

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Elver Quota System for the 2019 season

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This rule establishes the elver quota allocations for the 2019 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. 2019 allocations for individuals who held a license in 2018 will be the same as their 2018 allocations, plus any quota associated with licenses not renewed in 2018, or licenses suspended for the duration of the 2019 season, which will be distributed evenly to all license holders. This rule also prohibits more than one elver dealer from engaging in the licensed activities at the same physical address, and requires that transfers from vehicles to permanent facilities include all the contents of the vehicle. Finally, the rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
 FUND AGENCY S-UNIT APP OBJT AMOUNT
 Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta
 010 13A 1120 10 4946 regulations

DEPARTMENT OF MARINE RESOURCES

DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 - EELS

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DEPARTMENT OF MARINE RESOURCES

Chapter 32 - Eel Regulations

32.01 Definitions

For the purposes of compliance with this chapter:

1. An eel means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is 9 inches or more in length.
2. An elver means a member of the species *Anguilla rostrata* that will pass through a 1/8" non-stretchable mesh net.
3. A pigmented eel means a member of the species *Anguilla rostrata* in that stage of its life cycle when it will not pass through a 1/8" non-stretchable mesh but is less than 9 inches in length.
4. Fishing day means from 12:00 p.m. local time until 11:59 a.m. local time the following day.

32.02 Elver Harvest Reporting Requirements: See Chapter 8.10(E) Landings Program

32.03 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. (Repealed)

C. Authorized Activities of Unlicensed Crew Members

- 1) The holder of an elver fishing crew license who is authorized to fish using a dip net may engage one unlicensed crew member to assist with the activities associated with fishing for elvers under the direct supervision of the license holder. The unlicensed crew member may possess elvers when the license holder is present. It is unlawful for an unlicensed crew member to fish for, take, or sell elvers.
- 2) The holder of an elver fishing crew license who is authorized to fish using an elver fyke net may engage one unlicensed crew member to assist with activities associated with fishing for elvers under the direct supervision of the license holder. The unlicensed crew member may possess elvers when the license holder is present and may assist with tending the gear of the license holder when the license holder is present, except that it is unlawful for an unlicensed crew member to tend the cod end of the license holder's elver fyke net. It is unlawful for an unlicensed crew member to sell elvers.

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 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.

32.05 Area Closures – Eel Fishing

- 4- 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.

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.

32.35 Elver Quota System for ~~2018~~ 2019 Elver Season

- A. The total allowable catch of elvers for ~~2018~~ 2019 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 ~~2018~~ 2019 is 7,566 lbs.
- C. The total allowable catch of elvers for individuals licensed to fish for elvers under 6302-A, established in accordance with 12 M.R.S. §6505-A(3-A)(C) for 2018 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. ~~1356~~ 1304.3 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
- 51.7 lbs was deducted from the amount of quota allocated to the Passamaquoddy Tribe for 2019 to compensate for the overage in their 2018 quota, in accordance with §6302-B.
- 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 ~~2017~~ 2018 fishing season.
 2. Deduct any quota associated with licenses that were suspended for the duration of the ~~2017~~ 2018 season, but which will be eligible to harvest in the ~~2018~~ 2019 season.
 3. Calculate the poundage that would be allocated to license holders suspended for the duration of the ~~2018~~ 2019 elver season and for licenses not renewed in ~~2017~~ 2018 that is in excess of the quota needed to allocate to new license holders authorized to fish in 2018 through the elver license lottery, and distribute that poundage equally across all other license holders.
 4. Round to the nearest tenth of a pound
- ~~D-1 An individual licensed to fish for elvers under 12 MRS 6505-A(1) as a result of winning a license through the 2018 elver license lottery will be allocated 4 lbs of quota.~~
- 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. An individual licensed under 12 M.R.S. §§6505-A and 6302-A may not possess or sell in any combination, an amount of elvers that exceeds that individual's elver individual fishing quota.
- G. The Department will deactivate the transaction card of any individual who has sold or possessed in any combination an amount of elvers equal to or in excess of the elver individual fishing quota that individual has been allocated.
- H. A law enforcement officer may seize the transaction card of any individual who has exceeded their elver individual fishing quota by possessing or selling in any combination an amount of elvers that exceeds that individual's elver fishing quota.

32.40 Elver Transaction Cards

1. Eligibility:

In order to be eligible for an elver transaction card, the individual must be licensed according to 12 M.R.S. §6505-A or 12 M.R.S. §6302-A. Valid transaction cards may only be issued by the Department of Marine Resources.

2. Use:

It shall be unlawful for a licensed elver harvester to sell or transfer elvers (or glass eels) the license holder has caught to an elver dealer licensed under 12 M.R.S. §6864, unless he/she presents a DMR-issued transaction card to the elver dealer during each transaction and that card is used to document the transaction. Transaction cards may only be used to sell elvers which were harvested by the individual identified on the transaction card. A law enforcement officer may seize the transaction card of an individual who has used their transaction card to sell elvers they did not harvest.

32.41 Elver Dealer Transaction Card.

1. A person licensed in accordance with 12 M.R.S. §6864 shall be eligible to obtain an elver dealer transaction card for the primary facility named on the license and for each supplemental license. Elver dealer transaction cards may only be issued through the Maine Department of Marine Resources.
2. A person licensed in accordance with 12 M.R.S. §6864 must utilize an elver dealer transaction card to record all sales, purchase, or transfer transactions involving another license issued in accordance with 12 M.R.S. §6864 and must provide all information required by the transaction card system. It is unlawful for a person licensed in accordance with 12 M.R.S. §6864 to sell, buy, or transfer elvers in any transaction involving another license issued in accordance with 12 M.R.S. §6864 without utilizing an Elver Dealer Transaction Card. A person licensed in accordance with 12 M.R.S. §6864 must have an operational internet connection when using the elver dealer transaction card to buy or sell or transfer or transport elvers .
3. A person licensed in accordance with 12 M.R.S. §6864 shall maintain transaction card documentation to account for all elvers in their possession. Failure to provide proper documentation will be prima facie evidence that the elvers are illegal and are subject to seizure.

32.42 Elver Dealer Limitations and Requirements

1. No more than one elver dealer license holder may engage in the activities authorized by the elver dealer license at a single physical address.
2. When selling or transferring elvers from a vehicle to facility, it is unlawful to sell or transfer any amount of elvers less than the full amount of elvers present on the vehicle.

32.43 Elver Exporter Requirements

1. Forty-eight (48) hours prior to preparing elvers for export out of the state, the elver export license holder must notify the Maine Marine Patrol of their intention to prepare a shipment of elvers for export.
2. The elver export license holder must make arrangements for Maine Marine Patrol to be present when they are preparing the elvers for shipment. A Maine Marine Patrol Officer must be present to witness the weighing and packing of the elvers for export.
3. Upon completion of the packing of the elvers for export out of the state of Maine, the Marine Patrol Officer will seal the shipment of elvers. Seals must remain intact and untampered with until the elvers reach their destination for shipment out of the country. The absence of a seal, or a seal that has been broken or otherwise shows signs of having been tampered with is prima facie evidence that the elvers are illegal and subject to seizure.
4. The Marine Patrol Officer will mark the package of elvers with weight of the elvers contained within the package and the total weight of the package. If this information is not on the package, it is prima facie evidence that the elvers are illegal and subject to seizure.

32.45 Elver Record Keeping

Elver dealers must maintain paper records pertaining to all elver purchases and shipments. These records must be made available to the Department upon request and must comply with the following:

1. Each license holder must have a business address at which the records are maintained;
2. The records must be complete, accurate and legible;
3. The records must be sufficient to allow each purchase and shipment of elvers to be tracked by date of purchase from harvester, harvester name and landings number, who the elvers were sold to.
4. The records must be retained for a minimum of three years.

DMR provided reporting software must be synchronized for updates to the reporting system prior to the purchase of elvers on each fishing day as defined in Chapter 32.01(4).

32.50 Mandatory Elver Dealer Meeting to Prepare for the ~~2017~~ 2018 Elver Season

An individual licensed under 12 M.R.S. §6864 or §6865, and any authorized representative of a license holder must attend a meeting held at the Department offices in Augusta. Notice of the date and time of the meeting will be emailed 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.

32.60 Transport of Elvers Through the State of Maine

A person may not possess elvers harvested outside the State of Maine, except that elvers legally harvested outside the State of Maine may be transported through the State under the authority of the laws of the United States. Elvers transported through the State must be accompanied by a bill of lading that identifies the product amount by weight and the origin of the product. Elvers transported through the State must remain in the transport vehicle and may not be commingled with Maine elvers.

Basis Statement

This rule establishes the elver quota allocations for the 2019 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. 2019 allocations for individuals who held a license in 2018 will be the same as their 2018 allocations, plus any quota associated with licenses not renewed in 2018, or licenses suspended for the duration of the 2019 season, which will be distributed evenly to all license holders. This rule also prohibits more than one elver dealer from engaging in the licensed activities at the same physical address, and requires that transfers from vehicles to permanent facilities include all the contents of the vehicle. Finally, the rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export. Based on the comments received, the Department is not recommending any changes to what was originally proposed.

Summary of Comments

Notice of this proposed rulemaking appeared on January 9, 2019 in the five major daily newspapers as published by the Secretary of State. On January 9, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: 5:00 PM January 28, 2019, Jeff's Catering, Brewer; 5:00 PM January 29, 2019 Rm 118 DMR Offices, Marquardt Building, Augusta. The comment period closed February 11, 2019.

I. Brewer Public Hearing

Members of the Public	DMR Staff
Luther Choate, Annette Candage, John Candage, William Sheldon, Tim Bunker, Amanda Poland, Kristen Steele, Suzanne Smith, Shelly Geidel, John Taylor, Sara Radimaker, Travis Atwood, Billy Milliken, Velton Alley, Lance Geidel, Babe Stanley, Robert Stanley, Tim LaRochelle, Tristan Smith, and Adam Dragon	Deirdre Gilbert, Amanda Ellis, and Rene Cloutier

II. Augusta Public Hearing

Attendance

Members of the Public	DMR Staff
Patricia Bryant, Emerald Friend, Larry Friend, Abden Simmons, Amanda Poland, Dawn Bernier, Lawrence Bailey, Shelly Geidel, Lance Geidel, Suzanne Smith, Bill Sheldon, John Sheldon, Aaron Wllman, James Hutton, Kirk Zamm, and Adam Dragon	Deirdre Gilbert, Amanda Ellis, Patrick Keliher, Nick Popoff, Jeff Nichols, and Rene Cloutier

In-Favor (1)

Dawn Bernier, Augusta Public Hearing, January 29, 2019

Good job. It's a pain that this is happening, but we will adjust.

Neutral (3)

Timothy LaRochelle, Brewer Public Hearing, January 28, 2019

U.S. Fish and Wildlife took urchins off the live catch, so they don't have to be monitored anymore. Where is the safe guard that the urchins that go to China won't have elvers in them? People put them in suitcases and try to get them out by any means possible. There should be scrutiny over that, but I am happy with the way you are going.

DMR Response:

We are trying to do all we can to address this issue. We are having Marine Patrol Officers inspect and seal the boxes. However, DMR cannot prevent other things from happening to elvers once they leave the State of Maine. We'll have a total weight on each box, and U.S. Fish and Wildlife is willing to weigh boxes. If there is a discrepancy between the weight of the boxes, U.S. Fish and Wildlife could deal with it on their end.

Adam Dragon, Augusta Public Hearing, January 29, 2019

I am on the Maine Elver Fishermen Association Board. I am up for re-election by the way. Everyone always just says yes. I am representing people who are fishermen and people write things to me and talk to me. I try to present it to the Board. Sometimes it moves, sometimes it doesn't, whatever. There is something I told people I would bring up and it relates to this bill. It's the quota allocation this year. When the season ended and was shut down early without 24 hours' notice, there were a lot of law-abiding citizens with quota left that weren't able to catch it. This was hard on a lot of families and they didn't get any answers. I have a letter here from someone. It's real and I've seen this on T.V. I went back and found this letter from this one woman. I am not going to give any details, but her husband did not know this was happening. Little League coach, trying to get ready for lobster season. He's trying to coach the Little League team, he had all these plans. She doesn't know how much quota he had left. At the time he wouldn't tell her, because he was too embarrassed. This family has continued to be in contact with me and that is not the only people. These people suffered and they want to know what the recompense is. Apparently, some criminals did something wrong. For example, this person lost \$7,000.00 that's significant when you thought you had the time and no one told you that you needed to pull out. I don't know if we need rule-making going forward about these types of operations or something to address how this quota could be given back to these families. You know a lot of people turn around and accuse these families of doing something illegal. There's a shame and a stigma that is not necessarily true. The quota system as is, I am not saying it should or it shouldn't be the way it is. These questions need to be answered. This was a significant event. This whole move to make things more efficient and creating less chance of these things happening is positive. That's important and I want to bring it up, but someone has to take a stand and talk to these families about it.

DMR Response:

During the 2018 elver season, the Department became aware of significant illegal sales of elvers for cash that were not recorded through the swipe card system as required. On May 24, 2018, the Department closed the

fishery, via emergency rule, to prevent unusual damage and imminent depletion of the elver resource, caused by exceeding the 2018 elver fishing quota. The intent of this proposed rule change is, in part, to reduce the likelihood of this situation occurring during the 2019 season. Maine's elver quota is established by the Atlantic States Marine Fisheries Commission (ASMFC) and is allocated in accordance with application state law. There are no statutory provisions to provide additional quota, or return quota to those individuals that may have been affected by the 2018 emergency closure.

Abden Simmons, Executive Director, Maine Elver Fishermen's Association, Augusta Public Hearing, January 29, 2019

Some of the dealers that got caught last year for illegally purchasing elvers, is that facility only being suspended? Why can't we also put into the rule that the facility gets closed?

DMR Response:

Dealers must obtain an elver dealer license and then a supplemental for every facility or vehicle. Those with a suspended license cannot obtain a license, engage in the licensed activity, or have supplementals. Someone else with an eligible license could put a facility on their own license. The facility itself only matters because it is on the license.

Written Comments

Comment period closed February 11, 2019

DMR did not receive any written comments concerning this proposal.

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 32 Elver Quota System for the 2019 season

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

DATE AND PLACE OF PUBLIC HEARING(S): 5:00 PM January 28, 2019, Jeff's Catering, Brewer, ME; 5:00 PM January 29, 2019 Rm 118 DMR Offices, Marquardt Building, Augusta, ME (Snow date 5:00 PM January 30, 2019, Rm 118 DMR Offices, Marquardt Building, Augusta, ME)

COMMENT DEADLINE: February 11, 2019

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

Annually the Department must conduct rule-making to establish the individual quotas for the upcoming elver season. In addition, the Department is proposing changes for the 2019 pertaining to the activities of elver dealers and elver exporters to curtail the illegal activity that occurred during the 2018 elver season.

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 provide the quota allocations for the 2019 elver fishery and the requirements to which elver dealers and elver exporters must adhere.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE

The Interstate Fisheries Management Plan for American Eel, input from Maine Marine Patrol regarding enforcement needs.

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

No fiscal impact is anticipated.