

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST SPECIAL SESSION
November 28, 1995 to December 1, 1995

SECOND REGULAR SESSION
January 3, 1996 to April 4, 1996

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 4, 1996

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1995

bility to manage the Atlantic salmon fishery in the State, including the sole authority to introduce Atlantic salmon into Maine inland waters, other than commercial aquaculture facilities and associated activities. This sole authority does not take effect for the inland waters of the Sheepscot, Narraguagus, Pleasant, Machias, East Machias and Dennys rivers until July 1, 1997. The authority has the sole authority to limit or prohibit the taking of Atlantic salmon, issue licenses for the taking of Atlantic salmon and adopt rules establishing the time, place and manner of Atlantic salmon fishing in all waters of the State. In addition to these powers and duties, the authority may:

Sec. 3. 12 MRSA §9902, sub-§4, as enacted by PL 1995, c. 406, §12, is amended to read:

4. Rules. Adopt rules necessary to manage the Atlantic salmon fishery and to promote the conservation and propagation of the Atlantic salmon. Rules adopted by the authority must be enforced by the Department of Marine Resources, the Department of Inland Fisheries and Wildlife and other public officials authorized by law to enforce marine resource laws or inland fisheries and wildlife laws. The Department of Marine Resources and the Department of Inland Fisheries and Wildlife retain exclusive jurisdiction over rules pertaining to species other than Atlantic salmon that are designed to promote the conservation and propagation of Atlantic salmon. The departments shall consult with the Atlantic Salmon Authority in adopting such rules;

Sec. 4. 12 MRSA §9904, sub-§§4 and 5, as enacted by PL 1995, c. 406, §12, are repealed.

Sec. 5. PL 1995, c. 406, §19, sub-§7 is amended to read:

7. Not later than ~~January~~ December 1, 1996, the Chair of the Atlantic Salmon Board shall submit a report to the Joint Standing Committee on Inland Fisheries and Wildlife. The report must include the board's plan for managing the Atlantic salmon fishery in the State and any statutory recommendations pertaining to staffing or budget matters that the board determines necessary to implement that plan. The Joint Standing Committee on Inland Fisheries and Wildlife may report out legislation to the ~~Second Regular Session of the 117th~~ Legislature to implement the statutory recommendations of the board.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 13, 1996.

CHAPTER 536

H.P. 137 - L.D. 185

An Act Regarding the Harvesting of Eels and Elvers

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

Whereas, baby eels, or elvers, migrate from coastal waters to inland waters and a significant fishery for elvers has developed in the coastal rivers, brooks and streams of the State; and

Whereas, adult eels that mature in the State's inland waters play an important role in the propagation of the species; and

Whereas, conservation of the eel and elver resources is important for ecological and economic reasons; 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:

PART A

Sec. A-1. 12 MRSA §6001, sub-§§13-C to 13-G are enacted to read:

13-C. Dip net. "Dip net" means a device consisting of a rigid frame filled with netting, firmly attached to a rigid handle and manually operated by a single person.

13-D. Eel. "Eel" means a member of the species Anguilla rostrata in that stage of its life cycle when it is 6 inches or more in length.

13-E. Eel pot. "Eel pot" means a cylindrical or rectangular trap with funnels that is baited and used to harvest eels. An eel pot is 50 cubic feet or less in total volume and utilizes wire or slatting no smaller than 1/2 inch square measure.

13-F. Elver. "Elver" means a member of the species Anguilla rostrata in that stage of its life cycle when it is less than 6 inches in length.

13-G. Elver fyke net. "Elver fyke net" means a fyke net that is 30 feet or less in length from cod end to shore-side wing tip and that is fitted with netting that measures 1/8 inch mesh square measure or less.

Sec. A-2. 12 MRSA §6001, sub-§§17-C and 20-A are enacted to read:

17-C. Fyke net. "Fyke net" means a funnel-shaped net designed to intercept moving marine organisms and retain marine organisms in a confined space.

20-A. Hoop net. "Hoop net" means a stationary cylindrical net fitted with mesh measuring 1/2 inch or greater stretch measure, that is placed at the bottom of a body of water and has a diameter of 6 feet or less as measured at its widest point and has a length of 18 feet or less as measured from the cod end to the hoop that forms the mouth of the net. "Hoop net" includes wings or leads attached to the mouth of the hoop net.

Sec. A-3. 12 MRSA §6001, sub-§29, as enacted by PL 1977, c. 661, §5, is amended to read:

29. Marine species. "Marine species" means all marine animals except lobster, shellfish and marine worms and elvers.

Sec. A-4. 12 MRSA §6001, sub-§40-A is enacted to read:

40-A. Sheldon eel trap. "Sheldon eel trap" means a box trap with a netted wing used to intercept and direct elvers into the trap.

Sec. A-5. 12 MRSA §6404-A is enacted to read:

§6404-A. Suspension based on conviction of molesting elver gear

The commissioner shall suspend the elver fishing license of any license holder convicted in court of violating section 6575-D. This suspension must be for one year from the date of conviction.

Sec. A-6. 12 MRSA §6501, sub-§6, as amended by PL 1977, c. 661, §5, is further amended to read:

6. Definition. For the purposes of this chapter, "fish" shall mean means all marine finfish, squid and shrimp or other marine animals, except lobsters, crabs, shellfish, scallops or marine worms, elvers or eels.

Sec. A-7. 12 MRSA §6505, as enacted by PL 1995, c. 492, §4, is repealed.

Sec. A-8. 12 MRSA §§6505-A to 6505-D are enacted to read:

§6505-A. Elver fishing license

1. License required. It is unlawful for a person to fish for or take elvers or possess, ship, transport or

sell elvers that the person has taken unless the person is issued an elver fishing license under this section.

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

3. Limits on issuance. The department may not issue an elver fishing license after March 15th and before June 16th.

4. Fees. Fees for elver fishing licenses are:

A. For a person who is a resident, \$33; and

B. For a person who is a nonresident, \$334.

5. Gear listed on license. The license must identify the number and types of nets for which the license holder has paid fees pursuant to section 6505-B.

§6505-B. Elver gear fees

1. Elver fyke net and Sheldon eel trap fee. It is unlawful for a person to submerge an elver fyke net or a Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless the net or trap owner pays annually the following fees:

A. One hundred dollars per net or trap for the use of a first or 2nd elver fyke net or Sheldon eel trap; and

B. Two hundred dollars per net or trap for the use of a 3rd, 4th or 5th elver fyke net or Sheldon eel trap.

2. Tags for elver fyke net and Sheldon eel trap. It is unlawful for a person to submerge an elver fyke net or Sheldon eel trap in the coastal waters of the State to fish for or take elvers unless a tag issued by the department is affixed to the net or trap. The department may issue a replacement tag when an owner issued a tag documents that a net or trap has been damaged or lost.

3. Dip net fee. It is unlawful for a person to utilize a dip net to fish for or take elvers without paying a fee of \$75 per dip net annually.

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

5. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D.

§6505-C. Eel harvesting license

1. License required. It is unlawful for a person to fish for or take eels in the coastal waters of the State or possess, ship, transport or sell eels that the person

has taken in the coastal waters of the State without an eel harvesting license.

2. Exemptions. A person may fish for or take for personal use an eel in the coastal waters of the State by speargun, harpoon, trap or hook and line and may possess or transport that eel.

3. Eligibility. An eel harvesting license may only be issued to an individual.

4. Fees. The fee for an eel harvesting license is \$100.

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 \$33 must accrue to the General Fund for each license sold under this section.

§6505-D. Eel and Elver Management Fund

1. Fund established. The Eel and Elver Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund.

2. Permissible uses. The commissioner may use the fund in accordance with a plan required under subsection 3 to research and manage the State's eel and elver resources and to enforce the laws related to eels and elvers.

3. Plan required. Beginning in calendar year 1997, the commissioner shall by May 1st of each year present a plan for expenditures from the fund for the next fiscal year to the joint standing committee of the Legislature having jurisdiction over marine resource matters. When developing the plan, the commissioner shall consult with people who harvest eels and elvers, with dealers of eels and elvers and with the Commissioner of Inland Fisheries and Wildlife.

Sec. A-9. 12 MRSA c. 621, sub-c. II, art. 5 is enacted to read:

Article 5

Elver and Eel Limitations

§6575. Closed season; elver harvesting

1. Closed season. It is unlawful for a person to fish for or take elvers within the coastal waters of the State from June 16th to noon on March 15th of the following year.

2. Setting nets and traps. It is unlawful for a person to immerse or leave immersed a fyke net or a Sheldon eel trap in any river, stream or brook of the coastal waters of the State from February 15th to noon of March 15th.

3. Locating nets. It is unlawful between February 15th and noon of March 15th for a person to designate or claim by any means a location in which an elver fyke net or a Sheldon eel trap would be placed or set.

§6575-A. Closed period; elver harvesting

It is unlawful for a person to fish for or take elvers from noon Saturday to noon Sunday. A person may leave an elver fyke net or a Sheldon eel trap in the coastal waters of the State during the closed period if the net or trap is left in a condition that prevents the capture of elvers.

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

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

2. Number of elver fyke nets and Sheldon eel traps. It is unlawful from noon of March 15th to midnight of June 15th for a person to immerse at any one time:

A. More than 5 elver fyke nets;

B. More than 5 Sheldon eel traps; or

C. Any combination of elver fyke nets and Sheldon eel traps that total more than 5 nets and traps.

3. Rebuttable presumption. It is a rebuttable presumption that an elver fyke net or a Sheldon eel trap immersed in any river, stream or brook of the coastal waters of the State from noon of March 15th to midnight of June 15th is immersed for the purpose of fishing for or taking elvers.

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

5. Use of dip nets. It is unlawful for a person to use a dip net to fish for or take elvers while standing in the water of a river, stream or brook within the coastal waters of the State.

§6575-C. Closed areas; elver fishing

1. Dams with fishways. It is unlawful for a person to fish for or take elvers within 150 feet of any part of a dam with a fishway or within 150 feet of a fishway.

2. Alewife traps. It is unlawful for a person to fish for or take elvers within 50 feet of a licensed alewife trap.

3. Portion of rivers, streams and brooks. It is unlawful for a person to fish for or take elvers within the middle 1/3 of a river, stream or brook, as measured at mean high tide, within the coastal waters of the State.

4. Dip nets near elver fyke nets. It is unlawful for a person to fish for or take elvers with a dip net in the mouth of an elver fyke net. For the purposes of this subsection, "mouth of an elver fyke net" means that area within an elver fyke net that is net-side of a straight line that runs from one meshed wing tip of the net to the other meshed wing tip.

§6575-D. Molesting elver fishing gear

1. Prohibition. It is unlawful for any person other than a marine patrol officer or the license holder issued a tag for an elver fyke net or a Sheldon eel trap to utilize, transfer, alter, possess or in any manner handle the net or trap unless that person has been issued an elver fishing license under section 6505-A and:

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

B. Is issued written permission by a marine patrol officer to tend the net or trap of a license holder issued a tag. A marine patrol officer may issue a person written permission 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.

2. Penalty. A violation of this section is a Class D crime, except that the court shall impose a minimum fine of \$500 for each violation.

§6575-E. Method of eel fishing

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

Sec. A-10. 12 MRSA §6864 is enacted to read:

§6864. Elver dealer's license

1. License required. It is unlawful for a person to buy, possess, ship, transport or sell elvers without an elver dealer's license.

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

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

4. Fee. The fee for an elver dealer's license is \$1,000 and the fee for each supplemental license is \$43.

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 \$217 accrues to the General Fund for each elver dealer's license sold under this section and \$43 accrues to the General Fund for each supplemental license sold under this section.

Sec. A-11. Allocation. The following funds are allocated from the Eel and Elver Management Fund to carry out the purposes of this Part.

	1995-96	1996-97
MARINE RESOURCES, DEPARTMENT OF		
Marine Sciences - Bureau of		
All Other	\$180,000	\$180,000
Allocates funds for the contracting of life history basic biology work and the contracting of catch effort monitoring.		
Marine Patrol - Bureau of		
Positions - Other Count	(6.0)	(6.0)
Personal Services	66,000	66,000
All Other	23,400	23,400
Capital Expenditures	45,000	
TOTAL	134,400	89,400
Allocates funds for 6 seasonal Marine Patrol Officer positions, limited overtime, operating costs and to purchase radios, night vision optical equipment and binoculars.		
DEPARTMENT OF MARINE RESOURCES		
TOTAL	\$314,400	\$269,400

Sec. A-12. Transition provisions; licenses. An eel fishing license issued for calendar year 1996 under the Maine Revised Statutes, Title 12, former section 6505 remains in effect until December 31, 1996. A person who holds an eel fishing license issued under Title 12, former section 6505 and fishes for or takes elvers is subject to Title 12, section 6404-A, the fees established under section 6505-B and all applicable sections of Title 12, chapter 621,

subchapter II, article 5, except that in calendar year 1996 a license holder shall pay by April 1, 1996 applicable fees for the use of elver fyke nets, Sheldon eel traps and dip nets and affix tags by April 1, 1996 to elver fyke nets and Sheldon eel traps used by the license holder when those nets and traps are used to fish for or take elvers. A person who holds an eel fishing license issued under Title 12, former section 6505 and fishes for or takes eels that are not for personal use is subject to Title 12, chapter 621, subchapter II, article 5.

Sec. A-13. Effective dates. Those sections of this Part that enact the Maine Revised Statutes, Title 12, sections 6575 and 6575-A take effect March 16, 1996. Those sections of this Part that amend Title 12, section 6001, subsection 29 and enact Title 12, section 6864 take effect April 15, 1996.

PART B

Sec. B-1. 12 MRSA §7001, sub-§§6-A to 6-C, 37-A and 39-A are enacted to read:

6-A. Eel. "Eel" means a member of the species Anguilla rostrata in that stage of its life cycle when it is 6 inches or more in length.

6-B. Eel pot. "Eel pot" means a cylindrical or rectangular trap with funnels that is baited and used to harvest eels. An eel pot is 50 cubic feet or less in total volume and utilizes wire or slatting no smaller than 1/2 inch square measure.

6-C. Elver. "Elver" means a member of the species Anguilla rostrata in that stage of its life cycle when it is less than 6 inches in length.

37-A. Trap net. "Trap net" means a funnel-shaped net designed to intercept and retain fish in a confined space.

39-A. Weir. "Weir" means a structure placed in the inland waters of a river, stream or brook that is designed to entrap fish and that exceeds more than 1/3 of the wetted width of the channel.

Sec. B-2. 12 MRSA §7153, as amended by PL 1995, c. 455, §11, is repealed and the following enacted in its place:

§7153. Alewife, eel, sucker and yellow perch permit

1. Issuance. The commissioner may issue permits to fish for or possess alewives, eels, suckers and yellow perch under rules that the commissioner establishes, if these permits do not interfere with rights granted under section 6131.

A. Eels may be harvested in inland waters using only eel pots or weirs.

B. Alewives, suckers and yellow perch may be harvested in inland waters using trap nets, dip nets or spears.

2. Fee. The minimum fee for an individual permit for alewives, suckers and yellow perch is \$42. Beginning in calendar year 1996, a crew permit may be sold for alewives, suckers and yellow perch for \$100, authorizing up to 3 persons to engage in the licensed activity. The annual fee for an eel pot or weir permit is \$100. An eel pot or eel weir license is not transferable.

3. Prohibitions. The following prohibitions apply to the harvesting of eels and elvers in inland waters.

A. It is unlawful for any person to fish for or take elvers from inland waters.

B. It is unlawful for any person other than the owner of a weir used to fish for or take eels in inland waters to tend that weir while the weir is immersed unless that person has in the person's possession written permission from the owner to tend the weir or is in the presence of the owner and has the owner's permission to tend the weir.

4. Disposition of fees. All fees collected under this section accrue to the Eel and Elver Management Fund established in section 6505-D, except that \$42 accrues to the General Fund for each eel pot or eel weir permit issued under this section. This subsection is repealed on January 1, 2001.

5. Five-year limited entry; inland eel weirs. The department may not issue an eel weir permit to a person unless that person possessed a valid eel weir permit for calendar year 1995. This subsection is repealed on January 1, 2001.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved, except as otherwise indicated.

Effective March 14, 1996, unless otherwise indicated.

CHAPTER 537

H.P. 1188 - L.D. 1629

**An Act to Implement the
Recommendations of the Study
Commission on Property Rights and
the Public Health, Safety and
Welfare Establishing a Land Use
Mediation Program and Providing
for Further Review of Rules**