the incidental catch and small scale fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. It is unlawful to fish for, take, possess or land more than 6,000 lbs per vessel per day. It is unlawful to make more than one landing per 24 hour period (12 am to 12 pm). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1), except that it is unlawful during the incidental catch and small scale fishery for a catcher vessel to sell, give or transfer, at sea menhaden they have taken to any other vessel. For the purpose of this subsection, a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full equals 1/3 barrel.

C. Gear Restrictions

It is unlawful to use any gear type other than the following when targeting menhaden: cast nets, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep, stretched.

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

D. Storage Requirement

All menhaden must immediately be stored in barrels or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels or fish totes on both the catcher vessel and the dory towed by the catcher vessel, if utilized.

~~4-5.~~ Areas

- A. Bald Head Cliff to Cape Arundel
Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.
- B. Biddeford Pool to Cape Elizabeth
Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.
- C. All Maine territorial waters outside the areas defined in Chapter 41.30 (5)(A) & (B)
Shoreward of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical charts, except for those areas defined in Chapter 41.30 (5)(A) & (B).

~~3-6.~~ Area Limitations

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

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

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

~~B. Limitations in Area C~~

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

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

- (1) It shall be unlawful for any harvester vessel targeting menhaden that exceeds 50 feet in length overall (LOA) to fish for, take or possess menhaden within these restricted areas.
- (2) It shall be unlawful for any carrier vessel to possess or land more than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.
- (3) A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity.

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

- (4) It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport menhaden harvested from Areas A, B & C. Any carrier vessel greater than 70 feet but not to exceed 90 feet LOA must be measured, plainly marked at a maximum 120,000 lbs capacity or equivalent volume; or marked at the maximum vessel capacity if under 120,000 lbs, and sealed* by the State Sealer of Weights and Measures.

*Sealed means receipt of the applicable Fish Carrier Calibration Report and sticker, seal or appropriate marking affixed by the State Sealer of Weights and Measures or their designee. This documentation must be obtained prior to transporting menhaden taken from these areas.

4-7. Suspension of rules

The Commissioner has the authority to suspend all regulations in Chapter 41.30 in the event of a potential fish kill upon consultation with industry and Marine Patrol. Notice of rule suspension and duration shall be provided via the internet on the Department's web site and by email to industry members or telephone.

Basis Statement:

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

Based on the comments received during the rulemaking process, the Department has made the following changes:

- A definition of a dory, which has been a traditional method of transporting an individual harvester vessel's daily catch has been included in 41.30(1).
- A clarification has been provided that should the State of Maine receive an adjustment to its state allocation quota via an annual quota update or a quota transfer as outlined in the Atlantic States Marine Fisheries Commission Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner has the ability to extend or re-open the State Allocation Fishery program through notice (per 41.30(2)(A)).
- Harvest limits, daily (120,000 lbs) and weekly (160,000 lbs), for the state allocated fishery have been made consistent with limits within the episodic event fishery to simplify the monitoring and enforcement of these two distinct fisheries, as noted in 41.30(2)(B).
- During the incidental catch and small scale fishery, harvesters are required to store fish in either barrels or totes, so that the 6000 lb daily limit may be monitored and enforced both at sea and upon landing.

Summary of Comments

Notice of this proposed rulemaking appeared on January 10, 2018 in the five major daily newspapers as published by the Secretary of State. On January 10, 2018, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. The public hearing was advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and was held as follows: January 31, 2018, 1:00PM, DMR Offices, 32 Blossom Lane, Augusta, Maine.

I. Augusta Public Hearing

January 31, 2018

Members of the Public (10)	DMR Staff (5)
Josh Saxton, Cova Willis, Sawyer Hanna, Robert Bernat, Emily Morse, Mark Bichrest, Daniel Chadbourne, Robbie Begin, Dustin Delano and Jim Wotton.	Meredith Mendelson, Deirdre Gilbert, Jon Cornish, Melissa Smith, James Becker, and Amanda Ellis

Opposed

Josh Saxton, Deadliest Bait

The only thing that I really think should be changed is one landing per carrier, per day during the state allocated and episodic event fishery because it screws with people who don't have a carrier that can carry 120,000 pounds. If our carrier can't handle 120,000 pounds we should be able to have multiple loads per day. Keep the carrier limit, but we should be able to take as many trips as we need to get the 120,000 pounds.

Dustin Delano, F/V Knotty Lady

The only concern I have is not having a weekly limit during the state allocated fishery. Seems like we talked before about out-of-state boats being able to come in and clean up all those fish too. I don't see why we don't have the 160,000 pound limit throughout the episodic and the state quota. It doesn't make sense to me to land all the bait you want Monday through Thursday. The other thing for me, personally, is it would be nice to have Sunday as an option.

Jim Wotton, F/V Overkill

I am speaking as a lobsterman, pogie fisherman, and wharf owner. I think that running the state fishery on a wide open catch it as fast as you can catch it fishery is not right. At a minimum, it should be like the episodic fishery with a weekly limit to slow this down. We could potentially catch the state quota in a couple of weeks. I agree with Dustin on Sundays for fishermen looking to go get their own bait is real important. It seems that there's no clear definitions of transfer at sea. I know it is probably going to be an enforcement policy, but to get everyone on the same page, so that

everyone knows what a transfer at sea is. I think we need to get everyone on the same page and get it in writing somewhere where people can see it.

Written Comments

Comment period closed February 14, 2018

Jim Wotton, submitted via email, January 23, 2018

I believe it is irresponsible and shortsighted to manage a fishery in a catch all you can catch, as fast as you can catch it, derby style fishery. This proposed rule making plays right into the large bait dealers hands, the same dealers that have held the lobster fishery under their thumb for years. Every attempt should be made to match the menhaden fishery to the demand driven by the lobster fishery, the end user of the bait. A derby fishery in June will result in the quota being caught in Casco Bay and to the west. The freezers of a couple large bait dealers will be full so they can sell them to us at inflated prices when they are months old. The return of these fish to Maine waters is a golden chance for the lobster fleet to return to a way of fishing that has been gone for close to thirty years. A time when weeks old bait didn't arrive in the back of quarter of a million dollar truck, it came from neighbor's or even your boat when it was still flipping. I understand the thought that brought DMR to this proposal: catch the state quota asap to maximize the amount of episodic quota available then catch the episodic quota asap. I don't agree. At the very least the the state quota fishery should run under the same rules as the proposed episodic fishery... My recommendation is the state fishery is conducted Sun, Tue and Thursday weekly at a daily limit of 30,000 pounds. The episodic fishery operates under the same rules. DMR has stated Weekend fishing should be avoided as not to conflict with recreational fishermen. I know Sunday fishing to be very important to meet the upcoming week's bait demand. Lobstermen could catch their weekly supply of bait on the day legislated off. If conflict is an actual problem address it where it is occurring, not the whole state. Leave the areas in place and use them. I believe my approach will provided mid coast and even downeast fishermen better access to the fishery and the bait. As far as the incidental fishery is concerned, there needs to better definition of what can and can not be done. Example, can the catch boat put fish on more than one carrier? It's not a transfer at sea because they never went on the catch boat. Limiting seine size to 150x8 is pointless when there is a possession limit of 6000 pounds. This will crowd boats into a few areas and possibly create conflict. After reading through my comments I seem to be a bit disgruntled with bait dealers, so I'll add some info to justify it. Attached are photos of barrels of pogies I received from a large bait dealer, when I called her to complain about having to pay \$36 a bushel for five bushel barrels that were nowhere near full, her response was " you don't want em get em somewhere else".



Images were submitted with Mr. Wotton's comment and depict barrels of pogies he received from a bait dealer.

Josh Saxton, Deadliest Bait, submitted via email, February 1, 2018

I support the majority of your proposals in chapter 41, but I think that there should be a few changes. In the state allocation fishery and episodic event fisheries, we support the 120,000 pound carrier cap per day. However, limiting carriers to one landing per day causes a few problems. First it promotes a large vessel fishery, by limiting people with smaller carriers to not be able to compete. Having a small carrier already makes transporting fish more difficult and the fisherman should be able to make multiple trips to get their fish landed so that they can have a chance to compete. But more importantly have a one landing per day limit creates a huge safety issue for all carriers. Knowing that they will only be allowed to land once, people are going overload their boats and push it beyond its limits to try and maximize their one landing. If they were allowing to land multiple times to reach the 120,000 cap, that would encourage carriers to make safe loads. Which not only makes it more safe for the captains and crews, but also protects the ecosystem from fuel and oil spills from vessels that sunk from being overload, sunken vessels becoming navigational hazards for other vessels, and lastly prevents wasted resources from the marine patrol and coast guard regarding a sunken vessel that otherwise wouldn't have if they hadn't been pushed to overload their carrier. Please consider changing this for not only the menhaden fisherman, but for the state as a whole, because we will all benefit from the increase in catch from these boats with small carriers and it will prevent potential harm to the ecosystem.

Robbie Begin, submitted via email, February 6, 2018

I would like to leave a comment about the use of a dory in the small seine fishery. historical,for many many years it has been the safest way to transport a substantial amounts of fish, and it is also an efficient way to do so as well ,it is just like using a trailer and a truck if you are a carpenter.It is not SAFE to put 6000 pounds of fish on the boat with five crewmembers And all your fishing gear , so I hope that you will continue to let us use a Dory like over the past years .As Captain of the boat the safety of my crew is top priority and that is why I would like to use a dory to transport fish. also I think it will be an easy way to keep track of the 6000 pounds for the warden service.



February 8, 2018. Mr. Begin submitted this image with the following comment: *“I have left one comment and wanted to send a picture of what it looks like with 6000 pounds in a 36-foot boat and it is not safe to put 6000 pounds in a boat and your Nets and five crewmembers.”*

Ira “Tad” Miller, submitted via email, February 7, 2018

I am a commercial fisherman hailing from Matinicus, Maine. I believe that the proposed rule-making for menhaden is not in the best interest of the majority of fishermen that catch them, nor the lobstermen that use them as bait. I understand what the DMR is trying to achieve with these rules as written, but if the menhaden continue on with a cycle like has been witnessed in the past I believe that it will be counter productive to the needs of the majority those fishermen that utilize the resource. A derby fishery would result in higher prices to the lobstermen and an unfair distribution of that resource along the coast as it takes time for them to spread west to east. The access to catching these fish and opportunity to purchase good fresh bait, not put away in cooler for extended periods of time especially at a reasonable price should be a priority. The menhaden resource should be metered out in a way that reflects the historical way that this fishery has been carried out typically in Maine. This will allow more people to utilize the bonus of having the benefit of what has been a cyclic fishery in the past if it happens to move into their area of the State. It is my opinion that the fishery should proceed right from the start under the proposed episodic rules of 30,000#'s as a daily limit with fishing days of Sunday, Tuesday and Thursday. Sunday fishing is a must as it allows fresh bait to be available to lobstermen at the beginning of the fishing week when

participation is at its maximum. There needs to be special attention paid how the incidental portion of the fishery is conducted too. For instance things like transfers at sea present a problem right out of the gates as there appears to be a potential loophole in that language. If the fish show up in Maine in force we should have the ability to harvest our quota, the episodic quota and then continue in to the incidental portion of the catch. If this is the case the episodic quota will be accessed early on anyway as will the incidental quota because the harvesting sector of the fleet will grow this year and there will be market enough to move them in a reasonable time frame, without having to storing large amounts of menhaden leaving room to stockpile other baits for leaner times.

Calvin Bayley, submitted via email, February 11, 2018

I am writing in regards to the public pogy hearing meeting of January 31, 2018. My concern is the safety issue that may occur if a small seining boat is not allowed to load their catch on a dory (or another boat of similar size) during the incidental catch and small scale fishery that commences after the closure of the state allocated fishery and/or the episodic events fishery. Small seiners should have the option to use a dory or boat of similar size to load their catch and transport it to the dock. I feel this is a reasonable request as some of the small seining boat are quite small and it could be dangerous to overload them. Thank you for giving me this opportunity to voice my opinion.

Vincent Balzano, submitted via email, February 13, 2018

I am the owner/operator of purse seine fishing business that fishes for Menhaden out of Portland. After reading the proposed rule for Menhaden I asked myself. What happens if Maine is able to obtain additional menhaden quota after closure of the state directed fishery? Is there any mechanism to reopen the state allocated fishery. In response to the questions above I would like to comment. If Maine were able to obtain additional menhaden quota transferred from another jurisdiction then Maine should be able to extend or reopen the first part of its season the state directed fishery. Thank you for your consideration in this matter.

Lincoln Simmons, submitted via email, February 14, 2018

I commercial fish for manhaden for the past two years. I've heard that there is talk of not allowing the catch boat to transport its small scale fishery limit of 17 barrels by use of a dory and this concerns me due to safety, practicality, and trying to not overload/under load in order to remain legal. For me, my boats, and my crew, safety is the one I am most concerned about. Being that I have a forty foot and a thirty six foot catch boat, which is roughly the same size of every boat in the state that participated in the small scale fishery, It is very unsafe to load 17 barrels (roughly 6,000 pounds), a one hundred fathom by ten fathom purse seine (roughly 2,000 pounds), six men (1,000 pounds) and all other gear required to fish. For example, the rigging, the winches, the Tom weights, the purse line and so on. My point being without the use of a dory you will have ten to twenty boats carrying five or six guys steaming around state of Maine waters every day half sunk trying to make it to the dock before something quits like a bilge pump so they don't sink which is very alarming to me and a situation I whole heartedly DO NOT want to put my crew and I into or be a part of. On the other hand it could be completely avoided by the use of a dory. The practical side of this is that Maine fishing industry, boothbay in particular (where I'm from) was built on manhaden. It has a been a tradition to transport fish around the state of Maine via Dorys. Why?, because the old timer

weren't stupid. It is a safe, fast, and efficient way to transport fish. It would be too bad to lose that life long tradition of using dory's. In my mind, If I load my boat with loose fish in every spot they will fit to try and get my 6,000 pounds aboard it is a complete shot in the dark whether I have even close to seventeen barrels. A dory on the other hand once you use one once or twice you know what she can hold to what point up her hull and you can mark it. Say you load it the first time and come in with nineteen barrels, make a little mark where your fish were. Next trip you load her a little lower, you offload and it's seventeen barrels. Mark her good all the way around the dory. Now you know where your seventeen barrel mark is within probably a half of a barrel either way. Simple. It will be much easier for fisherman to follow the law and for the wardens to be able to enforce it with the use of a dory. I hope you rule makers and to whomever else it concerns understand the importance and significance of a dory for a small scale fishery. I hope this letter is useful and you will allow us to continue using dorys just like fisherman have done for so many years before us so we can come home safe to our families every night.

Patrice McCarron, Executive Director, Maine Lobstermen's Association, submitted via email, February 14, 2018

The Maine Lobstermen's Association (MLA) has reviewed the DMR's proposed rules regarding Chapter 41 Menhaden for the 2018 fishing season. Menhaden is a very important bait fish for Maine's lobster fishery which supports thousands of jobs and generated over \$500 million in ex-vessel value to the state of Maine in 2016. Sustainably managing local bait stocks such as menhaden, and allowing more equitable access to them, are fundamental to the continued success of the Maine lobster fishery.

Access to a steady supply of local baits – fresh or frozen – has been challenging in recent years. Due to a lack of landings from the offshore herring fishery, lobster bait has become scarce and prices have skyrocketed. The availability of menhaden in 2017 helped to meet demand but was not strong enough to stabilize prices. 2017 was a particularly frustrating year given the tremendous menhaden resource aggregated off the Maine coast that our fishermen were not able to fully utilize due to quota limitations. The MLA is pleased that ASMFC has since increased Maine's quota, maintained the availability of the episodic fishery and maintained the Incidental Catch and Small Scale fishery. These combined fishing opportunities will certainly benefit the Maine lobster fishery and Maine lobstermen in accessing local bait sources.

The MLA appreciates the DMR's efforts to manage the state's menhaden fisheries to maximize opportunities for Maine-based vessels and provide a steady and timely supply of bait to the lobster fishery. The MLA supports the rules as written, with one recommendation. The MLA recommends that the effort restrictions outlined for the State-Allocated fishery mirror those proposed for the Episodic Event Fishery. By including a daily limit of 120,000 per vessel and 160,000 pounds per week, the state would deter larger out of state boats from directing effort on menhaden in Maine's waters, and establish a steady and predictable pace of menhaden landings to supply the lobster fishery.

Emily Morse, submitted via email, February 14, 2018

The comments I have on the menhaden rule change are as follows:

41.30

1.

E.

Describes that the definition of "landing" includes "to transfer menhaden at sea to a vessel utilizing the menhaden for bait". I believe that this part should be removed in no way is in enforceable to have people put a barrel here and barrel there on lobster boats. Boats can come to the dock and get bait after it is properly landed. If the sharing of fish out of one catcher boats seine to another catcher boat cannot be enforced certainly this cannot be either.

4.

B.

Last year there was a lot of bending of the rules going on and it was allowed to happen for the people that dared to do it. Such as people licensing there bug boats as a catcher vessel because it was "participating in catching the fish" and they would set one net from the true catcher vessel and land 6000 lbs. with the bug boat and 6000 lbs. with the catcher. I think that there should be some sort of wording in the document that puts a stop to loopholes like this and if not everyone needs to know about them and enforcement needs to be upfront not just to the selected few. I have no problem with this loop hole as far as people landing more fish I just want it to be fair for everyone not just the daring few

If you are serious about enforcement, during the small scale fishery, fish should be required to be barreled on the catcher boat or in dories this is the only way to efficiently and quickly keep track of the 100 boats catch. If you're not serious about enforcement keep it the way it is and we can repeat last year.

6.

C.

(1)

How are the catcher and carrier vessels being measured, with a tape measure or by an architect? These are entirely different measures and if it's by an architect it is not the true length of the boat, please define.

6.

C.

(4)

If any boat clearly holds more than 80,000 lbs. it should have to be measured for capacity and stamped if it holds more than 120,000. There are many boats between 45' and 70' that hold 120,000 lbs. or more

The last two things we would like to discuss is that there be a plan in place if we were to get quota from another state say New Hampshire how would that look? catch limits and such so bait dealers can do a little bit of planning ahead of time.

Why is the fishing week set at Monday thru Thursday I realize we want to make the sports fishermen happy but why do they need Friday?

Mark Bichrest, submitted via email, February 14, 2018

The comments I have on the menhaden rule change are as follows:

41.30

1.

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Why is the fishing week set at Monday thru Thursday I realize we want to make the sports fishermen happy but why do they need Friday?

Rene you don't need Rockets permission for any of this!

Jennie Bichrest, President, Purse Line, Inc., submitted via email, February 14, 2018

Please find to follow my comments to the proposed change to Chapter 41 Menhaden Rue for the State of Maine. First I have a couple general comments about the stated “need” for the change. I am totally befuddled, as to why this rule “seeks to expand opportunity” to a low quota fishery, that already has long time participants with significant capital investments. These participants, have been anxiously waiting for the day when the Menhaden returned, to repay some of that investment. They are now being asked to allow many others to reap the benefits. Some of us have been involved from day one, when we made significant changes to the current rule, to limit effort before there where even cuts to the quota to protect the resource and all users, big and small. Thus the previous 220,000 Lb limit. Now 120,000.

Secondly I wish to say that the fiscal impact of the rule to the Department will definitely not take more money with the lack of enforcement effort directed in the rule. It does however lack in proper enforcement tactics which would be simple and easy and still protect the taxpaying highly invested bait companies in the state. And the lack of such tactics had a huge financial impact on those businesses last season. Further, enforcement done with routine patrols will not even begin to keep track of what is going on in the” small scale fishery “as currently proposed. My specific comments to various sections are as follows.

Finally ,I wish to say that I am totally against ASMFC ,and the decision to define the small scale fishery in this way. If it had been kept to 6000 pounds, as true BYCATCH, or if Maine had a limited entry on the total fishery it perhaps would work. However, I believe that this is throwing historical participants and bait dealers coast wide,to the dogs.6000 pounds per day with an undocumented and uncontrolled amount of harvesters is no small amount of fish. Further with most any size purse seine more fish will be killed than caught!!! This will someday ,not in the too distant future bite us in the butt!!! From Maine to Florida. Maine could have chosen to be a leader and pointed this out and acted upon it.

SECTION 41.30- 1 Definitions

E: Landing This definition is a little ambiguous .It should be written to come to shore, float or a dock and unload menhaden. I am unsure of the intent the way it is currently written but I think it makes it unclear when transferring to multiple carry vessels it could be assumed that it is NOT allowed, if to transfer means LAND. Please refer to landing in herring..I believe the precedent is there to come to shore ...It should be further stated that, there will be NO over the side sales in ANY of the three fisheries. It will not only make enforcement easier but offer at least a small amount of protection for long established bait dealers in the state. This also has already been done for those reasons in the herring fishery.

SECTIONS 41.30 -2,3 State Allocation and Episodic Event Fisheries.

The only real problem I have is there should be NO over the side sales.

SECTION 41.30-4 Incidental and Small Scale Fisheries

I have already stated my total dissatisfaction with this fishery. I would like to say that if we are going to play this game it needs a tighter rope on it. I think we were lead to think that enforcement would be better. I do not see it here. It should be REQUIRED to barrel immediately upon catching fish. Meaning as they put them aboard, they go into barrels. This not only makes enforcement easier but ensures no more than 6000 is caught. I had thought this was a main point that was agreed upon? Other concerned people could more easily see that someone was NOT overharvesting.

I will personally not support this without that. Without it, this does not pass the straight face test for enforcement!!!

SECTION 41.30-6-C Area Limitations

I would like to see the word "menhaden" "harvesting vessel" to the language. I feel as written it could be misconstrued when a Herring harvest vessel with a net onboard, is being used as a carrier. Several herring vessels are used as carriers. They may offload herring in the morning and then carry menhaden in the afternoon. I do not want any question as to them being able to do so if over 50 feet. Please clarify. They are not harvesting menhaden nor should they! They are acting as carriers.

SECTION 41.30-6-C-4 Sealing of vessels.... I think it should be required that this certification comes direct from the State of Maine not from another state and accepted by the state. This would help protect our Maine harvesters somewhat while still allowing the legal access to it that we are bound to do. Thank you again for this opportunity. We all want a thriving fishery while protecting those with previous financial commitment.

Department Response to Comments:

Multiple Landings by a Carrier

The Department is unable to allow for multiple landings by the same carrier per day due to the challenges that would create in enforcing the daily landing limits. However, a catcher vessel (actively harvesting menhaden) may use multiple carriers to transport and land its daily 120,000 lb daily limit.

Daily and Weekly Limits in State Allocation Fishery

Several comments referenced the need to limit the state allocated fishery landings both daily and weekly. It was suggested the state allocation fishery should mirror the episodic event fishery with regard to both daily and weekly landing limits. Considering that daily reporting as proposed through this rule is the same for these two fisheries, and, should there be sufficient menhaden resources present in state territorial waters, it will be a seamless transition from the state allocation fishery to an episodic event fishery, the proposed rule has been amended. The state allocation fishery will have a daily limit of 120,000 lbs for harvester vessels and a weekly harvest vessel limit of 160,000 lbs. This will also aid the Department in quota monitoring and enforcement.

Available Harvest Days for the State and Episodic Fishery Programs

There were comments that suggested expanding harvest days for the menhaden fishery state allocation and episodic programs to include harvesting on Sundays and Fridays. It was decided that to reduce the potential for gear conflict and overlap between user groups among commercial and recreational stakeholders, to maintain the harvest schedule as proposed starting Mondays through to Thursdays. For the incidental catch and small scale fishery program, harvest may occur seven days a week.

Usage of a Dory

Comments received regarding the inclusion of a dory to transfer a portion of an individual's daily harvest has resulted in the amendment of the proposed rule such that a dory is now defined as a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the catcher vessel. Fish that the catcher vessel to which the dory is attached has taken may be transported in the dory.

Re-opening of State Allocation Fishery

Two comments referenced the menhaden fishery programs ability to re-open the state allocation fishery, should there be an adjustment to the state quota allotment during an active harvest season. The proposed rule has been amended to reflect the Commissioner's ability to re-open the state allocation fishery by notice, should the State of Maine receive an increase of quota via an adjustment or transfer from another state participating in the Interstate Fishery Management Plan for Atlantic Menhaden within the Atlantic States Marine Fisheries Commission.

Clarification of Landing Definition

Several commenters were confused about the definition of a landing. Specifically, many suggested striking "*transfer menhaden at sea to a vessel utilizing the menhaden for bait*" from the proposed rule as it could create enforcement challenges. The definition of a landing in this rule (Chapter 41) is the same as that found in Chapter 36, which pertains to the Atlantic Herring Fishery. Based on the Department's experience administering and enforcing provisions in Chapter 36, the definition of landing has not led to any enforcement issues. As a matter of clarity, a harvester vessel may land menhaden once per day, and to land means that the vessel may come to shore, float, or dock to offload menhaden. Additionally, if a harvester vessel transfers any or all of its catch of menhaden to another vessel utilizing the menhaden as bait while at sea, this is also considered a landing event. After landing, the harvester vessel may not land until the next day. This does not preclude a harvester vessel from using multiple carrier vessels to transfer menhaden from the harvest area to the landing location.

Sealing of Vessels

Language in this proposed rule on the certification by State Sealer of Weights and Measures was pre-existing. The Department did not propose to change this section which has been effective since July 2013.

Enforcement of the Menhaden Fishery

Several comments referenced enforcement challenges experienced during the 2017 fishery. The Department believes that many of the changes made by this rule-making will aid in the effective enforcement of the necessary limitations, while still allowing this fishery to proceed in many of its traditional practices. Based on concerns expressed regarding the enforceability of the 6000 lbs daily limit during the small scale and incidental catch fishery, the Department has amended the proposed rule to require that harvesters immediately store all fish in either barrels or totes so that Marine Patrol can easily assess the amount of fish on board.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: 13-188- Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41 Menhaden

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 31, 2018 at 1:00 p.m.: DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta.

COMMENT DEADLINE: February 14, 2018

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

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

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

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

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

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

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

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this Agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]