



*Martin O'Malley, Governor*  
*Anthony G. Brown, Lt. Governor*  
*John R. Griffin, Secretary*  
*Joseph P. Gill, Deputy Secretary*

## Implementation Plan for Amendment 2 to the Interstate Fishery Management Plan for Atlantic Menhaden April 11, 2013

### **Background**

Since the December decision to reduce menhaden harvest and manage to a state-specific quota, Maryland has been engaged in an intensive outreach program with commercial bait harvesters. Due to Maryland's regulatory process, regulations to manage the menhaden fishery will not be effective until June of 2013 at which point we will implement mechanisms to monitor and adjust menhaden landings. Because the fishery is currently ongoing, menhaden will be landed and reported under our current system of monthly logs of daily activity. Harvesters submit these logs at the end of each month which means that we will not be able to quantify harvest occurring prior to June 1 until mid August of 2013. Therefore, it is Maryland's intention to honor its assigned TAC of 2,320.98 MT or 5,116,976 pounds by selecting a conservative date on which to close the unlimited 2013 menhaden fishery occurring mostly from pound nets. The closure date will be chosen by examining historical dates when Maryland would have achieved the TAC, and by examining incoming 2013 harvest reports to assess the performance of the 2013 fishery relative to past years. Because of uncertainty in early season harvest and to avoid the risk of overage, Maryland will likely close the unlimited 2013 fishery before the TAC is fully harvested.

By June 1, 2013 Maryland will have in place both the regulation and the infrastructure to receive daily or weekly menhaden harvest reports from pound netters and carefully monitor the progress of the 2013 menhaden harvest. By late August of 2013, Maryland will be able to add together harvest that occurred prior to the closure of the unlimited fishery and the harvest occurring under the bycatch allowance and project the total 2013 harvest relative to the TAC. This will inform Maryland as to whether the 6,000 pound bycatch limit should be adjusted downward to avoid substantially exceeding the TAC under the bycatch allowance.

Because regulations will be effective in the middle of the 2013 fishing season, provisions laid out in this document will apply to 2013 only. Maryland will evaluate the effectiveness of these provisions and submit a revised plan for the 2014 season.

### **1. Commercial Fishery Management Measures**

- a) Maryland's regulation (appendix 1) will allow the use of Public Notice authority to close the unlimited menhaden harvest from pound nets and other non-directed gears such as gill nets and fyke nets when Maryland's quota is projected to be achieved. Public notice authority provides flexibility to adjust the closure date based on incoming 2013 harvest reports. Maryland will select a conservative closure date because Maryland's current commercial reporting system includes delays of approximately two months from the time of harvest until data become available to managers. Since this situation cannot be rectified prior to the start of the 2013 menhaden season, we will likely begin limiting the pound net fishery to the 6,000 pound bycatch allowance on June 15, 2013. This date is based on a comparison of daily catches in all years between 2006 and 2012 to Maryland's projected 2013 quota of 2,320.98 metric tons (5.12 million pounds). According to this time series analysis, Maryland would have achieved the quota as early as June 15<sup>th</sup> and as late as

September 14<sup>th</sup>, with the average date being August 8<sup>th</sup>. Landings during this time have been highly variable with a record high catch in 2012. Although the number is still preliminary, the current estimate of 2012 menhaden harvest in Maryland is approaching 14 million pounds – nearly three times the 2013 quota. Therefore, to ensure Maryland does not exceed the quota in 2013, the closure date likely will be set at June 15, 2013 unless there is strong evidence that the 2013 fishery is performing at a slower pace than it did in 2012.

- b) Proposed regulations will include the authority of the Secretary of Natural Resources to change season dates, catch limits and the TAC limit through public notice in response to ASMFC management requirements.
- c) The public notice authority described in 1.b) above provides for changes in TAC to account for transfers to or from Maryland.
- d) The public notice authority described in 1.b) above provides for changes in TAC to account for a repayment mechanism to reduce the subsequent year's quota to account for any over-harvest of the TAC on a pound for pound basis.
- e) On average between 2009 and 2011, pound nets accounted for 92% of Maryland's annual menhaden harvest. Although pound netters are primarily targeting striped bass, there are a small number of pound netters who do not have a striped bass allocation and therefore rely on white perch, catfish, and gizzard shad as their primary species. Pound nets are large stationary gears that are deployed on sites that fishermen must register with the Department. Each harvester is limited to 8 registered sites, but few fish more than 4 nets in any given year. A Pound net is a multi-species gear that is not selective for a particular species. Therefore, undesirable or controlled species trapped in pound nets must be either discarded or harvested as bycatch. Because menhaden travel in schools, when a pound net traps menhaden, the numbers are generally large. Culling or discarding large numbers of menhaden would likely result in large quantities of dead discards. Therefore, Maryland will limit the 6,000 pound bycatch allowance to those individuals who had at least one registered pound net site as of February 18, 2013. Maryland regulation will stipulate that an individual who wishes to land 6,000 pounds of menhaden from a pound net after the closure of the unlimited fishery must be in possession of a 6,000 pound menhaden bycatch permit. Maryland estimates the number of active fishermen in this group to be approximately approximately 100 individuals fishing for striped bass and an additional 30 to 40 perch netters. There are additional latent harvesters with registered pound net sites, but it is unlikely that these sites would be activated in any number for the 2013 season which is already underway. There can be no growth in the number of individuals engaged in the striped bass pound net fishery because Maryland has, for 2013, frozen the ability to transfer into the fishery by previous regulation (COMAR 08.02.15.04). All temporary transfers that might occur among current holders of striped bass pound net permits must be completed by March 31, 2013. Therefore, there will be no opportunity to increase the number of individuals targeting striped bass using pound nets after that date. Through a regulation effective April 15, 2013 (COMAR 08.02.05.01F), that requires harvesters to declare to the Department when they activate a pound net, Maryland will be able to closely monitor any growth in the number of active pound nets. Additionally, legislation passed during Maryland's 2013 session will require that, beginning on July 1, harvesters will need to pay a fee for each pound net site they activate. This will further discourage new effort in the fishery.

#### *Gears other than Pound Nets*

One of Maryland's foremost priorities in managing the menhaden fishery is to prevent growth in directed effort by mobile commercial gears such as gill nets. Therefore, upon closure of the unlimited fishery Maryland will place all non-pound net gears deployed within Chesapeake Bay on a limited bycatch allowance ranging from 1,000 – 1,500 lbs per vessel per day. The final number will be set by public notice and will be decided upon based on industry input and on information on menhaden harvest rates from incoming 2013 reports. Maryland is considering offering the 6,000 pound bycatch permit to approximately 5 individuals who fish gill nets in the Atlantic Ocean to target dogfish. These individuals

can have significant menhaden bycatch, although most of these encounters occur early in the season prior to June 1.

*Application of the 6,000 lb Bycatch Allowance for Pound Nets - Daily Limits:*

Several small groups of pound net fishermen have been working in cooperation on the same vessel for many years. Several of these vessels are operating in Maryland, and are allowed to do so by law (Natural resources article §4-701, Annotated code of Maryland). These individuals may land their combined striped bass quota from one vessel. Additionally, in April of 2009, Maryland changed the regulatory structure of the striped bass pound net fishery and allowed individual pound netters to accrue up to 5 pound net permits. There are approximately 33 individuals who hold multiple striped bass pound net permits. The striped bass pound net fishery is currently controlled through daily landing limits. Pound netters who hold 1 permit are restricted to 800 pounds of striped bass per day. Those holding multiple permits may land up to 1,600 lbs per day. Commonly, those holding multiple permits are cooperative fishermen harvesting multiple nets from the same vessel. Maryland is concerned that limiting harvesters that are fishing cooperatively from a common vessel and/or working with multiple pound net permits to a single 6,000 pound allowance, may result in the dissolution of these cooperative groups and, in turn, result in more boats on the water, more crew, and therefore diminished economic returns for the pound net fisheries. To avoid this situation, Maryland is proposing that when a vessel has 2 individuals on board, each holding a 6,000 lb menhaden bycatch permit, that the vessel may bring in 12,000 lbs for the day. Maryland regulation will stipulate that both permit holders must be aboard the vessel with their bycatch permits. Likewise, those 33 individuals who hold multiple striped bass pound net permits will be allowed 12,000 pounds as a daily limit because they are harvesting larger volumes of striped bass – often from multiple nets. These individuals must have their striped bass permits on board the vessel. Maryland estimates that the ‘duel bycatch’ provision would apply to approximately 40 vessels. Without this 12,000 pound provision, the same harvest of menhaden would result, but would occur using a greater number of vessel, crew and fuel.

*Safeguards for Allowance of Two 6,000 Pound Bycatch Permits per Vessel:*

Maryland regulation will stipulate that all individuals who possess a 6,000 pound menhaden bycatch permit must report their harvest on a daily or weekly basis. Maryland will use public notice authority to adjust daily bycatch limits downward if it appears that the total 2013 harvest (sum of the harvest occurring before the closure and the harvest occurring under the bycatch allowance) will greatly exceed Maryland’s TAC of 5.12 million pounds. As mentioned earlier, Maryland will likely close the unlimited fishery on June 15 because this is the earliest date the quota was achieved in the outlier year of 2012. In a typical year, harvest prior to June 15 is substantially less than Maryland’s TAC, but Maryland cannot afford the risk of overage if 2013 performs like 2012. Using 2011 as an example of a more typical year, Maryland harvested just under 2.3 million pounds prior to June 15. An additional 2.5 million pounds of harvest under the bycatch allowance after June 15 would have resulted in a total 2011 harvest of 4.8 million pounds. Total harvest in 2011 was 5.9 million pounds. In most years since 2006 a June 15 closure plus an additional harvest of 2.5 million pounds, resulted in a total annual harvest that is nearly equivalent to our assigned TAC.

*The Bycatch Allowance will have the Following Mandatory Provisions:*

- i. Harvesters may not land more than one bycatch allowance in a calendar day. A vessel carrying a single 6,000 lb menhaden bycatch permit may not land more than 6,000 pounds in a calendar day. A vessel with two 6,000 pound menhaden bycatch permits on board may not land more than 12,000 lbs of menhaden per calendar day. An individual holding multiple striped bass pound net permits may not land more than 12,000 lbs of menhaden in a calendar day.

- ii. Multiple trips on a calendar day or the use of multiple carrier vessels for the purpose of exceeding the allowable daily limit will be prohibited.
  - iii. See section 2b.
- i. See section 2(b).
- f) Maryland does not qualify for the Episodic Events Set Aside.
  - g) N/A (applies to Virginia only)

## 2. Monitoring Requirements

- a) Maryland DNR Fisheries Service currently requires trip level harvester reporting on paper forms submitted on a monthly basis. As previously stated this level of reporting cannot be changed prior to June 1, 2013. Maryland will likely close the fishery on June 15<sup>th</sup>, the earliest date the fishery would have closed in previous years, since timely monitoring will not be possible for the first half of 2013.
  - i. Harvesters are, and will be, required to submit reports.
  - ii. Trip level reporting on paper forms contain the following data reporting elements: (1) trip start date (2) vessel identifier (3) individual fisherman identifier (4) dealer identification (5) species landed (6) quantity landed (7) units of measurement (8) disposition (9) county or port landed (10) gear (11) quantity of gear (12) number of sets (13) amount of time gear fished (14) hours at sea (15) number of crew (16) area fished. Once the menhaden fishery has closed, individuals holding a 6,000 pound menhaden bycatch permit will be required to report daily via text message or online and will include the following information: (1) 6,000 pound menhaden bycatch permit number (2) number of nets fished (3) number of days each net fished (4) menhaden landed (5) units of measure. Harvesters will still be required to fill out their paper report forms, so all 16 of those data elements will be recorded.
  - iii. N/A (Purse seining is illegal in Maryland waters)
  - iv. All harvesters must report daily trip level information on a monthly basis. Individuals holding a 6,000 pound menhaden bycatch permit will be required to report daily after the fishery closes - likely on June 15, 2013 – and all daily reports will be reported to ASMFC as bycatch.  
At the end of the year, Maryland will report to ASMFC all menhaden landings that occurred prior to fishery closure – likely on June 15, and all landings that occur as bycatch after the closure.
- b) Maryland DNR Fisheries service conducts an annual onboard pound net survey that has been collecting age and length samples for Atlantic menhaden. This sampling effort will be modified to collect the recommend number of samples of the sample size listed in (ii) below. If needed dealer sampling will be used to supplement onboard sampling.
  - i. N/A (Maryland is not in this region)
  - ii. One 10-fish sample (age and length) per 200 metric tons landed for bait purposes will be taken.
- c) Maryland DNR will collect the mandatory data elements as indicated in section 2. a. ii.
  - i. total pounds (lbs) landed per day
  - ii. number of pound nets fished per day

## 3. *De minimis*

N/A (Maryland does not qualify)

## Appendix 1 – Draft Regulation for Atlantic Menhaden.

Maryland will submit the following as an emergency regulation to be effective June 1, 2013 and will simultaneously propose permanent regulation. This regulation must be considered draft as Maryland's public comment period remains open, but no substantive changes will occur.

08.02.05.07

### **.07 [Repealed.] Menhaden.**

#### *A. Quota.*

*(1) The annual total allowable landings of menhaden for the commercial fishery is established by the Atlantic States Marine Fisheries Commission and shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

*(2) Any annual overages of the quota will be deducted from the subsequent year's quota.*

*B. Seasons. The season for harvesting menhaden shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

#### *C. Commercial Catch Limits.*

*(1) Prior to the State quota in §A of this regulation being met or exceeded, there is no catch limit for menhaden.*

*(2) Upon the State quota being met or exceeded, the catch limit for menhaden shall be established and may be modified through a public notice issued in accordance with §F of this regulation.*

#### *D. Menhaden Bycatch Allowance Landing Permits.*

*(1) An individual may apply for a menhaden bycatch allowance landing permit if, as of February 18, 2013, the individual had a pound net site registered with the Department.*

*(2) An individual may only be issued one menhaden bycatch allowance landing permit.*

*(3) A permittee shall possess the menhaden bycatch allowance landing permit when engaged in permitted activities.*

*(4) Menhaden bycatch allowance landing permits may not be transferred.*

*(5) Menhaden harvested under a menhaden bycatch allowance landing permit must be on the same vessel as the permittee.*

#### *E. Reporting.*

*(1) In addition to the requirements of Natural Resources Article, §4-206, Annotated Code of Maryland, an individual in possession of a menhaden landing permit shall report in the manner as specified by the Department.*

*(2) The Department may suspend the holder of a menhaden landing permit from participation in the menhaden fishery for up to 90 days per violation for failing to comply with §E(1) of this regulation.*

*(3) The Department may deny an application for a menhaden landing permit for failing to comply with §E(1) of this regulation during the previous season.*

*F. General.*

*(1) The Secretary may establish or modify catch limits, quotas, and seasons for menhaden in order to implement the Atlantic States Marine Fisheries Commission Interstate Fishery Management Plan for Menhaden by issuing a public notice on the Fisheries Service website.*

*(2) The Secretary shall make a reasonable effort to disseminate a public notice issued under this section through various other media so that an affected individual has a reasonable opportunity to be informed.*

*(3) A violation of the restrictions set by the Secretary in accordance with §F of this regulation is a violation of this regulation.*

