

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 40 Smelt Regulations

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 is a reorganization of daily limits in the smelt regulation, for improved clarity regarding daily limits in specific zones during different times of year. The proposed rule does not change any existing limits. The proposed rule also removes a repealed statutory reference.

Date, time and location of PUBLIC HEARING (*if any*): No public hearing.

COMMENT DEADLINE: February 28, 2020

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

NAME: Amanda Ellis

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Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 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/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* 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.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT _____ DATE: _____
(authorized signature)

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

DEPARTMENT OF MARINE RESOURCES

Chapter 40 - Smelt Regulations

40.12 Taking of smelts from the coastal waters of Maine

A. Definitions

1. Smelt Management "Zone One (1)" includes all coastal waters West of Owl's Head Lighthouse to the boundary of the State's coastal waters to the New Hampshire border.
2. 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. 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. During the period March 15 to June 30, both days inclusive, it shall be illegal to take or possess more than 2 quarts per day of smelts from the coastal waters of the State unless otherwise restricted in Chapter 40.12(C) and (D).~~
- ~~3. 2. It shall be unlawful to stand in the water 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

- 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. It shall be unlawful to fish for, take, or possess more than 4 quarts of smelts per day in Zone One.~~
- C. 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.

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

- 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.

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

- 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.
- b. 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.

D. Exceptions

1. Any wholesale seafood or retail seafood dealer licensed pursuant to 12 M.R.S. §6851 or §6852; ~~bait dealer licensed pursuant to 12 M.R.S. §7172~~; or 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:
 - 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, 67° 47.60' W (end of Ripley Neck) to 44° 29.92'N, 67° 44.64'W (end of Cape Split)
 - Narraguagus River in the Towns of Milbridge and Cherryfield within 44° 31.23'N, 67° 51.63'W (Long Point) to 44° 31.61'N, 67° 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:
 - Town of Steuben;
 - Indian River in the towns of Addison, Jonesport, and Jonesboro within 44° 29.87'N, 67° 42.74'W (the end point of Moose Neck), and 44° 31.60'N, 67° 38.34'W (end of Hopkins Point);
 - Harrington River and Mill River in the towns of Harrington and Milbridge within 44° 32.51'N, 67° 49.09'W (end of Ray Point) and 44° 32.67'N, 67° 48.23'W (end of Town Landing Road);
 - Chandler River in the town of Jonesboro within 44° 37.85'N, 67° 32.61'W (end of Look Point) and 44° 38.40'N, 67° 32.62'W (end of Deep Hole Point).

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:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 40 Smelt Regulations

STATUTORY AUTHORITY: 12 MRS 6171

DATE AND PLACE OF PUBLIC HEARING(S): No public hearing scheduled.

COMMENT DEADLINE: February 28, 2020

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

The principal reason for proposing this rule is to provide greater clarity regarding the daily limits for smelts at different times of year in Zone 2.

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)]

Existing daily limitations will continue as in past seasons, but fishermen will be better able to understand what the limit is.

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]: Input from Maine Marine Patrol regarding sources of confusion in past seasons.

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)]

Note: If necessary, additional pages may be used.