

## FISHERIES MANAGEMENT DIVISION EVALUATION, 12/6/2022

**PUBLIC HEARING:** Proposal to amend Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to establish a reciprocal quota transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery.

**ISSUES:** The Atlantic States Marine Fisheries Commission (ASMFC) approved a 10% decrease in the coastwide total allowable catch or landings (TAC) of menhaden at the October 2020 Board meeting. The 2021-2022 coastwide TAC is 194,400 metric tons.

As a result, in 2021, the purse seine bait sector reached their quota early and was unable to fish the rest of the season due to this 10% reduction. At a Menhaden Management Advisory Committee (MMAC) meeting in November of 2021, the bait sector representative asked for the committee to consider potential paths forward in acquiring additional quota for the purse seine bait sector. A subcommittee was formed to explore potential solutions. The subcommittee and full MMAC committee recommended that transfers of quota between the purse seine reduction and purse seine bait sectors be permitted for the 2022 fishing year and into the future.

**BACKGROUND:** In 2021-2022, Virginia received 78.66% of the coastwide total allowable catch (TAC) after 1% of the TAC is set aside for episodic events. The state's purse seine menhaden reduction sector share is 90.04%; the purse seine menhaden bait sector share is 8.38%; and, the non-purse seine menhaden bait sector share is 1.58% of the total allowable commercial landings. In section 30G of Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Menhaden", if the Commonwealth of Virginia receives a transfer of menhaden quota in any calendar year from another state, the total allowable commercial landings are increased, and then are divided by the sector shares established by regulation. Before June 2022, there was no allowance in regulation for transfers between sectors.

A subcommittee of the MMAC comprised of MMAC members and industry representation was formed in the spring of 2022 to discuss potential avenues for acquiring quota for the purse seine bait sector and the regulatory language barriers in the regulation. After two meetings, the subcommittee recommended reciprocal transfers be allowed between the purse seine reduction sector and the purse seine bait sector. The Commission approved this provision in June of this year; however, it was approved only for 2022. The Administrative Code § 28.2-201 of Virginia states that, "The Commission shall only adopt regulations for

the management of menhaden between October 1 and December 31 unless regulatory action is necessary to address an emergency situation pursuant to § 28.2-210 or to ensure compliance with the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Atlantic Menhaden.” The June action was pursuant to § 28.2-210, as it was necessary for the protection of the seafood industry. However, due to its emergency nature, the action will sunset at the end of the 2022 fishing season, unless this regulation is modified at the December Commission meeting.

In 2022, the reduction sector transferred all external quota that was received by Virginia from another state or jurisdiction to the purse seine bait sector. The current regulatory amendment allows this practice to continue if both sectors deem it amenable. Additionally, in the event of an emergency (ex. a bait vessel sinking or the reduction facility sustaining hurricane damage) this amendment will allow these sectors to transfer quota within the fishery to allow Virginia to fully utilize the overall state quota. The MMAC, the original subcommittee, and staff have supported the modifications to the regulation to allow transfers to continue to occur between these purse seine sectors into the future.

**STAFF**

**RECOMMENDATION:** Staff requests the Commission approve amendments Chapter 4 VAC 20-1270-10 et seq., "Pertaining to Atlantic Menhaden", to establish a reciprocal quota transfer system between the purse seine menhaden reduction sector and the purse seine menhaden bait sector of the fishery.

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**PREAMBLE**

This chapter establishes management measures including an allocation system for three fishing sectors of the commercial menhaden fishery, establishes an annual total allowable commercial harvest from the Chesapeake Bay by the purse seine menhaden reduction sector, establishes a limited entry and individual transferable quota systems for the purse seine menhaden bait sector, and establishes reporting requirements for the three sectors of the commercial menhaden fishery. This chapter is promulgated pursuant to the authority contained in §§ 28.2-201, 28.2-204 and 28.2-204.1 of the Code of Virginia. This chapter amends and re-adopts, as amended, previous Chapter 4 VAC 20-1270-10 et seq., which was promulgated ~~February 22, 2022~~ June 28, 2022 and made effective on ~~March 1, 2022~~ July 1, 2022. The effective date of this chapter is ~~July 1, 2022~~ December 31, 2022.

**4 VAC 20-1270-10. Purpose.**

The purpose of this chapter is to establish management measures for a sustainable Atlantic menhaden fishery and to provide fair and equitable allocation to the sectors.

**4 VAC 20-1270-20. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

“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.

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“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.

“Purse seine menhaden bait sector” means those vessels that utilize a purse seine net to land menhaden only for use as bait in other fisheries.

“Purse seine menhaden reduction sector” means those vessels that utilize a purse seine net to land menhaden only at a qualified menhaden processing factory.

“Qualified menhaden processing factory” means a facility located in Virginia that 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 or staked gill nets, fishing weirs, floating fish traps, and fyke nets.

**4 VAC 20-1270-30. Total allowable landings for menhaden; allocation, accountability, overages, restrictions, closures, state-to-state transfers, and transfers between sectors.**

A. Total allowable commercial landings for menhaden in 2022 shall be equivalent to 334,781,533 pounds or 78.66% of the annual total allowable catch (TAC) set by the Atlantic States Marine Fisheries Commission.

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 301,437,292 pounds or 90.04% of allowable commercial menhaden landings.
2. The purse seine menhaden bait sector shall be allocated a quota of 28,054,692 pounds or 8.38% of allowable commercial menhaden landings.
3. The non-purse seine menhaden bait sector shall be allocated a quota of 5,289,548 pounds or 1.58% of allowable commercial menhaden landings.

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 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 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 3 of this section.

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D. Any portion of the 1.0% of the coastwide 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 coastwide 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.

F. It shall be unlawful to harvest or land in Virginia, any menhaden after the Commissioner of the Marine Resources Commission (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 4VAC20-1270-60 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.

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 commercial landings 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 4VAC20-1270-35. The commissioner may transfer menhaden quota to another state only if there is unused menhaden quota at the end of the calendar year.

H. ~~For 2022, the~~ The Marine Resources Commission shall establish a reciprocal temporary transferable quota system between the purse seine menhaden reduction sector and the purse seine

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menhaden bait sector. Any transfer of menhaden quota between these sectors shall be limited by the following conditions:

1. A transfer of quota to the purse seine menhaden bait sector from the purse seine reduction sector shall be allocated to each qualified licensee's percentage share of the purse seine menhaden bait sector quota.
2. No transfer of quota to the purse seine menhaden bait sector shall be authorized by the Marine Resources Commission unless all qualified individuals of the purse seine menhaden bait sector and the purse seine menhaden reduction sector agree to the transfer and document the transfer on a form provided by the Marine Resources Commission, notarized by a lawful notary public, and approved by the commissioner.
3. No transfer of quota to the purse seine reduction sector shall be authorized by the Marine Resources Commission unless at least one qualified individual of the purse seine menhaden bait sector and the purse seine menhaden reduction sector agree to the transfer and document the transfer on a form provided by the Marine Resources Commission, notarized by a lawful notary public, and approved by the commissioner.
4. No transfer shall be authorized by the Marine Resources Commission unless the transferring qualified individuals of the purse seine menhaden bait sector and the purse seine menhaden reduction sector have submitted up-to-date records of all commercial landings of menhaden to the Marine Resources Commission prior to such transfer.
5. Quota transfers between the purse seine menhaden reduction sector and purse seine menhaden bait sector shall be effective only during the calendar year in which the transfer is approved.

**4 VAC 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 shall not exceed 51,000 metric tons (112,435,754 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.

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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.

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 commissioner has announced the date of closure.

**4 VAC 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 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.

B. The commission shall establish an individual transferable quota (ITQ) system for each purse seine menhaden bait licensee who 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 70 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.

**4 VAC 20-1270-50. Non-purse seine menhaden bait sector quota allocation.**

The non-purse seine menhaden bait sector's quota allocation shall be in proportion to each gear type of average landings from 2002 through 2011 and are as follows:

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- 1) Cast net: 0.04% or 2,116 pounds.
- 2) Dredge: 0.06% or 3,174 pounds.
- 3) Fyke net: 0.04% or 2,116 pounds.
- 4) Gill net: 30.31% or 1,603,262 pounds.
- 5) Pound net: 67.98% or 3,595,835 pounds.
- 6) Haul seine: 0.4% or 21,158 pounds.
- 7) Trawl: 1.17% or 61,888 pounds.

**4 VAC 20-1270-60. Reporting requirements by menhaden fishery sector.**

A. Each licensee of any purse seine vessel who harvests menhaden shall complete a Captain's Daily Fishing Report on each non-weekend or non-holiday day that either purse seine sector is open for harvest. The Captain's Daily Fishing 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 shall submit to the commission 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.

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.

B. The non-purse seine menhaden bait sector shall submit daily reports according to the schedule and reporting requirements established by 4VAC20-610.

**4 VAC 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.



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This is to certify that the foregoing is a true and accurate copy of the chapter passed by the Virginia Marine Resources Commission, pursuant to authority vested in the Commission by §28.2-201 of the Code of Virginia, duly advertised according to statute, and recorded in the Commission’s minute book, at its meeting held in Hampton, Virginia on December 6, 2022.

**COMMONWEALTH OF VIRGINIA  
MARINE RESOURCES COMMISSION**

**BY:** \_\_\_\_\_  
**Jamie L. Green**  
**Commissioner**

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

\_\_\_\_\_  
Notary Public