

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41.30 Menhaden Program Episodic Event Fishery

CONCISE SUMMARY: As provided by Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden, Maine is implementing the requirements necessary to provide for an episodic event fishery for Atlantic menhaden. Maine DMR is aware that the allocated state quota for menhaden has been met, and there is biomass still available such that an episodic event fishery is necessary. The requirements for daily trip level harvester reporting, requiring menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A) and (C). This notice of agency emergency rule-making serves as the notice that the episodic event fishery is open.

EFFECTIVE DATE: July 31, 2016

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Menhaden Program

1. Episodic Event Fishery

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

A. Notice

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

B. Reporting

Any harvester landing menhaden during an episodic event fishery must report landings daily to the Department by leaving a message at (207)624-6558 with the following information no later than noon the day after landing:

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

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

C. Landing of menhaden

Following the opening of an episodic event fishery, and prior to the closure of the episodic event fishery, all menhaden harvested from Maine territorial waters must be landed in the State of Maine.

42. Areas

A. Bald Head Cliff to Cape Arundel

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

B. Biddeford Pool to Cape Elizabeth

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

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

23. Definitions

- ~~A.~~ “Daily catch limit or Daily limit” For purposes of this section (Chapter 41.30) means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from areas A and B between 00:01 AM to 11:59 PM. There is no daily catch limit or daily limit in Area C for harvester vessels.
- ~~B.~~ A. “Carrier vessel 120,000 lbs capacity” For purposes of measuring 120,000 lbs or capacity in a vessel hold the volumetric measure (in hogshead) of 120,000 lbs of menhaden is equivalent to ~98 hogshead. One hogshead equals 17.5 lb bushels. For consistency with 12 M.R.S. §6543 and §6544(3), multiplying 70 pounds (lb) per bushel by 17.5 bushels per hogshead equals 1225 lb. Therefore 120,000 lb divided by 1225 lb (or 17.5 hogshead) equals ~98 hogshead, which is within the 5 hogshead tolerance used in §6544(3).

34. Area Limitations

The areas in Chapter 41.30(42)(A, B & C) are restricted to the take, possession and transport of the Atlantic menhaden in accordance with the following regulations:

~~A.~~ A. Limitations in Areas A & B & C

~~(1) Harvester and Carrier Vessel Daily Catch Limit – It shall be unlawful for harvester vessels and carrier vessels to catch and possess greater than 120,000 lbs of menhaden per day.~~

~~B.~~ B. Limitations in Area C

~~(1) Carrier Vessel Daily Limit – It shall be unlawful for carrier vessels to possess greater than 120,000 pounds (lbs) of menhaden per day.
For purposes of this section (Chapter 55.90) “daily catch” means a maximum of 120,000 lbs of menhaden possessed or loaded aboard from these areas between 00:01 AM to 11:59 PM.~~

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

~~(4) It shall be unlawful for any harvester vessel that exceeds 50 feet in length overall to fish for, take, or possess menhaden within these restricted areas. It shall be unlawful for any harvester vessel to fish for, take, or possess greater than 120,000 lbs of menhaden per day (00:01 AM to 11:59 PM).~~

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

~~(2) It shall be unlawful for any carrier vessel to 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. Exception: Any carrier vessel less than 70 feet length~~

overall (LOA) is exempted from the number of landings per day limitation in ~~Chapter 41.30(3)(C)(3)~~ but may not land more than a total of 120,000 pounds per day.

- (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.

45. 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

Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden was approved in December 2012. Amendment 2 enables the Atlantic Menhaden Management Board to set aside 1% of the overall total allowable catch (TAC) for episodic events. Episodic events are times and areas where Atlantic menhaden are available in more abundance than they normally occur. The set aside is designed to enable increased harvest of Atlantic menhaden during episodic events. As part of the episodic events set aside provision, the Board developed the mechanism for state(s) to use the set aside. The Technical Addendum detailing the episodic events set aside program was subsequently approved by the Board at its May 22, 2013 meeting. To participate in the episodic events program, a state must implement daily trip level harvest reporting. Each state must track landings and submit weekly reports to ASMFC staff. Episodic event harvests and landings must be restricted to state waters of the state that declares participation in an episodic event. States must implement a maximum daily trip limit no greater than 120,000 pounds/vessel.

Maine DMR is aware that the allocated state quota for menhaden has been met, and the biomass still available is such that an episodic event fishery is necessary. For compliance with the requirements established in Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden, the Commissioner adopts this emergency rule. The requirements for daily trip level harvester reporting, requiring menhaden harvested in state waters to be landed in Maine, and limiting daily harvests and landings to 120,000 pounds/vessel are necessary to prevent unusual damage or imminent depletion of the Atlantic menhaden resource. The Commissioner adopts this emergency rule-making under the authority provided by 6171-3 (A) and (C).

Summary of Comments

NA

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 41.30

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

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 Department has received reports from industry members and Department staff that the state allocation for Atlantic menhaden has been met or exceeded, and that there is significant fishable biomass that warrants the implementation of an episodic event fishery. Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden specifies the regulatory provisions that must be implemented in order to allow such an episodic event fishery to occur. Access to the additional menhaden biomass will provide an important source of bait for Maine's lobster fishery and minimize the risk for fish kills. For these reasons, the Commissioner has determined that it is necessary to take emergency action under 12 MRS 6171(3)(C) to allow for the occurrence of an episodic event fishery.

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 seeks to permit the occurrence of an episodic event fishery for Atlantic menhaden as allowed by Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for 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]
Reports from industry members, science staff, and landings program staff; Technical Addendum 1 to Amendment 2 of the Interstate Fisheries Management Plan for Atlantic Menhaden

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.