

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 40.12 Smelt Regulations

ADOPTED RULE NUMBER:

(LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:

This rulemaking amends the smelt regulations for Zone One (1), which is the area from the New Hampshire border to Owl's Head Light. In this Zone, the taking of smelt is allowed only by hook and line through the ice, as long as ice is present. Prior to this change in regulation, fishing was prohibited after March 15 until June 30.

EFFECTIVE DATE:

(TO BE FILLED IN BY SECRETARY OF STATE)

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DEPARTMENT OF MARINE RESOURCES

Chapter 40 - Smelt Regulations

40.12 Taking of smelts from the coastal waters of Maine

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) ~~from March 15 to June 30~~, except by hook and line through the ice, while ice is present.
- b. ~~When fishing for smelts in Zone One (1) 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 One (1) by any means other than by hook and line. Beginning December 1, 2015, during the period of July 1 to March 14, it~~ It shall be unlawful to fish for, take, or possess more than 4 quarts of smelts per day, both days inclusive in Zone One.

Basis Statement

This rulemaking was initiated at the request of a smelt camp operator, who wanted the smelt camps to be able to remain on the ice beyond March 15, in those years where ice is still present after that date. Under the existing rule, no fishing was allowed after March 15. The Department felt that this was a reasonable request, and that the impact on the smelt population of continued fishing through the ice at that time of year would not be significant. As a result of the amendment to the rule, in Zone 1 (New Hampshire border to Owl's Head Light) smelt may only be taken by hook and line through the ice and there are no limitations on the season.

Summary of Comments

Attendees at Public Hearing

Cindy Worthing, Worthing's Smelt Camps, Randolph
John Sheldon

Comments in favor of the proposed rule:

C. Worthing spoke on behalf of Worthing's Smelt Camps in favor of the proposed rule as it is written. They still would like to see the 4 quart limit eliminated. They called the other smelt camp operators to encourage them to attend, but they were not against the 4-quart limit. She asked if the rule was passed, if it would go into effect for this season?

The Sportsman's Alliance of Maine provided the following written comment:

This communication is to confirm that the Sportsman's Alliance of Maine supports the below proposed rule change that eliminates the mandatory rule in which smelt shacks must be removed from the ice.

We think in future years this flexibility for commercial smelt operations to determine when to remove their shacks from the ice is a much better policy than a specific date. Our weather patterns vary dramatically from year to year and this change in year's when the ice stays longer will allow these small businesses a little bit longer to fish and serve my membership and the smelt fishermen from around the state.

Sincerely,
David Trahan, Executive Director

Comments in opposition to the proposed rule:

Marc Paradis provided the following written comment:

how long is this ruling going to last? Zone 1 has been shut down after march 14 th for several years now,yet you allow it down east.the rivers are full of smelt,just ask the smelt shack owners.its getting to be worthless to fish here in the future with clueless management,same goes with the shrimp,and cod regs.very disappointed in you people.sincerly marc paradis

Comments neither for nor against the proposed rule:

J. Sheldon asked how long the 4-quart limit will be in effect, and whether it will change in the future? He felt fishermen were doing better this year, and that smelt populations go through cycles. He also stated that the 4 quarts is not unreasonable in terms of what an individual would need to eat, and asked whether you can sell smelt?

Department's responses to comments:

The Department will continue to evaluate the daily limit in Zone 1. The staff in the Division of Sea Run Fisheries and Habitat is currently doing creel census work, visiting all the smelt camps over the winter. They are seeing an increase in the catch this year, as compared to last year. They are also seeing bigger smelt this year.

Part of the reason for concern about the smelt population in Maine is that the runs to the west of us are almost nonexistent. There are no fisheries left in Massachusetts and New Hampshire. The population of smelt in and around Casco Bay is severely depressed. The fishery to the east remains healthier. The Department is trying to take management actions to preserve the populations that remain, while still allowing some level of activity.

In order to sell smelt, you need a Pelagic and Anadromous license, and you are still subject to the 4 quart limit in Zone 1.

The DMR Advisory Council is anticipated to meet on March 7. If they approve the proposed rule, it would be in effect prior to the existing March 15 deadline for removing the smelt camps.

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 40.12

STATUTORY AUTHORITY: §12 MRS §6171

DATE AND PLACE OF PUBLIC HEARING:

February 14, 2017 5:15 PM DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: February 24, 2017

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

This proposed rulemaking would amend the smelt regulations for Zone One (1), which is the area from the New Hampshire border to Owl's Head Light. In this Zone, it would permit the taking of smelting only by hook and line through the ice. Currently, fishing is prohibited after March 15, whether there is ice or not. This proposed change would allow fishing for smelt as long as the ice is present. The existing four quart limit would remain in place.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

The rule will allow individuals to continue to fish for smelt beyond March 15, as long as they are fishing through the ice with hook and line.

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 operators of smelt camps, who want their businesses to continue during those winters when there is still ice beyond March 15.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

No fiscal impact is anticipated.

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)]