

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 41 Menhaden Limitation

CONCISE SUMMARY: The presence of Atlantic menhaden in territorial waters has been persistent since the end of May, 2017. Over the past several months, the Atlantic menhaden fishery has been executed for both the state and episodic fisheries until each respective quota has been reached. Since July 6, 2017, the fishery has been operating under an incidental take program with a daily allowance of 6,000 lbs. The ongoing presence of Atlantic menhaden in bays and estuaries along the coast of Maine so late in the year is an unusual occurrence. The daily allowance of Atlantic menhaden is being reduced to 5,000 lbs to protect and conserve the Atlantic menhaden population from unusual damage from prolonged fishing pressure. The Commissioner has determined that it is necessary to take this emergency action under 12 MRS 6171(3)(A).

EFFECTIVE DATE: September 30, 2017

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 41

41.30 Menhaden Program

2. State Allocation Fishery

It is unlawful to fish for, take, or possess Atlantic menhaden except in accordance with an episodic event fishery established by the Department in accordance with Chapter 41.30(3).

A. Exceptions

- (a) An individual may fish or take by hook and line up to 25 menhaden per day for personal use only, daily.
- (b) A vessel may fish for or take up to ~~6,000~~ 5,000 pounds of menhaden per day as incidental bycatch at any time other than during an episodic event fishery. A vessel shall not land more than ~~6,000~~ 5,000 ~~lb~~ as pounds per calendar day. A vessel that is taking menhaden shall not transfer menhaden at sea.

Basis Statement

The fishery for Atlantic menhaden is managed through the Atlantic States Marine Fisheries Commission (ASMFC). Maine is allocated 171,882 lbs of the overall quota, which was harvested by June 3, 2017, at which point the state fishery was closed. Maine was then authorized by ASMFC to open an “episodic event” fishery. The quota for the episodic event fishery was reached and that fishery was subsequently closed on July 3, 2017. Since that time, the fishery has been operating as an incidental take fishery, with a daily limit of no more than 6,000 lbs. It is unusual for menhaden to persist in Maine waters into late September. Without a further limitation on the take of menhaden, the regulation will revert to a 120,000 pound daily limit, which will cause Maine to exceed its allocation and negatively impact the management of the menhaden resource. A very limited take is appropriate to supplement the bait supply for the lobster fishery. For this reason, this regulation lowers the existing incidental take daily limit of 6000 lbs to 5000 lbs. The Commissioner has determined that it is necessary to take this emergency action under 12 MRS 6171(3)(A), to protect and conserve the Atlantic menhaden population from unusual damage from excessive fishing pressure.

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 Menhaden Limitation

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)] Landings for Atlantic menhaden have continued well beyond what is typical for this fishery. Excessive fishing pressure may cause harm to the Atlantic menhaden resource, as the available quotas have been achieved. The extended presence of Atlantic menhaden, into September is not considered typical behavior for this fish species. For this reason, the Commissioner has determined that it is necessary to further limit the daily take of menhaden through this emergency action under 12 MRS 6171(3)(A).

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 seeks to further reduce the daily take of Atlantic menhaden to ensure that Maine does not exceed the quota that has been determined appropriate for this resource.

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 quotas that it receives from ASMFC and the landings reports provided by harvesters regarding their recent activity. .

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.