

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

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

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:

This rulemaking establishes the effort restrictions for the commercial menhaden fishery management program for FY2021. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Tuesdays, Thursdays and Fridays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Tuesdays and Fridays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Fridays with a daily vessel limit of 6,000 pounds. Transfers at sea of menhaden 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 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 for all gear types.

Menhaden cannot be transferred to another vessel while at sea. Menhaden cannot be received from another vessel while at sea. 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.

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

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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. It is unlawful for any vessel other than the harvester vessel that made the set to remove fish from the seine or net. If more than one vessel is used to set the seine or net, only the vessel from which the seine or net was removed may take or possess menhaden from the seine or net.

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.~~ 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. Hogshhead: one hogshhead 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. Crate: a crate equals two and one half bushels or 175 pounds of menhaden.
- G. Landing: to come to shore, float or a dock and offload menhaden.
- H. Harvester vessel: the ~~exclusive~~ vessel that deploys the net to fish for, take and possess menhaden. A harvester vessel is in possession of fish once the net encircles and traps the fish.
- I. ~~Carrier vessel: a vessel that is not rigged to fish and is transporting to shore menhaden that was caught by a harvester vessel.~~
- I. Set: To place from a harvester vessel a purse seine or a bait gillnet in the coastal waters of the state for the purpose of taking menhaden.

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

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery on Monday, June 14, 2021 at 12:01 AM. 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, Tuesdays, Thursdays and Fridays 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 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. 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 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.

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 Tuesdays and Fridays 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 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. 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 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.

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 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 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 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.

~~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 ~~1,000 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 speargun, harpoon, minnow trap, hand dip net or hook and line ~~or hand cast net~~, up to 25 menhaden per day for personal use only without a license.

Basis Statement

This rulemaking establishes the effort restrictions for the commercial menhaden fishery management program for FY2021. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Tuesdays, Thursdays and Fridays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Tuesdays and Fridays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Fridays with a daily vessel limit of 6,000 pounds. Transfers at sea of menhaden 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 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 for all gear types.

Menhaden cannot be transferred to another vessel while at sea. Menhaden cannot be received from another vessel while at sea. 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.

Summary of changes made:

- Proposed language on the prohibition of transferring nets at sea has been removed;
- Proposed language related to tender vessel length has been removed and clarity on harvester vessel's activity has been added;
- Definition of carrier vessel has been removed and clarity on no transfer of fish at sea has been added;
- Harvest days for state allocation fishery changed from the proposed Mondays, Wednesdays, Thursdays, Saturdays to the same schedule as FY2020 of Mondays, Tuesdays, Thursdays, Fridays;
- Harvest days for the episodic fishery changed from the proposed Wednesdays, Saturdays to Tuesdays, Fridays;
- Harvest days for the small scale fishery changed from the proposed Mondays, Wednesdays, Saturdays to Mondays, Wednesdays, Fridays; and,
- Recreational fishing does not specify a method of take except as limited in statute.

Summary of Comments

Notice of this proposed rulemaking appeared on February 24, 2021 in the five major daily newspapers as published by the Secretary of State. On February 24, 2021, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Due to the pandemic, a remote public hearing was held on March 16, 2021. The comment period closed March 28, 2021.

Written Comment Received

Matthew Clemons, received via email, February 25 and 26, 2021 and March 17, 2021

I would like to give my input on a few of the proposed changes the the 2021 menhaden season. My first concern is that the fish typically show up June 1st and I see no reason to delay the season. In 2020 I personally caught fish the first day they arrived and fished till the last day they were here before they traveled south. If people have a market they should be able to fish whenever the fish arrive. Delaying the season will result in a loss of revenue for menaden harvesters as well as cost lobstermen more money by being forced to buy bait from out of state.

Secondly, I ask the question whether the men and women proposing these new restrictions have realized they have essentially deleted the big boats that hit their maximum 160,000 lbs a weeks last year. Those

fishermen will not even be participating in this new 17 barrel a day fishery because it is not feasible to do so. I believe by eliminating those big producers the state fishery will take a lot longer to fill than you are expecting. These cuts are very drastic and the overall harvest from the state of Maine will be very low this year compared to last year thus forcing lobstermen to buy more expensive bait from out of state. Going from a 7 day a week small scale fishery to a 3 day a week fishery seems very drastic. If you find landings numbers are down compared to what you expected will you open up more days a week? My third concern is the proposed 20 ft max tender vessel restriction. I deploy my net out of a 25 foot dory, and haul the net back by hand with a 4 man crew, anything smaller than that is UNSAFE for myself and crew. Purse seines have been deployed from dory for as long as menhaden have been harvested in this state. Anything smaller doesn't have enough room for the net and the crew to stand together and pull it in.

Lastly I'd like more clarity on the restriction to transfer a net at sea. In what situation would it not be considered at sea? Possibly at the dock?? In the past it has been very easy to transfer my net being stored in a dory to another harvester vessel after I was done with it. It was my father who I would transfer it to. I do not agree with this new restriction. With these new limits, I can be done with my net in a few hours and do not see the point of it not being used by another fishermen. Any restriction like this is just making it harder for fishermen to harvest this great bait resource we have here in the state of Maine and I think it's a shame all these restrictions are going to force maine lobstermen to buy more expensive bait from out of state.

I would also like to give my input on the selected fishing days for this year. I see no reason saturday should be a fish day. These pogies are desired to be as fresh as possible to Maine lobstermen and if we land fish on a saturday no lobstermen can use them on Sunday because your not allowed to lobster on Sunday in the summertime. I would suggest switching saturday with a Tuesday so the fresh bait can be used before the weekend. Also if your concerned about a increase in landings removing saturday will help decrease landings because alot of lobstermen would fish for menaden on saturday while it's not on there routine haul schedule.

After yesterday's meeting I would like to add a couple more comments:

First I would like to eliminate all saturday fishing and move that day to a Thursday or a Friday, especially during the small scale fishery. If the intent is to slow landings I think weekends should not be allowed. Lobstermen should have to make a choice during the week as if they chose to haul or to catch menhaden. I as a menhaden harvester i should not have be forced to work every weekend all season long. Plus on the weekends it is harder to find crew at the warfs to help offload.

Secondly, I would think we could find a easier way to prove the catcher vessel caught the fish they are carrying without making them bring the net the whole way to offload. I sometimes fish over a hour steam away from where I offload, the idea of making that travel twice in one day with the net in tow seems unnecessary to fish two boats while sharing a net. My suggestion would be to call in and report catch once boat is loaded and report that you are now transferring the net to another vessel. Another idea would be to take a time and dated picture of the vessel making a set on fish and loading that vessel before transferring a empty net. I know there has to be much easier ways to prove I am following the law besides making me tow the net around to offload before heading back out to sea.

Also, if this proposal making net transfers at sea illegal is not going to change I need to know right now so I can build a second net, I cannot be told two weeks before the season opens that I need to build a second net.

James Clemons, received via email, February 28, 2021 and March 26, 2021

I would like to comment on record about this proposed Menhaden rule. First, I've fish for a living for over 50 yrs, have 3 sons who also fish for a living and I'm sponsoring grandchildren . I realize that

things must continue on, but with Covid , and not having a REAL public hearing, I don't believe this is a time to try to drastically change the menhaden fishery. Not all of us fishermen are familiar with on-line or zoom meetings, and I feel that this is not my time to try it out on such an important topic. So , I must comment in writing . The proposed changes I believe are not necessary, and will only hurt the fishery. Specific dates to fish only hurt the fishery, as the fish aren't date specific, they come and go on their whim. If they come earlier than you allow us to fish on them there will be massive die-offs as we saw in Casco Bay a few years back . This doesn't help fisherman and only hurts us as the public is then thinking that the fishery is not managed correctly.

The early fish that are caught are frozen so as the lobstermen have bait later on when the pogies have left the area. Without the frozen pogies, we would be in hard shape to find lobster bait in January. It's costly enough for bait as it is now, prolonging the start up time in June makes no sense, for me as a lobsterman and a pogie harvester. Limit the days to being specific only hurts the fisherman, as some days are pogie fishing days weather wise, and some are not. I don't thinking of us can predict the weather this far in advance. This proposed rule change only drives up the price of pogies making it harder lobsterman to keep a fair profit, and hurts the smaller menhaden fishermen to try to fish on days that are not safe, and cannot fish without going into a larger operation. Let us fish when we feel it's right, safety wise, and profitability wise, not on a calendar day specific .

As I stated, I'm a pro fishing family traditional guy, so I learned to pogie fish in the 1960's. I fished with a old-timer back then, using a net in a dory as the operation was small. I have continued to do this and have taught my sons this way of fishing, we are year round lobstermen ,and pogie fish as well when the fish are here. Our nets are in dories still, and we fish as a family, sharing help and using the same net and dory on separate harvester boats. We do not transfer the net out of the dory, but do deploy this one net out of the dory ,with different harvester boats, our lobster boats. This shared dory-net boat, as with sharing our helpers, keeps the cost down, and this is how I've done this forever. This new proposed rule ,seems to outlaw the way we do our pogie buisness, and will only force us to fish on our own, cost us more investment wise, and stop the traditional fishing as a family the we have had for many years. Divide and concur, comes to mind and I can see no common sense, as this doesn't help the menhaden, nor help us as lobstermen and suppliers of bait to other lobstermen . I haven't seen any explanation info for these proposed changes, as I see NO benefits in these changes, only hurts the menhaden fishery and the lobstermen who rely on this bait. I so wish we could have a REAL public hearing , so as I could voice my option in person, and also hear other views. Can't this be postponed until all could participate? I've seen many rule changes made over the years , that have only hurt the specific fishing industry, instead of helping it. I don't see the science or common sense to the proposed changes in rules . I ask you to leave it alone and next year after Covid ,we can have a REAL public meeting and workshops to voice all of our options and see if there are benefits to change the rules.

After watching your online hearing, I still don't understand the sense to jeopardize the safety of fishing crews by limiting the size of the tender- bug boat. Increased mortality of menhaden is a given if this becomes law and I don't see anyone benefiting with this happening. All fish must be reported each day, fine idea, but no need to change fishing traditions of one harvester to fish like another harvester. I don't see the common sense for 2 harvesters not to be able to work together and share their resources as they have for generations. To make a harvester return to port with a net before he can share this common net with another harvester just puts an unjustified burden on the fishing partners. If this passes, it will increase fuel bills and pollution by 100 percent, making both vessels return to port after fishing to transfer the net and return to the fishing grounds for the second time to fill the second boat . All the fish caught are reported so why is this necessary? Increased time, cost and pollution are the results. I fish with other family members, all having licensed vessels, who all report and all share a common net. The common net is stored in a dory that is tied off to the side of the harvester vessel . The harvester vessel deploys the net,

the harvester vessel brails the fish aboard into barrels. It is safer to not have the net in the harvester vessel as we can distribute the load better by not having to deal with the net on our decks as we have limited space due to the small size of our vessels. Dory and net are then tied off to the second vessel, to fill the second vessel. The dory with net is then towed back to port with the tender or bug boat, letting the harvester vessels deliver the catch, usually to different ports to different dealers. We have found this is the most efficient way to catch and sell our fish. Much less fuel burned and no loss of time ,driving back and forth burning fuel and time. All fish are reported, why make use go round and round to get to the same results? Having a video record sent in is a good idea, we report anyway, so why not make it easier for the wardens to enforce?

Sean Clemons, received via email, February 28, 2021

What does no transferring of nets at sea exactly mean? The last 2 years I have shared a net with my brother and father. My father has been doing this sharing since the 70s. We store the net in a 25' dory and on my boat hand haul the net back into the dory. Would that not be allowed anymore? Also we used to use a 20' dory and that was not big enough for 4 people to safely stand in and haul the net back. Elimination of the sharing of our net would force me not be able to fish. I do not have \$20,000 to buy a net. I feel this is forcing the smaller boats out of this fishery and also forcing the fishermen trying to catch bait to help with the local bait price.

I go fish for menhaden during the small scale fishery to catch lobster bait for myself and I sell the rest to pay for my crew. I feel as though going to 3 days a week would drastically affect if I can fish for menhaden. I try and catch my bait then haul but having this 3 days a week now would drastically increase my bait cost for my fishing summer. Having a small scale fishery 7 days a week helps my co op. We have over 40 members that fish from my wharf and we have been lucky to have multiple local small scale boats sell their catch to our wharf. We will use over 100 barrels of menhaden a day and the small scale fishery helps us keep the cost down on pogies. If you reduce the fishing days for this fishery I know we will have to use more big bait dealers pogies and our cost of bait will dramatically go up.

I know in the summer months the big dealers charge 20-30 dollars more a barrel then the local small scale fishermen. That alone would cost me 100-120 dollars a day in bait cost if I'm forced out of this fishery because of the net transfer law. I'm asking please reconsider the net transfer law and not restricting the small scale fishery to 3 days a week.

Robbie Begin, received via email, March 14, 2021

Hello my name is Robbie Begin I think we should start the season June 28th so the fishermen have a chance to start catching lobsters and we will be able to get top dollar for the bait. And none will get wasted and dumped. Also believe we should have a control date and go back and cut back on licenses. It should be 3 days a week at 17 barrel.

Lt Daniel White, received via email, March 15, 2021

The following changes should be made:

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.

The way that it is written now, the regulation is less restrictive than the law, section 6502-C.

There also needs to more clarification under the proposed regulation. The red [*Italics*] printed text below should be added.

41.05 Prohibitions

6. The transferring of nets while at sea is prohibited. *The net or seine needs to remain onboard the harvester vessel until the menhaden have been landed.*

41.30 1B. Effort restrictions

...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. *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.*

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...

41.30 2B 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 *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. 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

Dan Harriman, received via email, March 16, 2021

I would like to comment on proposed menhaden rules! I have used a 24 ft Carolina skiff for pound netting and purse seine for several years and it would be a severe financial burden to have to replace it with a bug boat under 20! Please consider this before implementing rules!

Reginald House, received via email, March 16, 2021

I am concerned with the episodic part of the fishery. I do not understand why we only can have two days to catch a **weekly** quota. What if we had bad weather for both days and no one got out? I would like to see at least a four day week. I would like to propose Sunday, Monday, Wednesday and Friday for days out. The reason for my thinking is for all the small boat fishermen catching pogies. My coop depends on a steady supply of pogies per week. We do not have capacity for big volume days. I have been a commercial fisherman for over forty years and hope you will consider my proposal. The pogies if they show up are a considerable asset to our community. The pogies are a lot cheaper than most bait and most fishermen use them for bait. Please give us four days on the **weekly** quota. Thank you for your consideration.

Darren Turner, received via email, March 19, 2021

I understand that the DMR is in a tough spot with the small quota and large catch capacity. There is no easy answer to manage it.

However, limiting tender boats to 20 foot is not a good idea. It doesn't address catch capacity. It only leaves harvest vessels with insufficient power for controlling their net and vessel. During the haul back of a seine, the vessel is immobilized. The tow boat needs to pull the harvest vessel out of the net, and away from danger. My vessel is a 48 feet, fiberglass over wood, and heavy. I have tried using a twenty foot boat with a 150 HP outboard to tow me, but the prop of the tow boat just cavitates. It had a little success with pulling the boat out of the net, but it cannot overcome the tide. I ended up drifting at the mercy of the tide. Small, high speed props cannot develop the necessary thrust, therefore they cavitate rather than move the boat forward. It takes a large amount of surface area on the prop blades to develop thrust, which is why a larger lobster boat is needed to tow on the harvest boat. There should be NO limitations on the tow boat. There are times when the tow boat has its own problems or breakdowns and another local vessel must come and tow on the harvester vessel to keep it out of danger. Enforceability should not supersede practicality, or safety. We can find better ways for enforcement.

I do not support "No Carriers". It just isn't safe or practical. If it's about enforcement, then let's come up with a better way. Most of the harvester vessels are just lobster boats. Even my 48 foot boat has no carrying capacity. Lobster boats have no depth to them. Often, the sterns are cut out. The scuppers are only a few inches from the waterline. There is not enough room on the deck for seine gear and the containers the fish are "required" to be in. Bulk loads are not legal so the load is on deck and therefore raises the boats center of gravity. If the load shifts, the boat is going to flood or roll. It is unsafe to put too much weight on these boats. Not everyone has dories. Harvester boats should be able to work with another similar sized boat to tow on and help carry the catch. Find a way to make it enforceable. Limit the carrying vessel to 50 feet like the harvester vessel. Use technology. Carry vessel must have written documentation from the harvester vessel. Report immediately the registration or documentation number online for DMR officers to see real time. Also, if a harvester has a big set, then multiple boats need to be able to take from his net, for the good of the fish. The "no carrier" rule does not address catch capacity, the weekly limit already does that.

Lastly, I do not support the "exactic box" being defined as 2100 lbs. Even if they are overflowing, 2100 lbs is high. They do not drain well, so there is a large amount of water taking up space. I have had dealers only pay for 1800 lbs in exactics. Please define exactic boxes as 1830 lbs.

Jeff Putnam, received via email, March 19, 2021

Hello, I am providing my comment on the Chapter 41, Atlantic menhaden 2021 harvest rules. please let me know that my comment has been received.

I would like to speak against the addition of limiting the tender vessel to 20' in length.

Carriers are not allowed under this proposed rule so the tender can not carry fish. it would be illegal for a tender of any size to possess fish so I see no need to limit the size of the tender.

transferring the net at sea is prohibited under this proposed rule, so the tender cannot have possession of the net at any point, so again there is no need to limit the size of the tender.

Using a tender that is under 20' could make the net setting and retrieval process more risky. If it is windy and the harvester vessel needs to be pulled away from the net to avoid twine in the wheel, a tender that is 16' for example may not be able to move the harvester vessel promptly.

My suggestion is to get rid of the tender length restriction completely, but if it must be kept then i would suggest the tender is limited to 25' in length. My other suggestion, should tender vessel restrictions need to be in place, would be to require that a tender vessel be powered by outboard motor only. Thank you for considering my comment.

Michael Dawson, received via email, March 25, 2021

On the bug boat size I think you should increase that to 23-24 foot also could have it be powered only by outboard and inboard outboard as this would eliminate traditional lobster boats and pretty much just be skiff type boats.

On the incidental catch I understand you only want fish landed 3 days a week at 17 barrel, but I would like to see an option to pick the 3 days from 5 or 6 days you designate. The reason for this it could let us fish consecutive days which would not have unloading are seines and all the gear that goes with Pogy fishing to do another fishery and load all that's gear on the boat which with loading and unloading can add 2 hours or more to the day (hour to load in am, hour unload in afternoon) which is also a lot of work on the crew each day which is getting harder to find in this industry. This could also spread out the days which boats will land which would be easier for shore side facilities to handle the fish if we all land at the dock same time it makes for stressful day at are coop with lobster coming in also and the limited help we have there as it's difficult to find help! This also gives the harvester options as when he wants to go but also only lets him catch 17 barrel 3 times a week so outcome is the same. I understand it will add more work for enforcement and reporting but taking seine on and off can add a lot to our job each week and it also gives us a little option on when to go and could spread out the fresh supply for lobsterman.

Emily Morse, received via email, March 25, 2021

I just wanted to voice my husband Josh and I's opinions on the menhaden fishery for 2021. We would vote for no fishing on weekends it makes sense to not have us out and about with pleasure boaters and sport fishermen and the fact that Lobstermen would have fresh bait during the week if we had all week day fishing.

Dale Prentice, received via email, March 23, 2021

I support the reduction in catch rates but do think some consideration should be given to changing the episodic event fishery to three 17 barrel days instead of two 20 barrel days. 2 days a week isn't much. I also think that a window of opportunity should be left open for the fishermen who want to coordinate with their local warden to confirm the capacity of a dory so it can be used as a unit of measurement. As long as the dory has a permanent identification marking such as a name painted on it so the warden knows what dory he's looking at, and has already confirmed the number of barrels it holds, I don't see why there should be any problem.

In the case of Round Pond, the two docks we use with coolers on them are tidal; and half of the time we have to try to get a loaded dory in there and ground out while we unload it. Can't do that with a boat and it's no good to leave fish aboard a boat for 6 or 8 hrs on a hot summer day waiting for the tide.

And I'll say again the big boats have been landing up to 120,000 pounds of fish a day, without using any unit of measurement, for the last four years. If THEY can do that, I'm not sure why you guys expect the "little guys" to store fish in totes, barrels or crates. They know how many barrels their dories hold, just as well as the "big guys" know what their boats hold.

And as far as the transfer at sea issue, I think that a conversation should be had about scratching harvesters off of that. Leave the "no transfer to carriers" in the regulations; but if a harvester is defined as having a seine and all the equipment to handle it and catch fish and has a license and therefore allowed to have 6000 lbs or whatever the number is, it makes no sense for one boat to set and catch more fish than he needs, put 6000 aboard, let the rest go, then go do the same thing with a second boat. It doesn't do the fish any good to keep catching them and letting them go.

And I'll go back to the big boats again. In the herring fishery in the last few years they stopped transfer at sea into carriers but they allowed transfer from harvester to harvester. It only makes sense. What's good for the Goose is good for the Gander.

Jim Merryman, received via email, March 28, 2021

I have 3 comments on chapter 41 Menhaden rules. First I would like to see a Monday, Wednesday, Thursday schedule. Anything later, to close to the weekend bait will sit and extra day where there is no lobstering on Sunday. My second issues I would like to address is a maximum length of 20 feet on a net deploy boat is too small and poses a real danger to the crew on that boat. I would support 25 feet maximum which would be safer for the crew. My 3rd issue I would like to address the transfer of nets at sea. This could be done in a different way. Maybe a phone call to the DMR say the boat is full and the net is going to be transferred to another boat. Requiring the net boat to go back to port then to be transferred could cost the rest of the day of fishing. Due to weather, wind not to mention the distance may have to be traveled to do so. Thank you for listening.

Riley Parlin, received via email, March 28, 2021

I urge Saturday's to be changed to Thursday or Friday. The bait caught on a Saturday cannot be used the following day so it had to sit in a cooler an extra day. There will be more fishing over a hour away from where we offload and forcing one boat to offload before net is transferred is unreasonable. There has to be a better option on how to do this. Having a vessel call in and saying they have loaded the vessel and now are transferring the net would make more sense. Faster and much more efficient for crews and captains. Tender vessel should be at least 25 feet a lot of the times we're fighting tide and wind and a bigger boat and more horsepower needs to be there and it is safer.

David Osier, received via email, March 28, 2021

The proposal of 68 barrel limit a week is very disappointing for the Maine Quota Harvest. I have a full time seiner and bait operation in South Bristol with a fish pump on the dock. I also buy lobsters and sell bait to lobstermen. If the proposal goes through I will not be able to stock pile enough Menhaden to supply the lobstermen that sell to me. I won't be able to use my 3 year old 50,000.00 state of the art Transvac Fish Pump. Bringing containers to put Pogies in is a hassle and makes a lot of extra work. Maine Weights and Measures could measure our holds and mark them at levels for this years weekly limits in the Maine and Episodic fisheries. I understand the fishing effort is out of control. I would like to be able to load menhaden in bulk so I could pump out like we normally do for the Maine Quota and the Episodic fishery. Containers are doable in the Incidental fishery with 17 barrels. As far as Fishing Days I would like to see no fishing Saturday and Sunday. If we can only fish 3 or 4 days a week why go on weekends? No weekend fishing would result in less interaction with recreation boat traffic and Pogy kill reports.

I would suggest Monday Wednesday Friday or Monday Tuesday Wednesday.

Jim Wotton, received via email, March 26, 2021

I provided comments at the public hearing but I'd like to clarify them and add a couple thoughts. I asked about the reasoning behind a tender/bug boat size limit. As I understand the answer it is to reduce the temptation to cheat (transfer at sea). I don't feel that is a valid reason to place a restriction on boat size. Restricting the ability of law abiding fishermen to quickly, safely and responsibly handle their gear and the fish will only result in more dead discards and possibly unsafe conditions. A bugboat/tender needs to have enough power and the ability to turn the seiner around inside the net and work it around the net as it is brought aboard. A skiff with an outboard is not capable of doing that for all size operations. It

didn't 30 years ago and it doesn't now. If you have a large set and the fish push the twine around the port side of the boat into a bag that is "cut off" (the net has come together and the fish can't move around into other parts of it) you need to get them back around the boat by pulling the boat backwards away from them or they will smother in there before you get to them. An outboard can't easily do that. I expect the response to this to be, we should avoid setting on more than we can handle safely. It's fishing... sometimes we get nothing, sometime we get way more than we want or need.

I also would like some clarification or definitions on what the terms "at sea, unload, rigged and net transfer".

When are you at sea? When are you not at sea?

What constitutes an unload? All fish? Some fish?

What is rigged? Has the net? Has any net?

Net transfer? If it's in a dory and never on another boat, is it a transfer to simply untie from one boat and tie to another? And in that case is the dory the harvester/catch boat?

Is it legal to haul lobster traps with a seine or gillnet onboard at the time?

Are the immediately/before landing, fish storage requirements the same for gill nets and seiners?

Kati Clemons, received via email, March 25, 2021

I urge you to change Saturday fishing to Thursday or Friday.

The bait caught on Saturday cannot be used the following day and will result in more effort in fishing if Saturday is an option.

Also, making net transfers at sea illegal will put a huge burden on fishermen who share a net. Sometimes we are fishing over an hour away from where we offload which forces one boat to offload before the net is transferred.... this is unreasonable and there has to be a better option.

I think having a vessel call in and report that they have loaded their fish on board and are now transferring the net to document what is taking place makes much more sense. It will be much more efficient.

Also the bug boat tender vessel minimum should be atleast 25, if not 30 feet. Sometimes with tide and wind you need a big tender with some horsepower.

Thank you for your time and I hope you take my suggestions into consideration. Fishing is THE way of life for my family and so many more in the State of Maine. It breaks my heart that we hard working, old fashioned honest men and women are being forced out of such humbling careers.

John F. Seiders, received via email, March 27, 2021

I am writing to ask the Department of Marine Resources to consider allowing more days per week to catch Atlantic Menhaden during the episodic event. Specifically, I would like to have you consider changing the two day fishery to at least a 5 day a week fishery. My reasons are twofold. First off, I am concerned for the safety of our fishermen. If you push for boats to fish only during two days, this increases the risk of small vessels (such as mine) being overloaded or pushed to their limits. Additionally, this limit on fishing time/day may fall on bad weather days including high winds, rain storms, heavy seas, etc. However, due to the limited amount of time/days available to fish, people may feel the pressure to still fish on these inclement days. I would go so far as to say they will HAVE to fish as there may not be other bait available. This is forcing the hand of fishermen and allowing policy to endanger human lives. My second reason for extending the fishing days from 2 to 5 includes the basic question of fishery management. If we are talking about a 40 barrel a week quota, I wonder what difference it would make whether you catch this quantity over two days or over five? If the concern is enforcement of the weekly quota, the rigorous reporting should be addressing this issue and keeping us within our limits and helping to keep the fishery viable. By allowing us to go to five days, we would be able to make good choices about weather, safe fishing practices, continuing to ensure the sustainability of the fishery within the regulations

as provided by analysis, and even allows for the days when the Atlantic Menhaden simply do not surface and are not available to catch.

Jason Lord, received via email, March 26, 2021

I'm writing in opposition to the 20' boat size in the Pogie fisheries i feel as though it is a dangerous practice to limit our ability to properly handle our gear through decisions made behind a desk !! There are a ton of variables that occur and arise where size and horsepower are needed you are making a dangerous job much more dangerous.

Oral Comments from Remote Public Hearing, March 16, 2021

Tad Miller, Harvester

I guess first thing I'd like to talk about would be what I just mentioned about possibly some kind of call - in system or call-out system. There might be the possible exchange of a net to save the harvesters from running back and forth to the wharf before they could transfer or net. I don't know if that's possible or not, but maybe something you could look into.

In the case of the 20 foot skiff rule, a couple of different things. It doesn't affect me so much, but bigger boats, bigger nets require more power and mass to move them. So I think you need to be thinking about that and also I have run into, in the case of emergency, setting into a tight spot or whatever with the tides running, sometimes it takes more power than the skiff has to hold the boat,

The catcher vessel and whatever, in place. I don't know what you can do about allowing some leeway in that, but there needs to be. I think the Marine Patrol should have some kind of conversation about that.

During the main state quota fishery, my preference would be to have a Sunday fishery instead of a Thursday fishery. And I'm just wondering if we're getting low enough in barrels, is it even make sense to target some kind of commercial fishery or would it be better off for longevity just to spread it out, like somebody had asked earlier, in the more even fashion, projecting it longer into the season.

Laura Hughes, South Bristol Fishermen's Coop

Hi, my name is Laura Hughes, calling from South Bristol Fishermen's Co-op. I also want to mention that I would also recommend having a Sunday fishery where we have the lobsterman that are not lobstering on Sundays, so that it helps out when they get landed so that I don't have those lobster boats in there at the same time.

I'm opposed to the episodic event being two days a week. It makes it very difficult to have all the fish landed in two days. If it spread out throughout the week, back to you know, even having this 17 barrels day, up to or however you want to divide it up, but more days during the week just because it's too difficult for us to land everything at the same time. You have boats waiting to unload, you've got fish sitting out there in the sun. We have a storage issue when we have to put them all in in two days of a week. So those are my biggest issues: is having more days a week to be able to land the fish and Sunday being one of the days.

Jason Lord, Harvester

I'd like to address a boat length. I think Tad did touch on something that most people probably don't know about, which is the length of the boat and the size of the horsepower. Sometimes when you're towing these nets around you can get in one hell of a mess and I hate to see that happen; I've had it happen quite a few times and I'd like to have it not happen as often. So I'd like to think that the boat size and a little more horsepower would help out. I mean, if we already got a limitation per vessel, what's the matter, if you tow the 50 foot boat?

The other thing is the start date. I feel as always, let the fish determine the start date and that's all I got for now. Thank you.

Chuck Plummer, South Bristol, Harvester

I'm gonna comment on the 17 barrel a day. Only I would like to see it be, you know, be five days of landing, and the boat could just be on a 51 barrel per week quota. They're doing a weekly quota with the state fishery and a weekly quota with the episodic. I don't think it's asking too much to have a weekly quota per boat in the small scale 17 barrel a day. If nothing else, I'd like to see it be a Monday, Wednesday, Friday and Sunday landing on that, at least add one more day.

Jim Wotton, Friendship, Harvester

I'm in favor of the ability to be able to land your weekly limit in the state and episodic in one day. I think that's a good thing. I think it provides some flexibility for the bigger guys and it throws them a little bit of a bone.

Well, we got next - the bug boat size. I don't think that's needed. I think the keeping the net with the catch vessel eliminates any need for that. If you do have to go forward with this, 20 feet is not enough. Like Jason Lord said, you can get in a mess, you need horsepower. I know there's been a lot of times that I'd have had a lot of dead fish if I didn't have a 40 foot boat pulling on me. You get bags of 1000 bushel of fish wrapped on down the port side of boat. You need the horsepower to be able to get yourself out of that. This is not going to be a good thing for the fish. I think it'll raise the dead loss drastically. Guys who know how to handle fish are going to be forced to do things that they know they shouldn't be doing.

I'm in favor of the days. I know a lot of people aren't gonna be happy with not being able to go Sundays. I think Sundays should definitely be a day off, as both a wharf owner, it's the only day my crew at the wharf gets a day off and they look forward to that. They don't need to be there unloading bait on that day too. If your goal is to reduce landings, you have to take away the day that everybody wants to go. Sunday is the day everybody wants to go. If that's your true goal, is to try to reduce effort, you have to take Sundays away. Make the guys, I'm not gonna be popular saying this, make him choose. Either go lobstering or go pogy fishing; one or the other.

The rest, I think, of my comment is going to be on the need for more clarification. I'm just going to go down through a list. Transferring a net – we need it in the rule what constitutes a transfer. Is it just simply untying the dory off one stern to another? What's the definition of at sea? We deal with the definition of at sea in the federal fishery. I think it's probably a lot different than what you folks have in mind. Same thing for landing. I've got a wharf on the island, float, moorings - can I land out there? We need a lot better clarification on a lot of this stuff so we can avoid some headaches in the future. Storage - I've seen, when you're fishing with a gillnet, apparently from my observations, a fellow who's fishing with a gillnet doesn't have to abide by that storage rule. You know they come into the docks with them still in the net. Pick them out at the end of the dock. Does that need to be clarified? Clarification on hauling with a net on board. I'm pretty sure there's a bunch of gillnetters that would, groundfish gillnetters, that would like to be able to have lobster onboard with a net on board. I guess that's been overlooked by Marine Patrol in the past. My understanding is if you got net on board, you don't have lobster on board. Should that be clarified? Maybe I'm missing something.

I think Dan might have clarified this for me, but, and Jason touched on this too, a bug boat - if a bug boat has a license to, it can't be a tender? So a licensed boat can't be a tender? I just like to have that clarified. If that's the case; a boat that has a Commercial license - you got my point on that. We just need some clarity to headaches down the road. I might have already said it, but if you do end up going with the size limit on a bug boat/tender, 20 feet definitely isn't enough. You know 24 foot boat, you might get a 50

horsepower on it, but I've got a 23 foot boat with 115 horsepower motor on it and that ain't big enough. so. Twenty feet is definitely not enough; better go 25 or 26 feet and you need a couple 100 horsepower to move around a 40 foot boat with 1000 bushel of fish in the net.

Darren Turner, Harvester

I see a lot of issues. I will say I support weekly limits over daily limits 'cause efficiency is so important with fishing. And I struggle with a lot of inconveniences, scalloping and urchining, having to run in and change my drag. I'm not an environmentalist this way, but it is a bigger carbon footprint for the people who are doing extra running around.

Exact size. I see it's been defined as 2100 pounds. I know buyers, bait dealers, that only want to pay for 1800 pounds for an exactic, so that confuses me on why we can get 11.2 exactics. I think it would be efficient to just round it to 12 or should be 13. But 12 would be a round number that fits evenly on a truck or trailer or in a boat, even number. Um, so that's kind of just a goofy one.

But the important ones are your bug boat size and not being able to have a carrier. I am telling you, that I fish up in the Bay of Fundy. We don't see a lot of pogies, but I've seen them up the Denny's Bay last year. If you guys have ever been up through the reversing falls and fished up around Eastport or Machias, we have big tides and you have got to have horsepower. There should be no limit on what bug boat size can pull on you. The guy before said a licensed boat shouldn't be able to pull on you. Will that's not OK because I've had to have another seiner come over and tow on me because I got in a jam. Now I really don't want to get in trouble with the law because I was in a jam. I don't want to be limited. It kind of speaks to the inexperience of the people who come up with stuff. I say that with respect; I don't mean any disrespect with that. But, to go out into the ocean and dump a net overboard and have, you know tens of thousands of pounds of fish in a bag, you can't limit yourself to what you're allowed to do because people are gonna get hurt and people are going to be, with the no carrier limit, they're going to be jamming 23,000 pounds on a 35 foot boat. Someone is going to roll one over, the load is going to shift. They're gonna make a mistake and someone's gonna get hurt.

So, I say this with passion, that you gotta make these fisheries flexible, you gotta allow boats to work together. I mean, historically, one boat would make a good set and he'd fill two or three other boats and they won't even wet their net. So it's just, it's inefficient and there's a lot of issues here. It really needs to be reworked in a big way. I've been through dozens of public hearings where I say my peace and not an ounce of it ever gets considered, so it would be refreshing to see the team, you know, reevaluate things and don't put enforcement above practicality. And most of all, don't put enforcement above safety 'cause there's a lot of issues with some of the stuff you guys have put here. And I guess that's my piece, thank you.

Nicholas Morley, Boothbay Harbor, Harvester

The only comment I have is, I agree with Jason and I don't think we should have a start date because all this stuff is to minimize effort. So if the fish show up in southern Maine, so only half the state can work on them for the first week or so, isn't that accomplishing what you guys want?

Andrew Hallinan, Boothbay Harbor, Harvester

I would just like some clarification on spillage when brailing into dories because, as Nicholas mentioned earlier, when you're brailing those fish in there that they go everywhere. I mean they're all over the floor of the dory by the time we get in. So I completely respect law enforcement discretion, but it would just be nice to know what we can, what we can put between the lines there for spillage because by the time we get to the dock, half of those barrels have settled and we could fit way more fish in there. So if that can just be looked at, that would be nice.

Ryan Miller, Harvester

I guess my only thing is it has to do with swapping the net at sea. I team up with a buddy of mine. We use one net. Sometimes we travel, you know it makes it hard for us to run back, say an hour or two, to grab the other boat. I think Tad's got a good idea to somehow one boat catches their 17 barrels and then calls it in and says I caught my fish, I'm transferring the net to the other boat. Also, with that being said, I fish at a tidal wharf. Sometimes I can't get in on the tide. What we've done in the past is I will catch the fish and transfer the dory with the net in it to the other boat and will just let my boat stay on the mooring until I can get it on the tide. Other times we've gone to the same, done that, still can't get in and have to still run to either port or Tenants Harbor. So I think Tad's got a good idea of letting either the marine resources, either the wardens or through the app or something just declaring that I've caught my fish and I've transferred the net to the second catch boat.

Donnie Young, Harvester

Pretty much like to echo what Ryan Miller just said. I'm kinda in the same situation. We have a tidal dock and when we come in, we can't always just take all the pogies off the boat before we want to go back out. And if we do have to wait, it's going to make a long day even longer. So I just like to pretty much echo the other things he said too, about the transferring at sea. If you could call in or I even like the idea of the guy videoing it. I mean, if we have a video was set in the net and brailing our fish and then calling in, I mean, you got all the evidence you need right there to, you know, to switch the dory to another boat. So I just I don't see why it can't be easier, so thank you.

Earl Small, Eastport, Harvester

I would like to first make the comment that I don't think we ought to have a limit on tenders. Twenty foot is just not enough. Consider a boat with an outboard motor on it. The other thing I'd like considered is dories that we could just fill. If you could have Weights and Measures, actually like you do the fish hole, and mark them or could we something like that so we could fill a dory full or half full of menhaden and know could know how much we have in there. So I'd like to see if that is something that we could consider.

Michael Ross, Stonington, Harvester

My name is Michael Ross and I'm from Stonington. I am in opposition of the tender size. I feel that it's grossly unfair to limit the size on the tenders for severe safety issues and it would only be fair if you illegalize having fish in them.

And two, I'm opposed on the commercial and non commercial licenses because coming from menhaden harvester and a lobsterman standpoint, I feel that I shouldn't have to take a financial hit on my pogie harvesting fish and I should still be able to utilize the three barrels to fish that bait as lobster bait. If the rec license is allowed to continue after the small scale ends, I think we should either be allowed to switch to the rec license or it just shouldn't, it shouldn't continue either. Then those should be treated fairly.

DMR's Response to Comments**Prohibition of Net Transfers At Sea**

There were nine commenters that opposed the implementation of prohibiting the transferring of nets while at sea, on fishing grounds. Primary concerns regarding this topic related to the reduced efficiency of harvesting, increased costs associated with additional fuel, acquiring new

nets, and longer harvest days. The Department recognizes the small scale, family and local community operations that exist within this fishery and has responded to public comment by removing this proposed prohibition on transferring nets at sea.

Restrictions on Tender Vessel

There were fourteen commenters in opposition to the proposed language related to the use of a tender vessel, and especially the length restriction of the tender vessel. Majority of commenters spoke to the relationship between length of a vessel and horsepower. The variability of fishing operations requires tenders with available horsepower at the ready to ensure the safety of both vessels and crew as well as the proper handling of the net. The Department has responded by removing the proposed language pertaining to the employment of a tender vessel and has further clarified what constitutes a harvester vessel. However, for the sake of clarity, fish that are in possession of a harvester vessel, whether captured in the net or are in the process of being transferred on board that harvester vessel may not be handled by any other party.

Season Start Date

There were four comments opposed to the setting of a harvest start date and one comment was in support that also offered a later date to commence the fishery. The Department will maintain the start date of June 14, 2021 as proposed.

In the previous seasons, it was common to observe small landings of menhaden in the month of May as the fish begin to enter Maine state waters. Especially in FY2020, there was an exceptional uptick in landings for menhaden in the month of June that resulted in an early closure of the state allocation fishery. In the instance of FY2020, the demand for bait was low during the high supply in June and resulted in a mismatch for the lobster fishery. The start date for FY2021 is to better align the timing of the summer start to lobster season with the demand for fresh bait.

Harvest and Landing Schedule

Seven commenters were in opposition to harvesting menhaden on Saturdays. The Department has responded by adjusting the harvest schedule in all three phases of the fishery by removing Saturdays and allocating a different weekday. The amended harvest schedule for the state allocation fishery repeats the schedule from FY2020: Mondays, Tuesdays, Thursdays, Fridays. The amended schedule for the episodic fishery is Tuesdays and Fridays. The amended schedule for harvesting during the small scale fishery is Mondays, Wednesdays and Fridays.

There were comments both for and against harvesting on Sundays. The Department has maintained its position excluding Sunday from the harvest schedule. The primary goal is to reduce effort, and Sundays would be a peak harvest day. Additionally, removing menhaden harvest from weekends reduces the conflict of harvest with other user groups, such as the recreational fishing community and pleasure boaters.

Four commenters requested adding additional potential harvest days during the episodic fishery, while maintaining the 14,000 pound weekly quota. The Department has maintained the two day harvest schedule for the episodic fishery, while amending the days to Tuesdays and Fridays. Instituting flexible harvest days during this fishery would be present an issue for enforcement and increase catch rates during this portion of the menhaden harvest. During the planning stages for the development of this rule, catch data from FY2020 indicated that nearly 3 million pounds of menhaden was landed on the opening day of the episodic fishery, by 133 harvesters (average of 22,500 pounds per harvester). There were adjustments made through emergency rulemaking during 2020 to slow the rate of harvest during the episodic fishery to ensure there was no risk of an overage to the available episodic event set aside quota. The schedule proposed for FY2021 was designed to balance the risk of an overage with allowing for a steady rate of harvest to orderly consume what is available for quota. Having non-consecutive harvest days is a necessity during this fishery phase to reduce any risk of overage and monitor the quota after each landing day should further adjustments to the fishery be required.

Two commenters were in opposition to the three day harvest schedule for the small scale fishery. While the Department did change the harvest schedule from Saturdays to Fridays, based on comments, it is still maintaining three set harvest days. In the anticipation that the quota fisheries (state and episodic) will occur early and end quickly, it would again result in an early start for the small scale fishery and extend section of the fishery well into the fall months. There is too much capacity and participation at current levels to operate the small scale fishery at the previous seven days a week. There is a need to both slow the rate of catch during the small scale fishery, and also, temper overall landings over the course of the small scale fishery. This fishery operates outside of the quota assigned for harvest and is imperative to reduce the risk of overharvesting the coastwide total allowable catch that has been set for menhaden for FY2021.

Exactic Totes

One commenter indicated the discrepancy of the weight of menhaden that would be held in an exactic box. With multiple sizes of exactic (fish) boxes available and in use, it is not possible to prescribe a standard exactic box size and volumetric measurement for menhaden. The Department has removed the proposed language related to using an exactic box for storing menhaden.

Weights & Measures

Three commenters suggested utilizing Weights and Measures to offer an official sealed volumetric measurement for harvest vessels or dories for the menhaden fishery. This avenue was investigated by the Department and due to Atlantic menhaden fishery not being recognized under 12 M.R.S. §6544.

Harvester to Harvester Transfers

Two commenters spoke to the necessity of allowing the transfer of fish from harvester vessel to harvester vessel. Current regulations prohibit the harvester vessel from transferring any fish to

another vessel. This regulation needs to remain in effect in order to maintain enforceability within the menhaden fishery.

Fish Storage During Quota Fishing

One commenter requested the removal of the storage requirement of menhaden during the state and episodic fisheries to allow for easier transfer of fish from the harvester vessel to the wharf through using a fish pump. As the menhaden fishery moves to allowing a weekly landing limit rather than a daily landing limit as was the case in previous seasons, the requirement to store all menhaden immediately upon retrieval from the net is to aid in enforcement of the weekly vessel landing limit.

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 Atlantic Menhaden; 2021 Harvest Rules

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): A remote public hearing was held Tuesday, March 16, 2021 at 4 p.m.

COMMENT DEADLINE: March 28, 2021

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

This rulemaking establishes the effort restrictions for the commercial menhaden fishery management program for FY2021. The State Allocation fishery opens Monday, June 14, 2021 at 12:01 AM with harvest days on Mondays, Tuesdays, Thursdays and Fridays. Vessel weekly limit is set at 23,800 pounds (68 barrels). The Episodic Event fishery will operate on Tuesdays and Fridays with a weekly vessel limit of 14,000 pounds (40 barrels). The Incidental and Small Scale fishery will operate on Mondays, Wednesdays and Fridays with a daily vessel limit of 6,000 pounds. Transfers at sea of menhaden 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 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.

Menhaden cannot be transferred to another vessel while at sea. Menhaden cannot be received from another vessel while at sea. 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