

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

H.P. 1025 - L.D. 1502

An Act To Provide Flexibility in the Administration of the Elver Fishery

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation changes the length of the elver fishing season and eliminates certain limitations on elver fishing; and

Whereas, to provide clarity to the Department of Marine Resources and holders of elver fishing licenses prior to the start of the elver fishing season, which will begin in March, this legislation needs to take effect as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §6171, sub-§3, ¶¶B and C, as enacted by PL 2015, c. 80, §1, are amended to read:

B. An unusually large concentration of fishermen might deplete the supply of any marine organism; ~~or~~

C. Immediate action is necessary to comply with changes to federal or interstate fisheries management plans; or

Sec. 2. 12 MRSA §6171, sub-§3, ¶D is enacted to read:

D. Immediate action is necessary pursuant to section 6302-B, subsection 4 to prohibit elver fishing.

Sec. 3. 12 MRSA §6302-A, sub-§3, ¶E, as repealed and replaced by PL 2013, c. 588, Pt. E, §5, is amended to read:

E. The Penobscot Nation may not issue to members of the nation commercial licenses for the taking of elvers in any calendar year that exceed the following limits:

- (1) Eight licenses that allow the taking of elvers with 2 pieces of gear, ~~consisting of an elver fyke net and a dip net, or 2 fyke nets~~; and
- (2) Forty licenses that allow the taking of elvers with one piece of gear ~~only, consisting of either an elver fyke net or a dip net~~.

The commissioner shall by rule allow the Penobscot Nation to issue additional commercial licenses to members of the nation for the taking of elvers if the commissioner and the Penobscot Nation determine that elver resources are sufficient to permit the issuance of new licenses;

Sec. 4. 12 MRSA §6302-A, sub-§3, ¶E-1, as repealed and replaced by PL 2013, c. 485, §2, is amended to read:

E-1. The Passamaquoddy Tribe may issue to members of the tribe commercial licenses for the taking of elvers ~~subject to the following limitations:~~ with one piece of gear:

- ~~(1) A license that allows the taking of elvers with an elver fyke net may be issued to only 6 members of the tribe in any calendar year; and~~
- ~~(2) A license that allows the taking of elvers with an elver dip net may be issued to any member of the tribe not authorized to use an elver fyke net;~~

Sec. 5. 12 MRSA §6302-A, sub-§3, ¶G, as enacted by PL 2013, c. 8, §1, is repealed and the following enacted in its place:

G. The Houlton Band of Maliseet Indians or its agent may not issue to members of the band more than 16 commercial licenses for the taking of elvers in any calendar year except that the commissioner shall by rule allow the Houlton Band of Maliseet Indians or its agent to issue additional commercial licenses for the taking of elvers to members of the band if the commissioner determines that elver resources are sufficient to permit the issuance of new licenses.

Sec. 6. 12 MRSA §6302-B, sub-§2, as enacted by PL 2013, c. 485, §3, is repealed and the following enacted in its place:

2. Individual allocations. The following provisions govern the allocation of the quotas established under subsection 1 to members of each of the federally recognized Indian tribes.

A. The commissioner may enter into an agreement with a federally recognized Indian tribe in the State that does not provide for individual allocations of the quota established under subsection 1 to members of that tribe, nation or band. If the commissioner enters into an agreement pursuant to this paragraph, the following provisions apply.

- (1) An elver transaction card under section 6305 must be issued to each person to whom the tribe, nation or band issues a license under section 6302-A, subsection 3.

(2) The holder of a license issued under section 6302-A, subsection 3 must meet the reporting requirements established by rule pursuant to section 6173.

(3) The quota established under subsection 1 applies to all elvers taken under licenses issued by the tribe, nation or band under section 6302-A, subsection 3.

(4) When the quota established under subsection 1 is reached, the department shall notify the tribe, nation or band. When the quota established under subsection 1 is reached, the holder of a license issued by the tribe, nation or band under section 6302-A, subsection 3 may not thereafter take, possess or sell elvers. Taking, possessing or selling elvers after the quota established under subsection 1 is reached is deemed a violation by the license holder of the prohibition on fishing in excess of the person's individual quota in section 6505-A, subsection 3-A.

B. This paragraph governs the allocation of the quotas established in subsection 1 to members of a federally recognized Indian tribe in the State when the commissioner has not entered into an agreement with members of the tribe, nation or band under paragraph A that applies to members of that tribe, nation or band.

(1) If there is no agreement under paragraph A between the commissioner and the Passamaquoddy Tribe, the Passamaquoddy Tribe shall allocate to each person to whom it issues a license under section 6302-A, subsection 3, paragraph E-1 a specific amount of the quota allocated to the Passamaquoddy Tribe under subsection 1, paragraph A and shall provide documentation to the department of that allocation for each individual license holder. The Passamaquoddy Tribe shall allocate all of the quota that it has been allocated and may not alter any individual allocations once documentation has been provided to the department.

(2) If there is no agreement under paragraph A between the commissioner and the Penobscot Nation, the Penobscot Nation shall allocate to each person to whom it issues a license under section 6302-A, subsection 3, paragraph E a specific amount of the quota allocated to the Penobscot Nation under subsection 1, paragraph B and shall provide documentation to the department of that allocation for each individual license holder. The Penobscot Nation shall allocate all of the quota that it has been allocated and may not alter any individual allocations once documentation has been provided to the department.

(3) If there is no agreement under paragraph A between the commissioner and the Houlton Band of Maliseet Indians, the Houlton Band of Maliseet Indians shall allocate to each person to whom it issues a license under section 6302-A, subsection 3, paragraph G a specific amount of the quota allocated to the Houlton Band of Maliseet Indians under subsection 1, paragraph C and shall provide documentation to the department of that allocation for each individual license holder. The Houlton Band of Maliseet Indians shall allocate all of the quota that it has been allocated and may not alter any individual allocations once documentation has been provided to the department.

(4) If there is no agreement under paragraph A between the commissioner and the Aroostook Band of Micmacs, the Aroostook Band of Micmacs shall allocate to each person to whom it issues a license under section 6302-A, subsection 3.

paragraph F a specific amount of the quota allocated to the Aroostook Band of Micmacs under subsection 1, paragraph D and shall provide documentation to the department of that allocation for each individual license holder. The Aroostook Band of Micmacs shall allocate all of the quota that it has been allocated and may not alter any individual allocations once documentation has been provided to the department.

The department shall issue an elver transaction card under section 6305 to a person licensed by the Passamaquoddy Tribe under section 6302-A, subsection 3, paragraph E-1, the Penobscot Nation under section 6302-A, subsection 3, paragraph E, the Houlton Band of Maliseet Indians under section 6302-A, subsection 3, paragraph G or the Aroostook Band of Micmacs under section 6302-A, subsection 3, paragraph F only upon receipt of adequate documentation specifying the individual quota allocated to that person by the tribe, nation or band under this subsection.

Sec. 7. 12 MRSA §6302-B, sub-§4 is enacted to read:

4. Emergency prohibition. The commissioner may adopt emergency rules to prohibit the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs or the Houlton Band of Maliseet Indians from fishing for elvers under a license issued under this Title if the commissioner finds that the tribe, nation or band has authorized fishing for elvers in a way that the commissioner determines will cause the tribe, nation or band to exceed the annual allocation set forth in subsection 1.

Sec. 8. 12 MRSA §6505-A, sub-§5, as amended by PL 1999, c. 534, §3, is further amended to read:

5. Gear. ~~Except as prohibited by section 6575-B, subsection 2-B, a~~ A person issued a license under this section may utilize one elver fyke net, one Sheldon eel trap or one dip net to fish for or take elvers without paying the fee required for a first net or trap pursuant to section 6505-B. A license issued under this section must identify the number and types of nets that the license holder may use pursuant to this section ~~and~~, section 6505-B and section 6575-B.

Sec. 9. 12 MRSA §6575, sub-§1, as amended by PL 1999, c. 7, §7, is further amended to read:

1. Open season. It is unlawful for a person to fish for or take elvers within the waters of the State except during the open season from noon on March 22nd to noon on ~~May 31st~~ June 7th.

Sec. 10. 12 MRSA §6575, sub-§1-A is enacted to read:

1-A. Federally recognized Indian tribes; violation. It is unlawful for a person to fish for or take elvers in violation of rules adopted by the commissioner under section 6302-B, subsection 4.

Sec. 11. 12 MRSA §6575-A, as amended by PL 2013, c. 468, §26, is repealed.

Sec. 12. 12 MRSA §6575-B, sub-§2-B, as amended by PL 2005, c. 533, §3, is further amended to read:

2-B. Type and amount of gear. It is unlawful for a person to immerse elver fishing gear other than the types and amounts ~~authorized pursuant to this subsection~~ listed on the person's license pursuant to section 6505-A, subsection 5. A person may not immerse an amount of elver fishing gear that exceeds the amount of elver fishing gear listed on the person's license for the previous elver fishing season. A person may elect which types of gear are listed on the person's license prior to the issuance of the license for that elver fishing season. The commissioner may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

~~A. A person who is issued an elver fishing license pursuant to section 6505-A, subsection 2, paragraph C may not immerse elver fishing gear other than the types and amounts of gear the person was authorized to immerse during the previous elver fishing season, except that a person may surrender the authority to use an elver fyke net in order to use an elver dip net.~~

Sec. 13. 12 MRSA §6575-B, sub-§8, as enacted by PL 2013, c. 468, §27, is repealed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.