

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

RULE TITLE OR SUBJECT: Chapter 32 – EELS (32.03 Commercial Harvesting Regulations, 32.06 Recreational Eel Harvesting Regulations, 32.30 Elver Gear and Fishing License Lottery, 32.35 Elver Quota System for 2015 Elver Season)

CONCISE SUMMARY: This rulemaking establishes the elver quota allocations for the 2016 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under 6505-A. 2016 allocations will be the same as the 2015 allocations, minus any quota that was provided due to licenses that were under suspension in 2015, but which are not under suspension in 2016. The rulemaking also creates an area closure to the taking of eels and elvers within a portion of the Kennebec River and within Cobbosseecontee Stream in Gardiner, so that Maine DMR can undertake the eel life cycle study required for compliance with the ASMFC fisheries management plan. The elver gear and fishing license lottery has been suspended by the Legislature, so the language regarding the lottery is struck, until such time as the lottery is reinstated in law. Finally, there is some reorganization of the chapter to combine the regulations regarding commercial and recreational eel harvesting.

THIS RULE WILL ___ WILL NOT _X_ HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 12 M.R.S. §6171; 6505-A

EFFECTIVE DATE: March 7, 2016

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 - EELS

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DEPARTMENT OF MARINE RESOURCES

Chapter 32 - Eel Regulations

32.03 ~~Commercial Eel~~ Harvesting Regulations

1. Elvers

A. Area Closures

It shall be unlawful to fish for, take or possess elvers in the following areas:

- 1) Camden Harbor- upstream of a line drawn from the northernmost point of the granite pier of the Camden Town Landing, to the southernmost point of the granite wall that borders on the northern side of the Megunticook River.
- 2) Franklin-by any means other than dip net, from May 1 to May 31 of any year within 327 feet (109 yards) downstream of the bridge that crosses Mill Brook on the Grist Mill Road in the town of Franklin.
- 3) Bangor- in the Penobscot River upstream of a line approximately 3100 feet downstream of where the Veazie dam once existed. The line will run on the downstream side of the Bangor Water District Pipeline crossing and will be identified by red posts on both sides of the river. The eastern end of the closure line will be identified by a red post located in front of the Eddington Salmon Club. The closure line will run in a westerly direction across the river and be identified by a second red post located in the town of Veazie.
- 4) Brewer- in the Sedgeunkedunk Stream upstream of the Route 15 crossing.
- 5) Bangor- in the Kenduskeag Stream upstream of the Harlow Street bridge.
- 6) Bangor- in the Peniajawoc Stream upstream of the Route 2 crossing
- 7) Ellsworth- in Card's Brook upstream of the Route 230 crossing.
- 8) Tremont- in Seal Cove upstream of the Route 102-A bridge.
- 9) Gardiner – within the Kennebec River, bounded on the northern side by the northern side of the Gardiner-Randolph bridge, and on the southern side by the southernmost end of the Gardiner seawall to a red painted post located on eastern shore of the Kennebec River directly across from the seawall.

Cobbosseecontee Stream is closed to fishing for, taking, or possessing elvers from its confluence with the Kennebec River and all waters upstream.

~~B. Prohibition on the use of fyke nets in the St. Croix River~~

~~Pursuant to 12 M.R.S. §6575-B, sub-§8, a person may not use an elver fyke net to fish for or take elvers from the tidal waters of the St. Croix River and its tributaries North of a line beginning at the Northern tip of Kendall Head, Eastport, and extended in an easterly direction to the Southern tip of Cummings Cove, Deer Island, Canada.~~

2. Eels

A. Pursuant to 12 M.R.S. §6575-E, it shall be unlawful for a person to fish for or take eels by any method other than eel pot, except that a person may fish for or take for personal use up to 25 eels per day from the coastal waters of the state by spear gun, harpoon, eel pot, or hook and line and possess and transport such eels that person has so lawfully taken.

~~B. It shall be unlawful to fish for, take, possess, or transport any eel less than 9" in length.~~ It shall be unlawful to fish for, take, possess, or transport elvers unless properly licensed under, and in accordance with 12 M.R.S. §6505-A, §6302-A, §6864, or §6865. It shall be unlawful to fish for, take, possess, or transport pigmented eels, except that eel and elver harvesters, licensed in accordance with 12 M.R.S. §6505-A, §6505-C, and §6302-A, shall not be in violation when encountering pigmented eels as "by-catch", provided that the pigmented eels are immediately released upon culling the catch at the harvest location.

C. Any person holding an eel harvesting license issued under 12 M.R.S. §6505-C or 6302-A shall comply with the following regulations:

- 1) Eel pots must be marked with a buoy. Two or more pots may be placed upon a single line with a single buoy.
- 2) All eel pots must be clearly labeled with the owner's eel license number on the buoy.
- 3) Eel pots must be placed in such a manner so as to not obstruct boat launch areas, swimming areas, or to create hazards to navigation.
- 4) Eel pots must not be baited with live fish.
- 5) All eel pots must be tended at least twice a week. Any animals other than eels captured in the pots shall be immediately released unharmed.

D. Captains and mates involved in party/charter (for hire) employment on party/charter (for-hire) activities may possess 50 eels each for bait purposes during fishing.

E. Captains involved in party/charter (for hire) activities may possess up to 100 eels each in shoreside cars.

32.06 Fishing in the Sheepscot River; Eel Fishing Area Closures – Eel Fishing

1. Sheepscot River-It shall be unlawful to use any type of net or seine in the Sheepscot River and its tributaries between the Wiscasset-North Edgecomb Bridge and the so-called Headtide Dam at Alna.
2. Kennebec River and Cobbosseecontee Stream – It shall be unlawful to fish for or take eels from the Kennebec River bounded on the northern side by the northern side of the Gardiner-Randolph bridge, and on the southern side by the southernmost end of the Gardiner seawall to a red painted post located on eastern shore of the Kennebec River directly across from the seawall. Cobbosseecontee Stream is closed to fishing for, taking, or possessing eels from its confluence with the Kennebec River and all waters upstream.

Exceptions:

- A. The fishing of lamprey eels within these waters shall be under the direction of the Commissioner of Marine Resources who may issue permits to take lamprey eels at places and by means designated by him or her.
- B. This section does not apply to the taking of river herring under any other law or regulation.
- C. Elver fyke or dip nets may be fished in ~~this area~~ the Sheepscot River for the harvest of elvers only. Persons issued an elver license in accordance with 12 M.R.S. §6505-A or §6302-A and who fish in accordance with current elver laws and regulations are not in violation of this regulation.

~~32.06 Recreational Eel Harvesting Regulations~~

- ~~1. It is unlawful to fish for, take, possess, or transport more than 25 eels per person per day.~~
- ~~2. A person may fish for or take for personal use up to 25 eels per day from the coastal waters of the state by spear gun, harpoon, eel pot, or hook and line and may possess and transport eels that person has taken.~~
- ~~3. It is unlawful to fish for, take, or possess, or transport any eel less than 9" in length.~~
- ~~4. Exceptions:~~
 - ~~A. This possession limit shall not apply to persons licensed under 12 M.R.S.A. §§6505-C, 6302-A, 6851, and 6852.~~
 - ~~B. Captains and mates involved in party/charter (for hire) employment on party/charter (for hire) activities may possess 50 eels each for bait purposes during fishing.~~
 - ~~C. Captains involved in party/charter (for hire) activities may possess up to 100 eels each in shoreside cars.~~

32.07 Elver harvesting limitations; gear

It is unlawful for a person to fish for or take elvers by any method other than dip net, unless authorized to fish for or take elvers by elver fyke net or Sheldon eel trap pursuant to 12 M.R.S. §6575-B sub-§2-B, or by elver fyke net pursuant to 12 M.R.S. §6302-A sub-§3 E, E-1, F, or G.

~~32.30 — Elver Gear and Fishing License Lottery~~

~~1. Lottery Procedures:~~

- ~~A. Following the end of the calendar year, the Department shall determine those license holders who did not renew their license before the end of the prior calendar year and those license holders who have had their licenses permanently revoked in the prior calendar year. For each of the licenses identified, the Department shall determine the number of pieces and types of gear held by each of those license holders. The number of pieces of gear associated with the licenses identified shall be the number of new licenses made available through the license lottery.~~
- ~~B. If any fyke nets are associated with any of the licenses identified, the Department shall hold a fyke net lottery in which individuals who held an elver license that authorized them to use a dip net only in the prior calendar year may obtain the authorization to use one fyke net, instead of a dip net. If an individual is selected through the lottery to be authorized to use a fyke net, they will relinquish their authorization to use a dip net.~~
- ~~C. If any dip nets are associated with any of the licenses identified, or if an individual who previously held a license that authorized them to use a dip net becomes authorized to use a fyke net in the fyke net lottery, the Department shall hold a license lottery in which individuals who do not hold an elver license may become authorized to obtain an elver license to use a dip net.~~
- ~~D. Eligible persons wishing to enter either lottery must submit the appropriate lottery application in a manner prescribed by the Commissioner. Applications must be received by the Department no later than January 15 of each calendar year. The fee shall be \$25 per entry per lottery. This fee is non-refundable.~~
- ~~E. Eligible persons may submit only one application per lottery. One draw (chance) will be allotted to an application, per lottery. Any attempt by an individual to submit more than one application per lottery will render that individual ineligible for the lottery. Any application fees submitted by these individuals are non-refundable.~~
- ~~F. Before the lotteries are held, the Department shall calculate and make public the number of fyke nets and elver fishing licenses to be awarded for that calendar year, if any.~~
- ~~G. By February 15 of each year the Department shall hold two separate drawings, one for fyke net authorizations and one for elver fishing licenses. Winners will be determined by random selection from all applicants entered for that lottery.~~

- ~~1. The fyke net drawing will be held first, and the drawing will continue until all available fyke nets have been awarded, or all individuals entered for that lottery have been drawn, whichever comes first.~~
- ~~2. The license drawing will be held second, and will continue until all available licenses have been awarded, or all individuals entered for that lottery have been drawn, whichever comes first.~~
- ~~3. Once all available licenses have been awarded and a list of winners determined for that lottery, drawing will continue for each lottery to establish an ordered list of alternates. Drawing for alternates will continue until an ordered list of alternates the same length as the list of winners has been established, or until all individuals entered for that lottery type have been drawn, whichever comes first.~~

~~2. Eligibility:~~

~~In order to be eligible for the fyke net lottery an individual must:~~

- ~~A. Have held a elver license that authorized them to fish one dip net in the prior calendar year;~~
- ~~B. Be a resident of the State of Maine, or a resident of a state that allows Maine residents to purchase an elver license and fish for elvers in that state; and~~
- ~~C. Be eligible to purchase a license for the calendar year in which the lottery is held if authorized, and not have had their right to obtain a license suspended.~~

~~In order to be eligible for the license lottery, an individual must:~~

- ~~A. Be at least 15 years of age at the start of the elver season for the calendar year in which the lottery is held;~~
- ~~B. Be a resident of the State of Maine, or a resident of a state that allows Maine residents to purchase an elver license and fish for elvers in that state; and~~
- ~~C. Be eligible to purchase a license in the current calendar year if authorized, and not have had their right to obtain a license suspended.~~

~~It is the responsibility of the applicant to determine their eligibility to participate in the fyke net lottery and the license lottery. If an applicant for either lottery is drawn, but determined to be ineligible, that drawing shall be void and the Department will draw another individual. The application fee submitted with the ineligible application is non-refundable.~~

~~3. Issuing the Awarded Licenses~~

- ~~A. Lottery winners will be informed in writing and mailed a license application form by the Department.~~
- ~~B. Lottery winners must submit a license application to the Department by no later than March 1. The application must be correctly filled out for the same individual as their lottery application, and must include full payment for the correct fees and any required documentation. The failure to submit a complete license application by March 1, the failure to pay all applicable fees, or the failure to include all required~~

~~documentation, will void the applicant's lottery drawing and the associated fyke net authorization or elver license will be made available to the next appropriate alternate.~~

- ~~C. The next alternate on the list of alternates for that lottery, will be sent a license application and have until March 15 to comply in the same manner.~~
- ~~D. If the next alternate fails to comply with the deadline and submission requirements, the Department will continue to select alternates through a drawing and provide 2 weeks for winners to comply until the fyke net or license is successfully obtained.~~

32.35 Elver Quota System for ~~2015-2016~~ Elver Season

- A. The total allowable catch of elvers for ~~2015-2016~~ for individuals licensed to fish for elvers under 12 M.R.S. §§6505-A and 6302-A is 9,688 lbs.
- B. The total allowable catch of elvers for individuals licensed to fish for elvers established in accordance 12 M.R.S. §6505-A(3-A)(B) for ~~2015-2016~~ is 7,566 lbs.
- C. The total allowable catch of elvers for individuals licensed to fish for elvers under 6302-A paragraphs ~~E, E-1, F, and G~~, established in accordance with 12 M.R.S. §6505-A(3-A)(C) for ~~2015-2016~~ is 2,122 lbs. A total of 2,122 lbs allowable catch is allocated pursuant to 12 M.R.S. 6302-B, subsection 1 as follows:
 - 1. 1,356 lbs to the Passamaquoddy Tribe
 - 2. 620 lbs to the Penobscot Nation
 - 3. 107 lbs to the Houlton Band of Maliseet Indians
 - 4. 39 lbs to the Aroostook Band of Micmac Indians

~~Pursuant to 12 M.R.S. 6302-B subsection 2, the Tribe, Nation or Band must allocate to each person to whom it issues a license a specific amount of quota and must provide documentation to the Department before the Department may issue transaction cards to the license holders. Once the Tribe, Nation or Band provides documentation to the Department of the allocations to their license holders, that allocation may not be altered.~~

- D. An individual licensed to fish for elvers under 12 M.R.S. 6505-A(1) will be allocated an elver individual fishing quota based on the following process. The Department will:
 - 1. Determine each license holder's allocation for the ~~2014-2015~~ fishing season.
 - 2. ~~Deduct the necessary percentage from each license holder's 2014 allocation in order to reduce the total allocation to 7,566 lbs. Deduct any quota that was allocated from license holders that were suspended for the duration of the 2015 season.~~
 - 3. ~~Round to the nearest tenth of a pound~~
 - 4. Calculate the poundage that would be allocated to license holders suspended for the duration of the ~~2015-2016~~ elver season and for licenses not renewed in 2015, and distribute that poundage equally across all other license holders.

5. Round to the nearest tenth of a pound

- E. An individual licensed under 12 M.R.S. §§6505-A and 6302-A must be present to receive his or her transaction card, and must produce a valid, government-issued photo identification card at the time of receipt. The license holder will be notified of his individual quota, both verbally by a law enforcement officer and in writing, at the time of receipt and will be deemed to have received notice of his or her quota upon signing the written notification document. Failure to sign the written notification document will result in ineligibility to obtain the transaction card.
- F. The Department will deactivate the transaction card of any individual who has met or exceeded the elver individual fishing quota that individual has been allocated.

32.50 Mandatory Elver Dealer Meeting to Prepare for the ~~2015~~ 2016 Elver Season

An individual licensed under 12 M.R.S. §6864 must attend a meeting held at the Department offices in ~~Hallowell~~ Augusta in order to ensure that the transaction card system is properly understood and implemented for the ~~2015~~ 2016 elver season. Notice of the date and time of the meeting will be mailed to the address provided by the license holder on their license application and posted to the DMR website. If an individual licensed under 12 M.R.S. §6864 does not attend the meeting, a marine patrol officer may seize any recording equipment issued by the Department to the individual licensed under 12 M.R.S. §6864.

Basis Statement

Chapter 32 – EELS (32.03 Commercial Harvesting Regulations, 32.06 Recreational Eel Harvesting Regulations, 32.30 Elver Gear and Fishing License Lottery, 32.35 Elver Quota System for 2015 Elver Season)

The principal reason for proposing this rule is to establish the elver quota allocations for the 2016 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under 6505-A. The proposed rule-making also creates an area closure to the taking of eels and elvers within a portion of the Kennebec River and Cobbosseecontee Stream in Gardiner, so that Maine DMR can undertake the eel life cycle study required for compliance with the ASMFC fisheries management plan. The elver gear and fishing license lottery has been suspended by the Legislature, so the language regarding the lottery is proposed to be struck, until such time as the lottery is reinstated in law. Finally, there is some reorganization of the chapter to combine the regulations regarding commercial and recreational eel harvesting

The rule will establish overall and individual quota allocations, and create a closure to the taking of eels and elvers within a portion of the Kennebec River and the Cobbosseecontee Stream in Gardiner. Other changes to the rule are reorganization for clarity. The proposed rule was amended to clarify that quota from licenses that were not renewed in 2015 will be allocated across current license holders. It was also amended to strike the prohibition on fishing fyke nets in the St. Croix River, for consistency with pending legislation that will also eliminate that prohibition.

There is not expected to be any fiscal impact if this rule is adopted as proposed.

Summary of Comments

Chapter 32 – EELS (32.03 Commercial Harvesting Regulations, 32.06 Recreational Eel Harvesting Regulations, 32.30 Elver Gear and Fishing License Lottery, 32.35 Elver Quota System for 2015 Elver Season)

Attendee	Town	Occupation
Bill Sheldon	Woolwich	Elver Buyer
John Sheldon	Woolwich	Fisherman
Marvin Farrin	Bristol	Fisherman
John Taylor	Newcastle	Fisherman
Suzanne Smith	Bristol	Fisherman
Angela Young	Eastbrook	Elver Fisherman
Darrell Young	Eastbrook	Elver Fishermen (Co-Director of MEFA)
Don Sprague	Newcastle	Fisherman
Shelly Geidel	Noridgerock	Elvers
Lance Geidel	Noridgerock	Elvers
Kevin White	Damariscotta	Elvers
Glenn Steeves		
Jamie Liang	Portland	BBS Enterprise, Inc.
Jimmy Liang	Portland	BBS Enterprise, Inc.

Darrell Young commented that the closure in the Cobbosseecontee lifecycle study would mean that elver fishermen who regularly fish there will have to fish elsewhere. This will mean that fishermen who fish the

closure will place additional fishing pressure on other areas. He was also concerned whether it would have an impact on whether the quota is caught.

DMR responded that this location was chosen by the state to conduct a lifecycle study based on environmental and population conditions. A lifecycle study is required under the Atlantic States Marine Fisheries Commission (ASMFC) FMP in order to continue to have an Eel and Elver fishery.

Darrell Young, John Taylor, and Mark Farrin commented that the quota should be increased given that Maine has never reached its current quota.

DMR acknowledged that at the most recent ASMFC meeting, Maine representatives brought up the issue of trying to increase the quota for the State. Maine could potentially receive a 25% increase in quota in the future if conservation efforts in the State have demonstrable impacts on the population. The quota was set for three years at just under 10,000 lbs. The Elver Fisherman's Association has proposed returning to the 2013 quota, which was just around 11,000 lbs, but that will be a follow up conversation. Maine DMR is proposing combining the conservation credits earned via State initiatives and/or increasing the quota across the board. However, this must be based on a scientific assessment which will likely not occur until 2018, meaning that the assessment would not be completed until 2019.

Darrell Young asked whether the study will involve engaging with fishermen.

DMR responded that the department will be reaching out to fishermen to draw on existing expertise so as to make the study as effective as possible.

Darrell Young asked why the Cobbosseecontee was chosen and why the entire river is not being closed to prevent fishing of other aspects of the Eel lifecycle that occur farther up river. Mr. Young also asked whether the Hydroelectric dam would be taken into consideration during the assessment.

DMR responded that the river was chosen so that the State could conduct a lifecycle assessment, meaning they had to choose an area that included all life stages for eels. They also had to choose a manageable drainage area that would not have an unreasonable impact on the statewide fishery.

DMR responded that yes, the dam would be taken into consideration and that the State has placed requirements on the facility in the past in order to facilitate conservation efforts.

Glen Steeves asked why fishing in the Kennebec couldn't be changed to allow fyke nets above the bridge, but below Augusta.

The limitation on fishing fyke nets in the Kennebec is in another Chapter of regulation, Chapter 55.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 32 – EELS (32.03 Commercial Harvesting Regulations, 32.06 Recreational Eel Harvesting Regulations, 32.30 Elver Gear and Fishing License Lottery, 32.35 Elver Quota System for 2015 Elver Season)

STATUTORY AUTHORITY: **12 M.R.S. §6171; §6505-A**

PUBLIC HEARING: February 9, 2016 6:15 PM DMR Offices, Marquardt Building, 32 Blossom Lane, Augusta, Maine

DEADLINE FOR COMMENTS: February 19, 2016

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The principal reason for proposing this rule is to establish the elver quota allocations for the 2016 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under 6505-A. The proposed rule-making also creates an area closure to the taking of eels and elvers within a portion of the Kennebec River and Cobbosseecontee Stream in Gardiner, so that Maine DMR can undertake the eel life cycle study required for compliance with the ASMFC fisheries management plan. The elver gear and fishing license lottery has been

suspended by the Legislature, so the language regarding the lottery is proposed to be struck, until such time as the lottery is reinstated in law. Finally, there is some reorganization of the chapter to combine the regulations regarding commercial and recreational eel harvesting

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The rule will establish overall and individual quota allocations, and create a closure to the taking of eels and elvers within a portion of the Kennebec River and the Cobbosseecontee Stream in Gardiner. Other changes to the rule are reorganization for clarity.

FISCAL IMPACT OF THE RULE:

There is not expected to be any fiscal impact if this rule is adopted as proposed.