



# The Commonwealth of Massachusetts

## Division of Marine Fisheries

251 Causeway Street, Suite 400, Boston, MA 02114  
p: (617) 626-1520 | f: (617) 626-1509  
[www.mass.gov/marinefisheries](http://www.mass.gov/marinefisheries)



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March 31, 2023

### **Notice of Public Hearings and Public Comment Period: Proposed Regulatory Amendments for Commercial Menhaden, Summer Flounder, Horseshoe Crab, and Groundfish Management**

Under the provisions of G.L. c. 30A and pursuant to the authority found at G.L. c. 130 §§ 17A, 21, 80 and 104, the Division of Marine Fisheries (DMF) is taking public comment on a series of proposed regulatory amendments to 322 CMR 4.00, 6.00, and 7.00 affecting commercial menhaden, summer flounder, horseshoe crab, and groundfish fisheries. Full text of the regulations may be found on [DMF's website](#) along with additional relevant background information and the proposals are outlined below.

#### **Public Hearing and Comment Schedule**

DMF will accept written public comment through 5PM on Monday, May 1, 2023. Submit written comments to Director Daniel McKiernan by e-mail ([marine.fish@mass.gov](mailto:marine.fish@mass.gov)). Additionally, DMF will host two in-person public hearings:

Monday, April 24, 2023  
6PM  
Hotel 1620  
180 Water Street  
Plymouth, MA 02360

Tuesday, April 25, 2023  
6PM  
DMF's Annisquam River Field Station  
30 Emerson Avenue  
Gloucester, MA 01930

#### **Proposed Regulatory Amendments**

Atlantic Menhaden Management (322 CMR 4.01, 4.06, 6.43, and 7.04). In response to revisions to the Interstate Fishery Management Plan for Atlantic Menhaden, DMF is proposing a suite of changes to the quota management controls. DMF is also seeking to add longstanding permit conditions affecting purse seining and carrier vessels into the regulations.

1. Quota Management. Establish open and closed seasons for the directed menhaden fishery; amend trip limits and trip limit triggers; adopt restrictions on the use of certain directed fishing gears (e.g., purse seines) during non-directed fisheries; and adopt fish hold capacity requirements:
  - a. Adopt a directed fishery closure during the period of January 1–June 14. During this period, commercial fishers may only retain, possess, and land up to 6,000 pounds of menhaden taken from state waters by non-directed and small-scale gears, with an exception for weir fishers with limited entry menhaden permits who will be subject to a 120,000-pound trip limit. Purse seining is prohibited.
  - b. Open the directed fishery on June 15. For commercial fishers participating in the limited entry fishery, the trip limit will be 120,000 pounds until 50% of the quota is taken;

25,000 pounds until 85% of the quota is taken; and 6,000 pounds until 100% of the quota is taken. For commercial fishers participating in the open entry fishery, the trip limit will be 6,000 pounds.

- c. Once 100% of the quota is taken, the directed fishery will close. During this period, commercial fishers may only retain, possess, or land up to 6,000 pounds of menhaden taken from state waters by non-directed and small-scale gears. Purse seining is prohibited.
  - d. If Massachusetts opts into the Episodic Event Set Aside Fishery, the trip limit will be 6,000 pounds; however, the limited access trip limit may be modified by the Director to a maximum of 120,000 pounds.
  - e. Beginning in 2024, require all harvester or carrier vessels participating in the limited entry fishery and capable of carrying more than 6,000 pounds of menhaden to have their fish hold certified and marked by an accredited marine surveyor to demonstrate the 25,000-pound and 120,000-pound storage levels. All storage capacity above 120,000 pounds must be rendered unusable.
2. Use of Purse Seines. Establish spatial and temporal restrictions on the use of purse seines, adopt longstanding permit conditions governing purse seining as regulations, and require purse seines subject to net size restrictions be subject to inspection:
- a. Until 50% of the quota is taken, the open fishing days for purse seines will be Mondays–Thursdays and purse seining will be prohibited Fridays–Sundays.
  - b. After 50% of the quota is taken, the open fishing days for purse seines will be Mondays–Fridays and purse seining will be prohibited on Saturdays and Sundays.
  - c. Prohibit purse seining on Memorial Day, July 4, and Labor Day.
  - d. Prohibit purse seining at night, in Buzzards Bay, and certain areas of Boston Harbor year-round, and in Beverly Harbor on Fridays.
  - e. Beginning in 2024, require all purse seines subject to net size restrictions be annually inspected and tagged by DMF prior to use. If net size is altered in-season, the net must be reinspected prior to use.
3. Use of Carrier Vessels. Establish restrictions on the use of carrier vessels, including the adoption of longstanding permit conditions as regulations.
- a. Allow the use of carrier vessels only from June 15 until 85% of the quota is taken during days open to the use of purse seining.
  - b. Restrict the use of a carrier vessel to limited entry fishery participants and allow them to use only one carrier vessel.
  - c. Restrict carrier vessels from receiving fish from more than one vessel per calendar day, from possessing and landing more than one trip limit of menhaden per calendar day, and from landing more than once per calendar day.
  - d. Prohibit the use of carrier vessels in Boston Harbor.
4. Permitting and Reporting. Adopt control dates for permits used in the commercial menhaden fishery and require electronic daily reporting for certain harvesters.
- a. Establish a Control Date of June 14, 2023 for all CAP-Purse Seine and Menhaden regulated fishery permit endorsements. Control date may be used in the future to manage or further restrict access to fishery based on criteria to be developed by DMF.
  - b. Beginning in 2024, require electronic daily harvester reporting from all limited entry fishery participants.

Commercial Horseshoe Crab Management (322 CMR 6.34, 7.01, and 7.04). DMF seeks to enhance conservation and management in the horseshoe crab fishery through an extensive suite of changes

affecting permitting and reporting requirements, harvest closures to protect spawning, and biomedical and bait fishery controls.

1. Permitting and Reporting. Establish new permitting requirements for the biomedical fishery, adopt as regulations longstanding permit conditions affecting biomedical reporting, and require electronic daily reporting for commercial bait and biomedical fishers.
  - a. For 2024, establish a new biomedical processor wholesale dealer permit for any entity involved in the processing of horseshoe crabs for the production of *Limulus Amebocyte Lysate*. Additionally, this permit authorizes the biomedical processor to purchase horseshoe crabs directly from permitted biomedical fishers. Establish a control date to limit future issuance of this permit.
  - b. For 2024, establish a new wholesale biomedical dealer permit for any entity purchasing horseshoe crabs directly from biomedical fishers on behalf of a biomedical processor.
  - c. Any biomedical dealer or processor conducting a primary purchase from a biomedical fisher is to report the purchase weekly on forms provided by the Division.
  - d. Any biomedical processor obtaining horseshoe crabs from a bait dealer or another state's biomedical fishery is required to weekly report the total number of crabs sourced on forms provided by the Division.
  - e. Biomedical processors are required to report monthly on forms provided by the Division the total number of horseshoe crabs processed, source of the crabs processed, and total estimated mortality.
  - f. Beginning in 2024, require electronic daily harvester reporting from all biomedical and bait harvesters.
2. Spawning Closure. For 2024, replace the existing 5-day springtime lunar closures, which occur around each new and full moon during the period of April 16–June 30, with a January 1–May 31 prohibition on horseshoe crab harvest by all persons.
3. Biomedical Fishery. Establish new controls on the biomedical horseshoe crab fishery and adopt longstanding permit conditions as regulations:
  - a. Biomedical Quota.
    - i. Establish an annual biomedical fishery quota of 200,000 horseshoe crabs taken by Massachusetts biomedical fishers. This quota will be distributed evenly among all permitted biomedical processors. The state's biomedical fishery will close once 100% of this biomedical quota is taken.
  - b. Biomedical Dealers and Processors.
    - i. Biomedical dealers and processors may only obtain lawful quantities of horseshoe crabs from Massachusetts biomedical fishers during the Massachusetts open season for the biomedical fishery.
    - ii. Continue to allow biomedical processors to obtain horseshoe crabs from the bait fishery and other states' biomedical fisheries. Horseshoe crabs from these sources will not be counted against the biomedical fishery quota.
    - iii. During handling, transport, and storage, containers holding horseshoe crabs may not exceed 2/3 full and crabs are to be kept moist.
    - iv. During the period immediately following harvest until post-processing release, horseshoe crabs may not be held out of seawater for longer than 36 consecutive hours.
    - v. During onshore transport, horseshoe crabs must be kept in a temperature-controlled environment maintaining a temperature between 50° and 60°F.

- vi. During onshore storage and holding, horseshoe crabs are to be kept in an air-conditioned space that does not exceed 70°F.
  - vii. At all times, horseshoe crabs supplied by biomedical fishers are to be segregated from horseshoe crabs obtained from other sources.
  - viii. Post processing, horseshoe crabs are to be marked with a distinct mark established annually by the Division. Biomedical dealers and processors may not accept any horseshoe crab from a biomedical harvester that bears the current year's mark.
  - ix. Post processing, horseshoe crabs are to be returned to the sea. Horseshoe crabs harvested by hand are to be returned to the shellfish growing area from which they were initially captured. Horseshoe crabs caught by trawlers are to be returned to the body of water adjacent to where they were caught. A third-party vessel may be contracted to conduct live release activities.
  - x. The biomedical dealer or processor is to keep records of all horseshoe crab mortality at all stages of processing and release.
- c. Biomedical Fishers.
- i. Maintain the biomedical trip limit of 1,000 horseshoe crabs.
  - ii. Require biomedical fishers only sell horseshoe crabs to a permitted biomedical dealer or biomedical processor.
  - iii. Restrict biomedical fishers from concurrently participating in the bait fishery.
  - iv. Prohibit biomedical fishers from retaining horseshoe crabs bearing the current year's mark indicating the horseshoe crab was previously processed during the present calendar year.
  - v. Biomedical fishers using trawl gear must limit tow length to no more than 30-minutes, with winches for the net gear locked. Throughout harvest and offloading, all crabs must be held in containers actively fed by seawater and containers may not be more than 2/3 full of crabs.
4. Bait Fishery. Adjust bait fishery quota, limits, and reporting requirements.
- a. Reduce the bait fishery quota by 25,000 horseshoe crabs, from 165,000 horseshoe crabs to 140,000 horseshoe crabs annually.
  - b. Adjust the bait fishery trip limits up to 500 horseshoe crabs for all gear types.
  - c. Consider re-issuing Letters of Authorization to trawlers who do not hold a limited entry horseshoe crab regulated fishery permit endorsement so that they may retain the full regulatorily set horseshoe crab bait fishery trip limit, rather than the open access limit of 75 horseshoe crabs.

Summer Flounder Management (322 CMR 6.22). DMF seeks to adjust the commercial summer flounder trip limits and landing window to enhance quota utilization.

1. Trip Limits. Adjust trip limits for all periods and consider a weekly aggregate pilot program for trawlers.
- a. For Period I (January 1–April 22), increase the trip limit from 3,000 pounds to 10,000 pounds consistent with recent in-season adjustments.
  - b. For the Period II summertime fishery (April 23–September 30):
    - i. Establish a pilot program to explore a weekly aggregate program for trawlers. Program will begin on June 1. Participating vessels will be exempt from daily trip limits for summer flounder and black sea bass; daily trip limits for horseshoe crabs and whelk will remain. Electronic daily reporting and vessel trackers will be required.

- ii. Alternatively, increase the trawler trip limit from 500 pounds to 800 pounds with a scheduled trip limit increase to 1,000 pounds on September 1 if more than 20% of the quota remains.
    - iii. Adjust the 100-pound bycatch allowance provision for the small mesh squid fishery consistent so that it applies only when fishing with small mesh (<5" square or diamond), as required by the fishery management plan.
  - c. For the Period II fall and winter fishery (October 1-December 31), increase the trip limit from 3,000 pounds to 10,000 pounds consistent with recent in-season adjustments.
2. Landing Window. Allow commercial vessels to offload from 6AM to 10PM, rather than 6AM to 8PM.

Groundfish Maximum Retention (322 CMR 6.03). Adopt a regulatory framework to accommodate the possession and landing of non-conforming sized groundfish by federal permit holders participating in the maximum retention electronic monitoring program, as well as the possession and sale of such fish by seafood dealers. This proposal is consistent with Amendment 23 to the federal Multispecies Groundfish management plan.

## Small Business Impact Statement

(As required by M.G.L. c. 30A §§ 2, 3 & 5)

**CMR No: 322 CMR 4.00, 6.00, and 7.00**

**Estimate of the Number of Small Businesses Impacted by the Regulation:** In 2022, DMF issued 55 menhaden permits, 75 CAP-Purse Seine permits, 587 Summer Flounder permits; 204 horseshoe crab permits; 26 biomedical horseshoe crab permits; 143 bait dealer permits; and 4 permits authorizing dealers to handle biomedical horseshoe crabs.

### Select Yes or No and Briefly Explain

|  |   |  |
|--|---|--|
| Yes<br><input checked="" type="checkbox"/> | No<br><input type="checkbox"/>            | <b>Will small businesses have to create, file, or issue additional reports?</b><br>Yes. For 2024, DMF is proposing to require commercial horseshoe crab and menhaden fishers to report electronically on a daily basis, replacing monthly trip level reporting requirements. This is part of a broader initiative to shift to daily electronic reporting across all fisheries over the next few years. DMF may adopt these reporting requirements pursuant to G.L. c. 130 s. 21.   |
| Yes<br><input checked="" type="checkbox"/> | No<br><input type="checkbox"/>            | <b>Will small businesses have to implement additional recordkeeping procedures?</b><br>Yes. For 2024, DMF is proposing to require commercial horseshoe crab and menhaden fishers to report electronically on a daily basis, replacing monthly trip level reporting requirements. This is part of a broader initiative to shift to daily electronic reporting across all fisheries over the next few years. DMF may adopt these reporting requirements pursuant to G.L. c. 130 s. 21.   |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Will small businesses have to provide additional administrative oversight?</b><br>DMF does not anticipate the proposed regulations create an additional need for administrative oversight.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Will small businesses have to hire additional employees in order to comply with the proposed regulation?</b><br>DMF does not anticipate the proposed regulations create an additional burden that would then require the affected small businesses to hire additional employees to comply with these new requirements.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Does compliance with the regulation require small businesses to hire other professionals (e.g. a lawyer, accountant, engineer, etc.)?</b><br>DMF does not anticipate the proposed regulations create an additional burden that would then require the affected small businesses to hire professional services to comply with these new requirements.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Does the regulation require small businesses to purchase a product or make any other capital investments in order to comply with the regulation?</b><br>DMF does not anticipate the proposed regulations will require capital investment to comply. Note the new reporting requirements will not come at an additional cost.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Are performance standards more appropriate than design/operational standards to accomplish the regulatory objective?</b><br>(Performance standards express requirements in terms of outcomes, giving the regulated party flexibility to achieve regulatory objectives and design/operational standards to specify exactly what actions regulated parties must take.)<br><br>DMF regulations control the harvest of marine species to comply with federal law, manage state-quotas and protect the environment. Performance standards are not appropriate without individual transferable quotas allocated to individual fishermen. Managing state-waters fisheries with individual quotas would have negative economic impacts across the seafood industry. |

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|--|---|--|
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Do any other regulations duplicate or conflict with the proposed regulation?</b><br>No duplicative or conflicting regulations are being filed. Additionally, DMF is proposing to rescind existing regulations it has deemed to be duplicative or conflicting.   |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Does the regulation require small businesses to cooperate with audits, inspections or other regulatory enforcement activities?</b><br>No. DMF does not anticipate the regulations will require small businesses to cooperate with additional enforcement activities.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Does the regulation require small businesses to provide educational services to keep up to date with regulatory requirements?</b><br>No. DMF does not anticipate the proposed regulations will require small businesses to provide educational services to keep up to date with regulatory requirements.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Is the regulation likely to <i>deter</i> the formation of small businesses in Massachusetts?</b><br>No. The proposed regulations do not address entry into these fisheries and other factors, such as permit and vessel availability and cost, are the constraining factors in the formation of new businesses.                                     |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Is the regulation likely to <i>encourage</i> the formation of small businesses in Massachusetts?</b><br>No. The proposed regulations do not address entry into these fisheries and other factors, such as permit and vessel availability and cost and shoreside infrastructure, determine the formation of new businesses.                          |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Does the regulation provide for less stringent compliance or reporting requirements for small businesses?</b><br>No duplicative or conflicting regulations are being proposed   |
| Yes<br><input checked="" type="checkbox"/> | No<br><input type="checkbox"/>            | <b>Does the regulation establish less stringent schedules or deadlines for compliance or reporting requirements for small businesses?</b><br>Yes. Beginning in 2024, commercial horseshoe crab and menhaden fishers will be required to report electronically on a nightly basis thereby replacing existing monthly trip level reporting requirements. |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Did the agency consolidate or simplify compliance or reporting requirements for small businesses?</b><br>No. DMF does not anticipate the draft regulations will create new audit or inspection requirements. Audit and inspection requirements are set forth at G.L. c. 130 et. seq.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Can performance standards for small businesses replace design or operational standards without hindering delivery of the regulatory objective?</b><br>No. Operational standards are needed for consistent and clear notification, enforcement, and compliance.  |
| Yes<br><input type="checkbox"/>            | No<br><input checked="" type="checkbox"/> | <b>Are there alternative regulatory methods that would minimize the adverse impact on small businesses?</b><br>No. These regulations are necessary to comply with federal law and address emerging fisheries management issues.  |