

MAINE STATE LEGISLATURE

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SMG
H. 23

L.D. 1765

Date: 3/23/12

(Filing No. H-816)

MARINE RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1298, L.D. 1765, Bill, "An Act To Sustain the Elver Fishery"

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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

Whereas, the elver fishing season begins March 22, 2012; and

Whereas, there are widespread violations in the elver fishery due to the dramatic increase in the price per pound of elvers and harsher penalties need to be in effect to combat the violations; and

Whereas, a change in the closed periods will help elver fishing license holders protect their gear from molestation; and

Whereas, a requirement for elver dealer's license holders to return their product to a permanent establishment will strengthen the position of licensed elver dealers of this State in an international market and help the economy of this State; 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 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:

Sec. 1. 12 MRSA §6404-A, as amended by PL 2001, c. 421, Pt. B, §18 and affected by Pt. C, §1, is further amended to read:

COMMITTEE AMENDMENT

R. 8.

1 **§6404-A. Suspension or revocation based on adjudication of molesting elver gear**

2 The commissioner shall suspend or revoke the elver fishing license of any license
3 holder adjudicated in court of violating section 6575-D. ~~This suspension must be for one~~
4 ~~year from the date of adjudication.~~

5 1. First offense. For a first offense, the commissioner shall suspend the license
6 holder's license for 3 years.

7 2. Second offense. For a 2nd offense, the commissioner shall permanently revoke
8 the license holder's license.

9 **Sec. 2. 12 MRSA §§6404-H to 6404-K** are enacted to read:

10 **§6404-H. Suspension or revocation based on adjudication or conviction of an elver**
11 **fishing license offense**

12 The commissioner shall suspend or revoke a person's eligibility for the elver lotteries
13 under section 6505-A, subsection 2-B if the person is adjudicated in court or convicted of
14 an offense in violation of section 6505-A, subsection 1.

15 1. First offense. For a first offense, the commissioner shall suspend the person's
16 eligibility for the elver lotteries under section 6505-A, subsection 2-B for one year.

17 2. Second offense. For a 2nd offense, the commissioner shall permanently revoke
18 the person's eligibility for the elver lotteries under section 6505-A, subsection 2-B.

19 **§6404-I. Suspension or revocation based on adjudication of untagged elver gear**

20 The commissioner shall suspend or revoke the elver fishing license of any license
21 holder adjudicated in court of violating section 6505-B.

22 1. First offense. For a first offense, the commissioner shall suspend the license
23 holder's license for one year.

24 2. Second offense. For a 2nd offense, the commissioner shall permanently revoke
25 the license holder's license.

26 **§6404-J. Suspension or revocation based on adjudication of fishing during closed**
27 **season or a closed period**

28 The commissioner shall suspend or revoke the elver fishing license of any license
29 holder adjudicated in court of violating section 6575 or 6575-A.

30 1. First offense. For a first offense, the commissioner shall suspend the license
31 holder's license for one year.

32 2. Second offense. For a 2nd offense, the commissioner shall permanently revoke
33 the license holder's license.

34 **§6404-K. Suspension or revocation based on adjudication of a violation of an elver**
35 **dealer's license**

36 The commissioner shall suspend or revoke the elver dealer's license of any elver
37 dealer's license holder adjudicated in court of violating section 6864.

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1. First offense. For a first offense, the commissioner shall suspend the license holder's license for one year.

2. Second offense. For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

Sec. 3. 12 MRSA §6505-A, sub-§2, as amended by PL 2007, c. 615, §15, is further amended to read:

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

C. Possessed an elver fishing license in the previous calendar year; ~~or~~

E. Did not possess an elver fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year; or

F. Becomes eligible to obtain an elver fishing license pursuant to the elver lotteries under subsection 2-B.

Sec. 4. 12 MRSA §6505-A, sub-§2-B is enacted to read:

2-B. Elver lotteries. The commissioner shall establish a dual lottery system under which the number of pieces of gear authorized does not exceed the number of pieces of gear authorized as of December 31, 2011.

A. The commissioner shall establish an elver gear lottery under which gear authorizations for use under a license issued under subsection 1 that is not renewed become available to other license holders in the elver gear lottery.

(1) The elver gear lottery must be held on or before February 15th of each calendar year beginning in 2013.

(2) In order to be eligible for the elver gear lottery, a person must hold an elver fishing license pursuant to subsection 1 and must have authorization to use only a dip net.

(3) In order to be eligible for the elver gear lottery, a person must submit to the Commissioner of Marine Resources a lottery application together with a \$25 nonrefundable application fee no later than January 15th for the lottery to be held by the following February 15th.

(4) A person may submit no more than one elver gear lottery application per lottery year.

(5) A person selected in the elver gear lottery must relinquish a dip net authorization that person holds in exchange for authorization to use an elver fyke net.

B. The commissioner shall establish an elver fishing license lottery under which a person who did not hold an elver fishing license in the previous calendar year may become eligible to obtain that license. The number of persons issued licenses under this paragraph may not exceed the number of individual gear authorizations remaining after the elver gear lottery.

12 of 8

- 1 (1) The elver fishing license lottery must take place after the elver gear lottery.
- 2 (2) The elver fishing license lottery must be held on or before February 15th of
- 3 each calendar year beginning in 2013.
- 4 (3) In order to be eligible for the elver fishing license lottery, a person must
- 5 submit a lottery application together with a \$25 nonrefundable application fee no
- 6 later than January 15th of the same calendar year as the lottery.
- 7 (4) A person may submit no more than one elver fishing license lottery
- 8 application per lottery year.

9 The commissioner shall adopt rules no later than December 31, 2012 to implement the
 10 elver gear lottery and the elver fishing license lottery. The rules must include provisions
 11 for the method and administration of the lotteries. The elver gear lottery must be set up so
 12 that gear authorizations associated with a license that is not renewed go into the elver
 13 gear lottery. If a person who held a license that is not renewed has 2 authorized pieces of
 14 gear, the gear authorizations must be divided and made available to 2 lottery entrants.
 15 Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter
 16 375, subchapter 2-A.

17 Application fees collected under this subsection must be deposited in the Eel and Elver
 18 Management Fund established in section 6505-D.

19 **Sec. 5. 12 MRSA §6505-A, sub-§8**, as enacted by PL 2001, c. 421, Pt. B, §29
 20 and affected by Pt. C, §1, is repealed and the following enacted in its place:

21 **8. Violation.** The following penalties apply to violations of this section.

22 A. A person who violates this section commits a civil violation for which a fine of
 23 \$2,000 may be adjudged.

24 B. A person who violates this section after having previously violated this section
 25 commits a Class D crime.

26 **Sec. 6. 12 MRSA §6505-B, sub-§6**, as enacted by PL 2001, c. 421, Pt. B, §30
 27 and affected by Pt. C, §1, is amended to read:

28 **6. Violation.** A person who violates this section commits a civil violation for which
 29 a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

30 **Sec. 7. 12 MRSA §6575-A**, as amended by PL 1999, c. 7, §8, is further amended
 31 to read:

32 **§6575-A. Closed period; elver harvesting**

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

R. S.

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Sec. 8. 12 MRSA §6575-D, sub-§2, as repealed and replaced by PL 2001, c. 421, Pt. B, §34 and affected by Pt. C, §1, is amended to read:

2. Violation. A person who violates this section commits a civil violation for which a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

Sec. 9. 12 MRSA §6864, as amended by PL 2009, c. 478, §5, is further amended to read:

§6864. Elver dealer's license

1. License required. A person may not buy, possess, ship, transport or sell elvers without an elver dealer's license. It is unlawful for a person to possess elvers prior to the beginning of the elver season and to possess elvers 5 days beyond the end of the elver season pursuant to section 6575.

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

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

4. Fee. The fee for an elver dealer's license is \$1,213 and the fee for each supplemental license is \$63.

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 \$376 accrues to the General Fund for each elver dealer's license sold under this section and \$52 accrues to the General Fund for each supplemental license sold under this section.

7. Violation. A person who violates this section commits a civil violation for which a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

8. Reporting. A dealer licensed under this section shall report the total annual harvest of elvers received by that dealer to the department within 30 days after the end of the elver fishing season. The commissioner shall prescribe how that data and any other information necessary for a meaningful analysis of the elver harvest are reported to the department.

9. Authorized representatives. A person who holds an elver dealer's license may identify authorized representatives to act on the license holder's behalf to purchase elvers at locations other than the permanent facility. The elver dealer's license holder must identify authorized representatives on forms provided by the department.

10. Purchase of elvers. A person who holds an elver dealer's license, or the authorized representative of that person under subsection 9, may purchase elvers from licensed harvesters at locations other than the permanent facility identified on the license holder's license. The license holder or the license holder's authorized representative shall keep a record that identifies each harvester from which elvers were purchased and the amount of elvers purchased from each harvester. The license holder or the license holder's authorized representative shall make the record available for inspection by a marine patrol officer.

R. 8.

1 11. Shipment or transport of elvers outside state limits. A person who holds an
2 elver dealer's license or the elver dealer's license holder's authorized representative under
3 subsection 9 must transport elvers to a permanent facility identified on the license
4 holder's license prior to shipping or transporting elvers outside state limits.

5 A holder of an elver ~~dealer~~ dealer's license when buying directly from a harvester
6 may buy only from a harvester who possesses an elver fishing license under section
7 6505-A. The harvester shall make the elver fishing license available for inspection upon
8 the elver ~~dealer~~ dealer's license holder's request.

9 The commissioner may adopt rules to implement and enforce requirements under this
10 section. Rules adopted pursuant to this section are routine technical rules as defined in
11 Title 5, chapter 375, subchapter 2-A.

12 **Sec. 10. Appropriations and allocations.** The following appropriations and
13 allocations are made.

14 **MARINE RESOURCES, DEPARTMENT OF**

15 **Sea Run Fisheries and Habitat Z049**

16 Initiative: Provides funding from an increase in revenue related to application fees for the
17 elver license lottery.

18	OTHER SPECIAL REVENUE FUNDS	2011-12	2012-13
19	All Other	\$0	\$5,000
20			
21	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$5,000</u>

22 **Emergency clause.** In view of the emergency cited in the preamble, this
23 legislation takes effect when approved.'

24 **SUMMARY**

25 This amendment replaces the bill and adds an emergency preamble and clause. It
26 does the following.

27 1. It changes the suspension for molesting elver fishing gear from a one-year license
28 suspension to a 3-year suspension for the first offense and adds that a 2nd offense results
29 in permanent revocation of the elver fishing license. It increases the fine for molesting
30 elver fishing gear from between \$100 and \$500 to \$2,000.

31 2. It creates an elver fishing lottery system and adds a suspension of eligibility in the
32 elver lotteries for fishing without an elver fishing license. The first offense results in a
33 one-year suspension of eligibility. A 2nd offense results in a permanent loss of eligibility
34 in the elver lotteries. It increases the fine for fishing without a license from between \$100
35 and \$500 to \$2,000 and makes a 2nd or subsequent offense a Class D crime.

36 3. It adds a license suspension for an adjudication of untagged elver gear. The first
37 offense results in a one-year license suspension. A 2nd offense results in permanent

R. 43.

1 revocation of the license holder's license. It increases the fine for untagged elver gear
2 from between \$100 and \$500 to \$2,000.

3 4. It adds a license suspension for elver fishing during the closed season or a closed
4 period. The first offense results in a one-year license suspension. A 2nd offense results in
5 permanent revocation of the license holder's license.

6 5. It adds a license suspension for violation of an elver dealer's license. The first
7 offense results in a one-year license suspension. A 2nd offense results in permanent
8 revocation of the license holder's license. It increases the fine for a violation of an elver
9 dealer's license from between \$100 and \$500 to \$2,000.

10 6. It lifts the moratorium on elver fishing licenses and creates a dual elver fishing
11 lottery system to keep the fishery at the same level as it was December 31, 2011.

12 7. It requires the elver gear lottery and elver license lottery to begin in 2013. Gear
13 authorized by licenses that are not renewed is placed in the elver gear lottery. Each lottery
14 entrant can win authorization to use only one piece of gear.

15 8. It allows only current elver fishing license holders who hold a dip net
16 authorization to enter the elver gear lottery to exchange authorization to use a dip net for
17 authorization to use a fyke net, if any are available.

18 9. It sets up the elver license lottery to be held after the elver gear lottery for any
19 remaining gear authorizations left over after the elver gear lottery. Each winner of the
20 elver license lottery wins the ability to purchase an elver fishing license and authorization
21 to use one piece of gear. The number of licenses available is based on and is the same as
22 the number of gear pieces available in the elver gear lottery.

23 10. It changes the closed period for elver harvesting, which in current law is from
24 noon Friday to noon Sunday, and splits the days in the closed period. The closed period is
25 changed to from noon Tuesday to noon Wednesday and from noon Saturday to noon
26 Sunday.

27 11. It adds that it is unlawful for an elver dealer to possess elvers prior to the
28 beginning of the elver season and 5 days beyond the end of the season. This allows
29 dealers to package and ship product after the season ends.

30 12. It restricts the elver dealer's license to allow activities at only one permanent
31 facility. A supplemental license is required for vehicles and for additional facilities.

32 13. It allows an elver dealer's license holder to identify authorized representatives to
33 purchase elvers for the dealer at locations other than the permanent facility.

34 14. It requires the elver dealer's license holder or the license holder's authorized
35 representative to purchase elvers from licensed harvesters and requires the elver dealer or
36 authorized representative to keep a record that identifies each harvester from which elvers
37 were purchased and the amount of elvers purchased from each harvester. The records
38 must be available for inspection by a marine patrol officer.

39 15. It requires the elver dealer's license holder or the license holder's authorized
40 representative to transport elvers to a permanent facility identified on the license holder's
41 license prior to shipping or transporting elvers outside state limits.

COMMITTEE AMENDMENT

R. S.

COMMITTEE AMENDMENT "A" to H.P. 1298, L.D. 1765

- 1 16. It provides for the Commissioner of Marine Resources to make routine technical
- 2 rules to set up the elver lotteries and the additional requirements for elver dealer's license
- 3 holders.
- 4 17. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



125th MAINE LEGISLATURE

LD 1765

LR 2484(02)

An Act To Sustain the Elver Fishery

Fiscal Note for Bill as Amended by Committee Amendment "A" (H-816)

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

	FY 2011-12	FY 2012-13	Projections FY 2013-14	Projections FY 2014-15
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$5,000	\$5,000	\$5,000
Revenue				
Other Special Revenue Funds	\$0	\$5,000	\$5,000	\$5,000

Correctional and Judicial Impact Statements

Establishes new Class D crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

This legislation creates an elver license lottery which is expected to increase Other Special Revenue Funds revenue to the Department of Marine Resources by \$5,000 beginning in fiscal year 2012-13. This analysis assumes 200 lottery applications per year. The bill includes a corresponding Other Special Revenue Funds allocation to the department in fiscal year 2012-13.