

MAINE STATE LEGISLATURE

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7/18/99

L.D. 905

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DATE: March 2, 1999

(Filing No. S-13)

MARINE RESOURCES

Reported by:

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 303, L.D. 905, Bill, "An Act Concerning the 1999 Elver Fishery"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

Sec. 1. 12 MRSA §6001, sub-§13-H, as enacted by PL 1997, c. 91, §2, is amended to read:

13-H. Elver dip net. "Elver dip net" means a dip net with a hoop of not more than 30 inches in diameter and fitted with netting that measures 1/8 inch bar mesh or less.

Sec. 2. 12 MRSA §6505-A, sub-§2, as enacted by PL 1995, c. 536, Pt. A, §8, is amended to read:

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

A. During the 1996 elver fishing season held an eel fishing license under former section 6505 or an elver fishing license and paid fees for the use of elver fyke nets, Sheldon eel traps or dip nets in accordance with Public Law 1995, chapter 536, Part A, section 12; and

B. During the 1997 and 1998 elver fishing seasons held an elver fishing license issued under this section.

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2 **Sec. 3. 12 MRSA §6505-A, sub-§3,** as enacted by PL 1995, c.
536, Pt. A, §8, is amended to read:

4 **3. Limits on issuance.** The department may not issue an
elver fishing license ~~after March 15th and before June 16th~~
6 during the open season for elver fishing.

8 **Sec. 4. 12 MRSA §6505-A, sub-§5,** as amended by PL 1997, c.
297, §2, is further amended to read:

10 **5. Gear.** --A- Except as prohibited by section 6575-B,
12 subsection 2-A, a person issued a license under this section may
14 utilize one elver fyke net, one Sheldon eel trap or one dip net
to fish for or take elvers without paying the fee required for a
16 first net or trap pursuant to section 6505-B. A license issued
under this section must identify the number and types of nets
18 that the license holder may use pursuant to this section and
section 6505-B.

20 **Sec. 5. 12 MRSA §6505-A, sub-§§6 and 7** are enacted to read:

22 **6. Minimum age.** It is unlawful for a person who is under 15
years of age to fish for or take elvers.

24 **7. Nonresident licenses; reciprocity with other states.** A
26 nonresident is eligible to purchase an elver fishing license only
if the nonresident documents to the commissioner that the
28 nonresident's state of residence allows Maine residents to
purchase an elver license and fish for elvers in that state.

30 **Sec. 6. 12 MRSA §6505-B, sub-§1,** as amended by PL 1997, c.
32 297, §§3 and 4, is further amended to read:

34 **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
36 in the ~~eastal~~ waters of the State to fish for or take elvers
unless the net or trap owner pays annually the following fees:

38 A. Fifty dollars per net or trap for the use of a ~~first or~~
40 ~~2nd~~ an elver fyke net or Sheldon eel trap, except that the
fee under this paragraph does not apply to an elver fyke or
42 Sheldon eel trap a person utilizes pursuant to section
6505-A, subsection 5. ~~For the purposes of assessing fees~~
44 ~~under this subsection, an elver fyke net or Sheldon eel trap~~
~~utilized pursuant to section 6505-A, subsection 5 is the~~
46 ~~first net or trap;~~

48 B. ~~One hundred dollars per net or trap for the use of a 3rd~~
~~elver fyke net or Sheldon eel trap; and~~

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~~G. Two hundred dollars per net or trap for the use of a 4th and 5th elver fyke net or Sheldon eel trap.~~

Sec. 7. 12 MRSA §6575, as amended by PL 1997, c. 91, §4, is further amended to read:

§6575. Open season; elver harvesting

1. **Open season.** It is unlawful for a person to fish for or take elvers within the coastal waters of the State ~~from June 16th to noon on March 15th of the following year~~ except during the open season from noon on March 22nd to noon on May 31st.

2. **Setting nets and traps.** It is unlawful for a person to immerse or leave immersed ~~a~~ an elver 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~~ at any time other than the open season for elver fishing.

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 to set an elver fyke net or a Sheldon eel trap ~~would be placed or set~~ at any time other than the open season for elver fishing.

~~4. Nets of certain sizes. It is unlawful for a person to immerse or leave immersed in the coastal waters of the State a fyke net, Sheldon eel trap or dip net fitted with netting that measures 1/8 inch bar mesh or less from midnight of June 15th to noon of March 15th of the following year.~~

Sec. 8. 12 MRSA §6575-A, as amended by PL 1997, c. 575, §3, is further amended to read:

§6575-A. Closed period; elver harvesting

It is unlawful for a person to fish for or take elvers from noon Friday to noon Sunday. A person may leave an elver fyke net or a Sheldon eel trap in the coastal waters of the State during the closed period if the net or trap is left in a condition that prevents the capture of elvers. The terminal portion of a fyke net cod end must contain a rigid device with an opening not less than 3 inches in diameter and not exceeding 6 inches in length that is unobstructed by any other portion of the net.

Sec. 9. 12 MRSA §6575-B, sub-§2, as enacted by PL 1995, c. 536, Pt. A, §9, is repealed.

Sec. 10. 12 MRSA §6575-B, sub-§2-A is enacted to read:

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2 2-A. Number of nets and Sheldon eel traps. A person may
3 not immerse at any one time a total of more than 2 elver dip
4 nets, elver fyke nets and Sheldon eel traps. In determining the
5 number of traps or nets that may be immersed, the following
6 formula must be used. A person may not immerse:

8 A. A number of elver dip nets that is greater than the
9 average number, rounded down, of elver dip nets that person
10 was authorized to use during the past 3 elver fishing
11 seasons for which that person held a license;

12 B. A number of elver fyke nets that is greater than the
13 average number, rounded down, of elver fyke nets that person
14 was authorized to use during the past 3 elver fishing
15 seasons for which that person held a license; and

16 C. A number of Sheldon eel traps that is greater than the
17 average number, rounded down, of traps that person was
18 authorized to use during the past 3 elver fishing seasons
19 for which that person held a license.

20 However, if the number arrived at using the formula is greater
21 than 2 nets or traps, the maximum number of traps and nets that
22 may be immersed may not exceed 2.

23 **Sec. 11. 12 MRSA §6575-B, sub-3,** as amended by PL 1997, c. 91,
24 §5, is further amended to read:

25 **3. Rebuttable presumption.** It is a rebuttable presumption
26 that an elver fyke net, Sheldon eel trap or elver dip net
27 immersed in any coastal waters of the State ~~from noon of March~~
28 ~~15th to midnight of June 15th~~ at any time of the year is immersed
29 for the purpose of fishing for or taking elvers.

30 **Sec. 12. 12 MRSA §6575-B, sub-§§6 and 7** are enacted to read:

31 **6. Prohibition on fishing from artificial platforms.** A
32 person may not build or use an artificial platform to fish for
33 elvers. This subsection does not prohibit fishing for elvers
34 from piers or floats established for purposes other than elver
35 fishing.

36 **7. Bycatch release.** A person immediately shall return
37 alive into the waters of the State any species other than elver
38 that is caught in an elver fyke net.

39 **Sec. 13. 12 MRSA §6575-C, sub-§§5 to 7** are enacted to read:

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2 5. Fyke net placement. A person may not place or set an
3 elver fyke net or take elvers from an elver fyke net when any
4 portion of the net, including any anchoring device, is located
5 within an imaginary line between the wing ends of another elver
6 fyke net. Cod end anchoring devices may not exceed 10 feet in
7 length and wing end anchoring devices may not interfere with or
8 create a hazard to navigation within the middle 1/3 of a
9 navigable watercourse. A marine patrol officer may open the cod
10 end of a net that is located in violation of this subsection.

11 6. Obstructing elver fyke nets. A person may not set an
12 elver fyke net or place an obstruction near an elver fyke net in
13 a manner that interferes with the operation of an elver fyke net.

14 7. Rulemaking; gear placement. If necessary to conserve the
15 elver resource, the commissioner may adopt rules pursuant to
16 section 6171 relating to placement of elver fishing gear based on
17 the configuration of specific rivers, streams, brooks or other
18 watercourses. Rules adopted pursuant to this subsection are
19 routine technical rules as defined in Title 5, chapter 375,
20 subchapter II-A.

21 **Sec. 14. 12 MRSA §6575-D, sub-§1,** as enacted by PL 1995, c.
22 536, Pt. A, §9, is amended to read:

23 **1. Prohibition.** ~~It is unlawful for any~~ A person other than
24 a marine patrol officer or the license holder issued a tag for an
25 elver fyke net or a Sheldon eel trap ~~to~~ may not utilize,
26 transfer, alter, possess or in any manner handle the net or trap
27 unless that person has been issued an elver fishing license under
28 section 6505-A and:

29 ~~A. --- Is in the presence of the license holder issued a tag~~
30 ~~for the net or trap and has the license holder's permission~~
31 ~~to tend the net or trap; or~~

32 B. Is issued written permission by a marine patrol officer
33 to tend the net or trap of a license holder issued a tag. A
34 marine patrol officer may issue a person written permission
35 for the person to tend the license holder's net or trap only
36 for the purpose of releasing captured elvers into the waters
37 of the State if the license holder can not tend the net or
38 trap because of a disability or personal or family medical
39 condition. If the license holder is unable to tend the net
40 or trap for more than 2 weeks, the net or trap must be
41 removed from the water.

42 **Sec. 15. 12 MRSA §6864, sub-§6** is enacted to read:

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2 6. Reporting. The commissioner shall require the holder of
4 an elver dealer's license to submit monthly reports to the
6 department with data on the harvest of elvers. The commissioner
may deny an application for the renewal of an elver dealer's
license if the dealer fails to report the information required
pursuant to this subsection.

8 **Sec. 16. Report; legislation.** The Commissioner of Marine
10 Resources shall study the harvest of elvers during the 1999
12 season and make recommendations regarding any changes to the
14 number of licenses and gear restrictions for the 2000 elver
16 fishing season. The commissioner shall by September 1, 1999
18 convene a meeting with representatives of the elver fishing
industry and other interested parties to review the
commissioner's findings and recommendations and, by November 1,
1999, submit the findings and recommendations to the Joint
Standing Committee on Marine Resources.

20 The Joint Standing Committee on Marine Resources may report
22 out legislation concerning elver fishing during the Second
Regular Session of the 119th Legislature.

24 **Sec. 17. 1999 licenses; eligibility or revocation.** A person who
26 purchased an elver fishing license for the 1999 elver fishing
28 season before the effective date of this Act shall document to
30 the Commissioner of Marine Resources by March 22, 1999 that that
32 person complies with the provisions of the Maine Revised
34 Statutes, Title 12, section 6505-A, subsections 2 and 6 and a
36 nonresident who purchased an elver fishing license for the 1999
38 elver fishing season before the effective date of this Act must
also document to the commissioner by March 22, 1999 that that
person complies with the provisions of Title 12, section 6505-A,
subsection 7. If that person fails to provide the documentation
by March 22, 1999, that person's elver fishing license for the
1999 season is revoked and the Commissioner of Marine Resources
shall refund to the person all license and gear fees paid by that
person.

40 **Sec. 18. Gear fees; refund.** A person who purchased an elver
42 fishing license for the 1999 elver fishing season before the
44 effective date of this Act and who paid gear fees for a greater
46 number of nets or traps than that person is authorized to use
48 pursuant to the Maine Revised Statutes, Title 12, section 6575-B,
subsection 2-A, shall return any extra tags issued pursuant to
section 6505-B, subsection 2 and the Commissioner of Marine
Resources shall refund to the person all gear fees paid by that
person for gear that the person is not authorized to utilize.'

50 Further amend the bill by inserting at the end before the
summary the following:

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FISCAL NOTE

1999-00 2000-01

REVENUES

General Fund	(\$60,977)	(\$60,977)
Other Funds	(356,994)	(356,994)

Restricting the issuance of elver fishing licenses and gear permits will reduce annual General Fund revenue by \$60,977 beginning in fiscal year 1998-99. These same restrictions will also reduce annual dedicated revenue collected by the Department of Marine Resources by \$356,994 beginning in fiscal year 1998-99.

The Department of Marine Resources will incur some minor additional costs to submit a required report to the Legislature. These costs can be absorbed within the department's existing budgeted resources.

This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$82.48 per day per prisoner. 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.'

SUMMARY

This amendment does the following.

1. It limits entry into the elver fishery to conserve the resource by specifying that elver fishing licenses may be issued only to people who held elver fishing licenses during the 1996, 1997 and 1998 elver fishing seasons and therefore have shown a long-term interest and investment in the elver fishery.

2. It specifies that the open season for elver fishing is March 22nd to May 31st and clarifies that the Department of

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2 Marine Resources may not issue an elver fishing license during
the open season for elver fishing.

4 3. It establishes a minimum age of 15 years old for elver
6 fishing.

8 4. It limits the eligibility of nonresidents to purchase
10 elver fishing licenses to those nonresidents from states that
allow Maine residents to purchase elver fishing licenses.

12 5. It strikes the requirement in the bill that the cod end
14 of an elver fyke net must be closed during the closed period for
16 elver fishing but maintains the requirement that the cod end must
contain a rigid device with an opening not less than 3 inches in
diameter during the closed period and specifies that the opening
must not exceed 6 inches in length.

18 6. It limits the amount of gear that a person may utilize to
20 a maximum combined total of 2 elver dip nets, elver fyke nets and
22 Sheldon eel traps. A person may not utilize more than the
average number of elver dip nets, elver fyke nets and Sheldon eel
traps that person used during the past 3 elver fishing seasons.

24 7. It prohibits a person from building or using an
26 artificial platform to fish for elvers and requires a person to
immediately release any bycatch caught in an elver fyke net.

28 8. It clarifies placement requirements for elver fyke nets
30 and authorizes a marine patrol officer to open the cod end of a
32 net that is located in violation of those requirements. It also
34 gives the Commissioner of Marine Resources authority to adopt
rules relating to the placement of elver fishing gear if
necessary because of the configuration of a river, stream, brook
or other watercourse.

36 9. It prohibits the tending of another person's gear except
38 with written permission from a marine patrol officer and for the
40 purpose of releasing captured elvers if the person issued a tag
42 for the gear is unable to tend the gear because of a disability
or medical condition. It requires that gear be removed from the
water if the license holder is unable to tend the gear for more
than 2 weeks.

44 10. It authorizes the Commissioner of Marine Resources not
46 to renew the elver dealer's license of a dealer who does not meet
reporting requirements.

48 11. It requires the Commissioner of Marine Resources to
50 submit a report by November 1, 1999 to the Joint Standing
Committee on Marine Resources with findings on the 1999 elver

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2 harvest and recommendations regarding the 2000 elver fishing
season. It authorizes the committee to report out legislation
concerning elver fishing during the Second Regular Session of the
4 119th Legislature.

6 12. It requires the Commissioner of Marine Resources to
revoke the 1999 elver fishing license of any person who has
8 purchased a license but does not meet the new eligibility
requirements and to refund all license and gear fees paid by that
10 person. It also requires the commissioner to refund any gear
fees paid by a person for gear that person is no longer
12 authorized to utilize.