

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41.30 Menhaden Fishery Management Program

CONCISE SUMMARY:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2018 was 2,439,114 pounds, which was fully consumed on July 22, 2018. Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states to allow for a re-opening of the directed fishery for the fall. As a result of these transfers, Maine is reopening the State Allocation fishery. Beginning September 17, 2018, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is reduced by this regulation to 80,000 pounds, with a weekly limit of 160,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per 24-hour period. All landings must be reported daily via email to menhaden.dmr@maine.gov. The Commissioner has determined that it is necessary to take emergency action to implement the reduction of the daily limit to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

EFFECTIVE DATE: September 15, 2018

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Menhaden Program

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 ~~420,000 lbs~~ 80,000 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~~ am). 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 by email to menhaden.dmr@maine.gov 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

Basis Statement

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2018 was 2,439,114 pounds, which was fully consumed prior to commencing participation in the Episodic Events Set-Aside program on July 22, 2018. The quota for the episodic event fishery has also been fully exploited and that fishery was subsequently closed on August 11, 2018. Since that time, the fishery has been operating as an incidental and small scale fishery, with a daily limit of no more than 6,000 lbs. For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and are expected to remain present into the fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait.

Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30 (2)(A), effective September 17, 2018. As was the case under the State Allocation fishery previously, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily landing limit is reduced by this emergency regulation from 120,000 lbs to 80,000 pounds. There remains a weekly limit of 160,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per 24-hour period. All landings must be reported daily via email to menhaden.dmr@maine.gov.

The Commissioner has determined that it is necessary to take emergency action upon reopening of the State Allocation fishery to implement the reduction of the daily limit from 120,000 lbs to 80,000 lbs, to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 41 Menhaden Fishery Management Program

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

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)] For the second consecutive year, presence of Atlantic menhaden in Maine waters is ongoing throughout late summer and is expected to remain present into the Fall. With sustained levels of menhaden biomass in nearshore waters, a continued harvest at a managed rate will ensure a level supply of fresh bait. Recently, Maine Department of Marine Resources (DMR) has been the recipient of additional quota via transfers of Atlantic menhaden quota from partnering states. As a result of these transfers, Maine is reopening the State Allocation fishery, as provided in 41.30 (2)(A). The Commissioner has determined that it is necessary to take emergency action to implement a further reduction on the daily catch (from 120,000 lbs to 80,000 lbs) to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

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

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]: This rule reduces the daily limit for Atlantic menhaden upon the reopening of the State Allocation fishery. Daily reporting will allow for near-real time monitoring to ensure that Maine does not exceed the quota. The reduction in the daily limit will prevent the depletion of the supply 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 quotas that it receives from ASMFC and the landings reports provided by harvesters regarding their recent activity.

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

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

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[*see* §8057-A(2)(A)]

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

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

Note: If necessary, additional pages may be used