

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Modified 2022 Episodic Fishery Harvest Limit

CONCISE SUMMARY:

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery requires further limitations in harvest controls for the EESA to reduce a risk of overage of the shared EESA quota. Harvest for EESA is permitted on Tuesdays and Fridays only. Harvesters are restricted to a single landing of 6,000 pounds per vessel daily with same day reporting required.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A).

EFFECTIVE DATE: June 21, 2022

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Commercial Menhaden Fishery Management Program

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 Tuesdays and Fridays each week. It is unlawful to fish for, take or possess more than 6,000 pounds or 17 barrels ~~14,000 pounds or 40 barrels~~ per harvester vessel per day ~~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: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above and may land fish seven days a week. However, daily landing must not exceed 6,000 pounds and total weekly landings must not exceed 12,000 pounds per harvest vessel between Mondays 12:01 AM through Sundays 11:59 PM. ~~However, weekly landing limits still apply.~~

C. Storage Requirement

All menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates 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 public notice in a newspaper circulated in the area affected, and on the Department's publicly accessible website, of the opening date for the incidental catch and small scale fishery.

B. Effort Restrictions

It is unlawful to fish for, take, possess or land more than 6,000 pounds per 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.

Exception: Fishing weirs, stop seines, and pound nets are not subject to the harvest schedule detailed above. However, daily landing must not exceed 6,000 pounds and total weekly landings must not exceed 18,000 pounds per harvest vessel between Mondays 12:01 AM through Sundays 11:59 PM. However, daily and weekly landing limits still apply.

C. Gear Restrictions

It is unlawful during the Incidental Catch and Small Scale Fishery to use any gear type other than the following when targeting menhaden: cast nets, traps, pots, haul seines, fyke nets, hook and line, bag nets, hoop nets, hand lines, trammel nets, bait nets and purse seines which are smaller than 150 fathom long and 8 fathom deep. The depth of the net will be determined by taking the average size of 20 meshes and then counting the total number of meshes by depth.

D. Storage Requirement

All menhaden must immediately be stored in barrels, crates or fish totes, or a combination thereof, upon harvest. All menhaden must be contained in barrels, crates 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.

Basis Statement

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, Maine is allocated 0.52% of the coastwide Total Allowable Catch (TAC). For the 2022 fishing year, this base allocation for the state directed fishery is 2,194,080 pounds. An emergency rulemaking, filed on May 31, 2022, reduced harvest days from four days per week to only two days per week for the FY2022 state allocation fishery. This action was completed in anticipation of increased effort related to legislative action to implement a limited entry license program for the FY2023 menhaden fishery and to allow for additional time to tabulate landings reports. As DMR predicted, the number of participants reporting landings on opening day of the menhaden fishery on June 13, 2022 was a five-fold increase due to recent action at the state legislature. As a result, there was an overage within the state allocation fishery related to an increased spatial spread of menhaden biomass in state waters, increased participation in the fishery and continued latent reporting which hampers effective real-time management.

Detailed in the ISFMP for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery signals a necessary reduction in harvest controls for the EESA to mitigate risk of overage of this shared EESA quota. Harvest for EESA is permitted on Tuesdays and Fridays only as was determined practical during the FY2021 season. However, harvesters are restricted to a daily vessel landing of 6,000 pounds with same day reporting required. All harvesting and landing of menhaden are restricted to Maine territorial waters and any vessel is restricted to one landing only per calendar day.

The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota. The Commissioner hereby adopts this emergency regulation as authorized by 12 M.R.S. §6171(3)(A).

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 41 Modified 2022 Episodic Fishery Harvest Limit

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

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)]

Under the Interstate Fishery Management Plan (ISFMP) for Atlantic menhaden, the Episodic Event Set Aside (EESA) program receives 1% of the coastwide total allowable catch (TAC). The estimated EESA quota for FY2022 is 4,285,786 pounds and is a shared quota pool between Northeastern states. Increased participation observed during the FY2022 state allocated fishery requires further limitations in harvest controls for the EESA to reduce a risk of overage of the shared EESA quota. Harvest for EESA is permitted on Tuesdays and Fridays only. Harvesters are restricted to a single landing of 6,000 pounds per vessel daily with same day reporting required. The Commissioner has determined that it is necessary to take emergency action to reduce the daily landing limit to prevent unusual damage to the menhaden resource by exceeding available quota.

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)]: This rule reduces the daily limit available to harvest during the Episodic Fishery but maintains the harvest schedule of Tuesdays and Fridays.

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 available quota available within the EESA, the anticipated level of effort for the fishery and observations of fishery operations by Maine Marine Patrol.

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.