

**Notice of Agency Rule-making Proposal**

AGENCY: 13-188-Department of Marine Resources

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

PROPOSED RULE NUMBER *(leave blank; to be assigned by Secretary of State)*:

**BRIEF SUMMARY:**

This proposed rulemaking 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 proposed rule-making 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 proposed rule establishes a process by which Maine Marine Patrol will monitor and seal the packing of elvers for export.

Date, time and location of PUBLIC HEARING *(if any)*: 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

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT *(if different)*: Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

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

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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\* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State’s website. Title 5 §8053, sub-§3, ¶D & sub-§6.

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

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_

*(authorized signature)*

FUND	AGENCY	ORG	APP	OBJ	PROGRAM	FUNDING Profile JVC	FUND Pri JVC	FUND Line JVC
010	13A	1120	10	4946				

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

- 1. 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. ~~4356~~ 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~~ 2019 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.



DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 - EELS

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EFFECTIVE DATE:

April 17, 1995- Section 10 (EMERGENCY, Expired 7/15/95)

AMENDED:

March 31, 1998 – Sections 02 & 03

May 4, 1998 – Section 10 (EMERGENCY, Expired 8/2/98)

February 27, 1999 – Section 15 added

March 24, 1999 – Section 11 (EMERGENCY, Expired 6/22/99)

March 18, 2000 – Section 11

November 19, 2000 – Section 02(1) & 04 (added)

February 26, 2001 – Section 20 added

February 9, 2002 – Section 15

October 21, 2002 – Section 06 added

December 17, 2003 – Sections 02 & 04

March 20, 2006 – Section 12

February 25, 2008 – Section 20, repealed

November 14, 2012-Section 30 added

December 18, 2013-Sections 01, 03, 05, 06 amended; Sections 40 & 45 added; Sections 11, 12, & 15 repealed

March 21, 2014-Section 03(1)(B) added (EMERGENCY, Expires June 18, 2014)

March 26, 2014-Section 03(1)(B) deleted; Sections 03(1)(C)(D),35,50,55 added (EMERGENCY, Expires June 23, 2014)

March 29, 2014-Section 35(D) amended (EMERGENCY, Expires June 26, 2014)

May 6, 2014-Section 01, 45 amended, 60 added; EMERGENCY, Expires August 3, 2014)

March 9, 2015-Section 01(4) added; Section 03(1)(B)&(C) added; Section 45 amended; Section 35, 41, 50, 60 added.

May 8, 2015 – Section 07 added (EMERGENCY, Expired August 6, 2015)

March 2, 2016 - 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 2016 Elver Season)

March 12, 2017 – 32.35; 32.40 (2); 32.50

March 19, 2018-32.05; 32.35

May 24, 2018-EMERGENCY-32.65 Closure of Elver Season, Expired August 22, 2018

## Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

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.

*Note: If necessary, additional pages may be used.*