

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 2022 Menhaden Commercial Fishery Closed

CONCISE SUMMARY:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated roughly 2.2 million pounds, but has typically landed over 20 million pounds through the combination of state allocated quota, Episodic Event Set Aside quota (EESA), transfers of quota from other states along and landings via the incidental catch and small scale fishery (ICSSF) provision. In 2022, Maine has landed 170% more pounds of menhaden under the ICSSF than in 2021 due in part to increased participants. For FY2021, total landings of menhaden (including landings under the ICSSF provision) exceeded the Total Allowable Catch (TAC) of 194,400 mt set for menhaden. Additional commercial landings of menhaden jeopardizes the TAC set for FY2022.

The Commissioner has determined that it is necessary to take emergency action to end the commercial fishing season to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A).

EFFECTIVE DATE: August 28, 2022

AGENCY CONTACT PERSON: Melissa Smith
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
Augusta, Maine 04333-0021
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: Melissa.Smith@maine.gov
TELEPHONE: (207) 441-5040
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Commercial Menhaden Fishery Management Program

3. Incidental Catch and Small Scale Fishery

The incidental catch and small scale fishery for commercial menhaden harvest is closed.

Exception: Fishing weirs, stop seines, and pound nets are not subject to commercial fishery closure. However, total weekly landings must not exceed 7,350 pounds per harvest vessel between Mondays 12:01 AM through Sundays 11:59 PM.

~~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 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 Fridays each week. It is unlawful for a harvester vessel to make more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25, except that it is unlawful during the incidental catch and small scale fishery for a harvester vessel to sell, give or transfer, menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea.~~

~~Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily landing must not exceed 6,000 pounds and total weekly landings must not exceed 18,000 pounds per harvest vessel between Mondays 12:01 AM through Sundays 11:59 PM.~~

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, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8~~

~~fathom deep. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.~~

D A. Storage Requirement

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

A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

Basis Statement

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signaled a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA was permitted two days a week and effort remained constant for the duration of the program. To avoid an overage in this fishery, Maine DMR closed the EESA fishery on June 28, 2022.

Commercial harvesting under the incidental catch and small scale fishery (ICSSF) began on July 6, 2022 and has operated at three days a week with a daily landing limit of 6,000 lbs. Comparing the first 17 days of harvest under the ICSSF across years, Maine has landed 170% more pounds of menhaden in 2022 than in 2021, and 250% more pounds in 2022 than in 2020. To date, we have landed 15.8 million pounds under the ICSSF.

The non-commercial rate of harvest is significantly lower than the commercial rate of harvest, with the non-commercial daily landing limit set to 1,050 pounds. These additional landings will not significantly impact the overall total landings of menhaden. Additionally, there are non-directed fixed gears within state waters targeting multiple species (i.e. mackerel). The allowance for fixed gears to retain 7,350 pounds of menhaden per week is to ensure continued access to other pelagic fisheries while reducing incidental mortality of menhaden.

Since 2018, Maine has been allocated roughly 2.2 million pounds of menhaden but has been landing greater than 20 million pounds through a combination of EESA quota, transfers of quota from other states and the use of the ICSSF once all quota options have been exhausted. Maine's ICSSF landings peaked at 13.6 million pounds in 2020 and decreased to 12.5 million pounds in 2021 as regulatory changes were established to moderate effort and landings during that portion of the fishery. However, in 2021, total landings of menhaden (including landings under the ICSSF provision) exceeded the Total Allowable Catch (TAC) for menhaden.

The Commissioner has determined that it is necessary to take emergency action to end the commercial fishing season to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A).

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6558; E-mail: Melissa.Smith@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41: 2022 Menhaden Commercial Fishery Closed

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)]

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated roughly 2.2 million pounds, but has typically landed over 20 million pounds through the combination of state allocated quota, Episodic Event Set Aside quota (EESA), transfers of quota from other states along and landings via the incidental catch and small scale fishery (ICSSF) provision. In 2022, Maine has landed 170% more pounds of menhaden under the ICSSF than in 2021 due in part to an increase in participants. For FY2021, total landings of menhaden (including landings under the ICSSF provision) exceeded the Total Allowable Catch (TAC) of 194,400 mt set for menhaden. Additional commercial landings of menhaden jeopardizes the TAC set for FY2022.

The Commissioner has determined that it is necessary to take emergency action to end the commercial fishing season to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A).

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 closes the commercial harvest of menhaden for mobile gears which comprises the majority of the fishing effort. This closure will lower the risk of a potential overage of the total TAC of 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]

DMR has considered the cumulative preliminary landings of the ICSSF, the anticipated level of effort for the fishery and observations of fishery operations by Maine Marine Patrol.

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)]