

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND FOURTEEN

H.P. 1197 - L.D. 1625

An Act Concerning Maine's 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, the elver fishing season begins March 22, 2014 and changes made to elver fishing licensing laws by this legislation must be made prior to the beginning of this season; 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 §6210, as enacted by PL 2013, c. 468, §8, is amended to read:

§6210. Procedure for administrative assessment of penalty for pecuniary gain

The department in an adjudicatory proceeding may impose an administrative penalty for a violation of section 6575-K or section 6864, subsection 7-A equal to the pecuniary gain from that violation in accordance with this section.

1. Definition. As used in this section, unless the context otherwise indicates, "pecuniary gain" means the amount of money or the value of property at the time a person violates section 6575-K or section 6864, subsection 7-A that the person derives from the violation.

2. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of section 6575-K or section 6864, subsection 7-A has been committed, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is

necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. The notice must state that the person may request a hearing in writing within 10 days of the notice.

3. Hearing. If a hearing is requested pursuant to subsection 2, it must be held within 30 business days after receipt by the commissioner of the request for a hearing, except that a hearing may be held more than 30 business days after the request if the delay is requested by the person requesting the hearing and mutually agreed to in writing. The hearing must be held in accordance with the Maine Administrative Procedure Act, except that:

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing committed a violation of section 6575-K or section 6864, subsection 7-A; and

B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under Title 5, section 9062 must be made not more than 10 business days after completion of the hearing. The presiding officer must be the commissioner or the commissioner's designee.

Any decision to impose an administrative penalty under this section must be based on evidence in the record of the pecuniary gain, which may include evidence of the fair market value of any elvers illegally possessed by the person at the time the violation was committed. The penalty may be based on evidence of the amount of money or value of property the person received for elvers sold in violation of section 6575-K or section 6864, subsection 7-A.

4. Appeal. A decision of the commissioner or the commissioner's designee to assess an administrative penalty for pecuniary gain pursuant to this section may be appealed to the Superior Court if the appeal is filed with the court within 30 days of the decision.

5. Request for hearing on penalty amount; place of hearing. The license holder may request a hearing regarding the amount of the administrative penalty assessed under this section. A hearing must be requested in writing within 10 days from the receipt of the notice of the penalty. The hearing must be held within 10 days of the request unless a longer period of time is mutually agreed to by the commissioner or the commissioner's designee and the license holder who requests the hearing in writing. The hearing must be conducted in the Augusta area.

6. Disposition of penalty. The commissioner shall deposit any payments for administrative penalties collected pursuant to this section into the Eel and Elver Management Fund established under section 6505-D.

Sec. 2. 12 MRSA §6302-A, sub-§3, ¶E-1, as enacted by PL 2013, c. 8, §1, is repealed and the following enacted in its place:

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

(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. 3. 12 MRSA §6302-B is enacted to read:

§6302-B. Elver quota for federally recognized Indian tribes in the State

If the commissioner adopts an elver individual fishing quota system pursuant to section 6505-A, subsection 3-A, this section governs the allocation of the elver quota to federally recognized Indian tribes in the State.

1. Annual allocation. In accordance with section 6505-A, the commissioner shall annually allocate 21.9% of the overall annual quota of elver fishery annual landings to the federally recognized Indian tribes in the State. If the Passamaquoddy Tribe, the Penobscot Nation, the Aroostook Band of Micmacs and the Houlton Band of Maliseet Indians reach an agreement regarding the division of this 21.9% portion of the overall annual quota among them and communicate in writing that agreement to the commissioner prior to March 1st of the year in which the quota is allocated, the commissioner shall allocate that portion of the quota in accordance with that agreement. If no agreement is reached, the commissioner shall allocate that portion of the quota in accordance with the following:

- A. To the Passamaquoddy Tribe, 14% of the overall annual quota;
- B. To the Penobscot Nation, 6.4% of the overall annual quota;
- C. To the Houlton Band of Maliseet Indians, 1.1% of the overall annual quota; and
- D. To the Aroostook Band of Micmacs, 0.4% of the overall annual quota.

In making any allocations under this subsection, the commissioner shall reserve a portion no greater than 10% of each allocation in order to ensure that the quota is not exceeded.

2. Individual allocation. 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. 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. 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. 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 elver transaction cards 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.

3. Overage. If the total weight of elvers sold by persons licensed by the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs or Houlton Band of Maliseet Indians exceeds the quota allocated under subsection 1 to that tribe, nation or band, the commissioner shall deduct the amount of the overage from any future allocation to that tribe, nation or band. If the overage exceeds the overall annual quota allocated to that tribe, nation or band for the following year, the overage must be deducted from the overall annual quota allocations to that tribe, nation or band in subsequent years until the entire overage has been accounted for.

Sec. 4. 12 MRSA §6404-M is enacted to read:

§6404-M. Suspension or revocation based on conviction of a violation of an elver individual fishing quota

The commissioner shall suspend or revoke the elver fishing license of any license holder convicted of violating section 6575-K.

1. First offense. For the first offense, the commissioner shall suspend the license holder's license for one year.

2. Second offense. For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

Sec. 5. 12 MRSA §6505-A, sub-§1, as amended by PL 2013, c. 468, §23, is further amended to read:

1. License required. Except as provided in section 6302-A and section 6302-B, a person may not engage in the activities authorized under subsection 1-A unless the person is issued one of the following elver fishing licenses under this section:

- A. A resident elver fishing license for one device;
- B. A resident elver fishing license for 2 devices;

- C. A nonresident elver fishing license for one device;
- D. A nonresident elver fishing license for 2 devices;
- E. A resident elver fishing license with crew for one device;
- F. A resident elver fishing license with crew for 2 devices;
- G. A nonresident elver fishing license with crew for one device; or
- H. A nonresident elver fishing license with crew for 2 devices.

The department may not issue a license under paragraph E, F, G or H until January 1, 2015.

Sec. 6. 12 MRSA §6505-A, sub-§1-C, as enacted by PL 2013, c. 468, §24, is amended to read:

1-C. Elver transaction card issued. The department may issue an elver transaction card to each license holder under this section and to each license holder under section 6302-A, subsection 3, paragraphs E, E-1, F and G in accordance with section 6302-B. The license holder shall use the elver transaction card to meet electronic reporting requirements established by rule pursuant to section 6173. The elver transaction card must include the license holder's name and license number.

Sec. 7. 12 MRSA §6505-A, sub-§3-A is enacted to read:

3-A. Elver fishing quotas. The commissioner may adopt rules to establish, implement and administer an elver individual fishing quota system in order to ensure that the elver fishery annual landings do not exceed the overall annual quota established by the Atlantic States Marine Fisheries Commission. A person issued a license under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G may not take, possess or sell elvers in excess of the weight quota allocated to that person under the quota system. The rules must:

A. Establish an overall annual quota for the State;

B. Establish the amount of the overall annual quota under paragraph A that is allocated to persons licensed under this section and specify a formula to establish individual quotas for persons licensed under this section. The formula may take into account the amount of elvers a person licensed under this section lawfully harvested in previous seasons based on final harvesting reports. The rules must specify the date by which harvester reports are considered final for the purpose of determining individual quotas; and

C. Provide, in accordance with section 6302-B, that 21.9% of the overall annual quota under paragraph A is allocated to the federally recognized Indian tribes in the State and establish the amount of that portion of the overall annual quota allocated to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs.

If persons issued licenses under this section collectively exceed the overall annual quota allocated to those persons pursuant to paragraph B, the number of pounds by which the

license holders exceeded that overall annual quota must be deducted from the following year's overall annual quota allocated to persons licensed under this section. If the overage exceeds the overall annual quota allocated to persons licensed under this section for the following year, the overage must be deducted from the overall annual quota allocated to persons licensed under this section in subsequent years until the entire overage has been accounted for.

The commissioner may adopt or amend rules on an emergency basis if immediate action is necessary to establish and implement the elver individual fishing quota in advance of the beginning of the elver fishing season.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 12 MRSA §6575-H, as amended by PL 2013, c. 468, §29, is further amended to read:

§6575-H. Sale and purchase of elvers

1. Sale of elvers. A person may not sell elvers except as follows.

A. A person may not sell elvers except to a person who holds a valid elver dealer's license under section 6864 or a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864.

B. A person may not accept payment for elvers in any form other than a check or cashier's check that identifies both the buyer, by whom the landings will be reported, and the seller, each of whom must be a person holding a license issued under section 6864, a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864 or a person holding a license issued under section 6302-A, subsection 3, paragraph E, E-1, F or G or section 6505-A.

1-A. Purchase of elvers. A person who holds a valid elver dealer's license under section 6864 or a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864 shall post at the point of sale the price that that buyer will pay.

2. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 9. 12 MRSA §6575-K is enacted to read:

§6575-K. Elver individual fishing quota

1. Prohibition on possession or sale of elvers in excess of elver individual fishing quota. A person may not possess or sell a weight of elvers that exceeds the elver individual fishing quota that person has been allocated for the fishing season pursuant to section 6505-A, subsection 3-A.

2. Prohibition on fishing after elver individual fishing quota has been reached.

A person who has sold a weight of elvers that meets or exceeds that person's elver individual fishing quota may not fish for or possess elvers for the remainder of the season, except that such a person who has been issued a license to fish for elvers may in accordance with section 6575-D assist another person who has been issued a license to fish for elvers who has not met or exceeded that person's elver individual fishing quota as provided in section 6505-A, subsection 3-A. All gear tagged by a license holder who has met or exceeded that person's elver individual fishing quota must be removed. A marine patrol officer may seize the elver transaction card of a license holder who has met or exceeded that person's elver individual fishing quota.

3. Violation. An individual who in fact violates this section commits a crime in accordance with section 6204 for which a fine of \$2,000 must be imposed, none of which may be suspended.

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