

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 632

S.P. 222

In Senate, February 21, 2013

**An Act To Improve Enforcement Mechanisms to the Elver Industry
and To Make Technical Changes to Maine's Marine Resources
Laws**

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 black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator JOHNSON of Lincoln.
Cosponsored by Representative KUMIEGA of Deer Isle.

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

2 **Sec. 1. 12 MRSA §6074, sub-§1**, as amended by PL 1999, c. 156, §§2 and 3, is
3 further amended to read:

4 **1. Exception.** A special license ~~shall~~ does not permit the holder to sell or, beyond the
5 state limits, to ship or transport any marine organism that is less than the minimum size
6 established by statute. This subsection ~~shall~~ does not apply to:

7 B. Any species grown in a hatchery for stock enhancement or resale for purposes of
8 cultivation or stock enhancement; or

9 C. Scallop spat collected under the authority of a special license and sold for the
10 purpose of placement on a lease site authorized pursuant to section 6072 or 6072-A
11 or under the authority of a license issued pursuant to section 6072-C. For purposes of
12 this paragraph, "scallop spat" means scallops less than 40 millimeters in the longest
13 diameter.

14 **Sec. 2. 12 MRSA §6078-A, sub-§1**, as amended by PL 2009, c. 240, §15, is
15 further amended to read:

16 **1. Fund established.** The Aquaculture Monitoring, Research and Development
17 Fund, referred to in this section as "the fund," is established. In addition to the fees
18 derived pursuant to rules adopted under subsection 6, the commissioner may receive on
19 behalf of the fund funds from any source. All income received by the commissioner
20 under this section must be deposited with the Treasurer of State, tracked according to its
21 source and credited to the fund. Any balance remaining in the fund at the end of a fiscal
22 year does not lapse but must be carried forward to the next fiscal year. Any interest
23 earned on assets of the fund is credited to the fund. All records related to harvests
24 submitted by aquaculture lease holders are considered proprietary information for the
25 purposes of section 6077, subsection 4.

26 **Sec. 3. 12 MRSA §6140-B, sub-§4, ¶C**, as enacted by PL 2007, c. 240, Pt. QQ,
27 §9, is amended to read:

28 C. Atlantic salmon raised by means of aquaculture, except that Atlantic salmon
29 raised in a hatchery for the purpose of restoration are not exempt.

30 **Sec. 4. 12 MRSA §6505-A, sub-§5-A** is enacted to read:

31 **5-A. Possession of elvers.** The holder of an elver fishing license may possess elvers
32 only during the open season pursuant to section 6575 and for up to 6 hours beyond the
33 end of the open season.

34 **Sec. 5. 12 MRSA §6505-A, sub-§8**, as repealed and replaced by PL 2011, c. 549,
35 §5, is amended to read:

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~~ must be adjudged.

1 B. A person who violates this section after having previously violated this section
2 commits a Class D crime for which a fine of \$2,000 must be adjudged.

3 A court may not suspend any portion of a fine imposed under this subsection.

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

6 **6. Violation.** A person who violates this section commits a civil violation for which
7 a fine of \$2,000 ~~may~~ must be adjudged. A court may not suspend any portion of a fine
8 imposed under this subsection.

9 **Sec. 7. 12 MRSA §6575-A**, as amended by PL 2011, c. 549, §7, is repealed and
10 the following enacted in its place:

11 **§6575-A. Closed period; elver harvesting**

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

19 **2. Violation.** A person who violates this section commits a civil violation for which
20 a fine of \$2,000 must be adjudged. A court may not suspend any portion of a fine
21 imposed under this subsection.

22 **Sec. 8. 12 MRSA §6575-C, sub-§1**, as amended by PL 2003, c. 452, Pt. F, §13
23 and affected by Pt. X, §2, is repealed.

24 **Sec. 9. 12 MRSA §6575-C, sub-§8** is enacted to read:

25 **8. Violation.** A person who violates this section commits a civil violation for which
26 a fine of not less than \$100 nor more than \$500 must be adjudged.

27 **Sec. 10. 12 MRSA §6575-D, sub-§2**, as amended by PL 2011, c. 549, §8, is
28 further amended to read:

29 **2. Violation.** A person who violates this section commits a civil violation for which
30 a fine of \$2,000 ~~may~~ must be adjudged. A court may not suspend any portion of a fine
31 imposed under this subsection.

32 **Sec. 11. 12 MRSA §6575-E**, as amended by PL 2001, c. 272, §13, is further
33 amended to read:

1 **§6575-E. Method of eel fishing**

2 Except as provided in section 6505-C, subsection 2, it is unlawful for a person
3 licensed under section 6505-C to fish for or take eels by any method other than eel pot or
4 hoop-net.

5 **Sec. 12. 12 MRSA §§6575-G to 6575-I** are enacted to read:

6 **§6575-G. Dams with fishways; elver fishing**

7 **1. Dams with fishways.** A person may not fish for or take elvers within 150 feet of
8 any part of a dam with a fishway or within 150 feet of a fishway.

9 **2. Violation.** A person who violates this section commits a civil violation for which
10 a fine of \$2,000 must be adjudged. A court may not suspend any portion of a fine
11 imposed under this subsection.

12 **§6575-H. Assisting in illegal harvest of elvers**

13 **1. Prohibition.** A person may not assist another person to harvest elvers in violation
14 of any law or rule pertaining to elvers. For the purposes of this section, "assist" includes,
15 but is not limited to, to drop off, to act as a lookout or to warn an elver harvester of
16 impending law enforcement action.

17 **2. Violation.** A person who violates this section commits a civil violation for which
18 a fine of \$2,000 must be adjudged. A court may not suspend any portion of a fine
19 imposed under this subsection.

20 **§6575-I. Seizure of illegally harvested elvers**

21 In addition to any other penalty imposed, elvers bought or possessed that were taken
22 in violation of any law or rule pertaining to elvers are subject to seizure. The entire bulk
23 pile containing illegally harvested elvers may be seized.

24 **Sec. 13. 12 MRSA §6671, sub-§8, ¶B**, as amended by PL 2001, c. 188, §8, is
25 further amended to read:

26 B. Any municipal shellfish conservation warden appointed by a municipality to
27 enforce the provisions of this article must be certified by the commissioner within
28 one year of the warden's appointment. The commissioner shall establish a program to
29 provide shellfish conservation training in principles of shellfish conservation,
30 management, enforcement and protection and shall establish standards for
31 certification of municipal conservation wardens upon their satisfactory completion of
32 the training program. ~~The program must include training in sampling techniques for~~
33 ~~the detection of pollutants and contaminants in shellfish areas.~~ The commissioner
34 may establish by rule procedures for certification, recertification and revocation of
35 certification. The commissioner may revoke a certificate for failure of the warden to
36 comply with performance standards.

37 **Sec. 14. 12 MRSA §6752**, as enacted by PL 1977, c. 661, §5, is amended to read:

