

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden; 2019 Menhaden Fishery Program

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

CONCISE SUMMARY:
This rulemaking clarifies the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the incidental/small scale fishery requires monthly reporting.

This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery.

Finally, the rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

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

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Please approve bottom portion of this form and assign appropriate MFASIS number.

Table with 6 columns: APPROVED FOR PAYMENT, DATE, FUND, AGENCY, S-UNIT, APP, OBJT, AMOUNT. Row 1: 010, 13A, 1120, 10, 4946, regulations

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.05 Territorial Waters Trawl Prohibition

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.

41.10 Recreational Fishery

An individual may fish or take by hook and line up to 25 menhaden per day for personal use only.

41.20 Permits and Reporting

Reporting of catch

All harvesters 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 that includes the following information. This is in addition to monthly harvester reports required by Chapter 8.

- 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 to be received, by weight, to each dealer (by dealer name and landings number)
- VTR number

Exception: Daily reporting via email to menhaden.dmr@maine.gov is not required for the Incidental Catch and Small Scale Fishery as described in 41.30 (4). Monthly logbook reporting remains a requirement.

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

Dealers: See Chapter 8.10 Landings Program

41.30 Menhaden Fishery Management Program

1. Definitions

- A. "Hogshead": one hogshead 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. "Landing": to come to shore, float or a dock and offload menhaden; or to transfer menhaden at sea to a vessel utilizing the menhaden for bait.
- F. "Dory": a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the catcher vessel. A dory may be used by a catcher vessel to transport menhaden the catcher vessel has taken.
- G. "Catcher vessel": the vessel that deploys the net to catch menhaden.

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 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 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 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~~

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 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 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 episodic event fishery must notify the Department of their intent to harvest through email prior to landing any menhaden, if they have not yet done so for the state allocation fishery. 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~~

4. 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 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 incidental catch and small scale fishery.

B. Effort Restrictions

During the incidental catch and small scale fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. It is unlawful to fish for, take, possess or land more than 6,000 lbs per vessel per day. 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), except that it is unlawful during the incidental catch and small scale fishery for a catcher vessel to sell, give or transfer, at sea menhaden they have taken to any other vessel. For the purpose of this subsection, a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full equals 1/3 barrel.

C. Gear Restrictions

It is unlawful to use any gear type other than the following when targeting menhaden: cast nets, 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, ~~stretched~~. 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 or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels or fish totes on both the catcher vessel and the dory towed by the catcher vessel, if utilized.

5. 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 (5)(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 (5)(A) & (B).

6. Area Limitations

A. Limitations in all Areas A, B & C

- (1) It shall be unlawful for any harvester vessel targeting menhaden that exceeds 50 feet in length overall (LOA) to fish for, take or possess menhaden within these restricted areas.
- (2) It shall be unlawful for any carrier vessel to possess or land more than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM) harvested from Maine Territorial waters, which includes Areas A, B & C.
- (3) A carrier vessel may transport and land menhaden once per day at a limit of 120,000 lbs capacity.
- (4) 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.

7. 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

This rulemaking clarifies the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the incidental/small scale fishery requires monthly reporting.

This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

Both the state allocation fishery and the episodic event fishery will continue to operate under a daily landing limit of 120,000 lbs and a weekly landing limit of 160,000 lbs with one landing per day allowed for both catcher and carrier vessels. Additionally, for both state allocation and episodic event fisheries, vessels may only fish for and land menhaden from territorial waters Monday through Thursday. Daily reporting of Atlantic menhaden landings is required for both the state allocated and the episodic event fisheries within 24 hours of landing. For both the state allocation and episodic event fisheries, a transfer at sea to a vessel utilizing menhaden as bait is considered a landing event. An incidental catch and small scale fishery will commence after the closure the state allocated fishery, or a subsequent episodic event fishery, with a daily landing limit of 6,000 lbs under gear restrictions. No transfer of fish at sea will be allowed under the incidental catch and small scale fishery.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- The exemption for fixed gear operations were clarified to allow for a seven day harvest schedule, but maintain the same daily and weekly limits as described for the state allocated and episodic fisheries.

Summary of Comments

Notice of this proposed rulemaking appeared on January 9, 2019 in the five major daily newspapers as published by the Secretary of State. On January 9, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: 4:30 PM January 29, 2019 Rm 118 DMR Offices, Marquardt Building, Augusta. The comment period closed February 13, 2019.

I. Attendance Augusta Public Hearing:

Members of the Public	DMR Staff
Darren Turner, Earl Small, Gary Small, Corey Prock, Robert Begin, Linc Simmons, Drew Wallace, Glenn Robbins, Jared Spofford, Dustin Delano, Wayne Delano, Arthur Farnham, Josh Saxton, Chris Hole, Robert Berat, and Bernard Johnson III.	Melissa Smith, Amanda Ellis, and Rene Cloutier

John-Paul Bilodeau, submitted via mail, dated January 27, 2019

I am writing to provide comments on behalf of the *FN* Providian. The *FN* Providian fishes for Atlantic Herring throughout the range of the fishery using both midwater trawl and purse seine gear. The *FN* Providian harvests herring for the lobster bait markets in Maine, New Hampshire and Massachusetts. The reporting requirements section 41.20 reads *Total amount of herring on board* should be changed to menhaden. The new addition to the reporting of catch is a good idea to assist regulators in the management of the quota. The large amount and frequency of the landings makes it necessary to assist regulators in quota management. The past requirements were to lose, making it impossible for Marine patrol to monitor actual or timely landing data. An over harvest of the quota will reduce Maine's future quota allocations. The clarification of net size allows regulators to have a clear definition of net size.

Robert Begin, Augusta Public Hearing, January 29, 2019

About the effort restrictions. There are four or five new boats getting in this fishery that haven't fished for pogies the last few years. They've all got big carriers and I think we have to knock this back to 40,000 per day and 80,000 per week. If you don't it's going to be caught in about three weeks. We've got to slow it down before it is all over. Those four or five boats that can carry three trucks they'll be a million pounds a week. It's not going to take long to eat this quota up. We've got to slow it down before it is too late.

Glenn Robins, Augusta Public Hearing, January 29, 2019

Because of our restrictions in the herring, I have purchased a boat I am going to go pogie fishing with and I don't want to be restricted to three trucks a day. I am the opposite of the last speaker, 160,000 I would rather have that at the end of the week whether it took me one day, two days, or three days. I'd want to be able to carry the 160,000 in one shot. Hopefully we'll get more pogie quota from other states. Hopefully the pogies will show. That's not always a guarantee either. I've made an investment in this, so I can fulfill the bait market until the herring situation is corrected. This pogie quota is different from the herring quota it seems like in other states where you catch a lot of pogies you get a lot of quota. If you show you need the fish and you catch a lot of fish your quota will go up. It's better to catch more than it is to catch less. That's the way I read this. There are a lot of states that don't use it, so we'll probably get it.

Chris Hole, Augusta Public Hearing, January 29, 2019

We need to continue the federal mandate on fish traps to two licenses being applied to one weir. For the survival of these gentlemen and anybody it's not going to barely be worth doing it at 6600, but with two attached licenses it might make it viable. This is going to be the survival of people just to go lobster fishing. This whole bait thing has

turned into a nightmare. If they can catch them they ought to be able to. It's not worth it to invest as a single license, but maybe for two and then that fish will be in circulation. It was already that way in Connecticut.

Darren Turner, Augusta Public Hearing, January 29, 2019

I just want people to keep one thing in mind when they are making all the rules. If you think of the shrimp fishery it got devastated by rules and then the infrastructure fell apart. When you could catch them there was no market, because there was no infrastructure. Keep that in mind. I am a small boat guy, but you got to protect the large boats too, because they provide lobstermen with bait. With all these quota issues and all these limits, keep in mind the infrastructure. If the big boats go out of business, because they can't afford to operate then we are all in trouble.

Dustin Delano, Augusta Public Hearing, January 29, 2019

I just want to add a little bit to what Robbie was talking about. There's going to be a lot more guys going this year. I would support a little bit of a slow down. Maybe not half. If we can get more quota then maybe things will work out, but we have a lot of small catchers. We'd hate to see all the fish get cleaned out before those guys even get a chance to go. It would be good to have a steady supply for awhile that we could keep going as long as we can. I understand we need to get through to the episodic before to be sure we are going to get there. I would personally support an idea like Robbie was talking about.

Arthur Farnham, Augusta Public Hearing, January 29, 2019

I don't think we should be cut back, because I've been told if we don't use our quota we'll lose it. If we can't fill it that may hurt us.

Josh Saxton, Augusta Public Hearing, January 29, 2019

I agree with Robbie Begin. I think that for our state allocation we should keep it the way it is. Get that caught and then maybe get the episodic and then slow the episodic down. If during the episodic the commissioner can get us more quota maybe we can speed that up to then jump into the additional quota. If we don't get that quota from another state we should be slowing down the episodic to drag it out for everyone. That way, it's not all caught within two weeks.

Justin Boyce, submitted via email, January 30, 2019

I go stop seining along with my father, sisters, brother, brother in law, cousins, and various other crew in the spring and early summer. This has been a fishery that has been in our family for generations and new rules may be endangering the tradition as well as the livelihood of many people in the deer isle stonington area. Typically we start fishing in early May and go until the kayak or other junk fish start showing up in late june or early July. All of our fish in the past 15 or so years has gone directly to lobster fishermen in the area who claim the fresh product can double or triple their haul backs for the time of year. We have many boats waiting for 10 to 12 hours before we start taking out fish just so they can be at the front of the line. We have made things easier over the years but all of our bait is still taken out with a dip net and put into mostly dorys where we fill crates and then hoist them onto boats. This process is long and labor intensive but it preserves the scales on the fish which is what the fishermen really want.

I am not sure if you understand how stop seining works. Fist off it is nothing like purse seining. We set out at night in an outboard and search for fish inside of coves by using mostly a 15 foot cedar pole and a fishfinder to find fish. The pole is run through the water to hit fish to find the density as well as the size of the fish. Without it you could be setting on seaweed or fish that are too small to keep. If we determine that there are enough fish inside the cove we bring a dory with net to the cove and go from one shore to the other closing off the cove. Usually we only have about 15 minutes or so to make a decision and get the net out before the fish scatter out of the cove. If we set and are lucky enough to still have fish in the cove we need to run several anchors to secure the net from dragging out of the cove when the tide goes and also keep it from towing over rocks which could ruin the net. If this wasnt already a long process we then need to put another net on the outside of the net in a square shape and attach it to the net going across the cove. This is called the pocket. We sink the cork line between these 2 nets

and wait until sunrise where we can run fish into the pocket. Most of the time we get about 60 to 70 percent of the fish from inside the cove into the pocket. If we don't get at least half of the fish then we have to wait for the next low tide later in the day so we can try again.

Once we have determined we have as many fish as we are going to get in the pocket we take up the twine across the cove and leave only the pocket with our fish inside. Reasons for taking the other net up are to hopefully keep it from riping up and possibly allow more fish to come in the following night.

With the other net back in a dory and the pocket securely anchored off we wait for the weather and tide to be right to start the process of taking fish out. This involves finding the right spot on the side of the net to start from and then seining the pocket. Depending on the depth of water and the amount of wind or tide we are dealing with we typically can only get about 75 percent of the fish from within the pocket because of the square shape of the pocket. We are unable to fully get in the corners with our seine and that's where the fish will go to get away from us.

After we get as many fish as we can out of the pocket we will take the pocket up and then start the whole process over again. A lot of work and very inefficient compared to purse seining but that is the biggest reason we need to have some leniency when it comes to daily landings and total quota. We cannot make it worth while on a daily quota because we cannot hold fish for much more than a week. Also we are not hurting the fishery when we only catch about 50 to 60 percent of a school of fish on average. Most times the purse seiners catch and dump more fish in one night than we catch in 5 years time. Why should we be punished because they have destroyed their fishery?

I just would like to be treated fairly. We have better conservation methods than any other fishing method and we only take a very small portion of the overall quota. I only know of one other person in our area who stop seines and maybe only 5 total in the whole state. We already have to wait to get lucky enough for fish to come to us and hope that they aren't mixed with kayak or river herring or else we have to let entire sets go. Please don't further punish us because of what others have made a problem. Thank you for your time. My family and the local community here on Deer Isle are really hoping we can continue our way of life. I would like to see stop seining to be allowed up to 100,000 pounds a week and land 7 days. That is a small number since manhadan was 120,000 per day or 180,000 pounds per week last year on their small scale fishery. This gives stop seiners a way to make enough money to make it worth all of the time and effort it takes to catch the fish. I would like to see a higher limit but at least 100,000 a week should be considered. It is too hard of work to go for less.

Note: The 14 individuals (counting Dale Prentice) listed below signed and/or sent copies of the following letter signed by Dale Prentice. The letter was dated February 1, 2019.

Craig Prior, Ronald Poland, Travis Carter, Lester Anderson, Mark Moody, Jeffrey Poole, Ellen Bunker, Michael Dawson, Aaron Summons, David Autio, Benjamin Geyer, David Osier, Dennis Zaccadelli, and Dale Prentice.

My name is Dale A. Prentice, retired fisherman of 50 (plus or minus) years, owner of FV Canyon Prince, Huntress, Ugly Duck land 2 which were seine boats, Miss Plum, Double Eagle, Valencia, and Jubilee, all of which were used in the menhadan business. Amounts they carried ranged between 300 bushels on the Huntress to 199 metric tons on the Valencia. So I have somewhat of a handle on the pogy business back in the 70's, 80's, and 90's.

After attending the pogy meeting at DMR on January 29, 2019, I left with the impression that the small and medium sized boat bait fishermen who fish for 200 to 400 bushels of fresh bait for the lobster fishermen and co-ops on a daily basis were, for the most part, not in attendance. A few of them spoke in favor of slowing down the RATE of catching the quota for the upcoming season.

My impression was that the majority of those with active reporting harvesting licenses have no idea how badly they are going to be affected this season if the catch rate stays at 120,000 pounds per day, with maximum of 160,000 per week.

As I understand it, after talking to Melissa Smith, last year there were approximately 50 to 60 active operators reporting landings. Of that group, there were only 3 outfits capable of landing the 160,000 pounds (or 4 truck) limit, and that this group of fishermen were able to catch the quota of approximately 12 to 14 million pounds.

So with a season of 12 to 14 weeks from late June until mid-October, it's pretty obvious that that breaks down to 1 million pounds a week to get the maximum length of the season for supplying bait to lobster fishermen; and that's IF the state of Maine gets its 2.5 million transfer from Georgia and the 2 million transfer from the Carolinas. (Episodic Event of 5 million.)

The situation this year is that, with the reduction of herring quotas, there are going to be as many as 8 or 9 herring boats jumping into the pogy fishing with the capability of landing that 160,000 pounds (4 trucks) limit, which means that just this group of big boats would catch 1.5 million pounds per week, and with the 45 to 50 small boats, 2 or 3 days week, catching another 1.5 million pounds a week, would mean the quota would be all caught up in one month instead of 3 and a half months. THIS WOULD BE BAD FOR EVERYBODY, especially for the lobstermen.

SUMMARY :

So I'm not in *favor* of Limited Entry and am not suggesting excluding the bigger herring boats. But I am suggesting that your advisory group *give* some serious consideration to slowing down the catch rate from 160,000 pounds (4 trucks) per week, down to 60,000 pounds (1.5 trucks per week) which would help extend the season hopefully into October for everybody, Big boats, medium boats, and small boats, and all the lobstermen would benefit. Oh yes, and keep in mind the big herring boats are already going to go out and catch their 4 truck /week of herring before jumping into the pogy business to get their additional 60,000 to satisfy their markets! I hope you give these numbers some serious consideration and help to level the ball field for everybody, giving the little guys a chance to supply fresh bait to the co-ops and individual fishermen all along the coast from Pine Point to Vinalhaven.

Dennis Zaccadelli, submitted via mail, dated February 1, 2019

I am 52 years old and I have fished my whole life. I have seen many species come and go. I agree with everything stated in the attached letter (referencing the letter created by Mr. Prentice). By reducing the weekly catch rate, everyone makes more, including the fish, the pogie fishermen, the lobstermen and everyone who handles the fish. We've had no problem catching the quota the last two years. Fishing should be for everyone. It is so nice to be back fishing.

Robert Begin, submitted via mail, dated February 3, 2019

I've been fishing for pogies since 1988 as did my family. The reason for this letter is my concern that at the current catch rate of 160,000 per week, the fishery would only last 3 or 4 weeks. With the cut of herring qupta the herring boats are going to clean the pogie quota up. They (the herring boats) have already proved they can ruin a fishery. So I am hoping that you will slow this fishery down. Let's make it 40,000 per day and 80,000 per week. We can always speed it up if things are not working. This would give the lobstermen a change to have bait all season!!! It would let the season go for 10 or 12 weeks as long as Pat rolls the dice.

Michael Dawson, submitted via mail, dated February 4, 2019

I am going to fish for menhaden in 2019 aboard F/V Lisabeth Ann with a seining operation in 2019. I also have many years' experience in the 80's and 90's fishing aboard F/V Seahornet, F/V Sea Leader, F/V Ocean Roamer, also which I captained and caught large volumes of menhaden.

Jeffrey Poole, submitted via mail, dated February 8, 2019

I have been active in most every fishery for the past 48 years and captain and owner for 41 years. I have been active in the pogie fisheries as crew and captain since back in the early 1970's when they showed up again after

a long absence. I cannot emphasize enough the importance of the small boat fishery. I agree with Dale Prentice's letter wholeheartedly.

I would also like to add that having the large carriers and seiners churched up and down the rivers and bays, cutting off lobster traps while driving the bait price higher and higher will only cause a lot more tension that exists now between fishermen. There needs to be a maximum length of carrier established inside the three mile limit to protect and preserve the bait market. Just as an example, last summer there were a good amount of small bunches of herring around Matinicus and surrounding islands, 90 to 120 foot herring seiners showed up using steep cable for purse lines and seiners rigged on chain top and bottom that cut off and drowned 100 to 200 lobster traps per night, let alone the ones that got caught in their propellers. A small seiner of up to 50 feet uses rope for a purse lines and light rigged seines could have fished on these bunches for weeks and had no conflict with lobster gear. We need to go back to some of the old ways and keep the big boats where they belong and preserve small boat fishery, such as with the pogie fishery where less fish can be taken for the week and thus extending the season to October.

Patrice McCarron, Maine Lobstermen's Association, submitted via email, February 11, 2019

The Maine Lobstermen's Association (MLA) has reviewed the DMR's proposed rules regarding Chapter 41 Menhaden for the 2019 fishing season. Maine's lobster industry supports thousands of jobs and generated over \$437 million in ex-vessel value to the state of Maine in 2017. Sustainably managing local bait stocks such as menhaden, and matching landings to demand from the lobster industry, are fundamental to the continued success of the lobster fishery. Menhaden have long been an important source of bait for Maine lobstermen. In recent years, menhaden have become even more important as larger numbers of fish have been caught in Maine waters providing access to a fresh, local, more affordable source of bait in the face of declining herring landings. Maine's menhaden fishery will take on even more importance this year due to the 70% reduction in herring quota. Given the skyrocketing price of bait in recent years and anticipated scarcity of product this season, the MLA urges the DMR to consider slowing the landings of menhaden during the episodic quota to keep fresh bait available to the lobster industry over a longer period of time. The MLA appreciates DMR's efforts to manage the state's menhaden fishery to maximize opportunities for Maine based vessels and provide a steady and timely supply of bait to the lobster fishery. The MLA supports the rules for the state allocated fishery as written, with a daily limit of 120,000 per vessel and 160,000 pounds per week. This worked well last year and will allow Maine to access the episodic quota if fish are being caught in Maine. During the Episodic quota, however, the MLA recommends that the state slow the landings by implementing smaller daily and weekly landing limits. With such limited herring quota available to the commercial pelagic fleet, we fear that there will be tremendous fishing pressure on the menhaden resource and the fish will be caught up too quickly. By implementing a daily limit of 40,000 pounds per vessel and 80,000 pounds per week, the state could slow the landings to ensure lobstermen have access to fresh bait during more weeks of the season. This should also deter larger out of state boats from directing effort on menhaden in Maine's waters. The MLA also supports the reporting requirements proposed in this rulemaking. Thank you for your consideration of these comments to ensure that the state's menhaden fishery provides a steady and predictable source of bait for the Maine lobster fishery.

Alan Poland, submitted via mail, February 11, 2019

The weekly landing cap on menhaden is too high. I think 40,000-60,000 per license and start in July. This would spread out what quota we have when the bait is most needed. If they show up. A steady supply would help everyone until maybe even October. Large outfits are gearing up to end it early. These same large herring boats are the ones caused problems with lobster trap around Matinicus. No cages on the carries. The ropes were also cut with a knife. They are going to fish in the bays and rivers where a lot of traps. Nobody winds and conflicts occur. I know a lot of the fishermen that went last year they don't want a derby fishing to catch them fast before the quota going.

Wayne Delano, submitted via mail, February 11, 2019

My name is Wayne Delano, lobsterman from Friendship. Over the last 30 years, I have participated in many of Maine's different fisheries, including sea urchins, lobster, menhaden, alewives, shrimp, etc. During the 2018 season, I worked with my son Dustin to catch Menhaden for other family members, friends, and myself. For the 2019 season, I have purchased a seine and plan to commercially fish for Menhaden in state waters. Below, I'm mirroring portions of a letter sent by my son regarding the 2019 quota. I'm very concerned for the 2019 fishery, especially for the small boat operations. Of course we all know the struggle the lobster industry will be facing in bait cuts. Knowing the importance of making the most of the Menhaden fishery, landing the maximum allowed quota is a necessity. However, given the increased number of boats predicted to fish in the 2019 season and the amount many will be able to land each week, I am asking that the fishery be slowed down. Having a steady supply of fresh Menhaden being landed at docks along the coast is crucial. Storage is already going to be an issue. Allowing boats to catch up the quota before the lobster fishery is in full swing will only plug up the much needed space for other frozen baits. The fish are within our reach until early October. Catching them up the first few weeks of the season seems a bit reckless. Not only will it effect the dozens of small boat seining operations but it will also effect the small docks who won't have boats coming into to unload each week. I read a copy of a letter submitted to you from Dale Prentice of Bristol. I would like to mirror his suggestion and opinion on how the quota should be managed. Slowing the quota down to 60,000 lbs per week would benefit the coast much better than landing all the fish quickly. At least with 60,000 lbs per week, big boats and small boats could both benefit along with the many lobstermen dependent on the fishery.

Dustin Delano, submitted via mail, February 11, 2019

My name is Dustin Delano, lobsterman and menhaden seiner from Friendship. The last couple of years I have taken advantage of the Menhaden fishery in Maine's state waters. First with a couple gillnets and then last year with seining. The 2018 a season allowed me to catch bait for my family, friends, and myself. It was a major help with the soaring bait prices. For the 2019 season, I've purchased a larger seine and block to make my operation more efficient I can employ 5-6 men with my small scale operation.

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Julie Eaton, submitted via email, February 13, 2019

I am a commercial lobsterman from Deer Isle and who fishes out of Stonington. I am writing to express my concern about the bait issues that we are expecting to face this year and the future use of the menhaden fishery to help with the lack of herring. I have several friends who have small boat operations and have caught herring in the past and will catch menhaden this year. My concerns are that the quota will be caught up by the biggest boats so rapidly that we will have no fresh bait to use throughout the season. Another concern is that the smaller boats will be eliminated from landing menhaden because the biggest boats will swallow up the quota in weeks. Being able to land fresh bait on Maine's docks is imperative to the lobster industry now more than ever,

not only for Maine's lobstermen but for the lobsters that we have been "farming" for lack of a better term, that are dependent on the bait for food. I am asking that the menhaden fishery be slowed down to allow the full quota to be caught and spread out over time when the lobstermen really need the bait. Storage of bait is a problem everywhere and by slowing down the harvest, we could ensure fresh bait much longer and allow room for frozen bait in the storage facilities we do have. I do think that the amount needed in May & June, when most of us are just starting to set gear out, will be far less than the amount needed in July, August and September when the fishery is in high gear. If the catch could be spread out, it would provide the smaller boats some ability to participate in the fishery as well.

Ira Miller, submitted via email, February 13, 2019

As far as Chapter 41 the Atlantic Menhaden plan goes I would urge you to allow the same rules that applied to the State waters quota as last year. If and when the fishery goes to an episodic quota, I would think a 120,000# threshold may help to spread the quota out a little further which I think would be better for the availability of fresh bait to the lobster industry. Slowing things down a little bit would probably help the smaller wharves and those whom don't have a lot of holding capacity have a fair chance to access bait too.

Department's response to the comments:

Fixed Gear Operations

Fixed gear operations may operate under exemptions that allow for seven day harvesting practices but will follow the same daily and weekly allowances as prescribed for mobile fishing. One commenter requested the allowance of stacked permits such that two license holders may work together on one fixed gear operation. The Department did not change the current structure that maintains a single permit requirement. With the updated measures that would allow for weekly harvest at the same weekly limit during the state and episodic fisheries, this should address the economic concerns.

Status Quo

Menhaden landed in Maine is solely used as bait; the peak needs of the lobster fishery for bait coincides with the increase in summer landings. Landings data from the lobster fishery indicate that August has been the peak month in all years 2013-2017; certain years indicate that July and August can be quite similar (Figure 1).

While the arrival date of menhaden to Maine territorial waters is usually unknown, it is generally accepted that menhaden as a bait source can and will be utilized immediately within the bait market for 2019. An anticipated low supply of stored baits and fresh herring during the start of summer will result in a higher demand for menhaden than what has been observed in previous years. To this extent, it is important to maximize the harvest of menhaden for use as fresh bait, while it is available. This effort should be concentrated between July and September. Looking back at the fall months of 2018, menhaden had considerably thinned out by mid-September into October, even though quota was still available.

This is an open access fishery with a mix of participants having a long history of menhaden fishing activity and participants newly accessing the fishery since the 2000s. There is a wide range of capacity, skill and harvest needs; there is no one-size-fits-all. The daily and weekly harvest limits that were determined for the 2018 fishing year through industry input and public comment worked well for the majority of harvesters last season and will remain for the 2019 fishing year.

General Concerns

Several comments referred to "large boats" accessing the fishery, be it large boats currently involved in the fishery, Atlantic herring vessels transitioning to the fishery or vessels from out of state. First, the regulation already specifies catcher vessel length may not exceed 50 feet length over all (LOA) while a carrier vessel may not exceed 90 feet LOA. This information is detailed in section 41.30(6)(A). Secondly, the menhaden fishery has historically been executed by a variety of vessels; the small fleet that has persisted through the fluctuations of both landings and quota over the last few decades have been vessels with a large capacity to harvest fish and provide a consistent supply to bait dealers.

There were several comments that spoke to the Commissioner’s ability to “speed things up” should lower catch rates be instituted but not warranted as the fishing season progresses. This concept of increasing harvest opportunity once the regulation is final is not permitted. According to 12 M.R.S. § 6171(3), emergency authority is granted to the Commissioner should the following issues be determined:

- A. Immediate action to protect or conserve any marine organism from unusual damage or imminent depletion;
- B. An unusually large concentration of fishermen might deplete the supply of any marine organism;
- C. Immediate action is necessary to comply with changes to federal or interstate fisheries management plans

None of the above-mentioned stipulations for exercising emergency regulatory action allow increasing harvest rates for a state regulated fishery; catch rates may only be lowered.

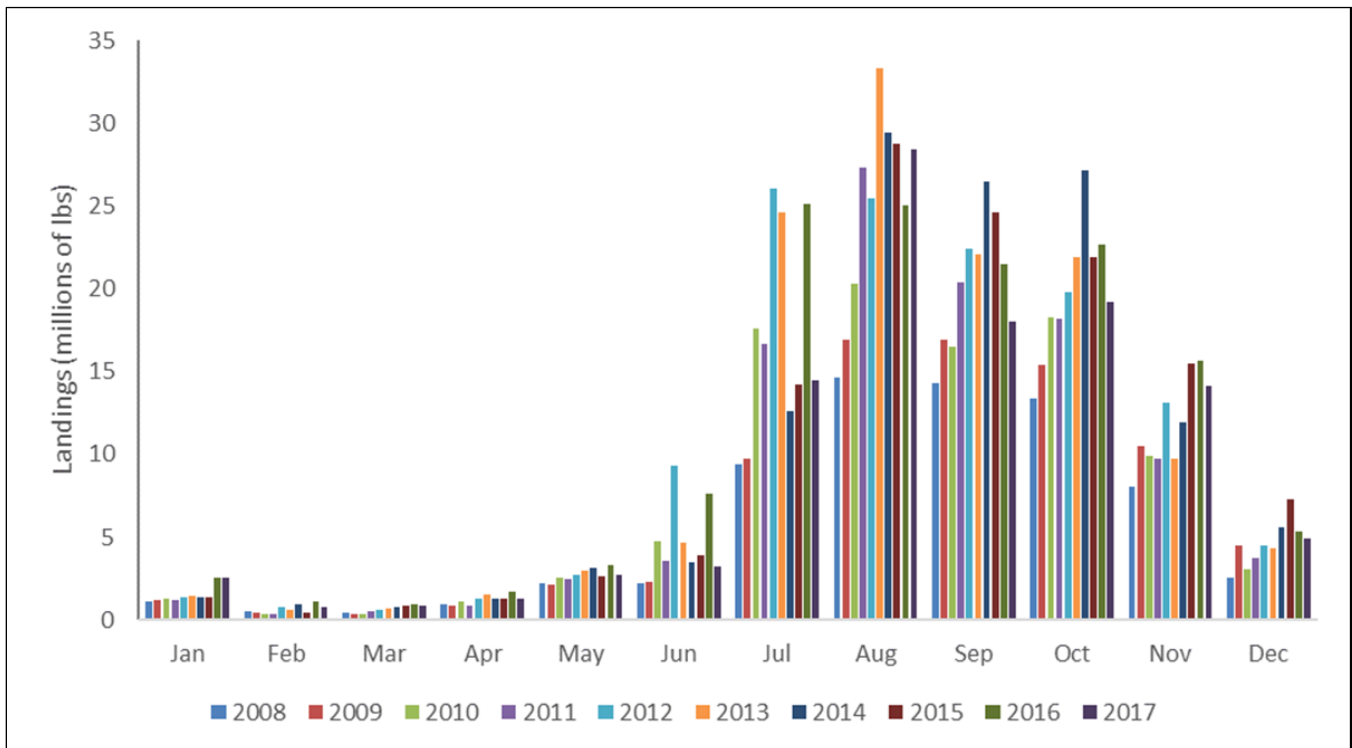


Figure 1: Maine DMR lobster landings data by month from 2008 to 2017; represented in millions of lbs.

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 Menhaden

STATUTORY AUTHORITY: 12 M.R.S. § 6171

DATE AND PLACE OF PUBLIC HEARING(S): January 29, 2019 at 3:00 p.m., DMR Conference Room, Marquardt Building, 32 Blossom Lane, Augusta. Snow date scheduled for January 30, 2019 at 3:00 p.m.

COMMENT DEADLINE: February 13, 2019

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

This proposed rulemaking clarified the reporting requirements for all Atlantic menhaden fishery operations. Components of the fishery that are quota managed (state and episodic) require daily reporting, while the small incidental/small scale fishery requires monthly reporting.

This rulemaking updates the management framework for the Atlantic menhaden fishery in territorial waters, including the state allocated fishery, the episodic event fishery, and an incidental catch/small scale fishery by separating out the restrictions placed on the fixed gear sector. Fixed gear harvesting may occur seven days a week in both the state allocated fishery and the episodic event fishery; however, the fixed gear fishery will maintain the same daily and weekly landing limits as previously set for the mobile fishery programs.

This rule re-instates a personal use regulation for hook and line harvest. Recreational harvest by hook and line for 25 fish per day is permitted seven days a week.

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 improve reporting requirements for all harvesters conducting directed Atlantic menhaden trips. Ease of access for recreational and fixed gear sectors of the fishery.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

Comments received from marine patrol during the 2018 harvest season as well as an industry meeting of menhaden harvesters held at DMR in December 2018 in combination with the public comments received for this rule.

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