

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Atlantic Menhaden; 2024 Season

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

This proposed rulemaking establishes limitations for the 2024 menhaden season. It establishes an annual end date for the fishery of November 30. It creates a new program in which two commercial menhaden license holders may enter into a Designated Partnership Agreement, which will allow either vessel to remove fish from a purse seine that has been set by one of the vessels in the Designated Partnership Agreement. A definition is provided for “fish box” or “tank” so that harvesters may use fish boxes or tanks to meet the requirement to store fish upon harvest. It clarifies that reporting requirements apply to all fish landed or retained. It creates an incidental bycatch limit of 1,050 lbs for individuals operating a pound net or fish weir during periods when the commercial menhaden fishery is paused by the Commissioner or when the commercial fishery is closed prior to the opening of the Episodic Event Set Aside Program. It amends the weekly limit for the State Allocated Fishery from 18,000 pounds to 17,850 pounds and amends the Small Scale Fishery daily limit from 6,000 to 5,950 pounds. The fishing and landing days for the Episodic Event Set Aside Program are proposed to be Monday and Thursday and the daily limit is increased from 6,000 lbs to 7,000 lbs.

Date, time and location of PUBLIC HEARING (*if any*): February 15 2024: 5:00 p.m. at DMR’s Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 4:00 pm in Room 224 of the same location, and remotely via Microsoft Teams. Remote access information is posted to DMR’s website under “Meetings.”

COMMENT DEADLINE: February 26, 2024

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: § 6171, § 6502-C

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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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. 2-~~ 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. 3-~~ 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. 4-~~ 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.

- ~~5. It is unlawful to remove Atlantic menhaden from pound net or fish weir gear that is not permanently marked with a Commercial Menhaden License holder's name and DMR landings number. Pound net or fish weir gear markings must be legible and clearly visible for inspection at all times. Gear must be marked with a single license holder's name and DMR landings number for the duration of a license year.~~
- ~~6. It is unlawful for a person, other than the license holder whose name and DMR landings number is marked on the pound net or fish weir gear, to remove Atlantic Menhaden from the pound net or fish weir gear.~~
- ~~6. 7-~~ 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 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 or retained fish daily ~~landings~~ 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 ~~landing~~ 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 ~~landing~~ 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. Hogshhead: one hogshhead 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. G. Landing: to come to shore, float or a dock and offload menhaden.

I. H. 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. F. 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. J. 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, such as dip nets.

L. ~~K.~~ 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 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 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 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 and fish weirs as June 1st, annually. Harvest of menhaden by pound net or fish weirs prior to the third Monday of June may occur seven days a week and is limited to taking 1,050 pounds or 3 barrels daily.

Starting on the third 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 ~~18,000~~ pounds ~~or 51 barrels~~ 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 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 ~~18,000~~ pounds ~~or 51 barrels~~ 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 tank or fish totes on both the harvester vessel and the dory towed by the harvester vessel, if utilized.

~~A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.~~

2. 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 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 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 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

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 to 11:59 PM on Mondays and ~~Thursdays~~ Fridays each week. It is unlawful to fish for, take or possess more than 7,000 ~~6,000~~ pounds ~~or 17 barrels~~ per harvester vessel 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 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.

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 ~~6,000~~ pounds ~~or 17 barrels~~ and the total weekly landing limit may not exceed 14,000 ~~12,000~~ pounds ~~or 34 barrels~~.

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.

~~A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.~~

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 ~~6,000~~ pounds ~~or 17 barrels~~ 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.

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 ~~6,000~~ pounds ~~or 17 barrels per harvester vessel per day~~ and the total weekly landing limit may not exceed 17,850 ~~18,000~~ pounds ~~or 51 barrels 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.

~~A dory is a boat with no mechanical means of propulsion that is towed to and from the fishing grounds by the harvester vessel.~~

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 ~~December 31~~.

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 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.

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:

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CHAPTER NUMBER AND RULE: Chapter 41 Atlantic Menhaden; 2024 Season

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

DATE AND PLACE OF PUBLIC HEARING(S): February 15 2024: 5:00 p.m. at DMR's Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 4:00 pm in Room 224 of the same location, and remotely via Microsoft Teams. Remote access information is posted to DMR's website under "Meetings."

COMMENT DEADLINE: February 26, 2024

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

This proposed rulemaking establishes limitations for the 2024 menhaden season. It establishes an annual end date for the fishery of November 30. It creates a new program in which two commercial menhaden license holders may enter into a Designated Partnership Agreement, which will allow either vessel to remove fish from a purse seine that has been set by one of the vessels in the Designated Partnership Agreement. A definition is provided for "fish box" or "tank" so that harvesters may use fish boxes or tanks to meet the requirement to store fish upon harvest. It clarifies that reporting requirements apply to all fish landed or retained. It creates an incidental bycatch limit of 1,050 lbs for individuals operating a pound net or fish weir during periods when the commercial menhaden fishery is paused by the Commissioner or when the commercial fishery is closed prior to the opening of the Episodic Event Set Aside Program. It amends the weekly limit for the State Allocated Fishery from 18,000 pounds to 17,850 pounds and amends the Small Scale Fishery daily limit from 6,000 to 5,950 pounds. The fishing and landing days for the Episodic Event Set Aside Program are proposed to be Monday and Thursday and the daily limit is increased from 6,000 lbs to 7,000 lbs.

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)]

The proposal seeks to adjust the menhaden regulations for the 2024 fishing season. It is expected to allow the Maine menhaden fishery to operate within the limitations of the quota available, while allowing some additional flexibility to fishermen.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

An industry meeting was held in December 2023 to survey industry feedback in preparation for the FY2024, 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.