

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 electronic originals
(may include minor formatting differences from printed original)



126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 497

S.P. 190

In Senate, February 19, 2013

An Act To Move Maine's Elver Fishery towards Sustainability

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.

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

2 **Sec. 1. 12 MRSA §6001, sub-§13-G**, as amended by PL 1997, c. 575, §1, is
3 repealed.

4 **Sec. 2. 12 MRSA §6001, sub-§40-A**, as amended by PL 1997, c. 91, §3, is
5 repealed.

6 **Sec. 3. 12 MRSA §6311, sub-§3**, as enacted by PL 2005, c. 111, §2, is amended
7 to read:

8 **3. Waiver of licensing requirements.** Notwithstanding Title 37-B, section 390-A
9 or any other provision of this Part, the commissioner shall waive the licensing
10 requirements under section 6421, subsection 5, paragraph A; section 6505-A, subsection
11 ~~2, paragraph C~~; and section 6749-O, subsection 2-A for a person who is a member of the
12 National Guard or the Reserves of the United States Armed Forces and was under an
13 order to active duty for a period of more than 30 days. This subsection does not apply to
14 a person who did not possess a license pursuant to section 6421, 6505-A, 6748, 6748-D
15 or 6749 or in the calendar year prior to that person's being called to active duty.

16 **Sec. 4. 12 MRSA §6404-A**, as amended by PL 2011, c. 549, §1, is repealed.

17 **Sec. 5. 12 MRSA §6404-H**, as enacted by PL 2011, c. 549, §2, is amended to
18 read:

19 **§6404-H. Suspension or revocation based on adjudication or conviction of an elver**
20 **fishing license offense**

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

24 **1. First offense.** For a first offense, the commissioner shall suspend the person's
25 eligibility for ~~the an~~ an elver ~~lotteries~~ fishing license under section 6505-A, ~~subsection 2-B~~
26 for one year.

27 **2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke
28 the person's eligibility for ~~the an~~ an elver ~~lotteries~~ fishing license under section 6505-A,
29 ~~subsection 2-B~~.

30 **Sec. 6. 12 MRSA §6505-A**, as amended by PL 2011, c. 549, §§3 to 5, is further
31 amended to read:

32 **§6505-A. Elver fishing license**

33 **1. License required.** A person may not fish for or take elvers or possess, ship,
34 transport or sell elvers that the person has taken unless the person is issued ~~one of the~~
35 ~~following an~~ an elver fishing ~~licenses~~ license under this section:

36 ~~A. A resident elver fishing license for one device;~~

- 1 ~~B. A resident elver fishing license for 2 devices;~~
- 2 ~~C. A nonresident elver fishing license for one device; or~~
- 3 ~~D. A nonresident elver fishing license for 2 devices.~~

4 **2. Eligibility.** An elver fishing license may be issued only to an individual who is a
5 resident and who has previously been issued an elver fishing license in any 2 consecutive
6 years since and including 1994. The commissioner shall issue an elver fishing license to
7 an applicant who meets the qualifications of this subsection.

- 8 ~~C. Possessed an elver fishing license in the previous calendar year;~~
- 9 ~~E. Did not possess an elver fishing license in the previous calendar year because the~~
10 ~~commissioner had suspended the person's license privileges for a length of time that~~
11 ~~included the previous calendar year; or~~
- 12 ~~F. Becomes eligible to obtain an elver fishing license pursuant to the elver lotteries~~
13 ~~under subsection 2-B.~~

14 ~~**2-B. Elver lotteries.** The commissioner shall establish a dual lottery system under~~
15 ~~which the number of pieces of gear authorized does not exceed the number of pieces of~~
16 ~~gear authorized as of December 31, 2011.~~

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

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

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

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

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

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

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

39 ~~(1) The elver fishing license lottery must take place after the elver gear lottery.~~

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

3 ~~(3) In order to be eligible for the elver fishing license lottery, a person must~~
4 ~~submit a lottery application together with a \$25 nonrefundable application fee no~~
5 ~~later than January 15th of the same calendar year as the lottery.~~

6 ~~(4) A person may submit no more than one elver fishing license lottery~~
7 ~~application per lottery year.~~

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

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

18 **3. Limits on issuance.** The department may not issue an elver fishing license during
19 the open season for elver fishing.

20 **4. Fee. Fees** ~~The fee for an~~ elver fishing licenses are: license is \$105.

21 ~~A. For a person who is a resident, \$105; and~~

22 ~~B. For a person who is a nonresident, \$442.~~

23 Fifty dollars of each license fee collected under this subsection accrues to the Eel and
24 Elver Management Fund established in section 6505-D.

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

30 **6. Minimum age.** A person who is under 15 years of age may not fish for or take
31 elvers.

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

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

37 A. A person who violates this section commits a civil violation for which a fine of
38 \$2,000 may be adjudged.

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

3 **Sec. 7. 12 MRSA §6505-B**, as amended by PL 2011, c. 549, §6, is further
4 amended to read:

5 **§6505-B. Elver gear fees**

6 ~~**1. Elver fyke net and Sheldon eel trap fee.** A person may not submerge an elver
7 fyke net or a Sheldon eel trap in the waters of the State to fish for or take elvers unless the
8 net or trap owner pays annually the following fees:~~

9 ~~A. Fifty eight dollars per net or trap for the use of an elver fyke net or Sheldon eel
10 trap, except that the fee under this paragraph does not apply to an elver fyke net or
11 Sheldon eel trap a person utilizes pursuant to section 6505-A, subsection 5.~~

12 ~~**2. Tags for elver fyke net and Sheldon eel trap.** A person may not submerge an
13 elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take
14 elvers unless a tag issued by the department is affixed to the shoreside wing of the net or
15 trap and is clearly visible. The department may issue a replacement tag when an owner
16 issued a tag documents that a net or trap has been damaged or lost.~~

17 **3. Dip net fee.** A person may not utilize a dip net to fish for or take elvers without
18 paying a fee of \$58 per dip net annually.

19 This subsection does not apply to a dip net a person utilizes pursuant to section 6505-A,
20 subsection 5.

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

23 **5. Disposition of fees.** ~~Fees~~ Fifty dollars of each dip net fee collected under this
24 section ~~accrue~~ accrues to the Eel and Elver Management Fund established in section
25 6505-D as follows:

26 ~~A. Fifty dollars per net or trap for the use of an elver fyke net or Sheldon eel trap;
27 and~~

28 ~~B. Fifty dollars per dip net.~~

29 **6. Violation.** A person who violates this section commits a civil violation for which
30 a fine of \$2,000 may be adjudged.

31 **Sec. 8. 12 MRSA §6505-D, sub-§2**, as amended by PL 2011, c. 266, Pt. A, §17,
32 is further amended to read:

33 **2. Permissible uses.** The commissioner may use the fund to research and manage
34 the State's eel and elver resources; and to enforce the laws related to eels and elvers ~~and to~~
35 ~~cover the costs associated with determining eligibility for elver fishing licenses.~~

36 **Sec. 9. 12 MRSA §6575, sub-§§2 and 3**, as amended by PL 1999, c. 7, §7, are
37 repealed.

1 **Sec. 10. 12 MRSA §6575-A**, as amended by PL 2011, c. 549, §7, is further
2 amended to read:

3 **§6575-A. Closed period; elver harvesting**

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

11 **Sec. 11. 12 MRSA §6575-B**, as amended by PL 2005, c. 533, §3, is further
12 amended to read:

13 **§6575-B. Method of elver fishing; limits on gear**

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

16 ~~**2-B. Type and amount of gear.** It is unlawful for a person to immerse elver fishing~~
17 ~~gear other than the types and amounts authorized pursuant to this subsection.~~

18 ~~A. A person who is issued an elver fishing license pursuant to section 6505-A,~~
19 ~~subsection 2, paragraph C may not immerse elver fishing gear other than the types~~
20 ~~and amounts of gear the person was authorized to immerse during the previous elver~~
21 ~~fishing season, except that a person may surrender the authority to use an elver fyke~~
22 ~~net in order to use an elver dip net.~~

23 **3. Rebuttable presumption.** It is a rebuttable presumption that an elver ~~fyke net,~~
24 ~~Sheldon eel trap or elver dip net~~ immersed in any waters of the State at any time of the
25 year is immersed for the purpose of fishing for or taking elvers.

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

29 **5. Use of dip nets.** It is unlawful for a person to use a dip net to fish for or take
30 elvers while standing in the coastal waters of the State.

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

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

36 **Sec. 12. 12 MRSA §6575-C, sub-§4**, as amended by PL 2003, c. 452, Pt. F, §15
37 and affected by Pt. X, §2, is repealed.

