

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 905

S.P. 303

In Senate, February 2, 1999

An Act Concerning the 1999 Elver Fishery.

(EMERGENCY)

Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GOLDTHWAIT of Hancock.

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

4
6 Whereas, the elver fishery has sustained a doubling in
fishing effort in one year; and

8 Whereas, it is important that this fishery be managed as a
sustainable fishery; and

10
12 Whereas, the level of fishing pressure experienced in the
fishery places this resource at risk; and

14 Whereas, the fishing season in this fishery commences March
15th of this year; and

16
18 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
20 necessary for the preservation of the public peace, health and
safety; now, therefore,

22 **Be it enacted by the People of the State of Maine as follows:**

24 **Sec. 1. 12 MRSA §6001, sub-§13-H,** as enacted by PL 1997, c.
26 91, §2, is amended to read:

28 13-H. **Elver dip net.** "Elver dip net" means a dip net with
30 a hoop of not more than 30 inches in diameter and fitted with
netting that measures 1/8 inch bar mesh or less that is manually
32 operated by one person.

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

36 3. **Limits on issuance.** The department may not issue an
elver fishing license ~~after~~ during the period between March 15th
38 and before June 16th the end of the open season for elver fishing.

40 Beginning with the issuance of the year 2001 licenses, and for
42 each year thereafter, the department may not issue an elver
44 fishing license during the period between March 1st and the end
of the open season for elver fishing.

46 **Sec. 3. 12 MRSA §6575,** as amended by PL 1997, c. 91, §4, is
further amended to read:

48 **§6575. Closed season; elver harvesting**

2 1. **1999 Open season.** It is unlawful for a person to fish
4 for or take elvers within the coastal waters of the State from
6 ~~June 15th to noon on March 15th of the following year~~ except
during the open season between noon on April 1st and noon on May
31st, both dates inclusive.

8 2. **Setting nets and traps.** It is unlawful for a person to
10 immerse or leave immersed a an elver fyke net or a Sheldon eel
12 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.

14 3. **Locating nets.** It is unlawful ~~between February 15th and~~
16 ~~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.~~

18 4. ~~Nets of certain sizes. It is unlawful for a person to~~
20 ~~immerse or leave immersed in the coastal waters of the State a~~
22 ~~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.~~

24 **Sec. 4. 12 MRSA §6575-A**, as amended by PL 1997, c. 575, §3,
26 is further amended to read:

28 **§6575-A. Closed period; elver harvesting**

30 It is unlawful for a person to fish for or take elvers from
32 noon Friday to noon Sunday. A person may leave an elver fyke net
34 or a Sheldon eel trap in the coastal waters of the State during
36 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 opening not less than 3 inches
in diameter that is unobstructed by any other portion of the
net. In addition, the cod end of an elver fyke net must be
closed at a point behind the excluder panel where the cod end
meets the body of the net so as to prevent elvers from entering
the cod end.

40 **Sec. 5. 12 MRSA §6575-B, sub-§2**, as enacted by PL 1995, c.
42 536, Pt. A, §9, is amended to read:

44 2. **Number of elver fyke nets and Sheldon eel traps.** It is
46 unlawful ~~from noon of March 15th to midnight of June 15th~~ during
the open season for elver fishing for a person to immerse at any
48 one time:

50 A. More than 5 elver fyke nets;

2 B. More than 5 Sheldon eel traps; or

4 C. Any combination of elver fyke nets and Sheldon eel traps
that ~~total~~ totals more than 5 nets and traps.

6 Sec. 6. 12 MRSA §6575-B, sub-§3, as amended by PL 1997, c. 91,
§5, is further amended to read:

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

16 Sec. 7. 12 MRSA §6575-B, sub-§6 is enacted to read:

18 6. Artificial platform. It is unlawful for a person to
16 build or use an artificial platform to fish for elvers. This
20 subsection does not prohibit fishing for elvers from piers or
floats established for purposes other than elver fishing.

22 Sec. 8. 12 MRSA §6575-C, sub-§5 is enacted to read:

24 5. Fyke net separation. It is unlawful for a person to
26 fish for or take elvers with an elver fyke net within the waters
of the State when any portion of the net, including any anchoring
28 device, is placed or located within an imaginary line drawn
between the wing ends of another elver fyke net. Anchoring
30 devices may not exceed 10 feet in length from the terminal
portion of the cod end. In addition, it is unlawful to place an
32 obstruction near an elver fyke net so that it interferes with the
lawful placement of another elver fyke net.

34 Sec. 9. 12 MRSA §6575-D, sub-§1, as enacted by PL 1995, c.
536, Pt. A, §9, are amended to read:

36 1. **Prohibition.** It is unlawful for any person other than a
38 marine patrol officer or the license holder issued a tag for an
elver fyke net or a Sheldon eel trap to utilize, transfer, alter,
40 possess or in any manner handle the net or trap unless that
person has been issued an elver fishing license under section
42 6505-A and:

44 A. Is in the presence of the license holder issued a tag
for the net or trap and has the license holder's permission
46 to tend the net or trap; or

48 B. Is issued written permission by a marine patrol officer
to tend the net or trap of a license holder issued a tag. A
50 marine patrol officer may issue a person written permission

2 for the person to tend the license holder's net or trap if
the license holder can not tend the net or trap because of a
3 disability or personal or family medical condition; or

4
5 It is a rebuttable presumption that a person is molesting elver
6 gear when that person tends an elver fyke net or Sheldon eel trap
7 and the conditions set out in this subsection are not applicable.

8
9 **Emergency clause.** In view of the emergency cited in the
10 preamble, this Act takes effect when approved.

12

SUMMARY

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The bill:

16

Clarifies the definition of an elver dip net;

18

Provides that in 2001 the Department of Marine Resources may
20 not issue an elver fishing license once the season has begun;

22

Specifies that the open season for elver fishing is April
21 1st to May 31st;

24

Specifies that the cod end of a fyke net must have a ridged
26 opening during the time when the net is not allowed to be in
fishable condition;

28

Specifies that it is unlawful to build or use an artificial
30 platform for elver fishing;

32

Establishes a separation zone with regard to the placement
of fyke nets; and

34

Establishes that it is a rebuttable assumption that an
36 individual is molesting the net of another if that individual is
not the person to whom the net tag on the net was issued.