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June 25, 2025

The Honorable Matthea Elisabeth Larsen Daughtry, President
MAINE STATE SENATE
3 State House Station
Augusta, Maine 04333

The Honorable Ryan Fecteau, Speaker
MAINE HOUSE OF REPRESENTATIVES
2 State House Station
Augusta, Maine 04333

The Honorable Mark Lawrence, Senate Chair
The Honorable Melanie F. Sachs, House Chair
COMMITTEE ON ENERGY, UTILITIES AND TECHNOLOGY
100 State House Station
Augusta, Maine 04333

Re: *2023/2024 Attorney General Report Under the Petroleum Market Share Act*

Dear President Daughtry, Speaker Fecteau, Senator Lawrence, and Representative Sachs:

I am pleased to submit the enclosed report in accordance with the Petroleum Market Share Act (PMSA), 10 M.R.S.A. § 1677, which requires the Attorney General to report to the Legislature regarding the concentration of retail motor fuel oil and home heating oil outlets in the State. The report is based on data collected from wholesalers and includes maps depicting relative concentration in designated markets throughout the State. This report is also available on the Attorney General's [website](#). The report includes a recommendation to repeal certain provisions of the PMSA.

Sincerely,

Aaron M. Frey
Attorney General

Enclosure

cc: Suzanne Gresser, Executive Director, Maine State Legislature
Jessica Lundgren, Director, Maine State Law and Legis. Reference Library
Charles E. Summers, Jr., Pres. & CEO, Maine Energy Marketers Association

**STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL**

**Aaron M. Frey
Attorney General**



PETROLEUM MARKET SHARE ACT

**Report to the Legislature pursuant to 10 M.R.S.A. § 1677
for the Reporting Period June 1, 2023 – May 31, 2024**

Retail Petroleum Outlets Concentration
10 M.R.S.A. § 1677
June 2025

I. INTRODUCTION

This report is provided by the Attorney General to the Legislature pursuant to the Petroleum Market Share Act¹ (“PMSA”). As required by the PMSA, the report describes the concentration of retail petroleum outlets in Maine, subject to the limitations and reservations stated herein. The concentration levels described in this report reflect conditions in Maine based on data through May 2025. The PMSA also requires the Attorney General to make “a recommendation to the Legislature as to whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets.” As described in more detail in section III, we recommend that the PMSA be repealed in part.

This report focuses on markets for home heating oil and motor fuel oil. In general, the geography of petroleum markets is local. In the case of home heating oil, the market may encompass an urban area or a segment of a county. Motor fuel oil markets tend to be smaller, in some instances limited to a single neighborhood or one side of a busy street. Nevertheless, for continuity purposes, our analyses retain the longstanding geographic markets developed by the Attorney General in the 1990s, when the PMSA reporting first began. The State is divided into 33 home heating oil markets and Maine’s 16 counties are used as the motor fuel oil markets.

¹ 10 M.R.S.A. § 1677.

The Attorney General receives data annually from home heating oil and motor fuel oil wholesalers indicating the annual gallons supplied to home heating oil and motor fuel oil retailers located in Maine. For the purpose of this report, we rely on that data to determine the number of retail competitors and their percentage market shares within the pre-defined geographic markets.² Those shares, in turn, allow us to calculate the concentration of the markets using a concentration index widely used by federal and state antitrust agencies to assess competitive conditions (usually in the context of proposed mergers and acquisitions). The Appendices to this report show the concentration levels and corresponding maps depicting those levels for each pre-defined market. For comparison purposes, the tables in the Appendices also show concentration numbers for the same markets for the past ten years.

Importantly, the market concentration levels described in this report are only as accurate as the data on which we rely. We routinely identify inconsistencies and gaps in the data. We also do not receive data pertaining to retailers based in other states (i.e. New Hampshire) that deliver to retail customers in Maine. Moreover, because data about the wholesale market does not necessarily correspond to conditions in the retail market, the determinations in this report should be viewed as, at best, general approximations of the concentration within these pre-defined markets.

² It should be noted that the Attorney General does not receive retail or wholesale price information under the PMSA. Moreover, the data collected from individual wholesalers, which is confidential by statute, is aggregated and not identifiable by wholesaler or retailer in this report. 10 M.R.S.A. §§ 1673, 1675, 1677.

Ultimately, it may be the case that a market identified as not concentrated in this report is in fact highly concentrated, or vice versa.

II. LEVELS OF CONCENTRATION

A. Methodology

The methodology employed by the Attorney General to assess levels of concentration in Maine's retail petroleum markets, as reflected in this report, is essentially the same methodology used by the U.S. Department of Justice, the Federal Trade Commission, and other state Attorneys General in evaluating the legality of a given merger or acquisition under applicable antitrust law. The Attorney General has employed a similar analysis enforcing Maine's merger law for more than thirty years.³ The most important factor affecting competition in a particular market is the level of concentration, which is determined by considering the number of competitors and the size of their market shares.

1. Market Definition. The first step in a concentration analysis is to determine the relevant product and geographic markets. This report focusses on two product markets, home heating oil and motor fuel oil. Home heating oil is defined as "#2 fuel oil sold for heating residential, industrial or commercial space or water."⁴ Motor fuel oil "means internal combustion fuel sold for use in motor vehicles," as more fully defined in 29-A M.R.S.A. § 101(42).⁵

³ 10 M.R.S.A. § 1102-A.

⁴ 10 M.R.S.A. § 1672(3).

⁵ 10 M.R.S.A. § 1672(4).

As to geographic markets, for the purposes of this report, we are not looking to identify the geographic area within which two merging companies operate, as we would if we were reviewing a merger. Rather, we are attempting to obtain a very broad snapshot of competition in the petroleum industry and trends within pre-defined geographic markets and across the entire state based exclusively on wholesale data.

The Attorney General has taken different approaches to defining geographic markets for home heating oil and for motor fuel oil. In preparing the initial reports under the PMSA, we conducted a series of interviews with people knowledgeable in the petroleum industry in Maine. On that basis, with respect to home heating oil markets, we divided the state into 33 separate geographic markets intended to approximate economic and competitive circumstances relative to home heating oil sales. With respect to motor fuel oil markets, we use county-wide markets. We have retained the original geographic markets to be able to compare concentration trends over time within consistent geographic areas.

Importantly, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. Each individual merger or acquisition proposal involves an evaluation of the unique competitive and economic circumstances in the areas within which both companies operate. Indeed, given the inconsistencies we have seen in the wholesale data over the years, we do not rely on it in evaluating the likely competitive effects of a given merger. Instead, when there appears to be the potential for reduced

competition due to a merger, we prioritize collecting data directly from retailers within the relevant geographic area. Through this process, we have discovered that wholesale data reported to us under the PMSA is often not informative with respect to retail markets.

2. Herfindahl-Hirschman Index. Market concentration is a well-accepted tool for evaluating competitiveness within identified markets. As a general rule, the fewer the competitors, and the higher those competitors' market shares, the more concentrated (and less competitive) the market. Federal and state antitrust agencies (including the Maine Attorney General) employ the Herfindahl-Hirschman Index ("HHI") to measure market concentration.⁶ The HHI concentration index is arrived at by summing the squares of the market shares of each competitor in a market. This simple mathematical device expresses the insight that market power increases exponentially in proportion to market share. Federal antitrust guidelines used by the Attorney General in merger enforcement provide that a market with an index over 1800 is considered highly concentrated.⁷ A market in the highly concentrated category is subject to a high degree of market power, unless the effects of high concentration are mitigated by other factors, such as ease of entry for a new competitor.

⁶ DOJ/FTC 2023 Merger Guidelines (available at <https://www.justice.gov/atr/merger-guidelines>).

⁷ For example, a market comprising five firms with market shares of 20% each would yield an index of 2000 (20 squared x 5).

For the purpose of this report, our analysis of levels of concentration in motor fuel oil markets tracks the current federal threshold of above 1800 points for identifying markets where there may be substantial competitive concerns, with additional tiers of concentration to assess more subtle year-over-year changes in concentration and for ease of comparison due to the historic use of those tiers. Thus, for motor fuel oil, an index below 500 is “unconcentrated,” 500-999 is “moderately concentrated,” and 1000-1800 is “highly concentrated.” Markets above 1800 points are referred to as “extremely concentrated.”

Our designated home heating oil market thresholds are significantly higher, largely tracking the categories reflected in the previous federal merger guidelines.⁸ Thus, a home heating oil market with an index below 1500 is “unconcentrated,” 1500-2499 is “moderately concentrated,” and 2500-5000 is “highly concentrated.” In addition to the former federal benchmarks, the Attorney General deems markets above 5000 points to be “extremely concentrated.”

Appendix A lists the geographic markets within which we measure concentration for both home heating oil and motor fuel oil. The home heating oil markets map depicts by color coding the relative concentrations in the 33 designated home heating oil geographic markets, based on the latest analysis of data from wholesalers. The motor fuel oil markets map depicts by the same

⁸ USDOJ/FTC Horizontal Merger Guidelines (rev. ed. 2010 available at <https://www.justice.gov/atr/file/810276/dl?inline>). We have kept these thresholds for year over year comparison purposes.

color coding the relative concentrations based on the latest analysis of countywide motor fuel markets. Again, these geographic market depictions are not used to analyze individual mergers or acquisitions in Maine. The tables in Appendix B contain the latest HHI concentration analyses within both home heating oil and motor fuel oil markets, as well as concentration comparisons in those markets over the last ten reporting years.

B. Overview – Retail Home Heating Oil Markets.

Based only on data we have received from wholesalers, and not on any data from retailers regarding sales, concentration levels in Maine's home heating oil markets appear to have remained relatively consistent, with some notable exceptions. We note that some variations from last year's report are due to corrections and adjustments made to prior years' data and therefore may not reflect changed market conditions.

The home heating oil markets centered around Augusta and Biddeford/Saco appear to be the most competitive. Moderately concentrated markets include those centered around: Ellsworth; Bangor; Pittsfield/Newport; Lewiston/Auburn; Bath/Brunswick; Portland; Gray; and York. Like last year's report, Northern and Downeast Maine, as well as the northwestern corner of the State, remain among the most concentrated, or least competitive.

The exceptions to the general consistency in concentration levels include markets centered on Dover-Foxcroft and York. The former has moved from highly concentrated to extremely concentrated and York has moved from extremely concentrated to the much more competitive moderately concentrated

category. We do not have an explanation for the significant shifts in concentration in these two markets.

C. Overview - Retail Motor Fuel Oil Markets.

The concentration levels for the countywide motor fuel oil markets have not shifted significantly since the last report, although we do observe an overall trend of increasing concentration levels with one notable exception. According to the wholesale data we received, Knox County appears to have become significantly more competitive. We do not have an explanation as to why this has occurred and do not opine as to whether the observation is reliable.

Four counties are extremely concentrated: Lincoln, Oxford, Piscataquis, and York, with Piscataquis being the only one that was also extremely concentrated in our previous report. Knox has moved from extremely to highly concentrated. Only Kennebec and Sagadahoc earned the most competitive designation based on the most recent data, compared to four counties in that category in the prior report.

III. RECOMMENDATION

The Attorney General is required to recommend whether additional legislation is needed to further limit or curtail the activity of refiners operating retail outlets.

The central purpose of the PMSA is to provide the Attorney General with the ability to monitor levels of concentration in Maine's retail markets on an annual basis. The perception that this monitoring is advisable and necessary arose out of a concern that a refiner or refiners could use the advantage

conferred by vertical integration⁹ to stake out a dominant position in Maine’s retail petroleum markets, whether through a program of aggressive marketing, acquisitions, or otherwise. The PMSA was adopted as a moderate alternative to so-called “divorcement” legislation, which would have barred refiners from Maine’s retail petroleum markets altogether.

Refiner retail operations in Maine have long been and remain extremely limited in both home heating oil and motor fuel oil.¹⁰ Refiners with a presence in Maine have enjoyed no more than 1% of retail HHO sales in Maine and no more than 5% of retail MFO sales since 2020. For that reason, we do not recommend any additional legislation to address refiner retail operations.

However, we do recommend that parts of the PMSA be repealed. The wholesale data reporting obligation was intended to enable the Attorney General to monitor, assess, and report on market conditions in the retail petroleum industry across the State. Having collected and analyzed the data for many years, we now conclude that the concentration levels identified in our reports are only the crudest of proxies for competitive market conditions around the State. The wholesale data is simply not a reliable basis to state with confidence that the competitive landscape we describe with our concentration calculations reflects actual market conditions.

⁹ A vertically integrated refiner enjoys two principal advantages over non-integrated competitors in retail petroleum markets. First, the refiner is not susceptible to the vagaries of wholesale markets and may to a certain extent exercise control or influence over wholesale markets; second, the refiner can pass along to its retail arm any economies realized in upstream phases of its integrated operations.

¹⁰ Although previous reports have indicated no refiner retail operations in the state, the extremely limited retail operations noted in this report lead to the same conclusion. Currently, as in recent years, no refiner occupies a dominant position in any retail market.

Although we have indicated in prior reports that the data can be useful as a starting point for merger analyses, it is not a reliable substitute for retail data specific to a given geographic market where merging retailers operate. In recent years, we have dedicated more resources to refining the data and filling in gaps we identify as we look to the reported data as a starting point for a merger review. This exercise has revealed that we cannot rely on wholesale data for any given merger.¹¹ Thus, we now routinely request data from all businesses selling home heating oil or motor fuel oil at retail in the relevant region when we are reviewing a proposed acquisition. Helpfully, because of recent legislative amendments to 10 M.R.S.A. § 1109, we now have 90 days to review the proposed acquisition of a home heating oil or motor fuel oil retail business, which facilitates a more thorough review based on retailer data and renders the wholesaler data we receive under the PSMA effectively obsolete.

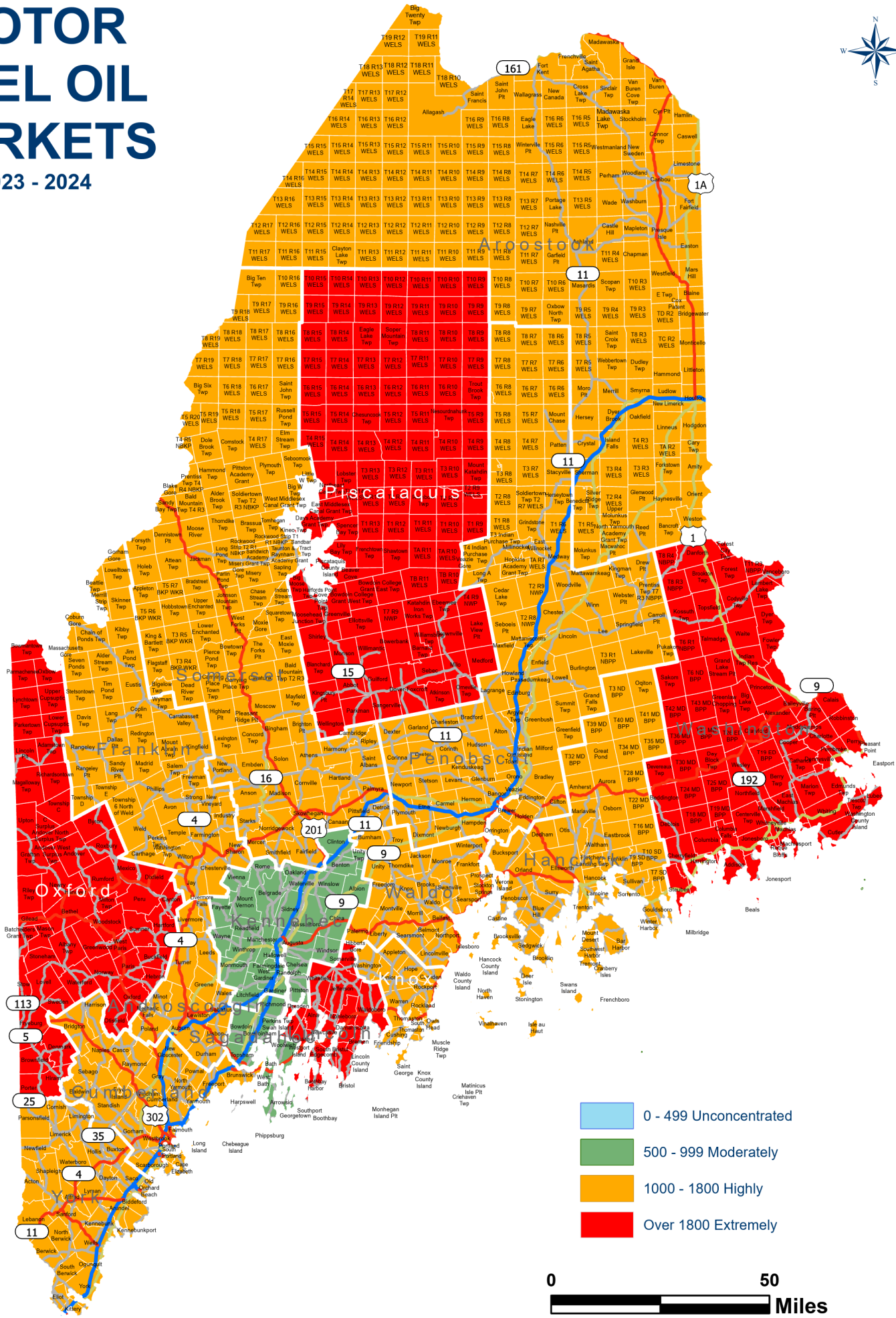
We therefore recommend that the Legislature repeal the following provisions of the PMSA, which relate to wholesale data reporting: Sections 1673(1) and 1677.

* * *

¹¹ For example, for some geographic markets we have received wholesale data showing zero gallons for retailers that, based on actual retail sales data, are in fact top competitors in those markets. On other occasions, the undercount or overcount of gallons has been in the hundreds of thousands.

MOTOR FUEL OIL MARKETS

2023 - 2024

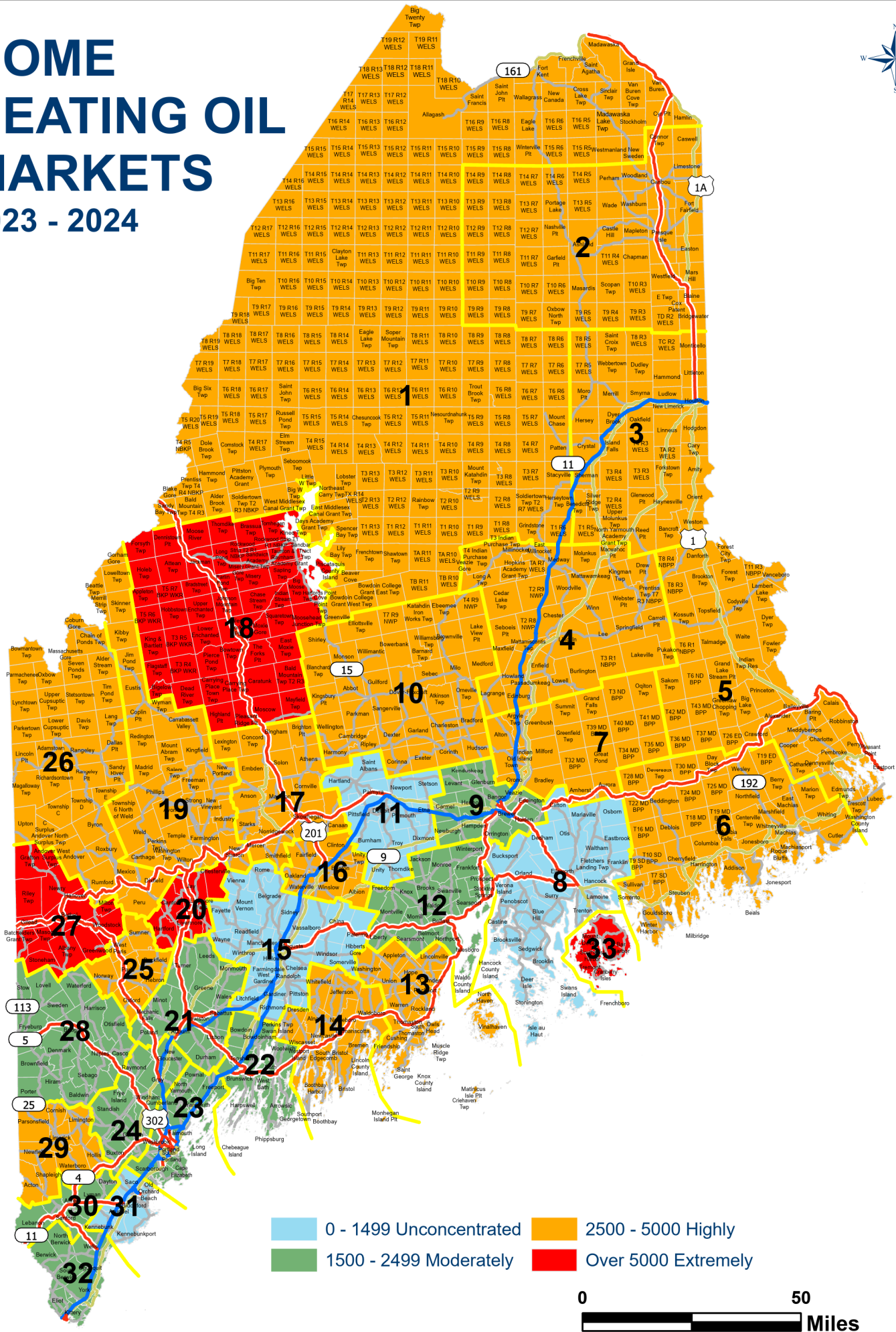


- 0 - 499 Unconcentrated
- 500 - 999 Moderately
- 1000 - 1800 Highly
- Over 1800 Extremely

0 50 Miles

HOME HEATING OIL MARKETS

2023 - 2024



HHO MARKET CONCENTRATION Home Heating Oil by HHO Market										
Market Area	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2021-2022 rev	2022-2023	2023-2024	
01. St. John Valley	3434	3242	3391	3455	3764	4526	3314	4076	3533	
02. Ashland /Presque Isle	3348	3351	3751	3808	3760	3786	3558	3147	3697	
03. Houlton	3725	3168	3194	4092	3542	3032	3729	3599	2724	
04. Lincoln	1584	1490	1316	1593	1877	1848	1820	1898	2508	
05. Woodland /Calais	3071	3154	3103	2821	2752	2845	3022	3256	3873	
06. Cherryfield / Machias	2444	2625	2012	2544	3238	2886	4209	5478	4344	
07. Old Town	1564	3822	4439	1952	2159	2180	2085	2625	2706	
08. Ellsworth	1536	1487	1446	1817	1874	1911	1812	1584	1455	
09. Bangor	1063	1741	1538	1831	1582	1645	1978	1302	1701	
10. Dover-Foxcroft	3791	2819	3242	3399	3168	3395	3842	4016	3962	
11. Pittsfield / Newport	3687	1947	2172	2394	2458	1917	1657	1537	1434	
12. Belfast	1398	1007	1486	1109	1227	1441	1347	1118	1912	
13. Rockland	1721	2647	2157	2104	2109	1745	1939	4722	2523	
14. Midcoast	3163	2755	1972	1880	2319	2789	4007	3514	4186	
15. Augusta	857	911	850	1370	1392	1257	1297	1300	877	
16. Waterville	1950	2231	2275	2311	2528	2516	2351	4310	3925	
17. Skowhegan	2162	2525	2688	2724	2789	2827	4351	4606	4293	
18. Jackman /Greenville	8681	8002	8214	8305	8797	9036	5035	10000	10000	
19. Farmington	2702	1654	2404	2110	2288	2311	2951	2540	2701	
20. Jay	5190	3282	4137	4436	4544	4674	4798	4298	6969	
21. Lewiston /Auburn	2212	2247	1574	1553	1693	1698	1700	1582	1878	
22. Bath / Brunswick	2258	2214	2138	1918	1788	1617	2138	1995	1730	
23. Portland	1772	1520	1250	1186	1567	1449	1484	1744	1899	
24. Gray	3061	3429	4043	2018	1511	1948	1358	1994	1578	
25. South Paris	3982	3492	3498	3532	3483	3330	2769	3367	4579	
26. Rumford /Rangeley	1541	2565	2638	2016	1999	2319	2605	3351	3904	
27. Bethel	8022	10000	10000	10000	10000	10000	10000	10000	10000	
28. Bridgton	2297	1182	1132	1936	1570	2492	2541	2906	2270	
29. Limerick	2760	2237	2813	2543	2567	2259	2959	2516	3508	
30. Sanford	2999	3377	3191	2485	2557	2633	2409	1933	2027	
31. Biddeford /Saco	1204	1601	1236	915	805	727	821	786	929	
32. York	7654	4428	5420	5071	9050	4356	5137	6881	2450	
33. Mt. Desert	3635	3030	2714	3554	3215	3054	6842	6337	5338	
HHI										
0 - 1499										
1500 - 2499										
2500 - 5000										
over 5000										

This document was prepared with data and information provided by wholesalers. The Attorney General does not verify the accuracy of volumes or retail locations.

MFO MARKET CONCENTRATION Motor Fuel Oil by County										
Market Area	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023 rev	2023-2024
Androscoggin	872	1399	989	1528	1119	1742	1000	1017	1301	1184
Aroostook	1021	1301	1480	1642	1479	1366	1681	1684	1620	1708
Cumberland	644	1103	748	874	1116	1080	780	873	1062	1346
Franklin	874	819	840	944	953	990	828	726	822	1111
Hancock	640	925	915	830	850	916	888	680	969	1105
Kennebec	768	895	889	1093	1051	753	739	675	963	990
Knox	2279	2417	2319	3102	3129	2611	2813	2996	2559	1441
Lincoln	762	1966	1459	1579	1435	1466	1552	1163	1484	2168
Oxford	1702	2012	1815	1995	2095	2645	1876	2059	1734	2440
Penobscot	824	1148	959	1045	1059	1354	820	1149	1051	1182
Piscataquis	3387	5516	5599	3038	2949	4430	3301	3717	3739	3650
Sagadahoc	992	1027	929	966	978	920	919	802	1016	978
Somerset	577	1576	1314	1097	1099	1112	981	805	990	1046
Waldo	590	1461	1125	1200	1148	1061	1474	1315	1799	1682
Washington	610	1455	1299	1222	1180	1474	1288	1089	1672	2156
York	768	1135	1058	871	851	795	648	908	1081	1228
HHI	Concentration									
0 - 499	Unconcentrated									
500 - 999	Moderately									
1000 - 1800	Highly									
over 1800	Extreme									

This document was prepared with data and information provided by wholesalers. The Attorney General does not verify the accuracy of volumes or retail locations.