

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden Open EESA

CONCISE SUMMARY:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2020 was 2,438,696 pounds, which was fully consumed by June 18, 2020. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside program to access an available 4.7 million lbs of menhaden quota. Beginning Monday, June 29, 2020 at 12:01 a.m., the harvest and landing is permitted on Mondays and Thursdays, 12:01 a.m. to 11:59 p.m. only. Reporting will now be required on the same day as fish are landed. The Commissioner has determined that it is necessary to take emergency action to reduce harvest days and provide more timely reports 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: June 27, 2020

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) 624-6558
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.20 Permits and Reporting

Menhaden Harvester Permit

All harvesters must report landings daily to the Department via an approved electronic reporting option on the same day as landing menhaden. ~~no later than noon the day after landing that includes the following information.~~

Exception: Daily reporting is not required for the ~~Small Scale Personal Use Non-commercial Permit or the Incidental Catch and Small Scale Fishery~~ as described in 41.30 (4). Weekly electronic reporting remains a requirement.

Harvesters: See Chapter 8.20(Q) and 8.20(M)

Dealers: See Chapter 8.10 Landings Program

41.30 Menhaden Program

3. Episodic Event Fishery

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

A. Notice

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

B. Effort restrictions

During the episodic event fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, it is unlawful to fish for or land menhaden except on Mondays between 12:01 AM to 11:59 PM and Thursdays between 12:01 AM to 11:59 PM. ~~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 vessel per calendar 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 a transfer at sea except to a 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 41.30 (1).

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

Basis Statement

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2020 was 2,438,696 pounds, which was fully consumed by June 18, 2020. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside (EESA) program to access an available 4.7 million lbs of menhaden quota. Beginning Monday, June 29, 2020 at 12:01 a.m., the harvest and landing is permitted on Mondays and Thursdays, 12:01 a.m. to 11:59 p.m. only. Reporting will now be required on the same day as fish are landed to ensure that DMR has the most accurate accounting of the catch as possible.

The daily limit remains at 120,000 pounds and the weekly cap remains at 160,000 pounds. These limits apply to both harvester and carrier vessels. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Department requested, and received, approval to enter the Episodic Event Set Aside (EESA) fishery on June 25, 2020. However, with over 4.3 million pounds landed during the state fishery, in conjunction with the reduced effort currently within the lobster fishery, the demand for bait has been moderate compared to the supply. As such, the Department was made aware some harvesters whom did not have pre-arranged markets for their harvest, have dumped fish. Also, there have been reports that harvesters have encountered large sets that were beyond their ability to harvest and dead fish have been left behind. These fishing practices are unacceptable and are a misuse of the menhaden resource.

Currently, there are 772 Commercial Pelagic and Anadromous license permits issued with a menhaden endorsement and more than 100 of those individuals actively reported during the State Allocated fishery. The harvest capacity of this fleet is above 1 million pounds daily, and thus requires ample processing time by shore side operations to properly chill, salt and store menhaden as bait products for future use in the lobster fishery. With the large increase of participants in the menhaden fishery for 2020, and to ensure that fish are utilized effectively within the lobster fishery, it is imperative to reduce the harvest schedule during the EESA to slow the rate of menhaden landings to meet the actual demand for bait within the lobster fishery. Further, it is necessary to collect landings information on a more timely basis to ensure that the quota available to Maine through the EESA is not exceeded.

The Commissioner has determined that it is necessary to take emergency action to reduce harvest days and provide more timely reports 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 Menhaden Open EESA

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)]

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2020 was 2,438,696 pounds, which was fully consumed by June 18, 2020. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside program to access an available 4.7 million lbs of menhaden quota. Beginning Monday, June 29, 2020 at 12:01 a.m., the harvest and landing is permitted on Mondays and Thursdays, 12:01 a.m. to 11:59 p.m. only. Reporting will now be required on the same day as fish are landed. The Commissioner has determined that it is necessary to take emergency action to reduce harvest days and provide more timely reports to prevent unusual damage to the menhaden resource by exceeding available quota.

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 reduces the weekly limit for Atlantic menhaden upon the opening of the Episodic Event Set Aside fishery. Daily reporting will allow for near-real time monitoring to ensure that Maine does not exceed the quota. The reduction in the weekly 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 quota that it receives from ASMFC and the landings reports provided by harvesters regarding their recent activity, observations of the fishery provided by Maine Marine Patrol and also the balance of supply and demand as set by the lobster fishery.

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.