

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 FY2019 was 2,438,677 pounds, which was fully consumed by June 30, 2019. Additionally, Department of Marine Resources (DMR) was granted access to the Episodic Event Set Aside program (EESA); it is projected that 80% of the 4.7 million lbs EESA has been consumed by Thursday, July 18, 2019. The Commissioner has secured several transfers of menhaden quota that will allow for the DMR to re-open the directed state allocated fishery. Beginning July 22, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs and this regulation reduces the weekly limit to 120,000 lbs as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. 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 weekly 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: July 21, 2019

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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 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess more than 120,000 lbs ~~160,000 lbs~~ per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 am). 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.

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 to harvest through email 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 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.

Basis Statement

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. Preliminary estimates for landings indicate that the state quota was exceeded by 2 million pounds. The bulk of landings occurred during the final four days of June.

The Department opened the Episodic Event Set Aside (EESA) fishery on Monday, July 15, 2019. Currently, there are over 560 active Commercial Pelagic and Anadromous license permits issued, with over 180 of those individuals declared into the fishery for the onset of the EESA. To date, there are 118 active harvesters reporting landings for menhaden during the EESA fishery with preliminary landing estimates at 2.4 million lbs after two days of open harvest. The number of trips reported peaked on Monday, July 15 at 107, with preliminary data indicating less trips for the remainder of the open harvest days. Projections indicate that with an additional two days of harvest, approximately 80% of the quota will be consumed by the end of the harvest week.

The Commissioner has acquired several transfers of menhaden quota from partner States; these transfers rectified the overage that occurred during the initial directed fishery and the remaining allotment will allow for the re-opening of the directed State allocated fishery. With the understanding that the harvest capacity of this fleet is now nearing 3 million lbs weekly, it was imperative to reduce the weekly harvest limit within the directed State allocated fishery by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used as was the case for the EESA. Menhaden have now been observed in state waters from Kittery through to the Mount Desert Island.

As was the case under the EESA fishery, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily limit remains at 120,000 pounds while the weekly landing limit is reduced by this emergency regulation from 160,000 lbs to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. 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 re-opening the directed State allocated fishery to implement the reduction of the weekly limit from 160,000 lbs to 120,000 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

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CHAPTER NUMBER AND RULE: Chapter 41.30 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)]

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2019 was 2,438,677 pounds, which was fully consumed by June 30, 2019. Additionally, Department of Marine Resources (DMR) was granted access to the Episodic Event Set Aside program (EESA); it is projected that 80% of the 4.7 million lbs EESA has been consumed by Thursday, July 18, 2019. The Commissioner has secured several transfers of menhaden quota that will allow for the DMR to re-open the directed state allocated fishery. Beginning July 22, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs and this regulation reduces the weekly limit to 120,000 lbs as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. 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 weekly 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).

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 re-opening of the directed State allocated 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.