

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41.30 Menhaden Fishery Management Program

CONCISE SUMMARY:

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2019 was 2,438,677 pounds, which was fully consumed on June 30, 2019. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside program to access an available 4.7 million lbs of menhaden quota. Beginning July 15, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs and this regulation reduces the weekly limit to 120,000 lbs as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov. The Commissioner has determined that it is necessary to take emergency action to implement the reduction of the weekly limit to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

EFFECTIVE DATE: July 14, 2019

AGENCY CONTACT PERSON: Melissa Smith
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
Augusta, Maine 04333-0021
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: Melissa.Smith@maine.gov
TELEPHONE: (207) 624-6558
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Menhaden Program

3. Episodic Event Fishery

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

A. Notice

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

B. Effort restrictions

During the episodic event fishery, it is unlawful to fish for, take, possess, or land menhaden except from Maine's territorial waters. Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, it is unlawful to fish for or land menhaden except between 12:01 AM on Monday and 11:59 PM Thursday each week. It is unlawful to fish for, take, or possess more than 120,000 lbs per vessel per day and it is unlawful to fish for, take or possess more than 120,000 lbs ~~160,000 lbs~~ per vessel per week. It is unlawful to make more than one landing per 24 hour period (12 am to 12 am). For the purpose of enforcing these limitations, the Department shall use the definitions provided in 41.30 (1).

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily and weekly landing limits still apply.

C. Reporting

All Commercial Pelagic and Anadromous license holders who intend to fish for menhaden during the 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 no later than noon the day after landing, in addition to monthly harvester reports required by Chapter 8. If the harvester did not fish, the harvester must report that they did not fish.

Basis Statement

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for 2019 of 2,438,677 pounds was reached by final week of June. During the State Allocated fishery, 87 harvesters declared into the fishery and 56 of those harvesters were active with daily reporting. The estimated 234 trips completed during the state fishery were predominantly trips landing less than 6,000 lbs (107 trips) or trips landing more than 6,000 lbs but less than 30,000 lbs (90 trips). Trips that had landings between 30,000 and 60,000 lbs or were greater than 60,000 lbs were 10.2 % and 5.6% of the fishery, respectively. Preliminary estimates for landings indicate that the state quota was exceeded by 1.5 million pounds and landing reports are still being received. The bulk of landings occurred during the final four days of June.

The Department requested, and received, approval to enter the Episodic Event Set Aside (EESA) fishery at the beginning of July. However, with the nearly 4 million lbs already landed during the state fishery, in conjunction with the summer lobster shed not yet occurring, the demand for bait was low compared to the available supply. As such, the Department was made aware of the dumping of fish that harvesters could not sell and did not have available storage arrangements. This practice was unacceptable and also factored in to the delay of opening the EESA until there was a demonstrated need for fresh bait once again.

Currently, there are over 528 active Commercial Pelagic and Anadromous license permits issued, with over 100 of those individuals declared into the fishery for the onset of the EESA. With the understanding that the harvest capacity of this fleet is above 2 million lbs weekly, it was imperative to reduce the weekly harvest limit by one truck to avoid the depletion of the menhaden supply at a time when it may not be readily used. Menhaden have now been observed in state waters from Kittery through to the Penobscot Bay.

As was the case under the State Allocation fishery previously, harvest may occur only between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week. The daily limit remains at 120,000 pounds while the weekly landing limit is reduced by this emergency regulation from 160,000 lbs to 120,000 pounds. Harvesting and landings are restricted to Maine territorial waters and may occur once per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov.

The Commissioner has determined that it is necessary to take emergency action upon opening the EESA fishery to implement the reduction of the weekly limit from 160,000 lbs to 120,000 lbs, to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Melissa Smith, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6558; E-mail: Melissa.Smith@maine.gov, web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 41.30 Menhaden Fishery Management Program

STATUTORY AUTHORITY: **12 M.R.S. §6171 (3)(B)**

DATE AND PLACE OF PUBLIC HEARING: NA

COMMENT DEADLINE: NA

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

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine's allocated quota share for FY2019 was 2,438,677 pounds, which was fully consumed on June 30, 2019. Department of Marine Resources (DMR) requested, and was granted, approval to participate in the Episodic Event Set Aside program to access an available 4.7 million lbs of menhaden quota. Beginning July 15, 2019, harvest may occur between 12:01 a.m. on Monday and 11:59 p.m. Thursday each week; daily landing limit is 120,000 lbs and this regulation reduces the weekly limit to 120,000 lbs as well. Harvesting and landings are restricted to Maine territorial waters; only one landing may occur per calendar day. All landings must be reported daily via email to menhaden.dmr@maine.gov. The Commissioner has determined that it is necessary to take emergency action to implement the reduction of the weekly limit to prevent the depletion of the supply of Atlantic menhaden. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(B).

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? YES NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]: This rule reduces the weekly limit for Atlantic menhaden upon the opening of the Episodic Event Set Aside fishery. Daily reporting will allow for near-real time monitoring to ensure that Maine does not exceed the quota. The reduction in the weekly limit will prevent the depletion of the supply of Atlantic menhaden.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]

DMR has considered the quota that it receives from ASMFC and the landings reports provided by harvesters regarding their recent activity, observations of the fishery provided by Maine Marine Patrol and also the balance of supply and demand as set by the lobster fishery.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)] No fiscal impact anticipated.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.