

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32.07 Elver harvesting limitations; gear

CONCISE SUMMARY: This emergency regulation limits the use of fyke nets in the elver fishery to those individuals authorized to fish fyke nets pursuant to 12 M.R.S. §6575-B sub-§2-B, or pursuant to 12 M.R.S. §6302-A sub-§3 E, E-1, F, or G, as authorized by 12 M.R.S. §6171(3). This regulation is necessary to ensure that the state does not exceed the elver quota of 9,688 lbs established in regulation and required for compliance with the Atlantic States Marine Fisheries Commission (ASMFC) Fishery Management Plan for American Eel.

EFFECTIVE DATE: May 8, 2015

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DEPARTMENT OF MARINE RESOURCES

Chapter 32 Eels

32.07 Elver harvesting limitations; gear

It is unlawful for a person to fish for or take elvers by any method other than dip net, unless authorized to fish for or take elvers by elver fyke net or Sheldon eel trap pursuant to §6575-B sub-§2-B, or by elver fyke net pursuant to §6302-A sub-§3 E, E-1, F, or G.

Basis Statement

Chapter 32.07 Elver harvesting limitations; gear Emergency Regulation

Justification:

At the October 2014 meeting of the Atlantic States Marine Fisheries Commission's (ASMFC) American Eel Board, the Board approved Addendum IV to the American Eel Fisheries Management Plan, with the goal of reducing mortality and increasing conservation of American eel stocks across all life stages. Addendum IV reduced Maine's elver quota to 9,688 lbs. The Board's actions were in response to the findings of the 2012 benchmark stock assessment which indicated that the American eel population in U.S. waters is depleted. The stock has declined in recent decades, and the prevalence of significant downward trends in multiple surveys across the coast is cause for concern. Causes of decline are likely due to a combination of factors including historical overfishing, habitat loss, food web alterations, predation, turbine mortality, environmental changes, toxins and contaminants, and disease. Addendum IV is the second phase of management action in response to the stock assessment.

For compliance with this Addendum, Maine is required to maintain daily trip level reporting to monitor quota at the individual and statewide level, and ensure a pound-for-pound payback in the event of quota overages in its glass eel fishery. Through the implementation of the swipe card system which is required for all commercial harvesters, the daily trip level reporting requirement is met.

In 2014, no sustenance licenses were issued by any of the four Federally recognized Tribes. Prior to the start of the 2015 season, the Department became aware of communications from the Passamaquoddy Tribe to its members, in which they notified their members of the availability of sustenance licenses in the 2015 season. The Department sent the Tribe a letter requesting information regarding the number of sustenance licenses they intended to issue, in order to determine whether it was necessary to withhold a portion of the Passamaquoddy Tribe's elver quota for sustenance purposes. The Tribe indicated that they would likely issue sustenance licenses, but did not indicate in what amount. In the absence of any further information, the Department withheld the maximum percentage allowable by law (10%) of the total Passamaquoddy quota of 1,356 lbs (or 136 lbs) in an attempt to ensure that the sustenance fishing did not cause the state to exceed the total quota established for the conservation of the American eel.

On May 4, 2015, the Department received notification from the Passamaquoddy Tribe that they had issued 39 sustenance licenses, 31 of which were for a combination of fyke net and dip net, and 8 of which were dip net only. Up until this communication, it was the Department's understanding that the existing Tribal Fisheries Management Plan prohibited the use of fyke nets by its members. Fyke nets are significantly more capable of catching large amounts of elvers than dip nets (in 2014, the average catch per trip for dip net was 0.68 lbs, while the average catch per fyke net was 1.35 lbs; fyke nets are also far more likely to have large catches than dip nets). All other fyke nets authorized by law under §6575-B sub-§2-B, or pursuant to §6302-A sub-§3 E, E-1, F, or G have specific amounts of quota associated with them which is tracked daily by the use of the swipe card system. The Passamaquoddy Tribe does not have a mechanism to accurately track and report the landings of sustenance license holders to the Department. Because of the capability of the gear type and the quantity of licenses issued, the Department is concerned that these licenses will cause the overall state quota to be exceeded, and negatively impact the elver resource. By harvesting elvers in excess of the established quota, there is potential for unusual damage to the American eel resource.

For these reasons, the Commissioner hereby adopts an emergency regulation limiting the use of fyke nets to those individuals authorized to fish fyke nets pursuant to 6575-B sub-§2-B, or pursuant to §6302-A sub-§3 E, E-1, F, or G, as authorized by 12 M.R.S. §6171(3).

In accordance with 5 M.R.S. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

Rule-Making Fact Sheet
(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 32.07 Elver harvesting limitations; gear

STATUTORY AUTHORITY: 12 M.R.S. §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The principal reason for proposing this rule is to protect the American eel by ensuring that the established quota (9,688 lbs) for elvers is not exceeded by the unlimited use of fyke nets in the fishery.

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The expected operation of the rule is to limit the use of fyke nets to those individuals who have had quota assigned to them and which is tracked through the use of the swipe card system. All other harvesting would be by dip net only.

FISCAL IMPACT OF THE RULE:

None anticipated.