

DEPARTMENT OF MARINE RESOURCES

Chapter 40 - Smelt Regulations

40.12 Taking of smelts from the coastal waters of Maine

A. 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(20).
2. During the period March 15 to June 30, both days inclusive, it shall be illegal to take more than 2 quarts per day of smelts from the coastal waters of the State. Possession of over 2 quarts per day of smelts during this period on any coastal river, brook, or stream shall be prima facie evidence that the smelts were taken in violation of this regulation.
3. It shall be unlawful to stand in the water of any coastal river, brook, or stream while fishing for smelts.

B. 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 Chapter 40.12(A) apply.

Chapter 55 - Gear Restrictions

55.20 Use of beam trawls in Sedgwick Harbor, Hancock County

The use of beam trawls or any similar device is prohibited in Sedgwick Harbor, known as Benjamin's River. ~~This section shall not be construed as prohibiting the taking of smelts in the usual manner by the use of purse seines during the time when the use of seines for this purpose is lawful in other waters of the State.~~

55.60 Fishing in Narraguagus River, Washington County

- B. This section does not apply to the taking of alewives under section 108-A, nor to the taking of alewives under any other law. This section shall not apply to the taking of smelts under 12 M.R.S.A. §4101. **NOTE: 4101 was repealed**

55.97 Fishing in the Kennebec River above the Gardiner/Randolph Bridge

It shall be unlawful to use any type of net or seine in the tidal waters of the Kennebec River above the Gardiner/Randolph Bridge. This regulation shall not apply to the taking of smelts by hand dip net or hook and line in

~~accordance with DMR regulations Chapter 40, to the taking of bait fish by fishermen who possess a valid license and special permit to do so from the Commissioner of Marine Resources.~~

Chapter 40 - Smelt Regulations – continued

~~40.01— Taking of smelts at Damariscotta Mills~~

~~It shall be unlawful to take salt water smelts from the waters above the so-called Fish Stream Bridge at Damariscotta Mills during the months of March, April and May of each year.—~~

~~40.02— Taking of smelts in Eastern River~~

~~The Eastern River in the Town of Dresden is closed to all smelt fishing, except by hook and line.—~~

~~40.03— Taking of smelts in Cathance River~~

~~No smelts shall be taken or fished for in any way other than by hook and line, except in nets of 2 inch mesh or more, in the tidal waters of Cathance River, in the Village of Bowdoinham, Sagadahoc County.—~~

~~40.04— Taking of smelts in Sasanoa River~~

~~No smelts shall be taken or fished for in the tidal waters of the Sasanoa River, except by hook and line, starting at the western point of Sasanoa Bluff on the west and continuing easterly to the eastern point of Hell Gates on the east.—~~

~~40.05— Taking of smelts in Abagadasset River~~

~~The Abagadasset River, in the Town of Bowdoinham, is closed to all smelt fishing except by hook and line.—~~

~~40.06— Taking of smelts in the Passagassawaukeag River~~

~~It shall be lawful to fish for salt water smelts commercially in the Passagassawaukeag River, Waldo County, from the head of the tide to 2,000 feet below the Memorial Bridge.—~~

~~40.07— Taking of smelts in East Machias River~~

~~It shall be lawful for any person to take smelts, without any limit on the catch, by the use of floating traps, gill nets or bag nets in the tidewaters of the East Machias River in East Machias from October 1st to April 30th each year, with the right to sell smelts on the open market.—~~

~~40.08— Taking of smelts in Addison, Columbia Falls, Harrington, Cherryfield, Milbridge and Steuben~~

~~A.— Gear restrictions~~

- ~~1.— Notwithstanding Chapter 40.12 (A), smelts may be taken without regard to limits on quantity from the tidal waters of the Towns of Addison, Columbia Falls, Cherryfield, Harrington, Milbridge and Steuben and from that part of Chandler River located in the Town of Jonesboro, all in the County of Washington, in the following manner: By hook and line, gill nets, hand dip nets, brush weirs and bag nets, from March 15th to April 10th of each year.—~~

~~B.— Sale of smelts~~

~~A holder of a Commercial Fishing License may sell and offer for sale within this State and to transport outside the State all smelts legally caught within said tidal waters.—~~

~~40.09— Taking of smelts in the Penobscot River~~

~~A.— Gear restriction and sale of smelts~~

~~Between the 1st day of October and the 1st day of May, it shall be lawful to commercially fish for and take smelts without regard to limits on quantity from the tidal waters of the Penobscot River, North Branch of the Marsh River downstream of the footbridge in Frankfort Village, South Branch of the Marsh River downstream of the Rte #174 bridge, on Carley Brook, downstream of the Bangor and Aroostook Railroad Bridge on Colson Stream in Prospect, and downstream of a yellow painted post located approximately 300 yards below the head of tide dam on Souadabscook Stream in Hampden. From May 1st to June 15th, daily limits and harvest methods shall be in accordance with Regulation 40.12. It shall be lawful to take smelts commercially without regard to limits on quantity from all other tributaries of the Penobscot River from the 1st day of October to the 15th day of March. From March 15th to June 15th, daily limits and harvest methods shall be in accordance with Regulation 40.12.~~

~~B.— Fishing above Joshua Chamberlain Bridge~~

~~It shall be unlawful to take smelts from the tidal waters of the Penobscot River and its tributaries above the Joshua Chamberlain Bridge except by hook and line or hand dip net. No more than two (2) quarts of smelts per person per day may be taken or possessed from these waters.—~~

~~40.10— Taking of smelts in the Town of Surry~~

~~A.— Closed season~~

~~It is unlawful to take or to fish for smelts in any of the tidal waters in the Town of Surry, Hancock County, except by hook and line. During the periods each year from April 1st to June 15th only 4 quarts of smelts may be taken during any one day.~~

~~B. Penalty~~

~~Whoever violates any provision of this regulation shall be subject to a fine of not less than \$25.00 nor more than \$500.00 or by imprisonment for not more than 90 days, or by both.~~

~~40.11 Taking of smelts in Bagaduce River~~

~~A. Closed Season~~

~~1. For conservation purposes there will be a closed season from March 15 to June 15 of each year to the taking of sea-run smelts in all brooks and tributaries of the Bagaduce River, upstream of the North Brooksville-Sedgwick Bridge.~~

~~2. Exception: Camp Stream in Sedgwick shall be open to the taking of smelts in accordance with Regulation 40.12 (Taking of Smelts from the Coastal Waters of Maine).~~

~~B. Penalty~~

~~Whoever violates any provision of this regulation shall be subject to a fine of not less than \$25.00 nor more than \$500.00 or by imprisonment for not more than 90 days, or by both.~~

~~40.12 Taking of smelts from the coastal waters of Maine~~

~~A. Method and amount. From March 15th to June 15th, both days inclusive, it shall be unlawful to fish for or take smelts from the coastal waters by any means other than a hand dip net operated by one man or by angling with a hook and line or to take or possess more than 2 quarts of smelts in one day. During the period March 15th to June 15th, both days inclusive, possession of more than 2 quarts of smelts on any coastal stream, brook, or river not exempted by further regulation shall be prima facie evidence that the smelts were taken in violation of this regulation.~~

~~B. Exceptions~~

~~1. Any licensed wholesale seafood or retail seafood dealer licensed under Sections 6851 or 6852; bait dealer licensed under Section 7172; or grocery, restaurant or fish store may possess more than 2 quarts in his place of business.~~

~~2. The holder of a current Commercial Fishing License may take smelts from areas, during seasons, and by methods which are authorized by further regulation of the commissioner. The failure to exhibit the Commercial Fishing License immediately upon request of a Marine Patrol Officer or Game Warden shall be prima facie evidence that the person possessing the smelts is not excepted under this paragraph.~~

~~40.13 Use of purse, drag or stop seines in Georges River, Knox County~~

~~SEE 55.05 (D).~~

Basis Statement

Chapter 40 Smelt Regulations and Chapter 55 Gear Restrictions, sections 20, 60 and 97

These amendments to the smelt regulations provide additional conservation measures for smelts which, since 2004, have been listed as a species of concern from Labrador to New Jersey on the east coast by the National Marine Fisheries Service (NMFS). Factors contributing to the overall decline of smelts include spawning habitat degradation, dams and blocked culverts, fishing and acid precipitation. Surveys by the Massachusetts Division of Marine Fisheries have shown a population decline during the past 15-20 years in Massachusetts Bay.

Department data dating back through the 1970's indicates the decline is advancing northerly through Maine and NH. For example, many rivers and streams in Southern Maine that supported spawning populations in the early 1900's do not anymore, including the Kennebunk River, the Saco River, and Back Cove in Portland. In the Midcoast and Downeast, small streams that used to support small annual runs may only support runs every few years now. Some of these smaller streams do not support any runs today. Compared to the 1970's there are only a few streams supporting smelt runs left on Mount Desert Island.

The various local area restrictions have been repealed and replaced with one set of coastwide rules; the spawning season is extended by 2 weeks, from June 15 to June 30, because the runs do not end on June 15 based on recent survey data; and the year round method of take would be limited to hand dip net and hook and line with no bag limit outside of the spawning season dates. A provision has been added that prohibits harvesters from walking in tidal streams while fishing to protect the newly spawned smelt eggs, similar to the elver rules in 12 M.R.S. §6575(B)(5).

The rules do not change the spawning season limit, which remain at 2 quarts per day. The allowance to commercially sell smelts taken through the ice by hook and line is unchanged pursuant to 12 M.R.S. §6501(3)(C). In the Washington County exception areas the ability to commercially sell remains unchanged.

Exceptions to the spawning season dates and limits on the method of take would apply to specific areas in Washington County, which have traditional fisheries and reasonably healthy stocks. The gear brush weirs and box traps have been removed while continuing to allow the use of gill nets and bag nets. The dates on these traditional runs had allowed fishing until April 30, which was proposed to be shortened to April 1, which in Washington County is due to concern about Atlantic salmon smolt by catch. In response to comments the DMR Bureau of Sea Run Fisheries and Habitat (BSRFH) reviewed the April 1 date based on their knowledge and data of impact to both Atlantic salmon smolt and smelt spawning runs, and the spawning season end dates have been adjusted in the regulations based on the comments from the DMR-BSRFH:

"The April 1 closing date for smelt gillnetting is a precaution approach to prevent the incidental harvest of Atlantic salmon smolt from the Federally Endangered Gulf of Maine Distinct Population Segment. The geographic range of the Gulf of Maine Distinct Population Segment extends from the Androscoggin River to the Dennys River. Of the rivers included in this regulation, juvenile salmon reared at Craig Brook National Fish Hatchery are stocked into the East Machias River, Pleasant River, and Narraguagus River, where smolt emigration occurs in the first week of April. DMR-BSRFH believes that for the East Machias, Pleasant, and Narraguagus River estuaries, the protective closure date of April 1 is warranted. For DMR to allow the fishery to go beyond the proposed April 1st end date would be permitting the Take of Atlantic salmon and would be a direct violation of the Endangered Species Act."

"Smolts exiting rivers move thru the estuary traveling with the tides on the surface. Although smolts travel near shore, routes tend to be directly out to the Gulf of Maine. Thus, gill nets set for smelt in the tidal area of rivers not producing Atlantic salmon are unlikely to capture smolts. DMR-BSRFH believes, an extension of the smelt fishery to April 10 is reasonable in the estuary of rivers not likely to produce Atlantic salmon smolts. These include rivers that 1) are not stocked with juveniles, 2) are not accessible to adult returns, and/or 3) do not contain juvenile Atlantic salmon habitat. The extension of the smelt fishery to April 10 is suggested for: tidal waters in the Town of Steuben; from the portion of the Indian River in the towns of Addison and Jonesboro, from the portion of the Harrington River in the Town of Harrington, and from that part of Chandler River located in the Town of Jonesboro."

Summary of Comments

Chapter 40 Smelt Regulations and
Chapter 55 Gear Restrictions, sections 20, 60 and 97

Public hearings were held in Machias and Wiscasset on October 20 and 22, 2009 respectively. A summary of the comments and questions pertaining to the proposed rules with the Department's responses are listed followed by individuals written or hearing comments.

Hearing Attendees - Machias:

Dwayne Shaw, Columbia Falls, biologist
Gerard Zegers, Machias, Professor of Biology
Joseph Robbins, East Machias
Chris Bartlett, Eastport
John Sawyer, Columbia Falls, Educator and license holder

Hearing Attendees - Wiscasset:

Lewis N. Flagg, Winthrop
DMR staff (both hearings): Claire Enterline, Seth Barker, L. Churchill

Written comments were received from:

Lewis Flagg, Winthrop
Pat Keliher, Dir. Bureau of Sea Run Fisheries and Habitat, DMR
John Whalen, Canaan

Summarized comments and responses:

- **Chapter 40.12(A)(3): Oppose the prohibition on harvesters walking in tidal streams** while fishing to protect the newly spawned smelt eggs. Reports indicate that 99% of smelt eggs die from: excessive accumulation of eggs (suffocation), infection and spread of egg fungus, and heavy siltation that occurs during the incubation phase. Foot traffic is not and should not be a scapegoat for natural phenomena.

Response:

While excessive accumulation leading to suffocation and fungal growth may be the leading causes of mortality where there are large egg mats in highly productive runs, the majority of streams in the state now support only small runs where egg mats are only a single layer and egg counts are less than 12,000 per square foot. In streams where spawning success is most threatened and where the number of returning adult smelts is far fewer compared to thirty years ago, suffocation and fungal growth are not observed. Mortality due to siltation is a problem that can affect egg mats of any size, but has not been observed to be a problem in Maine's streams where there is generally good water clarity. Siltation leading to egg mortality is more of concern in a watershed where there is active construction or land movement. In those cases, DMR recommends best management practices to minimize any erosion leading to high turbidity. While suffocation, fungal growth, and siltation do pose serious threats to egg viability, they are issues which require long term management on a case by case basis. The DMR is currently performing thorough sampling studies in multiple spawning streams over a five year period to identify streams where these factors may be an issue. The recommendations from these studies will be presented in a conservation plan submitted to state governments, municipalities, environmental organizations, and interested persons in the Gulf of Maine.

The purpose of this change in regulation is to protect the egg mats in those streams where declining numbers of returning adults has been documented. This includes the majority of the streams on the Maine coast. In these streams, all precautions must be taken to protect the viability of the eggs, and the regulation must be written in a way that it can be enforced uniformly across the state. This regulation does not purport to be the solution to reducing all egg mortality; it is only one measure that can be taken that will have a significant affect in those streams where there is reduced egg density.

Chapter 40.12(B)(2) Concerns specific to Washington County dates and locations:

- In **Washington County** the open water fishery, which occurs after the ice goes out, usually the last week or two of the season it is very important for persons here who primarily do not fish through the ice. Given the traditional fishing here and reasonably healthy runs could the Department could **consider opening another water body and extending the season?** Rivers might include the Chandler River, Harrington River, Mill River, Indian River or Middle River or somewhere nearby where there aren't known smolt migrations and if the populations are sufficient.
- The **April 1 date is too early** because in reality you wouldn't be able to fish in the open water because there are **so many ice cakes** that float around that it would wipe your nets out completely.
- I remember seeing 35 nets out in the [Pleasant River] basin and now the most out there in an evening is 5. So the **pressure has decreased a great deal**. My biggest concern is taking away the opportunity for those people to fish in the open water because **most of them don't fish under the ice**.

Response:

The dates on these traditional runs had allowed fishing until April 30 in the East Machias River and April 10 in the coastal waters of Addison, Columbia Falls, Cherryfield, Harrington, Milbridge, and Steuben, which was proposed to be shortened to April 1, which in Washington County is due to concern about Atlantic salmon smolt bycatch. In response to these comments the DMR Bureau of Sea Run Fisheries and Habitat (BSRFH) reviewed the April 1 date based on their knowledge and data of impact to both Atlantic salmon smolt and smelt spawning runs, and the spawning season end dates have been adjusted in the regulations based on the comments from the DMR-BSRFH. See comments by Pat Keliher, DMR BSRFH and the basis statement.

- Will residents of **Columbia Falls that fish commercially be able to continue fishing** as they have since 1776? [pertaining to Chapter 40.12(B)(2)]

Response:

As previously allowed during the spawning season they will be able to fish without any limit on take; gear allowed includes gill nets, bag nets, hand dip nets and hook and line, however, they will no longer be allowed to fish using brush weirs (see previous Chapter 40.08(A)(1)); and the spawning season dates in former Chapter 40.08(A)(1) will be changed from March 15 - April 10 to January 1 - April 1 with the April 1 date based compliance with the Endangered Species Act regarding Atlantic salmon smolt. (See comments by Pat Keliher, DMR BSRFH and the basis statement.)

The allowance to commercially sell smelts taken through the ice by hook and line is also unchanged pursuant to 12 M.R.S. §6501(3)(C). In the Washington County exception areas the ability to commercially sell remains unchanged.

Individual summarized comments:

Dwayne Shaw, Columbia Falls, Downeast Salmon Federation

We do smelt conservation work and other fisheries conservation work. We support this change in law [i.e., regulation] and are encouraged that the DMR listened to some of our observations and concerns and those are reflected in this new change. I think and also that we just want to reiterate comments we've made in the past in email and other correspondence about future conservation work that we're very much looking forward to participating as a partner in smelt conservation in the future and that I think the Downeast regions can serve as a model for really the rest of the range of the species as a success story of a fishery that has been maintained over a couple of 100 years. I think particularly in terms of what we're capable of doing I think is to work closely with the fishermen to look at the catch rates and the timing of the runs and these kinds of things. We can help to document that and also with outreach into the community with children; particularly work with school groups a lot and we're creating a smelt heritage fisheries camp. I guess is what it is; a traditional fishing camp on the Pleasant River. It is on DMR property. The property that we lease from DMR can be put to double duty and we're doing a lot of salmon work but we can do some things particularly on smelts in the future so we're looking forward to that.

Joseph Robbins, East Machias

The way I understand this, I'm going to be asking a couple of questions. The people in Columbia Falls that fish now commercially will be able to continue what they are doing? [C.Enterline: (As proposed) They will be able to fish with bag

nets and gill nets up to April 1 without any limit on take.] I support that as long as the fishermen in Columbia Falls can continue to fish the way they've been doing it since 1776. Thank-you.

John Sawyer, Columbia Falls

I'm a public educator but have been hanging out at the smelt camps on the Pleasant River for about 30 plus years now. I've had the pleasure of story telling and kind of passing on the tradition. I'm concerned with the; I support smelt conservation, but I'm opposed to the April 15 as opposed to April 1 because in reality you wouldn't be able to fish in the open water because there are so many ice cakes that float around that it would wipe your nets out completely in a short period of time. Watching it over the years I would say that at the beginning of when we can get in there and it varies a great deal depending on the amount of ice there are no [Atlantic salmon] smolts taken early in the fishing of open water. I would say that the last 4-5 days you see 1 or 2 in your nets out of the entirety of maybe 4-5 nights in a row you might see one or two smolts that showed up. That's just in recent years. There were very few prior to the last couple of years of smolts. I don't remember seeing any at all but I haven't been down there as much as some of the diehards. But there are about 4-5 people that that is the one thing they look forward to, they are elderly, and I'm with Joe, I would hate to see, and I'm one of them now, hopefully not real elderly but I'm gaining all the time, I'd hate to see us lose that opportunity and I'm, most year's you wouldn't have the opportunity to fish. If you did it would be 1-2 nights. The smelt look very healthy to me in that area, as healthy as they ever have in the Pleasant River, maybe more so. I can go back a lot of years. I can remember seeing 35 nets out in the basin and now the most out there in an evening is 5. So the pressure has decreased a great deal. But that is my biggest concern is taking away the opportunity for those people to fish in the open water because most of them don't fish under the ice. There's only one gentleman who fishes under the ice now.

Chris Bartlett, Eastport, Maine Sea Grant, Univ. of Maine Cooperative Extension

I'd like to state that I support the regulations as proposed. I've had the pleasure of assisting Claire and others from the Department with monitoring smelt in the Downeast region and also getting to meet and talk with land owners and recreational fishers for smelt over the past couple of years. I'd agree with you that the effort from the Eastport, Perry, Pembroke area is much less and I'm wondering if that is throughout the Downeast region and state wide. But those are that are still doing it are very passionate about it and I really enjoyed meeting them at stream side and talking to them about what we are doing and in general I've received favorable comments about what we are doing.

Dwayne Shaw, continued

I think John is correct, and this is something we've discussed within the Salmon Federation, is that the open water fishery, which is after the ice goes out, and usually the last week or week and a half of the season; two weeks maybe, it is very important. It has been there for many, many years; and it may be that the Department could consider opening another water body extending the season. [Such as] on the Chandler River, Harrington River, Mill River, somewhere nearby where there aren't known smolt migrations and if the populations are sufficient there and those drainages then maybe people could shift over and fish those nearby water bodies. Indian River would be another possibility. There would be no, very, very low incidence of smolt take in those cases. So I think that the populations could sustain that and I don't see why they couldn't though there is very little data really to go in any direction other than observations that have been made and so on. But it would be worth looking at...and with further research I think I think it could be justified to do that. [L. Churchill: Which rivers again?] Indian River, Chandler River, Harrington, and Mill River are 4 that come to mind. Also, possibly Middle River once we get the tide gates out of Middle River. I think habitat restoration will play a big part in the future of these fish and everything should be done that can be done to protect that habitat and to restore what's out there because we could be producing a lot more smelts than we are currently with a little more effort and I would have to also say more enforcement of current laws that have bearing on how those populations are going to do in the future.

Written comments:

John Whalen, Canaan

[Regarding] "A provision would be added that prohibits harvesters from walking in tidal streams while fishing to protect the newly spawned smelt eggs,..."

My remarks to this portion of the proposed rule is that it is based on assumptions that harvesters are destroying the laid eggs. If one reviews papers about smelt egg mortality, you would find the upwards to 99% of smelt eggs die from: excessive accumulation of eggs (suffocation) (#1 cause of mortality), infection and spread of saprolegnia (egg fungus) (#2 cause of mortality), and heavy siltation that occur during the incubation phase (#3 cause of mortality). *The impact of harvesters walking or standing in the spawning brooks is miniscule.* Efforts to increase larval production would be better served if spawning areas could be increased in size to reduce egg concentrations (maximum production is believed to be obtained when egg counts are less than 12,000 per square foot) and siltation control of spawning brook drainage areas. Heavy egg blankets results in massive suffocation and the dead eggs fuel the outbreak of fungus. I have viewed several brooks post-spawn and noted the eggs masses that were measured in centimeters of thickness and engulfed in layers of fungus growth. *Foot traffic is not and should not be a scapegoat for natural phenomena.*

Lewis Flagg, Winthrop (retired, DMR Anadromous fish division director)

I support the proposed no wading in streams and limit to hook and line only. The smelt stocks have declined, which is similar to the overall decline in other similar anadromous species decline. Overall the propose rules are good.

Regarding the Washington County closures, which occur later in the season, we used to allow commercial fishing until May 15th then cut it back to April 30th because of bycatch concerns for emigrating Atlantic salmon smolts. This probably bears scrutiny now due to the heightened concern for the Atlantic salmon resource.

On the Penobscot River issues: hook and line and hand dip net are allowed year round; then during spawning season there is a 2 quart limit, support. The Penobscot River does not have good ice formation so they do not have the smelt camps similar to the Kennebec River, and therefore, outside the spawning ground fishery, the only access to smelt harvest is by gill net or a bag net fishery. In the 1980's they harvested 50,000 lb, roughly 10 fish per pound or 500,000 fish. Based on the tag returns the exploitation rate was only 12%. We have data to show that the exploitation rate was not high. In the Kennebec the tag recaptures showed only a ~4% exploitation rate, during years when 250,000 to ~1 million fish were harvested. So having the hook and line fishery there the exploitation rates were not really high. The hook and line fishery is probably not much of a threat to conservation of the resource, given that the exploitation rate is very low compared to the gill net or bag net fisheries.

Patrick Keliher, Director, DMR Bureau of Sea Run Fisheries and Habitat

In an effort to clarify concerns over the bycatch of smolts in the commercial smelt fishery in our Downeast rivers and estuaries the Bureau of Sea Run Fisheries and Habitat submits the following information and suggestions:

The April 1 closing date for smelt gillnetting is a precaution approach to prevent the incidental harvest of Atlantic salmon smolt from the Federally Endangered Gulf of Maine Distinct Population Segment. The geographic range of the Gulf of Maine Distinct Population Segment extends from the Androscoggin River to the Dennys River. Of the rivers included in this rule, juvenile salmon reared at Craig Brook National Fish Hatchery are stocked into the East Machias River, Pleasant River, and Narraguagus River, with smolt emigration occurs in the first week of April. DMR-BSRFH believes that for the East Machias, Pleasant, and Narraguagus River estuaries, the protective closure date of April 1 is warranted. For DMR to allow the fishery to go beyond the proposed April 1st end date would be permitting the Take of Atlantic salmon and would be a direct violation of the Endangered Species Act.

Smolts exiting rivers move thru the estuary traveling with the tides on the surface. Although smolts travel near shore, routes tend to be directly out to the Gulf of Maine. Thus, gill nets set for smelt in the tidal area of rivers not producing Atlantic salmon are unlikely to capture smolts. DMR-BSRFH believes, an extension of the smelt fishery to April 10 is reasonable in the estuary of rivers not likely to produce Atlantic salmon smolts. These include rivers that 1) are not stocked with juveniles, 2) are not accessible to adult returns, and/or 3) do not contain juvenile Atlantic salmon habitat. The extension of the smelt fishery to April 10 is suggested for: tidal waters in the Town of Steuben; from the portion of the Indian River in the towns of Addison and Jonesboro, from the portion of the Harrington River in the Town of Harrington, and from that part of Chandler River located in the Town of Jonesboro.