

NOTICE OF AGENCY RULE-MAKING ADOPTION**AGENCY:** Department of Marine Resources**CHAPTER NUMBER AND TITLE:** Chapter 41 Atlantic Menhaden; 2024 Season

CONCISE SUMMARY: This 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.

ADOPTED RULE NUMBER:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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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 Maine 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. Hoghead: one hoghead 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.

Basis Statement

This 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.

For clarity, section 41.06 was amended to specify that previous landing reports must be from the Maine commercial menhaden fishery.

Summary of Comments

Notice of the proposed rulemaking appeared on January 24, 2024, posted to DMR’s website and also printed in the five major daily newspapers as published by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR’s rulemaking notices and sent to industry members who provided their email address to DMR. The comment period closed February 26, 2024.

A hybrid public hearing was held on February 15, 2024 in-person at DMR’s Augusta office and offered remotely via Microsoft Teams.

Attendance:

| Name | Affiliation |
|---|--------------------------------------|
| Deirdre Gilbert, Melissa Smith, Patrick Keliher, Megan Ware | Maine Department of Marine Resources |
| Robbie Begin, Andrew Hallinan, James Wotton, Ira (Tad) Miller, Donald Young, Kevin Glover, Dan Harriman, Dave Noonan, Michael Dawson, Earl Small, James West, Doug McLennan, Nicholas Morley, Melanie Tibbetts, Jason Hooper, Roy Whalen, Joel Rivard, Addie Binstock, Josh Saxton, Jeff Kaelin, Matt Clemons, Ryan Miller, Chris Hole, Jeanne Christie | Members of the Public |

DMR received the following public comments during the 2/15 Public Hearing:

Andrew Hallinan, Boothbay, ME

I think we should allow the fish to determine the start date. I agree with the end date so that you guys can do your thing with quotas and all that but we had fish in our area and Boothbay Harbor almost 2 1/2 weeks before the start date even began. The fish disappeared on us and we were working on small bunches when it actually did open up. We got word that there was fish way east of us. We had to travel 6 1/2 hours one way. Load up and then come home. I don't buy the whole we need lobster bait later in the year because we've got... we're lucky enough, at least myself, to have market that can hold a lot of bait and they still have bait right now that we caught earlier in the season and if guys don't have the capacity, I mean you store them somewhere else. So, uh, I think if we have to travel that far and then the guys from Downeast can come to us and I just think the start date is unnecessary because the shedder season is getting shorter and shorter for lobsters in our area, we don't catch the volume of lobster that those guys Downeast catch, so we need that fresh bait and we need that bait as soon as we can get it and it and keep the money local. It costs us a lot of revenue by having that start date and if we get rid of the start date then we'll be allowed to keep fish local and keep fish, keep the revenue off the fish local as well and still instead of transporting from Southern states. And another thing is I don't think speeding up the fishery is necessarily a bad idea because like Nicholas said on the call there, we barely caught what we needed to and the Southern states left a lot on the table. A lot of meat on the bone that we could have been using if we had speed up the fishery.

So the partnership I totally agree with, I think we should be able to figure out something for the guys with multiple licenses so that they can utilize that because the fish this year were very vulnerable, very touchy. We actually ended up not even using the rail roller half the time because they were dying on us. So instead of letting dead fish go, I think those guys should be able to harvest those and uh, yeah, I think that covers pretty much everything. I'd like to see the start date lifted. I support the partnership and try to figure out something for these guys.

James Wotton, Friendship, ME

I'm generally in support of it, as a proposed. I think the designated Partnership agreement needs more work so that it benefits everybody as much as it benefits just some. I would like to point out that in section 41.06 paragraph 2 regarding "must have reported from the previous commercial menhaden season in the form of landing reports...", I'd like to maybe suggest that that would be in one of the two previous seasons. There's no mention in this for medical, you know, maybe somebody did have a medical reason they couldn't fish the year before. Or a mechanical breakdown. So one of the two seasons previous would be suggestion. The episodic [fishery], I will re-state it again that I think you should be able to catch it all in one day. I accept most reasons why you don't want to do that. But I don't think it would be that big an ask for a change or that unreasonable. So I guess since I'm basically in support of the proposal with a few needs tweaks, needs a little more work, but basically I'm happy.

Ira (Tad) Miller, Tenants Harbor, ME

My concern is the same thing that I commented on last year that weren't addressed. I would propose that we should have a fishing week. It shouldn't matter, we shouldn't be limited to a certain amount of days. We're working on a quota system now and the thing that I've heard is it's a problem for enforcement. Well, my perspective is that it shouldn't be a problem. And if it is a problem, it shouldn't be on us. I mean you have other fisheries that you would enforce seven days a week, six days a week, whatever. And we should be able to prosecute this

fishery the same way. It really interrupts my fishing and many others from down there on the Islands because I end up making a trip back and forth again later in the week to go after menhaden. So it's costing me money every week because I can't just go down and haul through and go out and all of that and then I gotta come back and go fishing. It creates a burden. I think that by allowing people to fish more days at their choosing through the week, you're going to have fresher bait. You're going to have less expense and storage. I think the whole fishery would be a lot better. Far as the docks go, the fisherman go or whatever. I don't think that enforcements reasons and there may be others, but that shouldn't be a burden for us. That's something that needs to be figured out from that end. I think there's ways to do it so that enforcement knows when we're all going anyway. I sure would like to see him get rid of the set days a week so I can do what I need to do.

As far as designated partnership, I like that. I think it's better for the fish, with the exceptions that we've talked about here tonight. I think you have to look into that. So the guys with two licenses or whatever like Donnie could still prosecute their fisheries the same way they do now. And I would agree with Jimmy's comment that if you can get your fish in one day in the Episodic that you should. I don't think it will work to do that big a deal. We can do it in one or two. I mean, I think more efficiency you can build in better off we are.

Donald Young, Spruce Head, ME

First, I'd like to say, surprisingly, I thought things went very well last year. I thought way better than I expected, so I was happy with how it was, so it hasn't changed that much, so I hope we'll be happy with it this year. I do agree with the partnership, if we can iron out all the suggestions made here today as far as being able to leave your boat, because we share crews, you know, and it's hard to get a crew and it worked really well. If you can share your crew, I anchor my boat. I go to the other boat, we catch our other fish for the other guy and we've done that now, since we couldn't carry. So it's worked very well for us and hopefully we can utilize the partnership to keep that going. But if we can't, we'll go and keep doing it the way we've been doing it.

Kevin Glover, Owls Head, ME

I would like to say for the most part I'm in favor of everything that they are looking at changing and looking to do. I'm on the same lines as Donnie. I run basically my same setup that he does and also what Jimmy said about the two boats, same license. I'd hopefully there's a way we can work around that and make sure that those guys as well as us, can work together and be able to operate within the boundaries. I think everything else looks fairly decent. I appreciate it. Thank you.

Daniel Harriman, Cape Elizabeth, ME

With the lack of crew, it's almost impossible to find crew, especially after you pay them, to find them. It has been common practice to fill one boat, and have to pick up someone else, they then crew for me. You get the fish on the boat and we drop an anchor. We are present or in sight of it. We don't leave a loaded boat away someplace, but it's just been common practice in my area, anyways that we share crew. It's hard, actually with three guys. Almost impossible for me. It takes four with the quality of the help available. You really need four guys to stay ahead of it, especially one guy in the skiff. As long as the fish isn't being landed and transported, I can't see why you can't anchor up one boat and helps assist somebody else. Go catch their quota and still be able keep crews. Keep the boats working.

Question: does anybody stay on the anchored boat? Not generally. We just tie everything down and tie it up good so the gulls don't make a mess and anchor it up and move to the other boat for the time and then go back and steam them in to land. So that's the one biggest hurdle.

I think it is a good idea that to allow a partnership. I hate the sight of somebody making a set and takes them too long, because they only got three guys and by the time they get their quota on, what they're allowed, by the time they turn out fish are floating, that's no good for the industry.

There's no good for the, you know, the relationship with shorefront owners.

So other than that, I think I'm pretty good with the proposed rule making. Thank you for allowing the comment.

Dave Noonan, Tenants Harbor, ME

I think the partnership thing should be for everybody and anybody who holds the license and a seine. It's hard for one guy to go do everything and you guys are trying to, you know, team up people that when I'm alone and everybody else has a team partnership, it doesn't seem fair. But if we could all be on a level playing field, we could all help each other. I think that would be a better scenario for all of us.

Michael Dawson, New Harbor, ME

My comment is on the episodic. I agree with the other people thinking that we should be able to catch the whole quota in one day and not have it spread out over two. That way, if we have to travel somewhere later in the year, it's, you know, it's more profitable and easier to get people to go. Same thing finding crew to go, and if you're gonna steam five or six hours each way.

Earl Small, Eastport, ME

Yep, I just wanted to say I agree with the partnership agreement. I think you definitely listen to us and we're gonna try to work together and they there's probably some avenues to change things a little bit, but there's definitely a good start. And I agree with that. Thank you.

James West, Frenchman's Bay, ME

Me and my wife, we have two boats and we work together for quite a few years. And I didn't want to come and hang myself, but that's what we do. You know, sometimes it's just me and her on the boat that she runs. And I sat the seine ourselves. And then have the guys come over in the skiff and help us. But I leave my boat anchored, sometimes I've got fish on it and sometimes I don't. And then once we load her boat, we anchor that boat. And then jump on the other boat and go catch him. But I hope we can keep doing it that way. But I do support where we could instead of letting the fish go if she had too many, I could just pull up and we could load. That would be a lot easier and a lot better for fish. Then in the episodic, I'm with Jimmy. I think if we could catch them all in one day that would be great, but if that's not, you know, I'd like to have more in the episodic, whether if you're only going to get, if you're going to let us just have a Monday and a Thursday and we can only get a, you know, 7000 pounds than I'd really like three days at 7000 or have one day at 21,000. And if we get it and we're catching too many, you could always take some away.

Doug McLennan, Spruce Head, ME

If you guys do wanna get the episodic all in one day, I'd like to see it not be mandatory to get it in one day because we still have a market problem here in Spruce Head. Too many people but not enough people to buy the fish. I lost enough money last year. I hate to lose more next year because I can't sell the fish. Don't take away the two days for the people that don't have a market. Not everybody is a bait dealer.

Nicholas Morley, Boothbay Harbor, ME

I don't think there needs to be a start date. Like I said, back when we only had 2 million pounds of quota, they put the start date on it, 'cause the guys down east were complaining they didn't have a fair shot. Ohh, I really don't think it's gonna speed the fishery up at all. And then I'm in favor of the partnership. I think the state's making it way harder than it has to be. I think to include the guys that have two permits, if the state just says you can transfer fish at sea, that any boat that's rigged like and capable of catching fish, so you don't have guys just following around and trying to carry. I mean, I'm no genius, but I'm not gonna just start loading five or six boats today because I know what's coming off the overall quarter. So it's pretty much a partnership anyway. You're only gonna put fish on guys that you wanna help out. And the end date. Fine. You guys need your time to get the numbers put together and episodic, I think still do 2 days but if you can get them all in one day and makes it worth traveling wherever you have to go to get them. But overall, I thought the fishery was set up pretty well last year. I think everything proposed is pretty good.

DMR received the following written comments via email:

Jim Clemons, Harpswell, ME

If a vessel is at anchor, the crew should be able to help another vessel in the fishery catch their Pogies. This is a tradition, and should be spelled out to be permitted.

The season should have an earlier start date, the fish don't migrate by a calendar and with climate changes we cannot be certain of their patterns. It's problematic to see fish arrive before the season starts and be 4Hrs away when it finally opens. Fuel cost, time, safety, are all issues that are factors when the fish travel away sooner than usual. This is a quota fishery, so it makes no difference. The season should start earlier and have larger weekly takes. You said the commissioner can slow things down, BUT not allow more. This way we can catch all the fish we are allotted, and you can regulate it monthly to make sure we do get it.

Each vessel should be able to catch its weekly quota as weather and demand fits. This only set days causes fishing in dangerous weather and a glut on the market on said allowed days. Why? Not necessary if each vessel has a weekly quota. I see not reasonable explanation to set certain fishing only days.

Good idea to allowed partner fishing , better for the Pogies population . Puts alot less stress on the fish . Not good to catch fish , release excess, catch them again ,release some again multiple times.

Where is the regulation to let new entrants into this fishery? I 've got a grandson, who's fished with me for years . He cannot get a license. He has apprenticed with me to obtain his lobster license. He fishes with me for pogies , we need a similar program for pogies. I also believe that when I retire, a family member should be able to take over my fisheries, Lobster, pogies , etc. They are trained, have all the equipment that they need, and it is TRADITION. We don't need new people let into any fishery, that haven't put in their learning curve time, and displace fishing family members who know the business, but cannot get a license. We need this younger generation, to take the place of our aging fishermen.

Darren Turner, Charlotte, ME

Designated Partnership Agreements (DPAs): Historically, seiners have shared fish from big sets. It is simply a more efficient way to fish. It is easier on the fish and the fishermen. Therefore, DPA's are a step in the right direction. However, the current proposal is complicated and has room to improve. I recommend simply allowing the historic practice of sharing fish (fully rigged vessels). Enforcement would be easier because there wouldn't be anything to enforce. There would be less paperwork for the fishermen, and less paperwork for the DMR. It would save time and fuel. There is not a lot of money in pogie fishing, so efficiency matters. Also, if one enters a DPA, but then wants to switch regions and the partner doesn't, then any efficiencies from the DPA are lost. Some may have possible partners in different regions. Some vessels may be left without a partner. Maybe allow more than two boats into an agreement or multiple DPAs (not ideal compared to the simplicity of just allowing all vessels to share). And ultimately, the quota manages the amount of fish caught. Fishermen are still going to catch the fish, so I don't think the DPA's will slow the fishery compared to just allowing all vessels to share fish (which may be the intent of the DPA with only one vessel).

Fish boxes: I support adding and defining fish boxes to the storage containers list.

Episodic Fishery Days: I recommend removing the daily limit and only having a weekly limit, and having a three-day week with the option of reducing the weekly landing limit through emergency action if necessary for quota management. This would give Maine a better opportunity to harvest as much of the Episodic Event Quota as possible without going over.

Ira (Tad) Miller, Tenants Harbor, ME

My first comment would be that the assignment of specific fishing days each is unnecessary given the fact that this fishery is controlled by a weekly quota for each vessel. I have commented about this being a burden for the boats that participate in this fishery which operate from Maines offshore islands and I believe there have been other boats from these places that have also brought up this as being a burden as well. The days that have been set forth mean that I am forced to steam an extra full round trip from Matinicus in order to participate in the fishery any more than one day a week to the fact that I stay on the Island a fair amount during the time of year that we also pursue menhaden. By being forced to make an extra trip each week means that I have to burn around fifty gallons of fuel extra each week in order to participate in this fishery which is a very important part of my fishing business not only due to any revenue it may produce, but more importantly the availability of fresh bait for my traps. There are other reasons that I have stated to why it would be better for the fishery as a whole to be able to access the fishery on days of their choosing rather than set days. A few of those reasons are that the flow of the bait to the wharves would be easier to control instead of having large amounts of bait coming in a few days a week, it could be spread throughout the week. This makes sense because it takes less resources to handle smaller amounts throughout the week. Most fishermen prefer fresh bait to salted, so less salt would be used and also less electricity due to the fact that you would need to keep less bait in cold storage. I would very much like to see at least six days a week available to fish if not all seven, this would allow fishermen the ability to run their businesses in a way that works best for them, with weekly quotas there's no valid reason to have it run any other way. If the Department is worried about increased landings the Commissioner has the ability to slow things down. I feel taking this step would be more beneficial to the fleet and shoreside facilities as a whole than anything else you as regulators could do right now. I think that this scenario would work well for the State allocation portion of the fishery my opinion. I hope that you can

see that there is definitely an inequity here for then fishermen on the offshore islands and make an adjustment to the fishing days. A few years ago we used to be able to go Sven days a week in the small scale fishery and it worked well for us all. Thank you for considering my comments.

Robbie Begin, Boothbay Harbor, ME

I like the idea of partnerships, but in the wording of if you filled out your trip report from last year you can go? or is it if you fish last year you can go? which I did, but just not in the state of Maine I'm hoping we can figure this out somehow? I was honest and didn't put any landings down and I'm hoping it doesn't bite me in the A\$\$?

Earl Small, Eastport, ME

I'm in agreement with 41.06 Designated Partnership Agreement. I believe this to be a Good move.

Mark Bichrest, Cundy's Harbor

8 week season

50 barrels per week

400 barrels total

\$125 per barrel

\$50,000 stock

-salt \$3200

-fuel \$2000

= \$44,800

divided by 2

= \$22,400 for crew

divided by 4 crew members

\$5600 for the season per crew or \$700 per week This is not enough. You can't get crew unless you have another business to keep them doing something else.

The boat

\$22,400

-\$9000 insurance approximately

-\$3000 haul out

-\$1500 paint bottom and zincs

= \$8900 left for the season and this doesn't take into consideration any maintenance.

The only way to make this work is if you have 2 businesses. I don't think that we should be put in that position. I know that everyone is looking for something but the people that have been in it for a long time should still be able to make a dollar and if they have 2 licenses they should be able to go on one boat. We can't afford to have 2 boats with these numbers. stacking 2 licences is the only way for those of us who have done this for a long time and just seine to make it work.

Department's Response to Comments:

Start and End Dates

The start date was originally established to ensure a stable and consistent removal of menhaden throughout the summer. With a high number of participants, it was impossible to allow for an early harvest of fish and also guarantee harvest opportunity and fresh fish landings in August or

beyond. While the Department recognizes that the fish were present in state waters prior to the start date of the commercial fishery in 2023, it has also been stated that the menhaden fishery operated, with only a small pause, for 12 weeks under the state allocated fishery. Therefore, the Department is not changing the start date. Adding an end date to the fishery, which received general support during the public comment period, is to establish a clear termination date of the season.

Changes to the Episodic Event Set-Aside Provisions (EESA)

There were no comments directly in support nor opposition of the proposed measures to increase the daily limit and to also shift the harvest schedule to Mondays and Thursdays. However, there were seven comments that requested an amendment to the EESA provisions that would allow for the harvest to be conducted in one day with a weekly limit option, rather than the current daily requirement. The Department does not support a weekly limit for the EESA at this time. It was observed that during the 2023 fishing year, even with reduced participation of harvesters in the EESA and slower catch rates, that a significant latency of reporting exists. This extended latency of reporting, upwards of 4 months after the EESA fishery closed, has resulted in a continued monitoring of quota usage and resulting requests for transfers to cover the constant changes in reported pounds. Until the menhaden fleet as a whole can improve the daily trip level reporting compliance, the Department cannot risk overharvesting of the EESA shared quota and the potential impact to neighbouring states.

Set Harvest Days

The Department did not propose changes to the harvest schedule for the State Allocated Fishery. The EESA harvest days are proposed to be Mondays and Thursdays, but no directed comments spoke to that change. The Department acknowledges the comments received that highlight the difficulty of a set harvest schedule for those harvesters fishing on offshore islands and the restriction set days create when dealing with weather and markets. The maintenance of the weekly limit is meant to offset the need for a shift in harvest days. Additional considerations for excluding Saturdays and Sundays from the harvest schedule include conflict with recreational fisheries. Also, the implications of staff monitoring quota on the weekends reduces the ability to quickly react with management re-adjustments if warranted.

Designated Partnership Agreement

There was positive support for the establishment of the designated partnership agreement in section 41.06. While comments did offer support, there were several suggestions and/or requests provided to improve the program. At this time, the Department is not altering the language from what was proposed. The allowance of harvesters to create a partnership has the potential to increase the rate of harvest. As such, the state date was not amended and additional modifications to the program could also have unintended consequences. For clarity, the provision states the partnership agreement requires that both vessels be similarly rigged, and this would require each vessel to have their own purse seine. Additionally, during the question period at the Public Hearing, questions arose about the anchoring of a vessel when crew is shared. The anchoring of a vessel with fish onboard, and left unattended, while the crew participate in the fishery on another harvest vessel is permitted.

New Entrants for Limited Entry Fishery

The 2024 harvest season will be the second season under the limited entry license program. At this time, there have not yet been discussions on an entrance program into the commercial menhaden fishery. The total number of license holders that were deemed eligible, after two sessions of the Legislature resulted in a higher number of licenses than the Department had preferred. Also, there remains the open access non-commercial license for the harvesting of one's bait. Long term considerations also need to acknowledge that the current overall coastwide TAC of menhaden as determined by the Atlantic Menhaden Board at the Atlantic States Marine Fisheries Commission is routinely evaluated every two or three years. Any reduction of the coastwide TAC would probably result in a revisit of weekly limits within Maine's fishery. Having to further split the quota among additional harvesters could negatively impact current harvesters.

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:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6553; web address: <http://www.maine.gov/dmr/rulemaking/>

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 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.

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