

## **NOTICE OF AGENCY EMERGENCY RULE-MAKING**

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 41.30 (1) Menhaden Fishery Re-Opening

**CONCISE SUMMARY:** The Department of Marine Resources is reopening the 2016 episodic event fishery for menhaden as of August 15, 2016, at which time the remaining 2016 episodic event quota is estimated to be approximately 2.3 million lbs. Based on landings reports received, Maine DMR believed that the 2016 menhaden episodic event quota was being utilized more quickly than daily landings report indicated, and took steps to ensure it was not exceeded by closing the Maine episodic event fishery on August 5, 2016. However, actual landings were not as high as anticipated, and now Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery no later than noon on August 18, 2016 in order to ensure reporting compliance, and declare a single carrier vessel for the duration of the fishery, as well as limiting fishing and landing days to three days per week (Tuesday 00:01 am through Thursday 11:59 pm) with a 120,000 lb weekly landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

**EFFECTIVE DATE:** August 15, 2016

**AGENCY CONTACT PERSON:** Hannah Dean  
**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:** hannah.dean@maine.gov  
**TELEPHONE:** (207) 624-6573  
**FAX:** (207) 624-6024  
**TTY:** (207) 633-9500 (Deaf/Hard of Hearing)

## DEPARTMENT OF MARINE RESOURCES

### CHAPTER 41

#### 41.30 Menhaden Program

##### 1. State Allocation Fishery

It is unlawful to fish for, take, or possess Atlantic menhaden.

- A. Exception: An individual may fish for or take by hook and line up to 25 menhaden per day for personal use only.
- B. Exception: A vessel may fish for or take up to 6,000 pounds of menhaden per day as incidental bycatch at any time other than during an episodic event fishery. A vessel may not land more than 6,000 lbs per calendar day. A vessel that is taking menhaden may not transfer menhaden at sea.
- C. Exception: A vessel participating in the episodic event fishery may fish for or take menhaden in accordance with Chapter 41.30 (2).

##### 2. Episodic Event Fishery

An episodic event fishery may be opened following the full utilization of the state allocation of menhaden.

###### A. Notice

Pelagic and anadromous license holders shall be informed by public notice in a newspaper circulated in the area affected of any openings or closing dates for an episodic event fishery.

###### B. Declaration into Fishery and Reporting

Any harvester participating in the menhaden episodic event fishery must declare into the fishery before any fishing activity takes place and no later than noon on August 18, 2016 by leaving a message at (207)624-6558 with the following information:

- License Holder Name
- Vessel Name
- Vessel Documentation or State Registration Number
- DMR Landings Number
- Carrier Vessel Name (if any). Harvester vessels may only declare one carrier vessel, and may not transfer to any other carrier vessel for the entire length of the episodic fishery once the selected carrier has been declared.

Any harvester landing menhaden during an episodic event fishery must report landings or report that the vessel did not fish daily on each fishing and landing day (Tuesday--Thursday) to the Department by leaving a message at (207)624-6558 with the following information no later than noon the day after landing:

- Date of harvest
- License Holder Name

- Vessel Name
- Vessel Documentation or State Registration Number
- DMR Landings Number
- Total Pounds Landed-Harvested
- Phone Number where License Holder can be reached
- VTR numbers (if applicable)

Exception: Any harvester taking or possessing less than 2000 lbs of menhaden per day is not required to declare into the fishery. A harvester taking or possessing less than 2000 lbs of menhaden per day that has not declared into the fishery is not required to do daily reporting.

This reporting requirement is in addition to the reporting requirements of Chapter 8.20 for anadromous and pelagic license holders.

C. Harvest and Landing of menhaden

Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, all menhaden harvested from Maine territorial waters must be caught and landed in the State of Maine between 00:01 am on Tuesday and 11:59 pm Thursday each week.

3. Areas

A. Bald Head Cliff to Cape Arundel

Shoreward and westerly of a straight line starting at the easternmost point of Bald Head Cliff, Ogunquit to the southernmost point of Cape Arundel, Kennebunkport.

B. Biddeford Pool to Cape Elizabeth

Shoreward and westerly of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical chart 13286, starting at the easternmost point of Biddeford Pool, Biddeford following the territorial sea line to where the line intersects the southernmost point of land in Cape Elizabeth.

C. All Maine territorial waters outside the areas defined in Chapter 41.30(A) & (B)

Shoreward of the territorial sea line, as identified on National Oceanic and Atmospheric Administration nautical charts, except for those areas defined in Chapter 41.30(A) & (B).

4. Definitions

- A. "Carrier vessel 120,000 lbs capacity" For purposes of measuring 120,000 lbs or capacity in a vessel hold the volumetric measure (in hogshead) of 120,000 lbs of menhaden is equivalent to ~98 hogshead. One hogshead equals 17.5 ~~lb~~ bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 120,000 lb divided by 1225 ~~lb~~ (or 17.5 hogshead) equals ~98 hogshead, which is within the 5 hogshead tolerance used in §6544(3).

5. Area Limitations

The areas in Chapter 41.30(2)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

A. Harvester Vessel Limitations in all Areas (A, B & C)

It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take, or possess menhaden within these restricted areas. It shall be unlawful for any harvester vessel to fish for, take, or possess greater than 120,000 lbs of menhaden per ~~day~~ week (Tuesday 00:01 AM to Thursday 11:59 PM).

B. Carrier Vessel Limitations in all Areas (A, B & C)

It shall be unlawful for any carrier vessel to land more than 120,000 lbs of menhaden per ~~day~~ week (Tuesday 00:01 AM to Thursday 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.

~~A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity. Exception: Any carrier vessel less than 70 feet length overall (LOA) is exempted from the number of landings per day limitation but may not land more than a total of 120,000 pounds per day.~~

It shall be unlawful for any carrier vessel greater than 90 feet LOA to transport menhaden harvested from Areas A, B & C. Any carrier vessel greater than 70 feet but not to exceed 90 feet LOA must be measured, plainly marked at a maximum 120,000 lbs capacity or equivalent volume; or marked at the maximum vessel capacity if under 120,000 lbs, and sealed\* by the State Sealer of Weights and Measures.

\*Sealed means receipt of the applicable Fish Carrier Calibration Report and sticker, seal or appropriate marking affixed by the State Sealer of Weights and Measures or their designee. This documentation must be obtained prior to transporting menhaden taken from these areas.

6. Suspension of rules

The Commissioner has the authority to suspend all regulations in Chapter 41.30 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 to industry members or telephone.

**Basis Statement**

The Atlantic States Marine Fisheries Commission Atlantic Menhaden Management Board approved Maine's participation in the 2016 episodic event fishery on July 31, 2016, at which time the remaining 2016 episodic event quota available was 3,548,111 lbs. The episodic event quota is made available to the states based on the program established by Technical Addendum I to Amendment 2 to the Interstate Fisheries Management Plan for Atlantic menhaden. States have the responsibility to close the episodic event fishery in their state once the episodic event quota has been reached. Based on landings reports received, Maine DMR believed that the 2016 menhaden episodic event quota was being utilized more quickly than daily landings report indicated, and took steps to ensure it was not exceeded by closing the Maine episodic event fishery on August 5, 2016. However, actual landings were not as high as anticipated, and now Maine is reopening the episodic event fishery as there is biomass still available such that an episodic event fishery is necessary. DMR is implementing a requirement that all participating license holders must declare into the fishery no later than noon on August 18, 2016 in order to ensure reporting compliance, and declare a single carrier vessel for the duration of the fishery, as well as limiting fishing and landing days to three days per week (Tuesday 00:01 am through Thursday 11:59 pm) with a 120,000 lb weekly landing limit, all of which are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

**Summary of Comments**

NA