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PUBLIC HEARING ATLANTIC MENHADEN

Proposal to amend Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden" related to the transfer of management authority of the species from the General Assembly to VMRC and to be in compliance with the ASMFC Atlantic Menhaden Fishery Management Plan to avoid a moratorium of the fishery effective June 17, 2020.



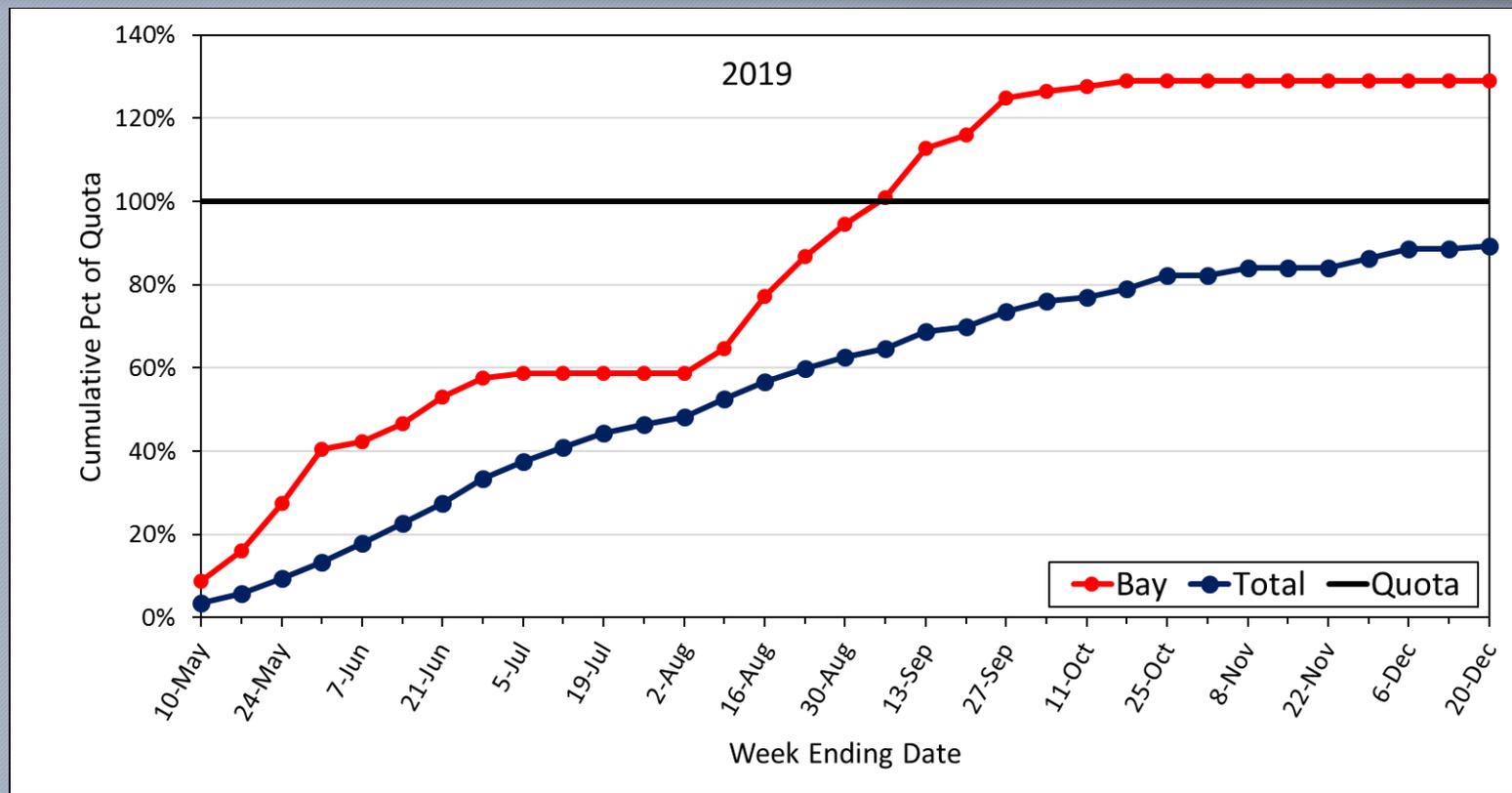
MENHADEN MANAGEMENT: A RECENT HISTORY



- **Nov 2017:** ASMFC Amendment 3 of Atlantic Menhaden FMP
 - Bay Cap reduced from 87,216 mt to 51,000 mt
- VA General Assembly never updated code (§ 28.2-1000.2)
- ASMFC Menhaden Board
 - **May 2018:** Vote on compliance postponed
 - **Feb 2019:** Non-Compliance postponed indefinitely (if below Bay Cap)
 - **Sept 2019:** Bay Cap exceeded
 - **Oct 2019:** Board finds Virginia out of compliance with FMP
 - **Dec 2019:** Secretary of Commerce concurs with non-compliance finding with moratorium in effect starting **June 17, 2020**

2019 Bay Quota Harvest by Week

Purse Seine Reduction Sector



CURRENT MENHADEN MANAGEMENT



- VA General Assembly
 - **March 12, 2020:** Approves SB791 and HB1448 to transfer management authority to VMRC
- VMRC
 - **April 20, 2020:** Menhaden Management Advisory Committee endorse regulatory updates.
 - **April 28, 2020:** Special public hearing by electronic means on Chapter 4 VAC-20-1270-10, “Pertaining to Atlantic Menhaden”

CODE OF VIRGINIA SECTIONS REMOVED

Repealed by HB1448 and SB791 (3/12/2020)



Article 1. Licenses

- § 28.2-400.2: Total allowable landings for menhaden
- § 28.2-400.3: Allocation of the total allowable landings for menhaden
- § 28.2-400.4: Administration of the menhaden management program
- § 28.2-400.5: Reporting requirements – (Chapter 4VAC-20-610-10)
- § 28.2-400.6: Biological sampling program and adult abundance index

Article 2. Area and Season Restrictions

- § 28.2-411: Season for vessels of less than seventy gross tons for menhaden

Article 1. Atlantic States Marine Fisheries Compact

- § 28.2-1000.2: Annual closure of the Chesapeake Bay purse seine fishery for Atlantic Menhaden

CODE OF VIRGINIA SECTIONS KEPT

Not repealed by HB1448 and SB791



Article I: Licenses

- § 28.2-400: Application for license for resident or nonresident to catch menhaden
- § 28.2-400.1 Criteria for qualifying for a limited entry purse seine menhaden bait license
- § 28.2-401: Service of process for nonresident individuals, foreign corporations, general and limited partnerships
- § 28.2-402: License fee to take menhaden with purse nets
- § 28.2-403: Action of Commissioner on such application; transfer of license of disabled vessel; delegation of authority; appeals
- § 28.2-404: Appeals from actions of Commissioner
- § 28.2-405: Carrying patent tongs, etc., while fishing for menhaden; penalty
- § 28.2-406: Reserved
- § 28.2-407: Forfeiture of fishing gear

Article 2: Area and Season Restrictions

- § 28.2-408: Food fish not to be taken, bought, or sold; percentage allowable; penalty
- § 28.2-409: Menhaden fishing prohibited in certain areas; exception
- § 28.2-410: Closed season for menhaden fishing; forbidden nets; penalty

CHAPTER 4 VAC 20-1270-10 “Pertaining to Atlantic Menhaden”



- Last updated August 2017
- Sections of Code repealed by General Assembly in HB1448 and SB791 need to be considered in the regulation update.
- Goal: Compliance with FMP Amendment 3 and minor language updates

REGULATION UPDATES KEY



- Underline: new/added language
- ~~Strikethrough~~: removed language
- **Yellow**: regulatory changes
- **Brown**: language updates

4VAC 20-1270-20 DEFINITIONS



“Atlantic menhaden or menhaden” means any fish of the species *Brevoortia tyrannus*.

“Bay Cap” means the annual total allowable commercial landings by volume (pounds or metric tons) from the Chesapeake Bay by the purse seine menhaden reduction sector.

“Chesapeake Bay” means the territorial waters of Virginia lying west of the Chesapeake Bay Bridge-Tunnel.

“~~Nonpurse~~ Non-purse seine menhaden bait sector” means those vessels that do not utilize a purse seine net to harvest menhaden and land menhaden only for use as bait in other fisheries.

4VAC 20-1270-20 DEFINITIONS



“Purse seine menhaden reduction sector” means those vessels that utilize a purse seine net to land menhaden only at a qualified menhaden processing factory, as described by § 28.2-400.3 of the Code of Virginia.

“Qualified menhaden processing factory” means a facility located in Virginia and which has processed at least 100,000 metric tons of menhaden in each of the years 2009, 2010, and 2011.

“Stationary multi-species gear” means pound nets, anchored/staked gill nets, fishing weirs, floating fish traps, and fyke nets.

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN; ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS, CLOSURES, AND STATE-TO-STATE TRANSFERS



~~A. In accordance with Section § 28.2-400.2 of the Code of Virginia the~~
~~total~~ Total allowable commercial landings for menhaden in ~~2017 and 2018~~
~~2020 in metric tons~~ shall be equivalent to 372,443,990 pounds (168,937.75
metric tons), or 78.66% of the annual total allowable catch (TAC) set by
the Atlantic States Marine Fisheries Commission. ~~and that total amount~~
~~of allowable landings shall be allocated as quotas among three sectors~~
~~of the menhaden fishery, pursuant to § 28.2-400.3 of the Code of Virginia.~~
~~The purse seine menhaden reduction sector is allocated a quota of~~
~~335,359,214 pounds of allowable menhaden landings; the purse seine~~
~~menhaden bait sector a 31,204,766 pound quota of allowable menhaden~~
~~landings; and, the nonpurse seine menhaden bait sector a 5,880,010~~
~~pound quota of allowable menhaden landings.~~

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN; ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS, CLOSURES, AND STATE-TO-STATE TRANSFERS



B. Total amount of allowable commercial landings in subsection A of this section shall be allocated as quotas among three sectors of the menhaden fishery, in proportion to each sector's share of average landings from 2002 through 2011, as described in subdivision 1, 2, and 3 of this subsection.

1. The purse seine menhaden reduction sector shall be allocated a quota of 335,348,569 pounds or 90.04% of allowable commercial menhaden landings.

2. The purse seine menhaden bait sector shall be allocated a quota of 31,210,806 pounds or 8.38% of allowable commercial menhaden landings.

3. The non-purse seine menhaden bait sector shall be allocated a quota of 5,884,615 pounds or 1.58% of allowable commercial menhaden landings.

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN; ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS, CLOSURES, AND STATE-TO-STATE TRANSFERS



~~B. C.~~ If the total allowable commercial landings specified in subsection A of this section are exceeded in any calendar year, the total allowable commercial landings for the subsequent calendar year ~~will~~ shall be reduced by the amount of the overage. Such overage shall be deducted from the sector of the menhaden fishery that exceeded the allocation specified in **subsection A B** of this section, with the exception of the non-purse seine menhaden bait sector which shall move into the incidental catch provision outlined in subsection F, subdivision 3 of this section.

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN;
ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS,
CLOSURES, AND STATE-TO-STATE TRANSFERS



D. Any portion of the 1% of the coast-wide total allowable catch set aside by the Atlantic States Marine Fisheries Commission for episodic events that is unused as of September 1 of any calendar year shall be returned to Virginia and other states according to allocation guidelines established by the Atlantic States Marine Fisheries Commission. Any such return of this portion of the coast-wide total allowable catch to Virginia shall increase the total allowable commercial landings for that year.

E. It shall be unlawful for any person to take or catch menhaden using a purse seine net except in accordance with the seasons, areas, and gear restrictions as set forth in §§ 28.2-409 and 28.2-410 of the Code of Virginia.

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN; ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS, CLOSURES, AND STATE-TO-STATE TRANSFERS



F. It shall be unlawful to harvest or land in Virginia, any menhaden, after the commissioner projects and announces that 100% of the total allowable landings for any sector has been taken. The commissioner may reopen a fishery sector if, after all reports as described in 4 VAC 20-1270-60 have been received, the portion of the total allowable catch has not been harvested by that sector.

1. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden reduction sector is projected to be taken.

2. The commissioner shall announce the date of closure when the total allowable landings for the purse seine menhaden bait sector is projected to be taken.

3. The commissioner shall announce the date of closure when the total allowable commercial landings for the non-purse seine menhaden bait sector is projected to be taken. Once this closure is announced, any person licensed in the non-purse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per calendar day as bycatch. Any two persons licensed in the non-purse seine menhaden bait sector may possess and land up to 12,000 pounds of menhaden bycatch when working together from the same vessel using stationary multi-species gear per the Atlantic States Marine Fisheries Commission incidental catch provision.

4VAC 20-1270-30 TOTAL ALLOWABLE LANDINGS FOR MENHADEN;
ALLOCATION, ACCOUNTABILITY, ~~AND~~ OVERAGES, RESTRICTIONS,
CLOSURES, AND STATE-TO-STATE TRANSFERS



G. The commissioner may request a transfer of menhaden quota from any other state that is a member of the Atlantic States Marine Fisheries Commission. If Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable catch for that calendar year shall increase by the amount of transferred quota. It shall be unlawful for this quota transfer to be applied to the Bay Cap quota as described in 4 VAC 20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota.

4VAC 20-1270-35 CHESAPEAKE BAY PURSE SEINE MENHADEN REDUCTION FISHERY



A. The annual total allowable Bay Cap landings from the Chesapeake Bay by the purse seine menhaden reduction sector in 2020 shall not exceed 36,196 metric tons (79,798,520 pounds), and shall be subject to annual adjustment for any overages as specified in subdivision 3 of this subsection.

1. It shall be unlawful for any transfers of quota from other states to be applied to the Bay Cap to reduce any overages.

2. It shall be unlawful for any amount of unlanded menhaden quota under the Bay Cap each calendar year to be rolled over or applied as credit for any subsequent calendar years.

3. Any annual menhaden landings in excess of the current calendar year's Bay Cap shall be deducted from only the subsequent calendar year's Bay Cap.

4VAC 20-1270-35 CHESAPEAKE BAY PURSE SEINE MENHADEN REDUCTION FISHERY



B. When it is projected that the purse seine menhaden reduction sector has met the annual menhaden Bay Cap in the Chesapeake Bay, based on mandatory daily landings reports, the commissioner shall promptly notify industry announcing the date of closure.

C. It shall be unlawful for any person to harvest menhaden by purse seine for reduction purposes from the Chesapeake Bay for the remainder of that calendar year after the commission has announced the date of closure.

4VAC 20-1270-40 PURSE SEINE MENHADEN BAIT SECTOR; LIMITED ENTRY CRITERIA; INDIVIDUAL TRANSFERABLE QUOTA SYSTEM, AND SEASON



A. To qualify for limited entry to the purse seine menhaden bait sector, the **applicant must person shall:**

1. Have held a purse seine license in 2011 and landed menhaden in Virginia in 2009, 2010 and 2011, while using purse seine gear to harvest menhaden in one of those three years; and,
2. Provide the commission receipts and landings reports or other requested reports as proof of landings and gear usage to demonstrate that the criteria described in subdivision 1 of this subsection have been met.

4VAC 20-1270-40 PURSE SEINE MENHADEN BAIT SECTOR; LIMITED ENTRY CRITERIA; INDIVIDUAL TRANSFERABLE QUOTA SYSTEM, AND SEASON



B. The commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee that meets the limited entry requirements in subsection A of this section. The quota for this sector will be allocated according to each qualified licensee's rounded percentage share of the average of the 2007 through 2011 menhaden landings.

C. Each licensee qualified under the ITQ system may transfer quota to another licensee's ITQ upon approval of the commissioner.

D. The season for vessels with a gross weight of less than seventy tons that use purse seine nets to take or catch menhaden for purposes other than use as fish meal or oil shall be from the first Monday in March up to, but not including, the first Monday in May.

4VAC 20-1270-50 ~~NONPURSE NON-PURSE~~ SEINE MENHADEN BAIT SECTOR QUOTA; ~~ALLOCATION AND BYCATCH~~ PROVISIONS



A. The ~~nonpurse non-purse~~ seine **commercial menhaden** bait sector's **quota** allocation shall be **by gear type in proportion to each gear types's share of average landings from 2002 through 2011 and are** as follows:

- 1) Cast net: ~~2,264~~ **0.04%** or **2,354** pounds.
- 2) Dredge: ~~3,595~~ **0.06%** or **3,531** pounds.
- 3) Fyke net: ~~2,477~~ **0.04%** or **2,354** pounds.
- 4) Gill net: ~~1,781,986~~ **30.31%** or **1,783,627** pounds.
- 5) Pound net: ~~3,997,204~~ **67.98%** or **4,000,361** pounds.
- 6) Seine **Haul seine**: ~~23,550~~ **0.4%** or **23,538** pounds.
- 7) Trawl: ~~68,940~~ **1.17%** or **68,850** pounds.

4VAC 20-1270-50 ~~NONPURSE~~ NON-PURSE SEINE MENHADEN BAIT SECTOR QUOTA; ALLOCATION ~~AND BYCATCH~~ PROVISIONS



~~B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the commissioner announces the date of closure for the nonpurse seine bait fishery, any person licensed in the nonpurse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.~~

4VAC 20-1270-60 REPORTING REQUIREMENTS BY MENHADEN FISHERY SECTOR



A. Each licensee of any purse seine vessel that harvests menhaden **must** submit **shall complete** a Captain's Daily Fishing Report **to the commission** on each **nonweekend non-weekend** or **nonholiday non-holiday** day that either purse seine sector is open for harvest. The Captain's Daily Fishing **report Report** is produced by the National Marine Fisheries Service and provides preliminary estimates of harvest. Pursuant to § 28.2-204 of the Code of Virginia, those same licensees **must shall** submit to the commission **actual the Captain's Daily Fishing Reports in addition to summarized** weekly harvest reports that include vessel name and exact weight of menhaden landed, in pounds, by Wednesday of the following week. **Once 97% of either purse seine sector's quota is projected and announced to have been met, each licensee of that purse seine sector must provide daily harvest totals to the Commission's Interactive Voice Recording System.**

1. **Any menhaden landed by a limited entry purse seine menhaden bait licensee at a qualified menhaden processing factory, as indicated on the mandatory daily landings reports, shall be attributed to the purse seine menhaden reduction sector quota.**

2. **Once 97% of either purse seine sector's quota is projected and announced to have been taken, each licensee of that purse seine sector shall provide daily harvest totals to the commission's Interactive Voice Recording System.**

4VAC 20-1270-60 REPORTING REQUIREMENTS BY MENHADEN FISHERY SECTOR



B. The non-purse seine menhaden **commercial** bait sector shall submit daily reports according to the schedule and reporting requirements established by 4 VAC 20-610-10, **~~“Pertaining to Commercial Fishing and Mandatory Harvest Reporting”~~**.

~~C. When the commissioner announces that 90% of the non-purse seine menhaden bait quota has been reached, each harvester of this sector is required to report his previous 10 days of landings to the commission’s Interactive Voice Recording System and must continue to report his additional landings every 10 days until it is announced that the nonpurse seine bait quota has been attained. More frequent reporting is permissible. The commission may also implement other harvest conservation measures such as trip limits.~~

4VAC 20-1270-70 PENALTY



As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor. A second and each subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

PUBLIC COMMENT



- **FMAC***: 6 Support, 2 Oppose
- **CMAC***: 1 Support
- **MMAC** – Electronic Meeting on 4/20/2020
 - Members:
 - Unanimously supported the modified regulation as presented
 - Suggested several items to consider at future meetings
 - General Public:
 - One Comment: Change Definition of Chesapeake Bay and prohibited areas
- **Written Comments Total 212**
 - For: 207
 - Against: None

* FMAC and CMAC members did not meet. Members were asked to individually provide their comments.

STAFF RECOMMENDATIONS



Staff requests the Commission approve amendments to Chapter 4 VAC 20-1270-10 et seq., “Pertaining to Atlantic Menhaden,” for the VMRC to accept management authority from the Virginia’s General Assembly, to be in compliance with the ASMFC’s Atlantic Menhaden Fishery Management Plan, and to avoid a statewide moratorium of the fishery effective June 17, 2020.

PUBLIC COMMENT



- If you **WANT** to speak: call into the Public Conference Call
 - 866-845-1266, Participation Code: 80441794#
 - PLEASE MUTE PERSONAL PHONE (*6 or cell phone mute function)
- If you'd like to comment, provide your full name, residence, and for/against the regulation via:
 - Chat feature on YouTube site
 - On Conference line
- We will call on you by name, you must unmute your phone, speak, re-mute phone to respect other comments
- Comments limited to 3 minutes

STAFF RECOMMENDATIONS



Staff requests the Commission approve amendments to Chapter 4 VAC 20-1270-10 et seq., “Pertaining to Atlantic Menhaden,” for the VMRC to accept management authority from the Virginia’s General Assembly, to be in compliance with the ASMFC’s Atlantic Menhaden Fishery Management Plan, and to avoid a statewide moratorium of the fishery effective June 17, 2020.