

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 40 Smelt Clarification

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY:

This proposed rule-making reorganizes and clarifies existing regulations pertaining to fishing for smelt in Zones 1, 2, and 3. Regulations in Zone 2 and Zone 3 are unchanged, but rewritten for greater clarity and consistency. In Zone 1, the regulation proposes to extend the period of time during which smelt fishing may occur prior to the formation of ice from October 1 to December 31 to October 1 to January 31. All other management measures in Zone 1 remain unchanged. A clarification is provided that fishing for smelts in Zone 3 using gill nets or bag nets requires a commercial pelagic and anadromous license.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: January 12, 2024

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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Hearing facilities: If you require accommodations due to disability, please contact 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 MRS 6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

DEPARTMENT OF MARINE RESOURCES

Chapter 40 - Smelt Regulations

40.12 Taking of smelts from the coastal waters of Maine

A. Definitions

1. Smelt means the sea run rainbow smelt, *Osmerus mordax*
4. ~~2.~~ Smelt Management "Zone One (1)" includes all coastal waters East of the New Hampshire border to the West of Owl's Head Lighthouse to the boundary of the State's coastal waters to the New Hampshire border.
2. ~~3.~~ Smelt Management "Zone Two (2)" includes all coastal waters East of the Owl's Head Lighthouse including all coastal waters of the Penobscot River extending to Naskeag Point, including Deer Isle and Stonington.
3. ~~4.~~ Smelt Management "Zone Three (3)" includes all coastal waters East of Naskeag Point to the US/Canada Border.

B. Statewide Restrictions

1. ~~It shall be unlawful to fish for or take smelts from the coastal waters by any means other than a dip net or by hook and line as defined by 12 M.R.S. §6001-13-C and (20).~~
2. ~~It shall be is~~ unlawful to stand in the coastal waters, including the coastal waters of any coastal-river, brook, or stream, while fishing for smelts.

C. Smelt Management Zone Restrictions

1. ~~Zone One (1)-New Hampshire border to Owl's Head Light~~
The following restrictions apply when fishing for, taking, or possessing smelt in Zone One (1):

~~a. It shall be unlawful to fish for, take or possess smelts in Zone One (1), except by hook and line between October 1-December 31, or by hook and line through the ice, while ice is present.~~

~~b. From July 1 to March 14, both days inclusive, it shall be unlawful to fish for, take, or possess more than 4 quarts of smelts per day in Zone One. From March 15 to June 30, both days inclusive, it shall be unlawful to fish for, take, or possess more than 2 quarts of smelts per day in Zone One.~~

a. Method of take: From February 1 to September 30, both days inclusive, it is unlawful to fish for, take or possess smelt by any means other than by hook and line through the ice. From October 1 to January 31, both days inclusive, it is unlawful to fish for or take smelt except by hook and line.

b. Season restrictions: None

c. Limit: From March 15 to September 30, both days inclusive, it is unlawful to fish for, take or possess more than 2 quarts of smelt per day. From October 1 to March 14, both days inclusive, it is unlawful to fish for, take, or possess more than 4 quarts of smelts per day.

2. ~~Zone Two (2)-Owl's Head Light to Naskeag Point~~

The following restrictions apply when fishing for, taking, or possessing smelt in Zone Two (2):

- ~~a. It shall be unlawful to fish for, take, or possess more than 1 quart of smelts per day in Zone Two (2) from March 15 to June 30 and it shall be unlawful to fish for or take smelts on Tuesday and Wednesday in Zone Two (2).~~
- ~~b. When fishing for smelts in Zone Two (2) during the period of July 1 to March 14, it shall be unlawful to fish for or take smelts from the coastal waters of Zone Two (2) by any means other than by hook and line. Beginning December 1, 2015, during the period of July 1 to March 14, it shall be unlawful to fish for, take, or possess more than 4 quarts of smelts per day, both days inclusive.~~
- a. Method of take: From March 15 to June 30, both days inclusive, it is unlawful to fish for, take or possess smelt by any means other than by dip net or by hook and line. From July 1 to March 14, both days inclusive, it is unlawful to fish for, take or possess smelt by any means other than by hook and line.
- b. Season restrictions: From March 15 to June 30, both days inclusive, it is unlawful to fish for, take, or possess smelt on a Tuesday or Wednesday.
- c. Limit: From March 15 to June 30, both days inclusive, it is unlawful to fish for, take, or possess more than 1 quart of smelt per day. From July 1 to March 14, both days inclusive, it is unlawful to fish for, take, or possess more than 4 quarts of smelt per day.

3. ~~Zone Three (3) - Naskeag Point to the Canadian border~~

The following restrictions apply when fishing for, taking, or possessing smelt in Zone Three (3):

- ~~a. It shall be unlawful to fish for, take or possess more than 2 quarts of smelts per day in Zone Three (3) during the period March 15 to June 30, both days inclusive.~~
- ~~e. When fishing for smelts in Zone Three (3) during the period of July 1 to March 14, both days inclusive, there shall be no limit on take.~~
- a. Method of take: It is unlawful to fish for, take or possess smelt by any means other than by dip net or by hook and line.
- b. Season restrictions: None
- c. Limit: From March 15 to June 30, both days inclusive, it is unlawful to fish for, take, or possess more than 2 quarts of smelt per day. From July 1 to March 14, both days inclusive, there is no limit on the take of smelt.

D. Exceptions

1. Any wholesale seafood or retail seafood dealer licensed pursuant to 12 M.R.S. §6851 or §6852; or any grocery, restaurant or fish store may possess more than 2 quarts per day in his/her place of business.
2. Taking of smelts in Washington County
 - a. January 1 through April 1, both days inclusive, without any limit on quantity, the use of gill nets and bag nets in addition to dip net or hook and line are allowed in the following tidal waters by persons licensed pursuant to 12 M.R.S. §6502-A:

East Machias River in the Town of East Machias following the town line;
Pleasant River in the Towns of Columbia Falls, Addison, and Harrington within 44° 31.18'N, 067° 47.60' W (end of Ripley Neck) to 44° 29.92'N, 067° 44.64'W (end of Cape Split)

Narraguagus River in the Towns of Milbridge and Cherryfield within 44° 31.23'N, 067° 51.63'W (Long Point) to 44° 31.61'N, 067° 51.46'W (Fickett Point).

- b. January 1 through April 10, both days inclusive, without any limit on quantity, the use of gill nets and bag nets in addition to dip net or hook and line are allowed in the following tidal waters by persons licensed pursuant to 12 M.R.S. §6502-A:

Town of Steuben;

Indian River in the towns of Addison, Jonesport, and Jonesboro within 44° 29.87'N, 067° 42.74'W (the end point of Moose Neck), and 44° 31.60'N, 067° 38.34'W (end of Hopkins Point);

Harrington River and Mill River in the towns of Harrington and Milbridge within 44° 32.51'N, 067° 49.09'W (end of Ray Point) and 44° 32.67'N, 067° 48.23'W (end of Town Landing Road);

Chandler River in the town of Jonesboro within 44° 37.85'N, 067° 32.61'W (end of Look Point) and 44° 38.40'N, 067° 32.62'W (end of Deep Hole Point).

- c. Outside these dates and coordinates the restrictions in the rest of Chapter 40.12(A) apply.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: Chapter 40 Smelt Clarification

STATUTORY AUTHORITY: 12 MRS 6171

DATE AND PLACE OF PUBLIC HEARING(S): None Scheduled

COMMENT DEADLINE: January 12, 2024

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)] This rule is proposed by request of smelt fishermen who wish to be able to continue to fish for smelt after December 31 in those years where ice has not yet formed to allow fishing through the ice.

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)] This rule would modify the fishing that is allowed for smelt in Zone 1 by allowing fishermen to continue to fish after December 31, until January 31, in those years where ice has not yet formed to allow fishing through the ice. Currently, fishing for smelt stops on December 31 and cannot resume until ice is formed and fishing through the ice begins.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]: In developing this rule, the Department considered input from smelt fishermen, staff in the Bureau of Sea Run Fisheries and Habitat, and members of Maine Marine Patrol.

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)]