

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Atlantic Menhaden

CONCISE SUMMARY: This rulemaking adjusts the start date of the commercial menhaden fishery to the second Monday of June. Incidental harvest of menhaden by fish weir, stop seine, or pound net operators is amended to begin May 1st, annually. Effort restrictions for the Episodic Event Set-Aside (EESA) program are expanded to allow for flexible harvest plans dependent on the number of states participating in the EESA. Lastly, the designated partnership agreement program initiated in 2024 has been removed.

ADOPTED RULE NUMBER:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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41.05 Prohibitions

1. It is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters.
2. It is unlawful to fish for, take or land menhaden except between May 1 and November 30, both days inclusive.
3. 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.
4. It is unlawful to use a vessel to fish for or take menhaden that exceeds 50 feet overall length as shown on the vessel's current USCG documentation or State registration.
5. It is unlawful for any vessel other than the harvester vessel that made the set to remove fish from the purse seine or gillnet. If more than one vessel is used to set the seine or net, only the vessel from which the seine or net was removed may take or possess menhaden from the seine or net.

~~Exception: A vessel listed on a Commercial Menhaden License holder's license, other than the harvester vessel that made the set, may remove fish from a purse seine under the conditions of an approved Designated Partnership Agreement as specified in 41.06.~~

6. It is unlawful for the holder of a menhaden license to take menhaden using a gear type not authorized for their license type, as specified in either section 41.30 or 41.40. Permitted gears include anchored/staked gillnets, bait gillnets, cast nets, drift gill nets, fish weirs, floating fish traps, fyke nets, hand seines, hand lines, hook and line, stop seines, pots, pound nets, and purse seines. Permitted gears are dependent upon which commercial fishery phase is open.

~~41.06 Designated Partnership Agreement~~

- ~~1. Prior to May 31st, annually, each Commercial Menhaden License holder requesting to enter into a Designated Partnership Agreement shall complete application forms provided by the Commissioner. Forms must include the following information:~~
 - ~~i. Licensee name and license number of both partners~~
 - ~~ii. Vessel name and number listed on each partner's license~~
 - ~~iii. Primary landing port of each vessel~~
- ~~2. The Commissioner will evaluate Designated Partnership Agreement applications and may approve or deny applications based on the following criteria:~~
 - ~~i. Both applicants must have reported harvest activity from the previous Maine Commercial Menhaden season in the form of landings reports;~~
 - ~~ii. Both applicants must not have had a menhaden quota violation within the previous fishing season; and~~
 - ~~iii. Both applicants' vessels must be similarly rigged to fish with purse seine gear, in a manner that would allow either vessel to conduct the same level of harvest effort.~~
- ~~3. A Designated Partnership Agreement approved by the Commissioner shall be in effect for the entire State Allocation Fishery, unless otherwise paused or terminated by the Commissioner during the season. Designated Partnership Agreements, once approved, may not be modified by the parties during the fishing season. The Commissioner shall maintain a list of approved Designated Partnership Agreements.~~

4. ~~It shall be unlawful for a vessel listed on an approved Designated Partnership Agreement to remove fish from a purse seine unless the seine was set by that vessel or the Designated Partner vessel.~~
5. ~~It shall be unlawful for a vessel listed on an approved Designated Partnership Agreement to remove fish from a purse seine unless the vessel removing the fish is also rigged to fish with a purse seine in a manner that would allow either vessel to conduct the same level of harvest effort consistent with how the partner vessel is rigged.~~
6. ~~When fishing under an approved Designated Partnership Agreement the vessel removing the fish from the seine is responsible for reporting those fish taken as required.~~
7. ~~The Commissioner may pause or terminate Designated Partnership Agreements at any time under the following conditions:~~
 - a. ~~Whenever landings of menhaden are occurring at a rate that the Commissioner is concerned that the entire quota for the state allocation fishery will be reached in a time frame that will negatively impact the supply and availability of bait or,~~
 - b. ~~Whenever the Commissioner is concerned Designated Partnership Agreements are being unlawfully used or abused so as to negatively impact the menhaden quota or fishery.~~

~~If the Commissioner determines it is necessary to pause or terminate Designated Partnership Agreements, the Department will notify declared license holders by direct notice to the email address and phone number provided by the license holder and on the Department's publicly accessible website.~~

41.10 Suspension of Rules

The Commissioner has the authority to suspend all regulations 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 direct notice to the email address and phone number provided by the license holder, and on the Department's publicly accessible website.

41.20 Reporting

1. Commercial Menhaden Fishing License

All harvesters must report all landed and retained fish daily to the Department via an approved electronic reporting option by 11:59 PM the day of landing or retention. If no landings or retention occurred on a calendar day, a negative report is required.

Exception: Daily reporting is not required for the Incidental Catch and Small Scale Fishery as described in 41.30(3). Weekly electronic reporting remains a requirement. Trip level reports are due weekly by 11:59 pm Sunday.

2. Noncommercial Menhaden Fishing License

All harvesters must report trip level landings and retention to the Department via an approved electronic reporting option once per week no later than 11:59 pm Sunday. If no landings or retention occur during the week (Monday 12:01 am through Sunday 11:59 pm), a negative report is required.

Harvesters: See Chapter 8.20(M) for reporting requirements.

Dealers: See Chapter 8.10 Landings Program for reporting requirements.

41.25 Definitions

- A. Hoghead: one hoghead 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. Fish tote: a standard fish tote (tray), measuring 28 inches long x 16 inches wide x 11 inches deep, when level full, equals 1/3 barrel.
- F. Crate: a crate equals two and one half bushels or 175 pounds of menhaden.
- G. Fish Tank or Box: a standard Saeplast or Bonar brand fish tank with internal measurements of 38 inches long x 38 inches wide x 44 inches deep and when filled to allow for a sealed cover, equals 20 bushels.
- H. Landing: to come to shore, float or a dock and offload menhaden.
- I. Harvester vessel: the vessel that deploys the net to fish for, take and possess menhaden. A harvester vessel is in possession of fish once the net encircles and traps the fish.
- J. Set: To place from a harvester vessel a purse seine or a bait gillnet in the coastal waters of the state for the purpose of taking menhaden.
- K. Pound net or trap net: a type of entrapment gear that consists of an arrangement of netting or wire supported upon stakes or piles and has the head ropes or lines above the water or in a frame that is supported by floats and anchors. A pound net or trap net may consist of an enclosure known as the pound proper, crib or pocket which has a netting floor and section known as a heart from the entrance of which a straight wall known as the leader or runner extends outward. There may be several combinations of hearts, pounds or pockets. Finfish are voluntarily directed by the leader towards and into the heart and/or pound, and then into the crib or pocket where they are removed periodically by various devices and methods, that are solely operated by hand. ~~such as dip nets.~~
- L. Fish weir: any fixed type of fishing equipment that consists of fences made of wooden stakes or out of other materials constructed in such a manner so as to intercept or attempt to intercept finfish. The fences form successive enclosures called the heart, pound and pocket into which the finfish are directed by a prolonged fence known as a leader.
- M. Dory: a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.

41.30 Commercial Menhaden Fishery Management Program

1. 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 menhaden license holders by direct notice to the email address provided by the license holder, 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 menhaden 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.

Whenever landings of menhaden are occurring at a rate that the Commissioner is concerned that the entire quota for the state allocation fishery will be reached in a time frame that will negatively impact the supply and availability of bait, the Commissioner may temporarily prohibit the taking of menhaden by commercial menhaden license holders for up to fourteen days. If the Commissioner determines it is necessary to temporarily prohibit the taking of menhaden by commercial menhaden license holders, the Department will notify license holders by direct notice to the email address provided by the license holder, a notice in a newspaper circulated in the area affected, ~~direct notice to the email address and phone number provided by the license holder~~, and on the Department's publicly accessible website, of the date of closing of the fishery and the date on which it will reopen.

When the commercial menhaden fishery is paused by the Commissioner, or if the commercial fishery is closed while transitioning to the Episodic Event Set Aside program, individuals operating a pound net, stop seine, or a fish weir, who also hold a Commercial Pelagic and Anadromous license may take 3 barrels (1,050 lbs) of menhaden as incidental bycatch.

B. Pound net and fish weir effort restrictions

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery which is set for pound net, stop seines, and fish weirs as ~~May~~ June 1st, annually. Harvest of menhaden by pound net, stop seines, or fish weirs prior to the ~~third~~ second Monday of June may occur seven days a week and is limited to taking 1,050 pounds per harvester and per vessel per day. ~~or 3 barrels daily~~.

Starting on the ~~third~~ second Monday of June, pound net and fish weirs may land, take or fish seven days a week and have a weekly landing limit of 17,850 pounds per harvester vessel.

C. Effort restrictions for all other gears

It is unlawful to harvest menhaden prior to the opening of the state allocation fishery, starting on the ~~third~~ second Monday of June, annually, at 12:01 AM. 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 to 11:59 PM on Mondays, Wednesdays and Fridays each week. It is unlawful to fish for, take or possess more than 17,850 pounds per harvester vessel per week. It is unlawful for a harvester vessel to sell, give or transfer menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea. It is unlawful for a harvester vessel to complete more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

~~Exception: A vessel other than the harvester vessel may take fish from a purse seine under an approved designated partnership agreement as specified in 41.06. The vessel removing the fish from the seine is responsible for reporting those fish taken. Vessel weekly limits remain at 17,850 lbs per harvester vessel per week.~~

D. Storage Requirement

All menhaden must immediately be stored in barrels, crates, fish tanks or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, fish tanks or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

2. Episodic Event Set-Aside (EESA) Fishery

Following authorization by the Atlantic States Marine Fisheries Commission, the Department may open an episodic event set-aside (EESA) fishery following the closing of the state allocation fishery.

A. Notice

The Department will notify commercial menhaden 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~~ EESA 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 menhaden license holders by direct notice to the email address provided by the license holder and 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~~ EESA fishery.

B. Effort restrictions

Following the opening of an ~~episodic event~~ EESA fishery and prior to the closure of the ~~episodic event~~ EESA fishery, it is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays and Thursdays each week. It is unlawful to fish for, take or possess more than 14,000 ~~7,000~~ pounds per harvester vessel per week ~~per day~~. It is unlawful for a harvester vessel to sell, give or transfer, menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea. It is unlawful for a harvester vessel to complete more than one landing per calendar day. ~~It is unlawful to complete more than one landing by harvester vessel per calendar day.~~ For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25.

Pound nets and fish weirs are not subject to the harvest schedule detailed above and may land, take or fish seven days a week. However, ~~the daily landing limit is 7,000 pounds and~~ the total weekly landing limit may not exceed 14,000 pounds.

Exception: When the Department is informed that another state has begun participating in the EESA fishery, the Department will notify license holders by direct notice to the email address provided by the license holder and a notice in a newspaper circulated in the area affected.

Upon notice to license holders, the weekly limit is 7,000 pounds per harvester vessel per day when more than one state is participating in the EESA fishery.

Pound nets and fish weirs are not subject to the harvest schedule detailed above and may land, take or fish seven days a week. However, the daily landing limit is 7,000 pounds and the total weekly landing limit may not exceed 14,000 pounds.

C. Storage Requirement

All menhaden must immediately be stored in barrels, crates, fish tanks or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, fish tanks or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

3. 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 menhaden license holders by direct notice by email and text to the email address and phone number provided by the license holder in their license application, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

B. Effort Restrictions

It is unlawful to fish for, take, possess or land more than 5,950 pounds per harvester vessel per day. It is unlawful to fish for or land menhaden except between 12:01 AM to 11:59 PM on Mondays, Wednesdays, and Fridays each week. It is unlawful for a harvester vessel to make more than one landing per calendar day. For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.25, except that it is unlawful during the incidental catch and small scale fishery for a harvester vessel to sell, give or transfer, menhaden they have taken to any other vessel while at sea. It is unlawful to receive menhaden from a harvester vessel while at sea. It is unlawful for a harvester vessel to complete more than one landing per calendar day.

Pound nets and fish weirs are not subject to the harvest schedule detailed above and may land, take or fish seven days a week. However, the daily landing limit is 5,950 pounds per harvester vessel per day and the total weekly landing limit may not exceed 17,850 pounds per harvester vessel per day.

C. Gear Restrictions

It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following: bait gillnets (including anchored/staked gillnets or drift gill nets), cast nets, pots, hand seines, hook and line, pound nets, fish weirs, fyke nets, and floating fish traps.

Bait gillnets cannot exceed 500 feet in length. A hand seine is defined as a seine solely operated by hand with no option to be cinched or pursed by the footrope.

D. Storage Requirement

All menhaden must immediately be stored in barrels, crates, fish tanks or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates, fish tanks or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

41.40 Noncommercial Menhaden Fishing

The following limitations apply to individuals holding a noncommercial menhaden license issued under 12 MRS §6502-C.

A. Season

The holder of a noncommercial menhaden license may fish for, take or possess menhaden from May 1 to November 30.

B. Effort Restrictions

(1) It is unlawful to fish for, take, possess or land more than 1,050 pounds ~~or 3 barrels~~ per harvester and per vessel, per day.

(2) It is unlawful to make more than one landing per vessel per calendar day.

(3) It is unlawful to transfer menhaden they have taken to any other vessel.

(4) It is unlawful to receive menhaden from a harvester vessel while at sea.

C. Gear Restrictions

It is unlawful to use any gear type other than the following when targeting menhaden: bait gillnets (including anchored/staked gillnets or drift gill nets), hand seines, cast nets, and fish traps.

Bait gillnets cannot exceed 500 feet in length. A hand seine is defined as a seine solely operated by hand with no option to be cinched or pursed by the footrope.

41.50 Recreational Fishing

An individual may fish or take, by either speargun, harpoon, minnow trap, hand dip net or hook and line, up to 25 menhaden per day for personal use only without a license.

Basis Statement

This rulemaking adjusts the start date of the commercial fishery to the second Monday of June. Incidental harvest of menhaden by fish weir or pound net operators is amended to begin May 1st, annually. Effort restrictions for the Episodic Event Set-Aside (EESA) program are expanded to allow for flexible harvest plans dependent on the number of states participating in the EESA. Lastly, the designated partnership agreement has been removed.

Currently, the menhaden fishery begins on the third Monday in June. In the proposed rule, the Department had proposed moving the start of the fishery to the first Monday in June. However, based on comments received, the Department amended the start date of the commercial fishery to the second Monday of June, annually.

Summary of Comments

Notice of the proposed rulemaking appeared on February 19, 2025, posted to DMR's website and also printed in the five major daily newspapers as published by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR's rulemaking notices and sent to industry members who provided their email address to DMR. The comment period closed March 22, 2025.

A hybrid public hearing was held on March 11, 2025 in-person at DMR's Augusta office and offered remotely via Microsoft Teams.

Attendance:

| Name | Affiliation |
|---|--------------------------------------|
| Deirdre Gilbert, Melissa Smith | Maine Department of Marine Resources |
| Michael Dawson, Earl Small, Doug McLennan, Nicholas Morley, Jason Lord, Rob Bernat, Jerry Leeman, Chuck Mahaleris for Senator Collins | Members of the Public |

Jason Lord, New Harbor:

My first and foremost comment is I'd like to see multi permit holders be allowed to fill both of their permits in one set throughout the season. I know that that you're trying to get away from the partnership and what have you, which I agree with the partnership. I think partnership's fine, but I also think that we're putting pressure on these fish that we shouldn't have to and why should I have to hit these fish twice when I've already caught them once?

I would like to address the fact of the start date and I think the start date, I'd like to see it pushed back further in the month because the river herring will still be here, and I'm afraid that there won't be a lot of people using the bait at that time we want the start date to be. So therefore you may have a reduced price for the fish we're trying to catch because there won't be as much effort on the species, nobody will be using them because it'll be the wrong time of year. I was happy with last year's start date, but I mean a happy medium would be the one in between the two, which would be the second week. I guess time will tell. The species will tell us when they wanna get caught.

Nicholas Morley, Boothbay Harbor:

On the start date, I actually liked you guys putting it June 2nd. Massachusetts will be opening on June 2nd. Last year there was an ungodly amount of fish landed in the first couple weeks of the Massachusetts season and no one down there had market, so they started sending truckloads of 40,000 lbs up here for 10-15 cents a pound 'cause they couldn't get rid of them. So I think if we open June 1st, it kinda competes with them and maybe we won't have that flood of fish if the Maine buyers don't think they need to buy them.

Second of all, with the partnership, I think the state's kind of shooting themselves in the foot getting rid of it, because last year the state quota got landed on August 23rd. If we didn't have it caught by September 1st, we completely lose out on episodic event. So with how many fish were caught in the partnership, in my eyes we're not going to catch our state quota if you don't have the partnership. So I don't know if there's a fine line where we can say we're going to open the partnership until we catch 10-12 million pounds to make sure we at least catch that many. And then maybe it can be addressed at that point, but every year we set the fishery up so the fish show up here and they last this long. But, the first year the fish don't last all season, especially with the herring cut back, the lobster industry is going to be screwed with a bait shortage.

So I think to get rid of the partnership, I think you're just shooting yourself in the foot, you're adding more pressure on the fish, like Jason said. And it's just unnecessary. The guys that are gonna catch them, are gonna catch them. I know in the December meeting Pat said something like after they got rid of the Partnership, 98 boats didn't land another fish. But that's kind of a hard number to go by because we've got two boats that are rigged up with power blocks and everything and we never caught fish after that because the fish were gone.

Episodic event. I don't think you guys should write it up in the sense of if another state is pulling, then we're going to a daily limit because depending on what the fish situation in Maine is, another state could be pulling, there could be 20 or 30 boats in the state catching fish still. So if you write it up like that, we're kind of behind the 8 ball.

The weir/pound set aside thing doesn't affect me. If those guys want to fish May 1st, go for it.

Add to my original call about the start date: Every other industry that I've been a part of in Maine, market dictates whether people go. So to open on June 2nd to say like oh, half the state can't fish because half the state doesn't have market. I don't really think that's the state's job to decide who catches fish when. We've got market that we put up 4000 or 5000 barrels. In the last three years, we've watched them in our harbor for three weeks to give the guys Downeast a chance because the guys Downeast aren't catching the lobsters til July. So I'd like to add to my comment that if you don't have market, don't go. The guys that have market, if you can open it June 2nd so they can start filling coolers. Like I said, I just don't think it's the state's spot to tell half the state they gotta wait to catch fish because this half the state's not catching lobsters until July. So that's probably an unpopular opinion.

Earl Small, Eastport:

I'd like to keep the partnership program going. I know there's a few incidents last year that's why we're going to dissolve it, but I think we should work on that and keep the partnership. I also like to start date of last year, you know more towards the middle of June. You know when the lobster season starting and you know, the menhaden was working its way up, we're in pretty good shape. So I don't really like starting that early in June, but the later the better.

Rob Bernat, Harpswell:

The May 1st start date for the pound net fishery, I think it's a wonderful idea.

Doug McLennen, Spruce Head:

I wanted to say just keep the latest start date. We have to spread it out so lobstermen can get bait.

Partnership is gone, it don't hurt my feelings any.

And I want to say that we always try to make all these changes for two or three people in the industry. We had the earlier meeting that was like 5 people complaining about stuff out of the whole season. And I thought that was a pretty low number. If that's how many people you got complaining, I'd say that you're doing a pretty good job and just leave things alone instead of trying to tweak it every year and do all this stuff. And it just really doesn't do a heck of a lot.

I think things are alright. A later start date. They want to start it early, we travel. That's all I'll say. Look for some boats to be in your harbor. If you want to start it in June, they'll be boats there.

Michael Dawson, New Harbor:

Well, I kind of agree with Doug on his comment. I want to say that last year's season, the start date was good. Everything seemed to work fairly well. I'm in agreement with the episodic to try to catch 40 in a day and then 20 if other states apply. But the third Monday in June seems like a much better idea, especially with the alewives. You know, you're kind of overlapping with them. It's still quite early. There's not a lot of market around then, so I'd much rather see the third Monday in June. First Monday seems awful early to start. Not a lot. So go on the record for that, especially for a quota fishery.

DMR received the following written comments via email:

Justin Boyce, Stonington:

I have been reading over the proposals for menhaden and am alright with most of it but would like to express a couple concerns with them. First I don't understand why stop seining isn't included in the language along with weirs and pound nets. I feel like it would be beneficial to include stop seining as a method of catching them early and late because between our extremely low herring quota and the fact that menhaden are coming earlier each year and driving herring out of the coves we fish that we should have opportunity to catch them. There are not many individuals left with nets used for stop seining on the coast and would be extremely expensive if individuals wanted to get new nets to try and do it so I don't believe there would be much new impact on the resource but it would help give us another use for our aging nets. The second thing that I don't like is the proposed earlier start date for purse seining. This is going to create even more of a glut in our market because of the stockpile that will be created before the real lobster season even begins. Last year with the 3rd monday in June start we flooded our market even with an earlier start to the lobster season than normal and I feel like we will eat up our quota in early August and then fill the episodic quota by end of September even when we really need the manhaden for bait into october and November.

In conclusion I can understand why guys from the west want to have an earlier start because the fish have been heading north sooner which is understandable. The stop seining not being involved in the fishery seems to be a shot in the foot though since besides weirs it is the oldest fixed gear fishery in the state. It is dependent on the fish coming into shallow water where they can be trapped and involves many steps and quite a bit of luck in order to actually land the fish. I hope you will consider this when making the final decision.

Kevin Grindle, Little Deer Isle:

Would like to offer my comment on this years menhaden season. I prefer same season date as last year with reason being there is very limited market in early June. I am not in favor of the partnership. Thank You!

Leroy Weed Jr, Stonington:

Chapter 41 - I'm replying to the upcoming season. Please leave it alone or, if anything, make it later not earlier! Makes no sense to have it earlier. It's a time of year where not everybody is set out and there's no place to go with them. Have it so we catch them when people are fishing every day would make a whole lot more sense. We're gonna end up getting less for them and there's gonna be more waste by opening it early.

Matthew Moody, Waldoboro:

I am opposed to the season starting on first Monday in June for several reasons:

- 1) Taking fish this early in the lobster season when the effort is low will fill up storage space available for bait which is at a premium throughout the state.
- 2) Traditionally the fish will not have moved up the coast to give everyone a fair chance to catch their part of the quota.
- 3) Most lobster fisherman would prefer fresh caught menhaden to bait their traps with and if the season opens early the quota will get caught up early and there will be no fresh caught menhaden.
- 4) Catching menhaden that early and storing them provides for a much poorer quality product when it is taken out and used later in the lobster season.
- 5) The alewives are also still running in the rivers in early June so there is risk of catching them in the gillnets or seines.

For all the reasons, I am opposed opening the menhaden season any earlier than the third Monday in June. I would not mind even the fourth Monday in June as a start date.

Jeanne Fuller, Boothbay Harbor:

We support the earlier start date for fishing of Menhaden on the first Monday of June, 2025 (June 2). Last year the pogies showed up in early June in the Mid-coast region and then moved down the coast quickly. They did come back to the Mid-Coast, but the fishermen missed out on at least 2 weeks of fishing. That could have made the difference in catching all of the Episodic quota later on in the fishing season. With the Federal herring quota being cut 86.5%, we will need to catch and store as much of the menhaden that we can.

Linda Vannah, New Harbor:

I am the manager of the New Harbor Coop. As regards to the season I would hope that you would consider opening the season the second week of June as it was last year or even the third week. As a coop we buy a lot of pogos from our own fishermen and tend to fill one of our coolers pretty fast. After that we go a bit slower a sell a bunch of unsalted ones to our fisherman but salt everything else to save for another day while filling the second cooler. But in doing that those pogos that were put in the cooler at the beginning of the season sit there. So adding an extra week to the beginning of the season will just make those pogos even older.

Thomas McLennan, Spruce Head:

Please do not move the season start date. We need the bait in the fall more than we do in June.

Kevin Glover, Owl's Head:

I am writing this email in regards to the upcoming rules for the upcoming 2025 Maine menhaden season. I think that starting the fishing season on the first Monday of June would be starting it too early. I feel that we need to try and spread out the menhaden season as long as we can to help the lobster fishery keep fresh bait around for as long as we can.

If the season did start early I would hope you might change the quota of what you can land per week to a lesser amount to start with. That way it might not cause a lot of fish to be landed and a glut first thing. The first of June there is not a lot of people lobstering and not much bait being used. I would rather see the season last till September when people are lobstering harder and needing the bait.

Doug McLennan, Spruce Head:

I want to suggest to leave the season as previous seasons, with start time as late as possible. I would also like to suggest that when a few people complain, that the system must be working fairly well, with only a couple people having complaints. In seasons past, these complaints by a small amount of people have been rescinded the following year. I think the state is doing a good job with the small amount of complaints. Thank You for your consideration.

Abigayle McLennan, Spruce Head:

Please do not change the menhaden start date. The third week of June works best for the entire fishing community. Lobsterman need this bait more in the fall than they do the early spring.

Emily Morse, Harpswell?:

I would like the menhaden season to remain status quo from last year. The beginning of June is too early. There are not enough people lobstering yet and the quality of the Pogies having to be barreled on the boat (instead of chilled in a fish hold) are not good for long term storage.

Joshua Morse, Harpswell?:

I would like the menhaden season to remain status quo from last year. The beginning of June is too early. There are not enough people lobstering yet and the quality of the Pogies having to be barreled on the boat (instead of chilled in a fish hold) are not good for long term storage.

Mark Bichrest, Harpswell:

I would like the menhaden season to remain status quo from last year. The beginning of June is too early. There are not enough people lobstering yet and the quality of the Pogies having to be barreled on the boat (instead of chilled in a fish hold) are not good for long term storage.

Herman Coombs, Orrs Island:

Wondering if it might be possible for an individual that holds two licenses to combine them onto one boat. With the understanding that the individual owns both boats and permits. Thank you.

Chuck Bennett, Sorrento:

I'm writing to express my concern with the proposed rule change that would change the harvest start date for the menhaden fishery to the first Monday in June.

I oppose this change for the following reasons.

It's my belief that the more the menhaden harvest aligns with the lobster shed the better it is for menhaden fishermen and lobstermen.

The earlier the menhaden harvest starts the more limited the market is for them.

Also, if the menhaden quota is reached earlier in the lobster season then it will create a bait shortage for lobstermen and therefore inflate other bait prices.

I believe a later start date for the menhaden fishery is for the greater benefit of the entire state even if it makes it makes difficulties locally for certain menhaden fishermen.

Thank you for considering my comment.

Chuck Bennett
Sorrento, Maine
Commercial lobsterman and commercial menhaden fisherman

Nick Heal:

I think that moving the start date up to the beginning of June is not a good idea.

The market will be flooded before the lobster season starts.

We should stick with the same date as last year.

If we do start early could we start at a reduced weekly limit, then ramp up as the season progresses?

DMR Response:

Commercial Fishery Opening Date

The Department received 17 total comments related to the season opening date: 15 comments requested a delay in the opening date from the proposed first Monday in June, either by leaving it status quo (third Monday in June) or to push it back a week to the second Monday in June, while 2 comments were in support of the first Monday of June opening. Recognizing that quota monitoring continues to be impacted by delays in reporting, and that in recent years Maine hasn't utilized the EESA to the full extent, the Department settled on the second week of June as a compromise for the comments received.

The start date was originally implemented as a mechanism to ensure a stable and consistent removal of menhaden throughout the summer. With a high number of participants (~374 commercial licenses issued), it is impossible to allow harvest simply when the fish show up, and then still guarantee there will be harvest opportunity and fresh fish landings in August or September. While the Department recognizes that the fish were present in state waters prior to the start date of the commercial fishery in 2023 and 2024, it has also been stated that the menhaden fishery operated for 10 weeks under the state allocated fishery. The state allocated fishery closed on August 25, 2024, to avoid an overage. This was a week earlier than the previous season.

In the last two seasons, there has been a documented shift of fishing activity away from lobstering towards the harvesting of menhaden during the month of June and early July that has resulted in an abundance of menhaden landed, stored frozen or salted in local coolers, or sometimes dumped due to market saturation. Stored bait then sits until the bait demand increases later in the summer. Fresh bait is always more desired over frozen and salted, so the goal is to moderate the landings to better coincide with an increase in lobster activity.

The Department has encouraged harvesters to be mindful of market or personal need so as to not land more product than is necessary for bait demand at every industry meeting. The goal that was shared during the menhaden industry meetings, both in December 2022 and recently in December 2024 was to stretch out the menhaden harvest season to the end of August and possibly into September.

Removal of Designated Partnership Agreement

There were four comments received related to the Designated Partnership Agreement (DPA): 3 comments were in support of maintaining the program while 1 comment supported removing it from the rule. The Department will proceed with striking the program from the rule as proposed.

The DPA was created in 2024 in response to harvesters concerned about dumping fish when a harvester makes a final set that was more than what was needed. Some industry members requested a way to allow harvesters to share fish with another permitted vessel. However, it was observed that this Program significantly increased landings, resulting in harvesting two vessel limits that otherwise would not have fished their limit. Landings data indicates that latent licenses became active in 2024 during the timeframe in which the DPA was available. Additionally, harvesters communicated directly to Department staff that some vessels were abusing the privilege of the DPA to simply land more fish. There were observations of unfishable nets on bows. In addition, reports of one boat doing all the fishing and just transferring fish to another, essentially utilizing its partner boat as a carrier. The Commissioner suspended the Program mid-season in 2024 due to the received comments from industry.

As a result of the increased effort from the DPA, there was complete market saturation as the lobster fishery in 2024 was slow to start. Bait dealers were also communicating to Department staff that they were running out of storage and spending additional costs to freeze bait that would not be used until later in the Fall. Again, the goal of only harvesting to fit the market does not apply well when there are ~374 individuals harvesting simultaneously.

Changes to the Episodic Event Set-Aside Provisions (EESA)

There were two comments regarding the proposed changes for the EESA; one was in support, while the other was supportive of the weekly limit, but without the measure to reduce effort when another state began participating. The Department will maintain the amendments to EESA as proposed, to allow for a reduction of effort should another state begin participation.

It was observed during the 2023 and 2024 fishing years, even with reduced participation of harvesters in the EESA and slower catch rates, that a substantial delay in daily reporting persists. Until the menhaden fleet as a whole can improve the daily trip level reporting compliance, the Department cannot risk overharvesting of the EESA shared quota and the potential impact to neighboring states.

Adjustment to the Incidental Take Provision for Fixed Gears

There were two comments in support of the proposed measure of expanding the incidental allowance of 1,050 pounds daily by individuals commercially harvesting from a fish weir or pound net, that are in possession of both a commercial menhaden license and a commercial anadromous and pelagic license.

There was one comment received pertaining to the inclusion of stop seine gear with the fixed gears referenced in 41.30(1)(B). As noted in Chapter 36; Atlantic Herring, fish weirs and stop seines are considered “fixed gears”. Thus, is it understandable that the use of an existing gear type, which may target Atlantic menhaden just as well as Atlantic herring may want to be used in early Spring. The rule has been amended to include stop seines as an allowable fixed gear that may harvest an incidental amount (3 barrels) of menhaden. It has been noted anecdotally that during Spring 2024, the Atlantic menhaden were present in large numbers enough to deter and displace Atlantic herring from entering a stop seine operation.

Increasing Vessel Limit for Individuals Possessing Multiple Licenses

Two comments were received to amend the rule to allow individuals in possession of two Commercial Menhaden Licenses to transfer and/or harvest both vessel allowances on a single vessel. Currently, trip limits for menhaden are associated with the vessel and trip reports require a match to the harvest vessel listed on the Commercial Menhaden License. Enforcement of weekly landing limits is contingent upon the vessel landing limit.

The Department shifted away from a daily trip limit within the state allocated fishery to a weekly landing limit. This shift was to benefit all harvesters by reducing harvest time and overhead expenses while allowing crew sharing.

We recognize that there remains interest in having this provision available in the rule, but such a significant change to the rule was not proposed during this rulemaking and cannot be considered at this time. The Department will evaluate the potential impact this provision may entail and discuss it at the next menhaden industry meeting.

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:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6553; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41 Atlantic Menhaden

STATUTORY AUTHORITY: 12 M.R.S. § 6171; § 6502-C

DATE AND PLACE OF PUBLIC HEARING(S) March 11, 2025: 5:00 p.m. at DMR's Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the March 11th hearing is cancelled due to inclement weather an alternate hearing will be held on March 12th at 5:00 pm in Room 118 of the same location, and remotely via Microsoft Teams. Remote access information is posted to DMR's website under "Meetings."

COMMENT DEADLINE: March 22, 2025

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

This rulemaking adjusts the start date of the commercial fishery to the second Monday of June. Incidental harvest of menhaden by fish weir or pound net operators is amended to begin May 1st, annually. Effort restrictions for the Episodic Event Set-Aside (EESA) program are expanded to allow for flexible harvest plans dependent on the number of states participating in the EESA. Lastly, the designated partnership agreement has been removed.

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 proposal seeks to adjust the menhaden regulations. It is expected to allow the Maine menhaden fishery to operate within the limitations of the quota available, while maintaining harvest flexibility for fishermen.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

An industry meeting was held in December 2024 to survey industry feedback in preparation for the FY2025, in addition to Marine Patrol and updated regulatory actions (Addendum I to Amendment 3 of the ISFMP for Atlantic Menhaden).

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)]