

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 353

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H.P. 240

House of Representatives, February 10, 2015

**An Act To Ensure Maine's Elver Fishermen Can Fully Access  
Maine's Elver Resource**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative PIERCE of Dresden.  
Cosponsored by Representatives: BATTLE of South Portland, HAWKE of Boothbay Harbor,  
McCREIGHT of Harpswell, SAWICKI of Auburn, TUELL of East Machias, Senators:  
BAKER of Sagadahoc, LANGLEY of Hancock, MIRAMANT of Knox.

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

3           **Whereas,** the high value per pound for elvers in recent years has resulted in  
4 economic benefit for the State of Maine and Maine's elver fishermen; and

5           **Whereas,** the statewide elver quota for the 2014 fishing season was 11,749 pounds;  
6 and

7           **Whereas,** Maine elver fishermen harvested only 9,688 pounds of elvers during the  
8 2014 fishing season; and

9           **Whereas,** the Atlantic States Marine Fisheries Commission reduced Maine's elver  
10 quota by an amount equivalent to the difference between the elver quota and the amount  
11 actually harvested during the 2014 fishing season; and

12           **Whereas,** the Department of Marine Resources must act quickly to ensure Maine  
13 fishermen can fully access Maine's elver resource in future fishing seasons; and

14           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
15 the meaning of the Constitution of Maine and require the following legislation as  
16 immediately necessary for the preservation of the public peace, health and safety; now,  
17 therefore,

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

19           **Sec. 1. 12 MRSA §6404-H,** as amended by PL 2013, c. 49, §4, is further amended  
20 to read:

21           **§6404-H. Suspension or revocation based on conviction of an elver fishing license**  
22           **offense**

23           The commissioner shall suspend or revoke a person's eligibility for the elver ~~lotteries~~  
24 lottery under section 6505-A, subsection ~~2-B~~ 2-C if the person is convicted of an offense  
25 in violation of section 6505-A, subsection 1.

26           **1. First offense.** For a first offense, the commissioner shall suspend the person's  
27 eligibility for the elver ~~lotteries~~ lottery under section 6505-A, subsection ~~2-B~~ 2-C for one  
28 year.

29           **2. Second offense.** For a 2nd offense, the commissioner shall permanently revoke  
30 the person's eligibility for the elver ~~lotteries~~ lottery under section 6505-A, subsection ~~2-B~~  
31 2-C.

32           **Sec. 2. 12 MRSA §6505-A, sub-§2, ¶F,** as enacted by PL 2011, c. 549, §3, is  
33 amended to read:

34           F. Becomes eligible to obtain an elver fishing license pursuant to the elver ~~lotteries~~  
35 lottery under subsection ~~2-B~~ 2-C.

1           **Sec. 3. 12 MRSA §6505-A, sub-§2-B**, as amended by PL 2013, c. 301, §9, is  
2 repealed.

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

4           **2-C. Elver lottery.** The commissioner shall establish an elver fishing license lottery  
5 under which a person who did not hold an elver fishing license in the previous calendar  
6 year may become eligible to obtain that license.

7           A. The elver fishing license lottery must be held on or before February 15th of each  
8 calendar year beginning in 2016.

9           B. In order to be eligible for the elver fishing license lottery, a person must submit a  
10 lottery application together with a \$25 nonrefundable application fee no later than  
11 January 15th of the same calendar year as the lottery.

12           C. A person may submit no more than one elver fishing license lottery application  
13 per lottery year.

14 The commissioner shall adopt rules no later than December 31, 2015 to implement the  
15 elver fishing license lottery. The rules must include provisions for the method and  
16 administration of the lottery. Rules adopted under this subsection are routine technical  
17 rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

20           **Sec. 5. 12 MRSA §6505-A, sub-§3-A, ¶¶B and C**, as enacted by PL 2013, c.  
21 485, §7, are amended to read:

22           B. Establish the amount of the overall annual quota under paragraph A that is  
23 allocated to persons licensed under this section and specify a formula to establish  
24 individual quotas for persons licensed under this section. The formula may take into  
25 account the amount of elvers a person licensed under this section lawfully harvested  
26 in previous seasons based on final harvesting reports. The rules must specify the date  
27 by which harvester reports are considered final for the purpose of determining  
28 individual quotas; ~~and~~

29           C. Provide, in accordance with section 6302-B, that 21.9% of the overall annual  
30 quota under paragraph A is allocated to the federally recognized Indian tribes in the  
31 State and establish the amount of that portion of the overall annual quota allocated to  
32 the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet  
33 Indians and the Aroostook Band of Micmacs; ~~and~~

34           **Sec. 6. 12 MRSA §6505-A, sub-§3-A, ¶D** is enacted to read:

35           D. Provide for the transferability of individual quotas among persons licensed under  
36 this section.

37           **Sec. 7. 12 MRSA §6575-B, sub-§2-B, ¶A**, as enacted by PL 1999, c. 534, §5, is  
38 amended to read:

1 A. A person who is issued an elver fishing license pursuant to section 6505-A,  
2 subsection 2, paragraph C may not immerse elver fishing gear other than the ~~types~~  
3 ~~and~~ amounts of gear the person was authorized to immerse during the previous elver  
4 fishing season, ~~except that a person may surrender the authority to use an elver fyke~~  
5 ~~net in order to use an elver dip net.~~ Beginning January 1, 2016, a person may select,  
6 as part of that person's license application, which gear type the person will use for the  
7 entire elver fishing season that calendar year.

8 **Sec. 8. Rulemaking to implement selection of gear type.** The Commissioner  
9 of Marine Resources shall complete rulemaking to implement the allowance of selection  
10 of gear type by elver fishermen pursuant to the Maine Revised Statutes, Title 12, section  
11 6575-B by the start of the 2016 elver fishing season. Rules adopted to implement this  
12 allowance are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

13 **Sec. 9. Rulemaking to implement transferable quotas.** The Commissioner  
14 of Marine Resources shall complete rulemaking to implement transferability of individual  
15 quotas for elvers pursuant to the Maine Revised Statutes, Title 12, section 6505-A,  
16 subsection 3-A, paragraph D by the start of the 2016 elver fishing season. During the  
17 rulemaking process, the commissioner shall consider, without limitation, the following:

- 18 1. Among which elver fishermen may individual quotas be transferred;
- 19 2. Whether new participants should enter the elver fishery by purchasing individual  
20 quotas or if transfer should be limited to existing elver licensees only;
- 21 3. Whether transfers should be documented before the beginning of the elver fishing  
22 season to support enforcement efforts by the Department of Marine Resources;
- 23 4. What type of ownership interests in individual quotas may be transferred;
- 24 5. Whether owner-operator restrictions should be imposed on transfers of individual  
25 quotas; and
- 26 6. Whether caps on total individual quota ownership should be imposed to prevent  
27 unfair concentration of ownership of individual quotas.

28 Rules adopted to implement the transferability of individual quotas for elvers are  
29 routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

30 **Emergency clause.** In view of the emergency cited in the preamble, this  
31 legislation takes effect when approved.

## 32 SUMMARY

33 This bill amends Maine's elver licensing laws to provide for the selection of elver  
34 gear types by elver fishermen, to be implemented via rulemaking before the 2016 elver  
35 fishing season. Additionally, this bill amends Maine's individual elver quota system to  
36 provide for transferability of individual quotas, to be implemented via rulemaking before  
37 the 2016 elver fishing season.