

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SIXTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 2012 to July 10, 2013

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
OCTOBER 9, 2013

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

Augusta, Maine
2013

Sec. 1. 12 MRSA §6134, as amended by PL 2011, c. 598, §12, is repealed and the following enacted in its place:

§6134. River herring passage; fishways on the St. Croix River

By May 1, 2013, the commissioner and the Commissioner of Inland Fisheries and Wildlife shall ensure that the fishways on the Woodland Dam and the Grand Falls Dam located on the St. Croix River are configured or operated in a manner that allows the unconstrained passage of river herring.

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

Effective April 23, 2013.

CHAPTER 48

S.P. 48 - L.D. 127

An Act Relating to Ways under the Jurisdiction of the Midcoast Regional Redevelopment Authority and the Loring Development Authority

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

Sec. 1. 5 MRSA §13080-D, sub-§4 is enacted to read:

4. Enforcement on ways under jurisdiction of the authority. A law enforcement officer may enforce the traffic laws under Title 29-A on a way under the jurisdiction of the authority.

Sec. 2. 5 MRSA §13083-K, sub-§4 is enacted to read:

4. Enforcement on ways under jurisdiction of the authority. A law enforcement officer may enforce the traffic laws under Title 29-A on a way under the jurisdiction of the authority.

See title page for effective date.

CHAPTER 49

S.P. 222 - L.D. 632

An Act To Enact Measures To Improve Enforcement Mechanisms in the Elver Industry

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

Whereas, elver prices are unusually high and elver purchasing transactions have created law enforcement difficulties; and

Whereas, the safety of the public and of law enforcement is at stake and elver season is already under way, and therefore it is necessary immediately to modify the strategies available to law enforcement to increase safety and accountability in the elver industry; 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 §6173, sub-§1, as enacted by PL 2003, c. 170, §1, is amended to read:

1. Collection and reporting of statistics. The commissioner may, with the advice and consent of the advisory council, adopt rules to collect pertinent data with respect to the fisheries, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight, areas in which fishing was conducted, time of fishing, number of hauls and the estimated processing capacity of, and the actual processing capacity utilized by United States fish processors. The commissioner may collect statistics from any source and may require reporting of these statistics. The information collected by or reported to the commissioner is confidential and may not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order or when specifically permitted under this section. The commissioner may share data collected under this section with the National Marine Fisheries Service or successor organization for research or fisheries management purposes, ~~provided that as long as~~ federal laws and regulations protect the confidentiality of the shared data. The commissioner may share landings data collected under this subsection with the Bureau of Marine Patrol when necessary for the enforcement of reporting requirements under this section. The commissioner shall adopt rules to carry out the purposes of this section. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 2. 12 MRSA §6305, sub-§1-A is enacted to read:

1-A. Photo identification. When a person is engaged in an activity for which a license is required under section 6505-A, that person shall, on the request of a marine patrol officer or other authorized person, present a government-issued identification card with the person's photograph and date of birth.

Sec. 3. 12 MRSA §6404-A, as amended by PL 2011, c. 549, §1, is further amended to read:

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

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

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

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

Sec. 4. 12 MRSA §6404-H, as enacted by PL 2011, c. 549, §2, is amended to read:

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

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

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

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

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

§6404-I. Suspension or revocation based on conviction of untagged elver gear

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

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. 6. 12 MRSA §6404-J, as enacted by PL 2011, c. 549, §2, is amended to read:

§6404-J. Suspension or revocation based on conviction of fishing during closed season or a closed period

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

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. 7. 12 MRSA §6404-K, as enacted by PL 2011, c. 549, §2, is amended to read:

§6404-K. Suspension or revocation based on conviction of a violation of an elver dealer's license

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

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. 8. 12 MRSA §6505-A, sub-§8, as repealed and replaced by PL 2011, c. 549, §5, is repealed.

Sec. 9. 12 MRSA §6505-A, sub-§8-A is enacted to read:

8-A. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 10. 12 MRSA §6505-B, sub-§6, as amended by PL 2011, c. 549, §6, is further amended to read:

6. Violation. A person who violates this section commits a ~~civil violation~~ Class D crime for which a fine of \$2,000 ~~may~~ must be adjudged imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 11. 12 MRSA §6575, sub-§5 is enacted to read:

5. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000

must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

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

§6575-A. Closed period; elver harvesting

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

2. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

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

Sec. 14. 12 MRSA §6575-D, sub-§2, as amended by PL 2011, c. 549, §8, is further amended to read:

2. Violation. A person who violates this section commits a ~~civil violation~~ Class D crime for which a fine of \$2,000 ~~may~~ must be ~~adjudged~~ imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 15. 12 MRSA §§6575-G and 6575-H are enacted to read:

§6575-G. Dams with fishways; elver fishing

1. Dams with fishways. A person may not 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. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

§6575-H. Sale of elvers

1. Sale of elvers. A person may not sell elvers for cash or credit or receive from any person any goods, wares, merchandise or other articles or form of payment in exchange for elvers other than a check that identifies both the seller and the buyer, each of whom must be a person holding a license issued under sec-

tion 6864, a person who, pursuant to section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864 or a person holding a license issued under section 6505-A.

2. Violation. A person who violates this section commits a Class D crime for which a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 16. 12 MRSA §6864, sub-§7, as amended by PL 2011, c. 549, §9, is further amended to read:

7. Violation. A person who violates this section commits a ~~civil violation~~ Class D crime for which a fine of \$2,000 ~~may~~ must be ~~adjudged~~ imposed, none of which may be suspended. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Sec. 17. 12 MRSA §6864, sub-§10, as enacted by PL 2011, c. 549, §9, is amended to read:

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. The license holder or the license holder's authorized representative may not purchase elvers for cash or credit or provide to any person any goods, wares, merchandise or other articles or form of payment in exchange for elvers other than a check that identifies both the seller and the buyer, each of whom must be a person holding a license issued under this section, a person who, pursuant to subsection 9, is an authorized representative of a person holding a license issued under this section or a person holding a license issued under section 6505-A.

Sec. 18. 12 MRSA §6864, sub-§12 is enacted to read:

12. Nonnegotiable checks. A licensed elver dealer or an authorized representative of a licensed elver dealer may not purchase or attempt to purchase elvers with a nonnegotiable check.

Sec. 19. 12 MRSA §6864, first ¶, as amended by PL 2011, c. 549, §9, is further amended to read:

A holder of an elver dealer's license when buying directly from a harvester may buy only from a harvester who possesses an elver fishing license under section 6505-A. The harvester shall make the elver

fishing license and a government-issued identification card with the harvester's photograph and date of birth available for inspection upon the elver dealer's license holder's request.

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

Effective April 23, 2013.

CHAPTER 50

S.P. 187 - L.D. 494

**An Act Regarding Maine
Commercial Motor Carrier
Safety Regulations**

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

Sec. 1. 29-A MRSA §555, sub-§2, as amended by PL 2011, c. 164, §1, is further amended to read:

2. Adoption of federal regulations. The bureau may adopt ~~rules~~ a rule to incorporate by reference federal regulations in 49 Code of Federal Regulations, Parts 40, 382, 383, 385, 390, 391, 392, 393, 395 and 396, and appendices, as amended, and may adopt amendments to those federal regulations. The following provisions apply to the adoption of federal regulations under this section.

A. Except as provided in paragraph A-1, the Maine Administrative Procedure Act does not apply to the adoption by reference of federal regulations under this subsection.

A-1. ~~A~~ The rule adopted by the bureau under this subsection is a major substantive rule as defined in Title 5, chapter 375, subchapter 2-A if it:

- (1) Adopts by reference any provision of the federal regulations described under this subsection that would ~~result in a modification of the substance or effect of~~ substantively change any amendment to the federal regulations adopted by the bureau ~~and in effect on the effective date of this paragraph~~; or
- (2) Adopts an amendment to any federal regulation described under this subsection.

A-2. The bureau may not adopt any rule that exempts motor carriers, vehicles or drivers transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with 49 Code of Federal Regulations, Part 172 from any federal regulation adopted and incorporated by reference into any rule adopted by the bureau pursuant to this sub-

section. Notwithstanding paragraph A-1, the Maine Administrative Procedure Act does not apply to the amendment of any rule consistent with the prohibition set forth in this paragraph.

C. For ~~every~~ the rule adopted under this subsection:

- (1) The bureau shall file with the Secretary of State:
 - (a) A certified copy of the rule;
 - (b) A published copy of the federal regulation or amendment as printed in the Federal Register; and
 - (c) Annually, a published copy of the updated volume of the Code of Federal Regulations containing the federal regulation.

The bureau shall make available for inspection at no charge, and for copying at actual cost, a current published copy of the referenced federal regulations.

D. The Secretary of State shall publish, pursuant to Title 5, section 8053, subsection 5, a notice containing the following information:

- (1) A statement that the rule has been adopted and its effective date;
- (2) A brief description of the substance of the rule and the referenced federal regulation or amendment; and
- (3) The addresses at which copies of the rule and the federal regulation or amendment may be obtained.

E. The Secretary of State shall maintain and make available at the Secretary of State's office for inspection at no charge, and for copying or purchase at actual cost, current copies of ~~these rules~~ the rule and include ~~them~~ it within the compilations subject to Title 5, section 8056, subsection 3, paragraphs A-1 and B. The Secretary of State shall also make available for inspection at no charge and for copying at actual cost a current published copy of the referenced federal regulations and amendments.

F. A rule adopted under this section may not take effect until at least 5 days after filing with the Secretary of State, except that, if the bureau finds that immediate adoption of the rule is necessary to avoid an immediate threat to public health, safety or general welfare, the bureau may adopt the rule as an emergency rule in accordance with Title 5, section 8054, and that rule takes effect immediately.

See title page for effective date.