

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

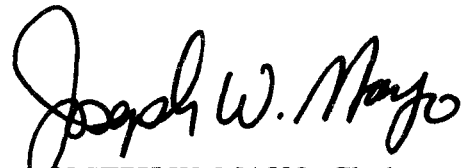
No. 1173

H.P. 839

House of Representatives, February 11, 1999

An Act Regarding Elver Fishing.

Reference to the Committee on Marine Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative PERKINS of Penobscot.

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

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50
52

Sec. 1. 12 MRSA §6302-A, sub-§§1 and 2, as enacted by PL 1997, c. 708, §1 and affected by §3, are amended to read:

1. Tribal exemption; commercial harvesting licenses. A member of the Passamaquoddy Tribe who is a resident of the State is not required to hold a state license or permit issued under section 6421, 6501, ~~6505-A, 6505-C, 6505-E,~~ 6535, 6536, 6601, 6701, 6702, 6703, 6731, 6745, 6746, 6748, 6748-A, 6748-D, 6751 or 6803 to conduct activities authorized under the state license or permit if that member holds a valid license issued by the tribe to conduct the activities authorized under the state license or permit. A member of the Passamaquoddy Tribe issued a tribal license pursuant to this subsection to conduct activities is subject to all laws and rules applicable to a person who holds a state license or permit to conduct those activities and to all the provisions of chapter 625, except that the member of the tribe:

A. May utilize lobster traps tagged with trap tags issued by the tribe in a manner consistent with trap tags issued pursuant to section 6431-B. A member of the tribe is not required to pay trap tag fees under section 6431-B if the tribe issues that member trap tags;

B. May utilize elver fishing gear tagged with elver gear tags issued by the tribe in a manner consistent with tags issued pursuant to ~~6505-B, ---A member of the tribe is not required to pay elver fishing gear fees under section 6505-B if the tribe issues that member elver fishing gear tags~~ section 6505-E, subsection 7; and

C. Is not required to hold a state shellfish license issued under section 6601 to obtain a municipal shellfish license pursuant to section 6671.

2. Tribal exemption; sustenance or ceremonial tribal use. Notwithstanding any other provision of law, a member of the Passamaquoddy Tribe who is a resident of the State may at any time take, possess, transport and distribute:

A. Any marine organism, except lobster, for sustenance use if the tribal member holds a valid sustenance fishing license issued by the tribe. A sustenance fishing license holder who fishes for sea urchins may not harvest sea urchins out of season;

B. Lobsters for sustenance use, if the tribal member holds a valid sustenance lobster license issued by the tribe. The sustenance lobster license holder's traps must be tagged with sustenance use trap tags issued by the tribe in a

2 manner consistent with trap tags issued pursuant to section
6431-B; however, a sustenance lobster license holder may not
4 harvest lobsters for sustenance use with more than 25 traps;
and

6 C. Any marine organism for noncommercial use in a tribal
ceremony within the State, if the member holds a valid
8 ceremonial tribal permit issued to the tribal member by the
Joint Tribal Council of the Passamaquoddy Tribe or the
10 governor and council at either Passamaquoddy reservation.

12 For purposes of this subsection, "sustenance use" means all
noncommercial consumption or noncommercial use by any person
14 within the Passamaquoddy reservation at Pleasant Point or Indian
Township or at any location within the State by a tribal member,
16 by a tribal member's immediate family or within a tribal member's
household. The term "sustenance use" does not include the sale
18 of marine organisms. A member of the Passamaquoddy Tribe who
takes a marine organism under a license or permit issued pursuant
20 to this subsection must comply with all laws and rules applicable
to a person who holds a state license or permit that authorizes
22 the taking of that organism, except that a state law or rule that
sets a season for the harvesting of a marine organism does not
24 apply to a member of the Passamaquoddy Tribe who takes a marine
organism for sustenance use or for noncommercial use in a tribal
26 ceremony. A member of the Passamaquoddy Tribe issued a license
or permit under this subsection is exempt from ~~paying elver gear~~
28 ~~fees under section 6505-B or~~ trap tag fees under section 6431-B
and is not required to hold a state shellfish license issued
30 under section 6601 to obtain a municipal shellfish license
pursuant to section 6671. A member of the Passamaquoddy Tribe
32 who fishes for or takes lobster under a license or permit issued
pursuant to this subsection must comply with the closed periods
34 under section 6440.

36 **Sec. 2. 12 MRSA §6505-A**, as amended by PL 1997, c. 297, §§1
and 2, is repealed.

38 **Sec. 3. 12 MRSA §6505-B**, as amended by PL 1997, c. 575, §2,
40 is repealed.

42 **Sec. 4. 12 MRSA §6505-E** is enacted to read:

44 **§6505-E. Elver fishing license**

46 **1. License required.** It is unlawful for any person to
engage in the activities authorized by a license under this
48 section without a current Class I, Class II or Class III elver
fishing license.

50 **2. Licensed activity.** A license authorizes activities by
52 individuals as follows.

2 A. A Class I elver fishing license authorizes a person to
3 fish for or take elvers by dip net in waters designated
4 Class I elver waters under section 6575-F. It also
5 authorizes that person to possess, ship, transport or sell
6 elvers that the person has taken.

8 B. A Class II elver fishing license authorizes a person to
9 fish for or take elvers by dip net in waters designated as
10 Class II elver waters under section 6575-F. It also
11 authorizes that person to possess, ship, transport or sell
12 elvers that the person has taken.

14 C. A Class III elver fishing license authorizes a person to
15 fish for or take elvers by dip net, elver fyke net or
16 Sheldon eel trap in waters designated as Class III elver
17 waters under section 6575-F. It also authorizes that person
18 to possess, ship, transport or sell elvers that the person
19 has taken.

20 3. Eligibility. An elver fishing license may be issued
21 only to an individual as follows.

24 A. A person may be issued a Class I elver fishing license
25 if that person's name is drawn in a Class I license lottery
26 under section 6575-G or if a license lottery is not
27 required. An application for a Class I license must be
28 submitted by January 15th.

30 B. A person may be issued a Class II elver fishing license
31 if that person's name is drawn in a Class II license lottery
32 under section 6575-G or if a license lottery is not
33 required. An application for a Class II license must be
34 submitted by January 15th.

36 C. Any person may be issued a Class III elver fishing
37 license. A person who wants to utilize a dip net under a
38 Class III license may not be issued a Class III elver
39 fishing license unless that person's name is drawn in a
40 Class III elver fishing license lottery under section 6575-G
41 or if a license lottery is not required. A person wanting
42 to utilize a dip net under a Class III elver fishing license
43 must submit a license application by January 15th.

44 4. Limits on issuance. The department may not issue an
45 elver fishing license between March 16th and June 15th.

48 5. Fees. A Class I, Class II or Class III elver fishing
49 license must be purchased separately. The fees are:

50 A. For a Class I or Class II elver fishing license:
51
52

2 (1) Eighty-three dollars for a person who is a
3 resident; and

4 (2) Three hundred eighty-four dollars for a person who
5 is a nonresident; and

6 B. For a Class III elver fishing license:

7 (1) One hundred thirteen dollars for a person who is a
8 resident; and

9 (2) Four hundred fourteen dollars for a person who is
10 a nonresident.

11 Fifty dollars of each license fee collected under paragraph A
12 accrue to the Eel and Elver Management Fund established in
13 section 6505-D. One hundred dollars of each license fee
14 collected under paragraph B accrue to the Eel and Elver
15 Management Fund established in section 6505-D.

16 6. Gear limitations. The following provisions apply to
17 gear used to fish for or take elvers.

18 A. A person issued a Class I or Class II elver fishing
19 license may not utilize more than one dip net.

20 B. A person issued a Class III elver fishing license for
21 use of a dip net may not utilize more than one dip net.

22 C. A person issued a Class III elver fishing license may
23 not set more than 2 elver fyke nets, 2 Sheldon eel traps or
24 one elver fyke net and one Sheldon eel trap.

25 D. A person issued a Class III elver fishing license may
26 not set more than one elver fyke net at an elver fyke net
27 site established under section 6575-H.

28 7. Tags for elver fyke net and Sheldon eel trap. It is
29 unlawful for a person to submerge an elver fyke net or Sheldon
30 eel trap in the coastal waters of the State to fish for or take
31 elvers unless a tag issued by the department is affixed to the
32 shoreside wing of the net or trap and is clearly visible. The
33 department may issue a replacement tag when an owner issued a tag
34 documents that a net or trap has been damaged or lost.

35 Sec. 5. 12 MRSA §6575-D, sub-§1, as enacted by PL 1995, c.
36 536, Pt. A, §9, is amended to read:

37 1. Prohibition. It is unlawful for any person other than a
38 marine patrol officer or the license holder issued a tag for an
39 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
41 person is a marine patrol officer or the license holder issued a tag
42 for an elver fyke net or a Sheldon eel trap.

2 person has been issued an elver fishing license under section
6505-A 6505-E and:

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

8 B. Is issued written permission by a marine patrol officer
10 to tend the net or trap of a license holder issued a tag. A
12 marine patrol officer may issue a person written permission
14 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
disability or personal or family medical condition.

16 **Sec. 6. 12 MRSA §§6575-F to 6575-H** are enacted to read:

18 **§6575-F. Classification of elver fishing streams; limitations**

20 **1. Classification by rule.** The commissioner shall by rule
22 classify that portion of each river, brook and stream in the
24 State below head of tide as either Class I, Class II or Class III
26 elver waters based upon flow volume. Class I waters are those
waters with low-flow volume. Class II waters are those waters
with moderate-flow volume. Class III waters are those waters
with high-flow volume.

28 **2. Prohibition on Class I streams.** A municipality may
30 petition the commissioner to close by rule all or a portion of
32 the elver fishing waters located within that municipality. The
commissioner must hold a public hearing as part of any
rule-making action on a municipality's petition to close elver
fishing waters.

34 **3. Limitations on elver fyke nets and Sheldon eel traps.**
36 It is unlawful for a person to fish for or take elvers with an
38 elver fyke net or Sheldon eel trap from any river, brook or
stream classified as Class I or Class II by the commissioner
under subsection 1.

40 **4. Establishment of elver fyke net sites.** It is unlawful
42 for a person to immerse an elver fyke net in the coastal waters
44 unless that net is immersed on a site designated for the location
46 of an elver fyke net. The commissioner shall by rule designate
sites on which elver fyke nets may be located in Class III
waters. Elver fyke net sites must be separated by a distance of
at least 75 feet.

48 **5. Alternating sides on Class III waters.** It is unlawful
50 for a person to fish for or take elvers during 2 consecutive
calendar years from the same side of Class III waters. The
commissioner shall by rule establish a schedule for each Class

2 III water under which use of each side of the river, brook or
stream alternates with each calendar year.

4 Rules adopted by the commissioner pursuant to this section
6 are routine technical rules pursuant to Title 5, chapter 375,
subchapter II-A.

8 **§6575-G. Dip net licenses; lottery**

10 1. Commissioner sets number of dip net licenses. The
12 commissioner shall annually by January 2nd establish the number
14 of Class I, Class II and Class III elver fishing license holders
16 who may use dip nets during the elver fishing season that begins
on the subsequent March 15th. The numbers must be based on the
commissioner's determination of a reasonable number of licenses
that will conserve the elver resource and protect the public
safety.

18 2. Lottery submission. A person who wants to use a dip net
20 to fish for or take elvers must submit a license application by
22 January 15th to be issued a Class I, Class II or Class III elver
fishing license for the elver fishing season that begins on the
subsequent March 15th.

24 3. Lottery. If the number of dip net entries submitted
26 under subsection 2 for a class of license exceeds the number of
28 license openings for that class of license established under
30 subsection 1, the commissioner shall, by March 1st, hold a
32 lottery for that class of license. A person may enter a Class I,
Class II and Class III lottery, provided the person submitted an
application for the license category that is the subject of the
lottery. A person may only submit one entry for each lottery.
34 The commissioner shall establish by rule a lottery system for the
issuance of Class I and Class II elver fishing licenses and of
Class III licenses under which license holders may use dip nets.

36 Rules adopted by the commissioner pursuant to this section
38 are routine technical rules pursuant to Title 5, chapter 375,
40 subchapter II-A.

42 **§6575-H. Fyke net sites; lottery**

44 A person issued a Class III elver fishing license for the
46 upcoming elver season must declare by March 1st an elver fyke net
48 site that that person wishes to utilize. The person must choose
from those sites the commissioner has established pursuant to
section 6575-F, subsection 4. If more than one person chooses a
single site, the commissioner shall place the names of those who
selected the site into a general lottery, which must be held by
50 March 7th. All sites that no one chooses and those sites that
more than one person chose must be awarded randomly through the
52 lottery. If, as a result of the lottery, a person who purchased

2 a Class III elver fishing license is not issued a site, the
3 commissioner shall refund that person's license fee. The
4 commissioner shall establish by rule a lottery system for the
5 issuance of elver fyke net sites.

6 Rules adopted by the commissioner pursuant to this section
7 are routine technical rules pursuant to Title 5, chapter 375,
8 subchapter II-A.

10

SUMMARY

12

13 This bill requires the Commissioner of Marine Resources to
14 classify elver fishing rivers, brooks and streams as Class I,
15 Class II or Class III elver waters, based on the flow volume of
16 the watercourse. Elver harvesting on Class I and Class II rivers
17 is limited to dip nets. Municipalities may petition the
18 commissioner to close elver fishing on Class I waters. Elvers
19 may be harvested on Class III waters with elver fyke nets,
20 Sheldon eel traps and dip nets. In addition, elver fishing on
21 Class III waters must alternate banks each year.

22

23 The bill establishes separate elver fishing licenses for
24 Class I, Class II and Class III waters.

24

25 The bill also requires the Commissioner of Marine Resources
26 to determine the number of dip net licenses that may be issued
27 annually under the licenses for Class I, Class II and Class III
28 waters. If the number of dip net license applications for a
29 license category exceeds the number of license openings for that
30 category, the commissioner must hold a lottery to determine who
31 may obtain a license in that category. A person issued a dip net
32 license may utilize only one dip net.

34

35 The bill requires the Commissioner of Marine Resources to
36 establish elver fyke net sites in Class III waters. If more than
37 one person chooses a particular site, the person's names are
38 entered into a general lottery for elver fyke net sites. A
39 person issued a Class III license may use only 2 elver fyke nets,
40 2 Sheldon eel traps or one elver fyke net and one Sheldon eel
41 trap.