

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND TWELVE

H.P. 1298 - L.D. 1765

An Act To Sustain the Elver Fishery

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

**Whereas,** the elver fishing season begins March 22, 2012; and

**Whereas,** there are widespread violations in the elver fishery due to the dramatic increase in the price per pound of elvers and harsher penalties need to be in effect to combat the violations; and

**Whereas,** a change in the closed periods will help elver fishing license holders protect their gear from molestation; and

**Whereas,** a requirement for elver dealer's license holders to return their product to a permanent establishment will strengthen the position of licensed elver dealers of this State in an international market and help the economy of this State; 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 §6404-A,** as amended by PL 2001, c. 421, Pt. B, §18 and affected by Pt. C, §1, is further amended to read:

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

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

**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. 2. 12 MRSA §§6404-H to 6404-K are enacted to read:

**§6404-H. Suspension or revocation based on adjudication or 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.

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

The commissioner shall suspend or revoke the elver fishing license of any license holder adjudicated in court 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.

**§6404-J. Suspension or revocation based on adjudication 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 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.

**§6404-K. Suspension or revocation based on adjudication 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 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. 3. 12 MRSA §6505-A, sub-§2,** as amended by PL 2007, c. 615, §15, is further amended to read:

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

C. Possessed an elver fishing license in the previous calendar year; ~~or~~

E. Did not possess an elver fishing license in the previous calendar year because the commissioner had suspended the person's license privileges for a length of time that included the previous calendar year; or

F. Becomes eligible to obtain an elver fishing license pursuant to the elver lotteries under subsection 2-B.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 5. 12 MRSA §6505-A, sub-§8**, as enacted by PL 2001, c. 421, Pt. B, §29 and affected by Pt. C, §1, is repealed and the following enacted in its place:

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

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

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

**Sec. 6. 12 MRSA §6505-B, sub-§6**, as enacted by PL 2001, c. 421, Pt. B, §30 and affected by Pt. C, §1, is amended to read:

**6. Violation.** A person who violates this section commits a civil violation for which a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

**Sec. 7. 12 MRSA §6575-A**, as amended by PL 1999, c. 7, §8, is further amended to read:

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

It is unlawful for a person to fish for or take elvers from noon ~~Friday~~ 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.

**Sec. 8. 12 MRSA §6575-D, sub-§2**, as repealed and replaced by PL 2001, c. 421, Pt. B, §34 and affected by Pt. C, §1, is amended to read:

**2. Violation.** A person who violates this section commits a civil violation for which a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

**Sec. 9. 12 MRSA §6864**, as amended by PL 2009, c. 478, §5, is further amended to read:

**§6864. Elver dealer's license**

**1. License required.** A person may not buy, possess, ship, transport or sell elvers without an elver dealer's license. It is unlawful for a person to possess elvers prior to the beginning of the elver season and to possess elvers 5 days beyond the end of the elver season pursuant to section 6575.

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

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

**4. Fee.** The fee for an elver dealer's license is \$1,213 and the fee for each supplemental license is \$63.

**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 \$376 accrues to the General Fund for each elver dealer's license sold under this section and \$52 accrues to the General Fund for each supplemental license sold under this section.

**7. Violation.** A person who violates this section commits a civil violation for which a ~~forfeiture fine of not less than \$100 nor more than \$500~~ \$2,000 may be adjudged.

**8. Reporting.** A dealer licensed under this section shall report the total annual harvest of elvers received by that dealer to the department within 30 days after the end of the elver fishing season. The commissioner shall prescribe how that data and any other information necessary for a meaningful analysis of the elver harvest are reported to the department.

**9. Authorized representatives.** A person who holds an elver dealer's license may identify authorized representatives to act on the license holder's behalf to purchase elvers at locations other than the permanent facility. The elver dealer's license holder must identify authorized representatives on forms provided by the department.

**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.

**11. Shipment or transport of elvers outside state limits.** A person who holds an elver dealer's license or the elver dealer's license holder's authorized representative under subsection 9 must transport elvers to a permanent facility identified on the license holder's license prior to shipping or transporting elvers outside state limits.

A holder of an elver ~~dealer~~ 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 available for inspection upon the elver ~~dealer~~ dealer's license holder's request.

The commissioner may adopt rules to implement and enforce requirements under this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 10. Appropriations and allocations.** The following appropriations and allocations are made.

**MARINE RESOURCES, DEPARTMENT OF  
Sea Run Fisheries and Habitat Z049**

Initiative: Provides funding from an increase in revenue related to application fees for the elver license lottery.

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2011-12</b>	<b>2012-13</b>
All Other	\$0	\$5,000
<b>OTHER SPECIAL REVENUE FUNDS TOTAL</b>	<b>\$0</b>	<b>\$5,000</b>

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

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In House of Representatives, ..... 2012

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2012

Read twice and passed to be enacted.

..... President

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Approved ..... 2012

..... Governor