

MAINE STATE LEGISLATURE

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R.S.

L.D. 185

DATE: 3/12/96

(Filing No. H- 759)

MARINE RESOURCES

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STATE OF MAINE HOUSE OF REPRESENTATIVES 117TH LEGISLATURE SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 137, L.D. 185, Bill, "An Act to Restrict the Taking of Eels Less than 6 Inches in Length from Maine Coastal Waters"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding the Harvesting of Eels and Elvers'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

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

Whereas, baby eels, or elvers, migrate from coastal waters to inland waters and a significant fishery for elvers has developed in the coastal rivers, brooks and streams of the State; and

Whereas, adult eels that mature in the State's inland waters play an important role in the propagation of the species; and

Whereas, conservation of the eel and elver resources is important for ecological and economic reasons; 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

COMMITTEE AMENDMENT

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:

PART A

Sec. A-1. 12 MRSA §6001, sub-§§13-C to 13-G are enacted to read:

13-C. Dip net. "Dip net" means a device consisting of a rigid frame filled with netting, firmly attached to a rigid handle and manually operated by a single person.

13-D. Eel. "Eel" means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is 6 inches or more in length.

13-E. Eel pot. "Eel pot" means a cylindrical or rectangular trap with funnels that is baited and used to harvest eels. An eel pot is 50 cubic feet or less in total volume and utilizes wire or slatting no smaller than 1/2 inch square measure.

13-F. Elver. "Elver" means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is less than 6 inches in length.

13-G. Elver fyke net. "Elver fyke net" means a fyke net that is 30 feet or less in length from cod end to shore-side wing tip and that is fitted with netting that measures 1/8 inch mesh square measure or less.

Sec. A-2. 12 MRSA §6001, sub-§§17-C and 20-A are enacted to read:

17-C. Fyke net. "Fyke net" means a funnel-shaped net designed to intercept moving marine organisms and retain marine organisms in a confined space.

20-A. Hoop net. "Hoop net" means a stationary cylindrical net fitted with mesh measuring 1/2 inch or greater stretch measure, that is placed at the bottom of a body of water and has a diameter of 6 feet or less as measured at its widest point and has a length of 18 feet or less as measured from the cod end to the hoop that forms the mouth of the net. "Hoop net" includes wings or leads attached to the mouth of the hoop net.

Sec. A-3. 12 MRSA §6001, sub-§29, as enacted by PL 1977, c. 661, §5, is amended to read:

29. **Marine species.** "Marine species" means all marine animals except lobster, shellfish and, marine worms and elvers.

Sec. A-4. 12 MRSA §6001, sub-§40-A is enacted to read:

40-A. Sheldon eel trap. "Sheldon eel trap" means a box trap with a netted wing used to intercept and direct elvers into the trap.

Sec. A-5. 12 MRSA §6404-A is enacted to read:

§6404-A. Suspension based on conviction of molesting elver gear

The commissioner shall suspend the elver fishing license of any license holder convicted in court of violating section 6575-D. This suspension must be for one year from the date of conviction.

Sec. A-6. 12 MRSA §6501, sub-§6, as amended by PL 1977, c. 661, §5, is further amended to read:

6. Definition. For the purposes of this chapter, "fish" shall-mean means all marine finfish, squid and shrimp or other marine animals, except lobsters, crabs, shellfish, scallops ~~or~~, marine worms, elvers or eels.

Sec. A-7. 12 MRSA §6505, as enacted by PL 1995, c. 492, §4, is repealed.

Sec. A-8. 12 MRSA §§6505-A to 6505-D are enacted to read:

§6505-A. Elver fishing license

1. License required. It is unlawful for a person to fish for or take elvers or possess, ship, transport or sell elvers that the person has taken without an elver fishing license.

2. Eligibility. An elver fishing license may only be issued to an individual.

3. Limits on issuance. The department may not issue an elver license between March 16th and June 15th.

4. Fees. Fees for elver fishing licenses are:

A. Thirty-three dollars for a person who is a resident; and

B. One thousand dollars for a person who is a nonresident.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$33 accrues to the General Fund for each resident license sold under this section and \$334 accrues to the General Fund for each nonresident license sold under this section.

6. Gear listed on license. The license must identify the number and types of nets for which the license holder has paid fees pursuant to section 6505-B.

§6505-B. Elver gear fees

1. Elver fyke net and Sheldon eel trap fee. It is unlawful for a person to submerge an elver fyke net or a Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless the net or trap owner pays annually the following fees:

A. One hundred dollars per net or trap for the use of a first or 2nd elver fyke net or Sheldon eel trap; and

B. Two hundred dollars per net or trap for the use of a 3rd, 4th or 5th elver fyke net or Sheldon eel trap.

2. Tags for elver fyke net and Sheldon eel trap. It is unlawful for a person to submerge an elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless a tag issued by the department is affixed to the net or trap. The department may issue a replacement tag when an owner issued a tag documents that a net or trap has been damaged or lost.

3. Dip net fee. It is unlawful for a person to utilize a dip net to fish for or take elvers without paying a fee of \$75 per dip net annually.

4. Payment with license. The fees required under subsections 1 and 3 must be paid upon application for an elver fishing license under section 6505-A.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D.

§6505-C. Eel harvesting license

1. License required. It is unlawful for a person to fish for or take eels in the coastal waters of the State or possess, ship, transport or sell eels that the person has taken in the coastal waters of the State without an eel harvesting license.

2 2. Exemptions. A person may fish for or take for personal
4 use an eel in the coastal waters of the State by speargun,
6 harpoon, trap or hook and line and may possess or transport that
8 eel.

10 3. Eligibility. An eel harvesting license may only be
12 issued to an individual.

14 4. Fees. The fee for an eel harvesting license is \$100.

16 5. Disposition of fees. All fees collected under this
18 section accrue to the Eel and Elver Management Fund established
20 in section 6505-D, except that \$33 must accrue to the General
22 Fund for each license sold under this section.

24 **§6505-D. Eel and Elver Management Fund**

26 1. Fund established. The Eel and Elver Management Fund,
28 referred to in this section as the "fund," is established as a
30 dedicated, nonlapsing fund.

32 2. Permissible uses. The commissioner may use the fund in
34 accordance with a plan required under subsection 3 to research
36 and manage the State's eel and elver resources and to enforce the
38 laws related to eels and elvers.

40 3. Plan required. Beginning in calendar year 1997, the
42 commissioner shall by May 1st of each year present a plan for
44 expenditures from the fund for the next fiscal year to the joint
46 standing committee of the Legislature having jurisdiction over
48 marine resource matters. When developing the plan, the
50 commissioner shall consult with people who harvest eels and
52 elvers, with dealers of eels and elvers and with the Commissioner
54 of Inland Fisheries and Wildlife.

56 Sec. A-9. 12 MRSA c. 621, sub-c. II, art. 5 is enacted to read:

58 **Article 5**

60 **Elver and Eel Limitations**

62 **§6575. Closed season; elver harvesting**

64 1. Closed season. It is unlawful for a person to fish for
66 or take elvers within the coastal waters of the State from June
68 16th to noon on March 15th of the following year.

2 2. Setting nets and traps. It is unlawful for a person to
immerse or leave immersed a fyke net or a Sheldon eel trap in any
river, stream or brook of the coastal waters of the State from
February 15th to noon of March 15th.

6 3. Locating nets. It is unlawful between February 15th and
noon of March 15th for a person to designate or claim by any
means a location in which an elver fyke net or a Sheldon eel trap
would be placed or set.

10 **§6575-A. Closed period; elver harvesting**

12 It is unlawful for a person to fish for or take elvers from
14 noon Saturday to noon Sunday. A person may leave an elver fyke
net or a Sheldon eel trap in the coastal waters of the State
16 during the closed period if the net or trap is left in a
condition that prevents the capture of elvers.

18 **§6575-B. Method of elver fishing; limits on gear**

20 1. Gear. It is unlawful for a person to fish for or take
22 elvers by any method other than by dip net, elver fyke net or
Sheldon eel trap.

24 2. Number of elver fyke nets and Sheldon eel traps. It is
26 unlawful from noon of March 15th to midnight of June 15th for a
person to immerse at any one time:

28 A. More than 5 elver fyke nets;

30 B. More than 5 Sheldon eel traps; or

32 C. Any combination of elver fyke nets and Sheldon eel traps
34 that total more than 5 nets and traps.

36 3. Rebuttable presumption. It is a rebuttable presumption
that an elver fyke net or a Sheldon eel trap immersed in any
38 river, stream or brook of the coastal waters of the State from
noon of March 15th to midnight of June 15th is immersed for the
40 purpose of fishing for or taking elvers.

42 4. Prohibition on fishing from boats. It is unlawful for a
person to set or tend an elver fyke net or a Sheldon eel trap
44 from a boat or to fish for or take elvers from a boat. A person
may transport an elver fyke net, a Sheldon eel trap or a dip net
46 by boat.

48 5. Use of dip nets. It is unlawful for a person to use a
dip net to fish for or take elvers while standing in the water of
50 a river, stream or brook within the coastal waters of the State.

2 **§6575-C. Closed areas; elver fishing**

4 **1. Dams with fishways.** It is unlawful for a person to fish
6 for or take elvers within 150 feet of any part of a dam with a
fishway or within 150 feet of a fishway.

8 **2. Alewife traps.** It is unlawful for a person to fish for
10 or take elvers within 50 feet of a licensed alewife trap.

12 **3. Portion of rivers, streams and brooks.** It is unlawful
14 for a person to fish for or take elvers within the middle 1/3 of
a river, stream or brook, as measured at mean high tide, within
the coastal waters of the State.

16 **4. Dip nets near elver fyke nets.** It is unlawful for a
18 person to fish for or take elvers with a dip net in the mouth of
an elver fyke net. For the purposes of this subsection, "mouth
20 of an elver fyke net" means that area within an elver fyke net
that is net-side of a straight line that runs from one meshed
22 wing tip of the net to the other meshed wing tip.

24 **§6575-D. Molesting elver fishing gear**

26 **1. Prohibition.** It is unlawful for any person other than a
28 marine patrol officer or the license holder issued a tag for an
elver fyke net or a Sheldon eel trap to utilize, transfer, alter,
possess or in any manner handle the net or trap unless that
person:

30 **A.** Has in the person's possession written permission from
32 the license holder to tend the net or trap or is in the
presence of the license holder and has the license holder's
34 permission to tend the net or trap; and

36 **B.** Possesses an elver fishing license issued under section
6505-A.

38 **2. Penalty.** A violation of this section is a Class D
40 crime, except that the court shall impose a minimum fine of \$500
42 for each violation.

44 **§6575-E. Method of eel fishing**

46 **Except as provided in section 6505-C, subsection 2, it is**
unlawful for a person licensed under section 6505-C to fish for
48 or take eels in the coastal waters of the State by any method
other than eel pot or hoop net.

50 **Sec. A-10. 12 MRSA §6864 is enacted to read:**

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§6864. Elver dealer's license

1. License required. It is unlawful for a person to buy, possess, ship, transport or sell elvers without an elver dealer's license.

2. License limited. An elver dealer's license authorizes the licensed activities at only one establishment or with only one vehicle.

3. Supplemental license. A supplemental license must be obtained for each additional establishment or vehicle.

4. Fee. The fee for an elver dealer's license is \$1,000 and the fee for each supplemental license is \$43.

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$217 accrues to the General Fund for each elver dealer's license sold under this section and \$43 accrues to the General Fund for each supplemental license sold under this section.

Sec. A-11. Allocation. The following funds are allocated from the Eel and Elver Management Fund to carry out the purposes of this Part.

	1995-96	1996-97
MARINE RESOURCES, DEPARTMENT OF		
Marine Sciences - Bureau of		
All Other	\$180,000	\$180,000
Allocates funds for the contracting of life history basic biology work and the contracting of catch effort monitoring.		
Marine Patrol - Bureau of		
Positions - Other Count	(6.0)	(6.0)
Personal Services	66,000	66,000
All Other	23,400	23,400
Capital Expenditures	45,000	
TOTAL	134,400	89,400

2 Allocates funds for 6
3 seasonal Marine Patrol
4 Officer positions, limited
5 overtime, operating costs and
6 to purchase radios, night
7 vision optical equipment and
8 binoculars.

10 **DEPARTMENT OF MARINE RESOURCES**
11 **TOTAL**

\$314,400 \$269,400

12
13 **Sec. A-12. Transition provisions; licenses.** An eel fishing
14 license issued for calendar year 1996 under the Maine Revised
15 Statutes, Title 12, former section 6505 remains in effect until
16 December 31, 1996. A person who holds an eel fishing license
17 issued under Title 12, former section 6505 and fishes for or
18 takes elvers is subject to Title 12, section 6404-A, the fees
19 established under section 6505-B and all applicable sections of
20 Title 12, chapter 621, subchapter II, article 5, except that in
21 calendar year 1996 a license holder shall pay by April 15, 1996
22 applicable fees for the use of elver fyke nets, Sheldon eel traps
23 and dip nets and affix tags by April 15, 1996 to elver fyke nets
24 and Sheldon eel traps used by the license holder when those nets
25 and traps are used to fish for or take elvers. A person who
26 holds an eel fishing license issued under Title 12, former
27 section 6505 and fishes for or takes eels that are not for
28 personal use is subject to Title 12, chapter 621, subchapter II,
29 article 5.

30
31 **Sec. A-13. Effective dates.** Those sections of this Part that
32 enact the Maine Revised Statutes, Title 12, sections 6575 and
33 6575-A take effect March 16, 1996. Those sections of this Part
34 that amend Title 12, section 6001, subsection 29 and enact Title
35 12, section 6864 take effect April 15, 1996.

38 **PART B**

39
40 **Sec. B-1. 12 MRSA §7001, sub-§§6-A to 6-C, 37-A and 39-A** are
41 enacted to read:

42
43 **6-A. Eel.** "Eel" means a member of the species *Anguilla*
44 *rostrata* in that stage of its life cycle when it is 6 inches or
45 more in length.

46
47 **6-B. Eel pot.** "Eel pot" means a cylindrical or rectangular
48 trap with funnels that is baited and used to harvest eels. An
49 eel pot is 50 cubic feet or less in total volume and utilizes
50 wire or slatting no smaller than 1/2 inch square measure.

2 6-C. Elver. "Elver" means a member of the species Anguilla
3 rostrata in that stage of its life cycle when it is less than 6
4 inches in length.

5 37-A. Trap net. "Trap net" means a funnel-shaped net
6 designed to intercept and retain fish in a confined space.

7 39-A. Weir. "Weir" means a structure placed in the inland
8 waters of a river, stream or brook that is designed to entrap
9 fish and that exceeds more than 1/3 of the wetted width of the
10 channel.

11 Sec. B-2. 12 MRSA §7153, as amended by PL 1995, c. 455, §11,
12 is repealed and the following enacted in its place:

13 **§7153. Alewife, eel, sucker and yellow perch permit**

14 1. Issuance. The commissioner may issue permits to fish
15 for or possess alewives, eels, suckers and yellow perch under
16 rules that the commissioner establishes, if these permits do not
17 interfere with rights granted under section 6131.

18 A. Eels may be harvested in inland waters using only eel
19 pots or weirs.

20 B. Alewives, suckers and yellow perch may be harvested in
21 inland waters using trap nets, dip nets or spears.

22 2. Fee. The minimum fee for an individual permit for
23 alewives, suckers and yellow perch is \$42. Beginning in calendar
24 year 1996, a crew permit may be sold for alewives, suckers and
25 yellow perch for \$100, authorizing up to 3 persons to engage in
26 the licensed activity. The annual fee for an eel pot or weir
27 permit is \$100. An eel pot or eel weir license is not
28 transferable.

29 3. Prohibitions. The following prohibitions apply to the
30 harvesting of eels and elvers in inland waters.

31 A. It is unlawful for any person to fish for or take elvers
32 from inland waters.

33 B. It is unlawful for any person other than the owner of a
34 weir used to fish for or take eels in inland waters to tend
35 that weir while the weir is immersed unless that person has
36 in the person's possession written permission from the owner
37 to tend the weir or is in the presence of the owner and has
38 the owner's permission to tend the weir.

4. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$42 accrues to the General Fund for each eel pot or eel weir permit issued under this section. This subsection is repealed on January 1, 2001.

5. Five-year limited entry; inland eel weirs. The department may not issue an eel weir permit to a person unless that person possessed a valid eel weir permit for calendar year 1995. This subsection is repealed on January 1, 2001.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

	1995-96	1996-97
APPROPRIATIONS/ALLOCATIONS		

Other Funds	\$314,400	\$269,400
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REVENUES

Other Funds	\$796,395	\$796,395
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The establishment of licensure requirements for various aspects of eel and elver fishing and harvesting will increase license fee collections. The estimated annual increase of dedicated revenue to the Department of Marine Resources is \$796,395 beginning in fiscal year 1995-96.

The Department of Marine Resources will require allocations from the Eel and Elver Management Fund of \$314,400 and \$269,400 in fiscal years 1995-96 and 1996-97, respectively, for the costs of enforcing eel and elver fishing requirements and the costs of conducting research about this fishery.

The Department of Inland Fisheries and Wildlife will incur some minor additional costs to enforce certain requirements on the harvesting of eels in inland waters. These costs can be absorbed within the department's existing budgeted resources.

This bill may increase prosecutions for Class D and Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.70 per day per prisoner.

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These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.'

STATEMENT OF FACT

This amendment strikes the bill and replaces it with the following provisions.

Part A repeals the current eel fishing license for coastal waters and enacts 2 new licenses for eel fishing in the coastal waters:

1. An elver fishing license with fees of \$33 for residents and \$1,000 for nonresidents; and

2. An eel harvesting license with a fee of \$100 for residents and nonresidents.

The amendment defines elvers as eels less than 6 inches in length. The amendment also enacts an elver dealer's license with a fee of \$1,000 for residents and nonresidents.

The amendment defines the terms "elver fyke net," "Sheldon eel trap" and "dip net" and limits the method of fishing for elvers to those nets and traps. It limits the method of fishing for eels in coastal waters to eel pots and hoop nets. The amendment limits to 5 the number of elver fyke nets, Sheldon eel traps or any combination of nets and traps an elver license holder may use. It also enacts fees for the use of elver fyke nets and Sheldon eel traps of \$100 per net or trap for the first or 2nd net or trap used and \$200 per net or trap for the 3rd, 4th or 5th net or trap used. The amendment enacts a \$75 per net fee for the use of dip nets.

The amendment dedicates revenues from the elver fishing license, the eel pot fishing license, the elver fyke and dip net fees and the elver dealer license to the Eel and Elver Management Fund. The fund may be used by the Commissioner of Marine Resources to support research and management of eel and elver resources and enforcement of the eel and elver laws. Expenditures from the fund must be in accordance with a

management plan that is reviewed by the joint standing committee of the Legislature having jurisdiction over marine resource matters.

The amendment limits the harvesting of elvers to the State's coastal waters. It also enacts a season for elver fishing that runs from noon of March 15th to midnight of June 15th. It prohibits the harvesting of elvers from noon on Saturdays to noon on Sundays. It prohibits the setting of any fyke nets or Sheldon eel traps from February 15th to noon of March 15th and it prohibits claiming any elver fishing locations from February 15th to noon of March 15th.

The amendment prohibits fishing for elvers from boats, although it allows nets, traps and gear to be transported by boat. It prohibits a person who fishes for elvers with a dip net from fishing while standing in the water of a river, brook or stream. It prohibits fishing for elvers in the middle 3rd of coastal rivers, streams or brooks, as measured at mean high tide. It prohibits the use of dip nets in the mouths of elver fyke nets. It prohibits fishing for elvers within 150 feet of a dam with a fishway, within 150 feet of a fishway and within 50 feet of a licensed alewife trap.

It requires a person to affix to each elver fyke net and Sheldon eel trap a tag issued by the Department of Marine Resources. The amendment also prohibits a person other than a net tag holder from tending a net unless the person has written permission to do so or is in the presence of the tag holder and has permission to do so.

The amendment also enacts a violation for molesting an elver fyke net. A violation carries a minimum \$500 fine. In addition, the commissioner is required to suspend for one year the elver fishing license of a person convicted of molesting a fyke net.

The amendment, while repealing the current eel fishing license, also provides that an eel fishing license issued for 1996 is valid for the year. However, anyone who possesses a 1996 eel fishing license must pay the net fees for any gear used to fish for elvers by April 15, 1996 and affix tags to elver fyke nets and Sheldon eel traps by April 15, 1996. The amendment provides that anyone who possesses a 1996 eel fishing license and commercially fishes for adult eels must only use an eel pot or a hoop net.

Part B of this amendment implements the recommendations of the Joint Standing Committee on Inland Fisheries and Wildlife with respect to management of the eel and elver fishery in inland waters.

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2 The amendment prohibits the taking of elvers in inland
waters, limits the eligibility for eel weir permits over the next
5 years to persons who held that permit in 1995, prohibits the
4 use of traps and spears when harvesting eels in inland waters and
increases the annual freshwater eel pot and eel weir permit fee
6 to \$100. Money from eel pot and eel weir permits sold during
calendar years 1996, 1997, 1998, 1999 and 2000 is deposited into
8 the Eel and Elver Management Fund that is administered by the
Department of Marine Resources in coordination with the
10 Department of Inland Fisheries and Wildlife.

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