

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season

CONCISE SUMMARY: This rulemaking would establish the quota system for the 2015 elver season. 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, which reduced Maine's elver quota to 9,688 lbs. As required by 12 MRS 6505-A, the rule establishes the overall annual quota for the state; the amount of quota that is allocated to persons licensed to fish for elvers by the Department of Marine Resources and the formula by which that quota will be allocated to individual license holders; the portion of the annual quota that is allocated to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmacs, in accordance with the percentages established by 12 MRS 6302-B, subsection 2.

In addition, the rule:

- Establishes the tributaries of the St. Croix River within which the use of fyke nets are prohibited, in accordance with 12 M.R.S. §6575-B, sub-§8;
- Defines the activities in which an unlicensed crew member may assist an individual who holds a license that authorizes crew, as authorized by 12 M.R.S 6505-A sub 1-B.
- Establishes the requirements with which persons licensed as elver dealers must comply when using an elver dealer transaction card;
- Establishes a mandatory meeting for elver dealers licensed under 12 M.R.S. §6864, to ensure that elver dealers understand their responsibilities for proper administration of the individual fishing quota system
- Requires that before purchasing elvers each fishing day (as defined within the regulation), licensed elver dealers synchronize their DMR-provided reporting software in order to align with current Department records.
- Clarifies that no person may possess elvers that were harvested outside the State of Maine, except if they are exclusively transporting legally harvested elvers through the State under the authority of the laws of the United States.

In response to public comment, the formula for allocating individual quota was modified to include distribution of quota associated with licenses that are suspended for the duration of the 2015 season. Dealer requirements were also further clarified.

As authorized by 12 M.R.S §6171, 6173; 6505-A; 6575-B, the Commissioner of Marine Resources adopts this regulation.

EFFECTIVE DATE: March 9, 2014

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DEPARTMENT OF MARINE RESOURCES

Chapter 32 - Eel Regulations

32.01 Definitions

For the purposes of compliance with this chapter:

1. An eel means a member of the species *Anguilla rostrata* in that stage of its life cycle when it is 9 inches or more in length.
2. An elver means a member of the species *Anguilla rostrata* that will pass through a 1/8" non-stretchable mesh net.
3. A pigmented eel means a member of the species *Anguilla rostrata* in that stage of its life cycle when it will not pass through a 1/8" non-stretchable mesh but is less than 9 inches in length.
4. Fishing day means from 12:00 p.m. local time until 11:59 a.m. local time the following day.

32.02 Elver Harvest Reporting Requirements: See Chapter 8.10(E) Landings Program

32.03 Commercial Eel Harvesting Regulations

1. Elvers

B. Prohibition on the use of fyke nets in the St. Croix River

Pursuant to 12 M.R.S. §6575-B, sub-§8, a person may not use an elver fyke net to fish for or take elvers from the tidal waters of the St. Croix River and its tributaries North of a line beginning at the Northern tip of Kendall Head, Eastport, and extended in an easterly direction to the Southern tip of Cummings Cove, Deer Island, Canada.

C. Authorized Activities of Unlicensed Crew Members

- 1) The holder of an elver fishing crew license who is authorized to fish using a dip net may engage one unlicensed crew member to assist with the activities associated with fishing for elvers under the direct supervision of the license holder. The unlicensed crew member may possess elvers when the license holder is present. It is unlawful for an unlicensed crew member to fish for, take, or sell elvers.
- 2) The holder of an elver fishing crew license who is authorized to fish using an elver fyke net may engage one unlicensed crew member to assist with activities associated with fishing for elvers under the direct supervision of the license holder. The unlicensed crew member may possess elvers when the license holder is present and may assist with tending the gear of the license holder when the license holder is present, except that it is unlawful for an unlicensed crew member to tend the cod end of the license holder's elver fyke net. It is unlawful for an unlicensed crew member to sell elvers.

32.35 Elver Quota System for 2015 Elver season

- A. The total allowable catch of elvers for 2015 for individuals licensed to fish for elvers under 12 M.R.S. §§6505-A and 6302-A is 9,688 lbs.

- B. The total allowable catch of elvers for individuals licensed to fish for elvers established in accordance 12 M.R.S. §6505-A(3-A)(B) for 2015 is 7,566 lbs.
- C. The total allowable catch of elvers for individuals licensed to fish for elvers under 6302-A paragraphs E, E-1, F, and G, established in accordance with 12 M.R.S. §6505-A(3-A)(C) for 2015 is 2,122 lbs. A total of 2,122 lbs allowable catch is allocated pursuant to 12 M.R.S. 6302-B, subsection 1 as follows:
1. 1,356 lbs to the Passamaquoddy Tribe
 2. 620 lbs to the Penobscot Nation
 3. 107 lbs to the Houlton Band of Maliseet Indians
 4. 39 lbs to the Aroostook Band of Micmac Indians

Pursuant to 12 M.R.S. 6302-B subsection 2, the Tribe, Nation or Band must allocate to each person to whom it issues a license a specific amount of quota and must provide documentation to the Department before the Department may issue transaction cards to the license holders. Once the Tribe, Nation or Band provides documentation to the Department of the allocations to their license holders, that allocation may not be altered.

- D. An individual licensed to fish for elvers under 12 M.R.S. 6505-A(1) will be allocated an elver individual fishing quota based on the following process. The Department will:
1. Determine each license holder's allocation for the 2014 fishing season.
 2. Deduct the necessary percentage from each license holder's 2014 allocation in order to reduce the total allocation to 7,566 lbs
 3. Round to the nearest tenth of a pound
 4. Calculate the poundage that would be allocated to license holders suspended for the duration of the 2015 elver season, and distribute that poundage equally across all other license holders.
- E. An individual licensed under 12 M.R.S. §§6505-A and 6302-A must be present to receive his or her transaction card, and must produce a valid, government-issued photo identification card at the time of receipt. The license holder will be notified of his individual quota, both verbally by a law enforcement officer and in writing, at the time of receipt and will be deemed to have received notice of his or her quota upon signing the written notification document. Failure to sign the written notification document will result in ineligibility to obtain the transaction card.
- F. The Department will deactivate the transaction card of any individual who has met or exceeded the elver individual fishing quota that individual has been allocated.

32.41 Elver Dealer Transaction Card.

1. A person licensed in accordance with 12 M.R.S. §6864 shall be eligible to obtain an elver dealer transaction card for the primary facility named on the license and for each supplemental license. Elver dealer transaction cards may only be issued through the Maine Department of Marine Resources.
2. A person licensed in accordance with 12 M.R.S. §6864 must utilize an elver dealer transaction card to record all sales, purchase, or transfer transactions involving another license issued in accordance with 12 M.R.S §6864. It is unlawful for a person licensed in accordance with 12 M.R.S. §6864 to sell, buy, or transfer elvers in any transaction involving another license issued in accordance with 12 M.R.S §6864 without utilizing an Elver Dealer Transaction Card. A person

licensed in accordance with 12 M.R.S. §6864 must have an operational internet connection when using the elver dealer transaction card to buy or sell or transfer or transport elvers.

3. A person licensed in accordance with 12 M.R.S. §6864 shall maintain transaction card documentation to account for all elvers in their possession. Failure to provide proper documentation will be prima facie evidence that the elvers are illegal and are subject to seizure.

32.45 Elver Record Keeping

Elver dealers must maintain paper records pertaining to all elver purchases and shipments. These records must be made available to the Department upon request and must comply with the following:

1. Each license holder must have a business address at which the records are maintained;
2. The records must be complete, accurate and legible;
3. The records must be sufficient to allow each purchase and shipment of elvers to be tracked by date of purchase from harvester, harvester name and landings number, who the elvers were sold to.
4. The records must be retained for a minimum of three years.

DMR provided reporting software must be synchronized for updates to the reporting system prior to the purchase of elvers on each fishing day as defined in Chapter 32.01(4).

32.50 Mandatory Elver Dealer Meeting to Prepare for the 2015 Elver Season

An individual licensed under 12 M.R.S. §6864 must attend a meeting held at the Department offices in Hallowell in order to ensure that the transaction card system is properly understood and implemented for the 2015 elver season. Notice of the date and time of the meeting will be mailed to the address provided by the license holder on their license application and posted to the DMR website. If an individual licensed under 12 M.R.S. §6864 does not attend the meeting, a marine patrol officer may seize any recording equipment issued by the Department to the individual licensed under 12 M.R.S. §6864.

32.60 Transport of Elvers Through the State of Maine

A person may not possess elvers harvested outside the State of Maine, except that elvers legally harvested outside the State of Maine may be transported through the State under the authority of the laws of the United States. Elvers transported through the State must be accompanied by a bill of lading that identifies the product amount by weight and the origin of the product. Elvers transported through the State must remain in the transport vehicle and may not be commingled with Maine elvers.

Basis Statement

Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season

This rulemaking establishes the quota system for the 2015 elver season, which is necessary for compliance with Atlantic States Marine Fisheries Commission (ASMFC) management measures. At the October 2014 meeting of the ASMFC American Eel Board, the Board approved Addendum IV to the American Eel Fisheries Management Plan, which reduced Maine's elver quota to 9,688 lbs. As required by 12 MRS 6505-A, the proposed rule establishes the overall annual quota for the state; the amount of quota that is allocated to persons licensed to fish for elvers by the Department of Marine Resources and the formula by which that quota will be allocated to individual license holders; the portion of the annual quota that is allocated to the Passamaquoddy Tribe, the Penobscot Nation, the Houlton Band of Maliseet Indians, and the Aroostook Band of Micmacs, in accordance with the percentages established by 12 MRS 6302-B, subsection 2.

The Board's actions respond to the findings of the 2012 benchmark stock assessment indicating 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.

In addition, this rule:

- Establishes the tributaries of the St. Croix River within which the use of fyke nets are prohibited, in accordance with 12 M.R.S. §6575-B, sub-§8;
- Defines the activities in which an unlicensed crew member may assist an individual who holds a license that authorizes crew, as authorized by 12 M.R.S. 6505-A sub 1-B.
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In response to public comment, the formula for allocating individual quota was modified to include distribution of quota associated with licenses that are suspended for the duration of the 2015 season. Dealer requirements were also further clarified.

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.

Summary of Comments

Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season

Notice of this proposed rulemaking was advertised on January 21, 2015 in the Secretary of State's Notice of Rulemaking column in the five daily newspapers of the state. Also, mailed notices were sent to all licensed elver harvesters and dealers. Public hearings were held on February 9, 2015 in Brewer and February 10, 2015 in Hallowell.

Comments in Favor:

Babe Stanley, Hancock; comment received at Brewer public hearing:

"I think you guys have done one hell of a job. Positively. And I ought to thank you. I don't know if anybody else is going to do that but I do. Because if you guys hadn't gone down to Washington and done what you done, we would have no fisheries here now. It would be done. So thank you very very much."

William Milliken, Jonesport; comment received at Brewer public hearing:

"In general, I'm in support. It's nice to see everybody is taking the same cut. I understand the perspective of the other fishermen. Those that work hard were able to achieve their quotas are being punished more than those who fell short of the bar. I think that in the future, I'm just gonna offer a suggestion that the next time we do this if it's possible—I'm not sure if ASMFC would give us the latitude to do so—but we are going to get 9,688 lbs. of quota next year and could we double that and make it a two-year quota? What that will do is give us some latitude the second year if we are short of the quota, there would be a little extra quota to go around to allocate here and there. So that's my only comment."

Comments in Opposition:

Darrell Young, Angela Young, Julie Keene, Adam Boutin, comment received via e-mail:

1. "We respectfully request allocating individual quotas back to what was caught last year to each fisherman by what each fisherman actually caught.
2. We understand there will be a reduction to each fisherman regardless, because of the fishermen re-entering the fishery whose licenses were suspended last year.
3. Pertaining to the people that lost their license during open season: If they are not eligible to obtain a license or their quota for the following year before opening day.... Then they should not be able to get their license until the following season.
4. For the people that went over their quotas they should be punished as well. Punishment should be equal to what they went over. Or they should have to pay back double. We should be able to fish that quota.
5. We are very concerned that the state is holding back quota each year from the fishermen whose fishing privileges have been suspended. It is our understanding that our current quota has been set in stone for the next three elver fishing seasons. When Maine goes back to the ASMFC to discuss Addendum 5 and Maine reports the total quota that was caught each year it is going to appear that Maine was not able to catch their allotted quota. Giving them ammunition to cut our quota further. Under the current management practices for allocating quota we will never catch our allotted quota. We absolutely feel it is crucial that we are allowed to catch the entire quota. Please take our letter and concerns in consideration. Based on the ASMFC's history in other fisheries we can expect to have our quota cut if we don't catch it.
6. We do not understand nor can we accept why we are being punished because of other people breaking the law, or not putting enough effort into catching their entire quota.
7. We are eager to have a conversation with the Department of Marine Resource's to address solutions to these issues. "

Darlene and Fred Campbell, Friendship; comment received via e-mail:

"My husband holds a dip license. All I see is he will be pushed out of this business. Each year due to quota reductions, it looks like the only ones left in the business will be fyke net holders. What really should happen is all fyke net license should be taken away have every one hold a dip license. By taking away the fyke net maybe we would not need a quota, everyone would be on the same page. That also cut down on all the other species being caught in the fyke net. My husband has been working in the fishing business all his life. He also holds a harvest shellfish license. As everyone knows Maine winters are hard on self-employed. I see my husband on many nights out in the cold dipping for elver for nothing. Maine seems to be always taking the brunt for fishing business. THANKS FOR TAKING THE TIME TO READ."

Howard Frye, Milford; comment received at Brewer public hearing:

"The part that I am opposed to is how you are allocating the quota to the non-tribal fishermen. Us fishermen that fill that quota are being asked to have a reduction in quota for people who didn't fill their quota because they lowered their overall catch by them not filling their quota. So take for example a fisherman who didn't fill their quota by 20%, you are going to give them a 13 1/2 % reduction but they are still going to catch 6.5% more than what they caught last year. That's not fair. It should be allocated differently so that the fishermen who fill their quota doesn't take as large of a percentage as those that didn't."

Norman Bernard, Arrostook Band of Micmacs; comment received at Brewer public hearing:

"At some point in time, we would like to negotiate for more licenses and more quota. We have tribal members that are looking to get into the industry to learn more and get into it. Sustainability. These are some of the things we would like to bring to the table and talk about. We've been compliant throughout the years. We're new to the game so we just want to do what we can for our tribal members. And I know by asking for more in the quota, somebody has to take a hit on that. So we don't want to really create waves. We just want to create opportunity."

Joseph McDonald, Jonesport; comment received at Brewer public hearing:

"I'm in agreement with the gentleman who spoke first. I think in considering the allocation, there should be some weight to the fact that people who follow their quota and fish their quota and did it correctly versus the ones who didn't catch the quota or violated the laws. I don't think that none of it has been fair to a point there is nothing fair about it. But for us, an across the board cut it seems a bit rewarding to some and not so much the guys who play by the rules."

Travis Atwood, Orland; comment received via e-mail:

"I am Travis Atwood, I went to your notice of rulemaking meeting on February 9th at Jeffs Catering in Brewer. I listened to what you and others had to say. I am a 24 year continues elver fisherman. I've been reduced a lot over the years as you know, and I understand the sacrifices that it takes to keep our fishery stable on all ends. With that said, I feel as though the proper way to distribute the allocated quota that we have for this 2015s season be divided up in a more rewarding way, by not taking away so much from the law abiding fishermen and not let the illegal actions of others hurt us like it did in the reduced quota allowance we got this year from the ASMF. By that said, I think that you should divide up the quota on more of a based on your efforts of the fishery by both quota and laws. So here's my suggestion of how to do that. You would take the quota that was allocated to us last year from taking the years 2011, 12&13s years and dropping the worst and subtracting 41.8% from those two given us our overall 2014s elver seasons individual quota allowances. And take the actual amount we swipped in on our cards for 2014s season and divide it by two, that would give you your 2015s individual quota allowances. So if a fisherman didn't fish or catch their quota last year because of lack of efforts or they was under suspension then they would lose. There for, if you broke the law and have a zero for 2014s elver season because of suspension, then they would take the reduction. And if you just didn't catch it but still had reports of catch, then they would lose a little. Basically based on your fishing efforts. The suspended quota that would come from deducting from those that was under suspension and or didn't fill thier quotas, would go towards the 1, 190.3 pounds that we need to reduce for 2015s elver season. And if it doesn't, then it would reduce the 13.6% reduction that you are suggestion. And maybe if it covers the 1, 190.3 pounds

and then some, then that quota could be allocated back into the quota system and be divided up among the elver fishermen. This rewards the honest, hardworking elver fishermen while punishing only the law breakers and keeping within our allowed quota that ASMF allowed us. I hope you understand where I'm coming from with this suggestion and hope you consider this way or something on the same lines as mine.

I sincerely thank you guys for all you do to help keep this elver fishery stable and keep us fishermen fishing to feed the world and our state's economy."

Chris Hole, Harpswell; comment received at Hallowell public hearing:

"I'm totally opposed to reducing this quota in any form. I would feel a lot better about it if I got here and it said if we achieve this, then our quota is going to go back up. But everyday, it seems fishing lately—shrimping, pogeing, eeling, tuna fishing—it's always goes down and math doesn't lie. Math goes in two directions and I'm sick of the math going against us with nobody doing anything. I mean I know you go to these meetings and whose going to hold these people accountable? A lot of these are like Greenpeace type operations that are funded these attacks against commercial fishing. A \$40 million dollar industry. We have a meeting at six at night after a storm and we don't have a turnout because people are busy just trying to make a living. I just don't think we are getting treated well on this deal and I can't even believe that we are going along and that somebody doesn't tell Atlantic States and the feds that we are not going along with all of it. We got people trying to make a living. That doesn't seem to ever come out in the end unless there is something I just don't know about. I must have missed it."

Don Sprague, Newcastle; comment received at Hallowell public hearing:

"In light of what he said, do we believe the study not from Atlantic States but from the other group U.S. Fish and Wildlife? I hope that soon they 'No. They are not endangered.' I think part of what Atlantic States did is that they took that and the fact that they had a challenged and assumed. Maybe we will have some realistic numbers. It's doing harm to the fishermen by holding it over our heads. But it's also displacing industry. It's Haiti right now and next year it goes to Cuba. If we keep letting them play with numbers, this will turn into a secondary market."

Patricia Bryant, Nobleboro; comment received at Hallowell public hearing:

"It just seems like it is give, give, give and more regulations. The fishermen are just losing the entire business and industry. I don't know what the answer is. I know the fishermen now have had enough. You guys are going to do exactly what you want to do. The Atlantic States is just telling us what to do and we are just a bunch of pawns. There is nothing we can do about it. I was hoping to do it with a 25% increase so this wouldn't hurt us so bad. And then I heard that wasn't put in for this last meeting. Somebody didn't have time to put the numbers in and all of this. The Department insists that every 24 hours we got to have our numbers in and by the 15th of June. And boy, if we don't. Because I've had them come by my place...and you guys a year later, you haven't had time to get the numbers in. It always seems like we don't have the accurate numbers? And everybody is wondering just where are these numbers coming from? Why are we stuck with this 13.5%? How do we figure that because we don't know who died this year or if there license is suspended? What happens to their quota? That obviously doesn't go back in and there again we are not going to be able to meet the quota. And we have annihilated the fisher and blah, blah, blah and we have no choice to make it go down because we are not allowed to catch what we can't catch. We are not allowed to show what is actually out there. These people doing these models and these studies are not out there on a day-to-day basis. They are not seeing what we are seeing and we tell them this and all we get is 'oh, well.' What science? Best available science? I for one would like to know just exactly what that means? I'm not seeing it. I'm not hearing it. You didn't even have to supply any data unless you wanted to. The fishermen would say we don't want to give you what we caught because then you would say they caught too many. Then I would say if you caught them all, we are not going to have any. And we still don't know because the landings data still isn't accurate. Last year, you kept that five percent buffer and I understand why you did that. All the licenses that didn't get paid. Those numbers didn't get put back in the pot. So then ASMFC came along and we gave you this much and you only caught this much. So probably that's all you're going to get this year. We are supposed to stand around and divide it all up amongst us. What ever happened to the

people who didn't pay or who lost their license for this year? Where's that quota? Is anybody going to get that? Is that going to go back in the pot? We're always going to be behind.

Everybody who is not going to be fishing this year, whether they lost their license, whether they died, whether they moved, whether they are in jail and are going to stay there for the duration of the season and we all know who we are talking about, their quota needs to be going back into the pot. Everybody who had quota last year that did make an effort, did not leave quota on the table. None. So the quota that was not caught was because the effort was not made and I don't understand why those people even have that quota this year frankly. I don't understand why you get it and the rest of us who bust our asses to catch our quota...We have been at this a long time. The money is going down and we are just getting beat to death. I'm almost ready to retire. I'm pushing. That's all I got to say."

Tim LaRochelle, Woolwich; comment received at Hallowell public hearing:

"I have a problem with this. They are going to take one for one if we go over but then if we don't catch it I think you ought to get that for next year as a carryover. I think that ought to be written into the ASMFC somehow. As Chris was talking about us losing quota on everything that is, we actually got a 15% increase in tuna quota this year. And the reason we got that increase is because of the science that was produced by industry. We tagged fish and drew a line in the Atlantic and they said these fish don't go there and they don't go over there and we were able to prove that 90% of those fish do go over there. So I think where we need to go with this is the science. I fish at Cobbossee in the fall and the spring and it's an important fishery. But if we can use it for science to gain quota in the years to come, and it's the easiest place for you guys to go do it moneywise. I think the way to go here is the science. It's the same way we got the tuna quota back. We need to produce some science and take away these ICUN models that they don't have a clue what they are talking about. So I think that the way we need to go to get this quota back is with science. I noticed that it was in the BDN paper that it would take two years to develop that habitat model. Of course, that comes from the BDN so I did not take that as gospel. I don't like the hit we are taking but a 13% cut is a lot better than a 40% or 50% cut."

Dustin and Angela Young, Eastbrook; comment submitted via e-mail:

"I'm a fisherman that caught his quota last year. Now you are asking me to take another cut in my quota. And for who? For all the people that couldn't fill their quotas when they sold poached eels. That gave them the quota they couldn't catch. Also to those that lost their license for a year. That didn't even help catch the quota that we have today. So for the people that can't catch their quota, or broke the law, plus the people that went over their quotas.

For the people that lost their license during open season. That following year if you don't get it before opening day. Then they should not be able to get their license until following next season. For the people that went over their quotas should be punished as well. Punishment should be with what they went over with. Or punish back double. Also I think that all the quota you hold back for these people. We should be able to fish that quota. You are going to have to figure new quota every year anyways.

It's important to fill the whole quota. So we don't get further reductions.

I also know that there are other fishermen that feel the same way. Being punished for the dishonest fisherman is not fair.

Here is a thought. Why not take the cut with all 936 fishermen that had a license. Divide that into the 2061 pound reduction that we have to take. That would be around a 2.2% reduction that everyone would have to take. I know that the tribal get 21.9% of the quota. But the law does not say they can't take a cut from their individual quota."

Suzanne Smith; comment submitted via email:

I am member of MEFA and AESA and myself! Here we go again write letters! The DMR and the ASMFC has heard the same thing over and over! My companion (30yrs) and I have been fishing for almost 20 yrs, we've fished through tough times and good, but seems when something good happens the government takes it away. One warden made a comment at the fishermen's forum last yr in response to a fishermen

about poaching, he made it sound like we're all poachers, well we're not all poachers, we've gone by the rules, fill our reports and pay our taxes. I like having the swipe card, that shows who are the honest ones, unless you get a dealer who swipes a card twice! Like what happened last year, hopefully his dealer license got taken away! ok, know the scientist show theres not a depletion, wasn't that what the state was waiting for?! So let us fish! Thought we were suppose to get 25% increase on our quotas were we didn't meet our state quota last year, then we here 13% reduction, we think your trying to get everyone down to the same quota which isn't fair to the holder of 2 nets. And wow! When we hear Mr Keliher say we could close it down and everyone goes quite, WELL close it down! It will be another fishery gone and no revenue for the state, oh but wait the crew licenses that was passed this yr, you'll get some back! The government lost revenue last year so lets do this instead. We don't need crew licenses, fishermen with licenses have helped other fishermen! Also know your creating more problems for the wardens, they have all they can do to watch the 400+fishermen adding more people that's not needed will be worse. The state of Maine should give credit to the ones that go to the meetings and who care! And The HYDRO PLANTS are the #1 issue as we all know. Thank you for your time sincerely Suzanne smith

Patricia Bryant; Nobleboro; comment submitted via email:

After attending the public hearing in Hallowell on Feb. 10^h regarding allocation of the 2015 Maine elver quota and hearing Commissioner Keliher request alternative suggestions for quota distribution be submitted for the advisory committee to take into consideration, I am writing this letter as my formal opinion and suggestion regarding this issue.

Although I do understand the necessity of reducing the non-tribal quota by 1190.2 lbs., I do not agree with the formula of simply reducing everyone's individual quota by 13.6% in order to reach that goal. Although this is undoubtedly the easiest way to go about it, it certainly isn't the fairest way to treat those who have consistently put in the individual effort while abiding by the letter of the law. Simply put those who did not make the effort to fish their allotted quotas last season, which can be determined by landings reports and those who could not meet their quota due to license suspension, should take the largest portion of percentage reduction.

Whereas all quota allocations for the 2014 season were based on past fishing history over a 3 year period, my suggested formula for reaching a fair quota allocation for the 2015 season is as follows:

Example #1 2014 quota 15.6#

2014 reported catch 15.5#

Total=31.10#/2yrs.= 15.55#

Example #2 2014 quota 15.6#

2014 reported catch= 0.0

Total -15.6#/2 yr. =7.8#

In both of the above examples, the calculated total would be the number or pounds upon which to begin the newly calculated individual% reduction. Obviously, there would be no need for everyone who did fish legally and reach their allocated 2014 quota to be punished for those who didn't.

As I do not have the actual numbers, I cannot calculate what a necessary % reduction would be using the above formula but am certain it would be a good bit lower than the 13.6% now suggested. I also suggest that it is entirely unnecessary to keep back the 2015 suspended license quota allocation as a "buffer" to avoid any possible "one on one" payback, as the payback should simply be deducted from the offender's future quota, not everyone else's.

I do greatly appreciate the Department's efforts to keep this a viable, lucrative, responsible fishery and appreciate the opportunity to voice my opinions and have such taken into consideration.

Thank you,
Patricia Bryant

Comments Neither For Nor Against:

Mel Grant, Stockton Springs; comment received at Brewer public hearing:

"I'm just checking on the possibility of gear changes. It was mentioned about if I have a dip net only, I would like to take some nights off when it's 15 degrees and stay home and not get cold. It's becoming a fishery where you can't make a living for a spring job. I have a business to run and stuff like that and with the cuts we've taken we've lost a ton of money and now I have to run my business and not hire it out like I used to. So it would be nice to fish at night and work my regular job during the day."

Jeff Clark, Surry; comment received via e-mail:

"Thank you for doing all you can to keep our quotas as they are and for keeping the fishery going. I saw in the newspaper article the season will start as originally scheduled. Is there anything being considered to have a delay due to the extremely cold weather? Nothing specific was stated about the actual quotas for each fisherman, I was wondering if they will stay the same due to the 5% buffer. Especially if the person didn't fill their quota last year."

DMR Responses:

In response to comments regarding different potential quota allocation systems:

- Quota should be allocated for two years

In Addendum IV to the Atlantic States Marine Fisheries Commission (ASMFC) Fisheries Management Plan for American Eel, Maine's quota for the 2015-2017 commercial glass eel fishing seasons was set at 9,688 pounds annually, and subject to re-evaluation prior to the start of the 2018 fishing season. Without further changes to the FMP, Maine could not allocate the quota for multiple years at this time.

- Quota should be allocated based on what an individual actually caught last year, instead of what was allocated last year

The Department did evaluate a system that would allocate quota based on what someone caught in 2014, instead of what they were allocated in 2014. 237 out of 404 active harvesters met or exceeded their quota. 122 out of the remaining 167 active harvesters finished the season within two pounds of their quota. Thirty-three harvesters did not report landing. There are many reasons why an individual may not have caught their entire quota for the 2014 season, ranging from personal situations that may have prevented them from fishing, to temporary medical issues that may be resolved by this upcoming fishing season. Last year, there was no crew license that would have allowed someone who had a physical difficulty to obtain assistance. The 2014 allocation was reflective of the prior 3 years of fishing, so was based on an individual's recent activity in the fishery. At this stage of this program, the Department does not think it is advisable to severely reduce, or eliminate, a license holder's quota simply because they did not reach it during one fishing year. Unlike other state fisheries, there is no medical appeal provision for the elver fishery that would allow them to regain their quota if they could demonstrate that a medical reason prevented them from fishing. Finally, Maine has never employed a "use it or lose it" criteria in determining whether someone could fish, so removing any opportunity to fish based on one year's inactivity would be precedent setting and would warrant a much broader conversation before proceeding down this path.

- Quota held by those individuals who will be under suspension for the duration of the 2015 season or who will not use their quota because they have died, or moved away, should be allocated to other license holders.

In the proposed rule-making the Department intended to eliminate the 5% buffer that was withheld from allocation in 2014 in order to ensure that the state did not go over the overall quota. In lieu of the 5% buffer, the Department was not going to allocate quota held by individuals who could not access their quota due to a suspension in 2015. However, based on the comments, the Department is willing to amend the proposed formula to allocate the poundage associated with those licenses under suspension for the duration of the 2015 season to license holders eligible to fish. The Department has the information to determine who is under suspension, but does not have information on who may have died, or moved away subsequent to purchasing a 2014 license, so cannot reallocate quota based on those factors.

- The quota system should be designed so that the entire amount of quota will be obtained, otherwise ASMFC will make further cuts.

A minimum of 9,688 lbs has been allocated by ASMFC for the Maine elver fishery for the next three seasons, subject to evaluation in 2018. In no case does ASMFC reduce quota in a fishery for the sole reason that it was not harvested. There are many reasons that the quota is not harvested, including an individual not being able to harvest, the 5% buffer that was previously withheld, suspensions, and weather related conditions. These issues will be reported to ASMFC by DMR.

- In order to minimize cuts across license holders, individual tribal allocations should be reduced as well.

The percentage of the overall quota allocated to the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs and Houlton Band of Maliseet Indians is specified in law. Each government has the authority to allocate quota to their license holders, so this regulation cannot dictate how those reductions are achieved.

In response to comments regarding changes to the penalties that should apply to individuals who have had their license suspended

- An individual who has been suspended should lose their license for the length of the following season

In recent legislation, many of the elver violations have been made Class D crimes, with mandatory one year suspensions. This means that the Commissioner cannot extend the length of the suspension in order to ensure that the entirety of the following season is included in the suspension. To further extend the suspension length would require a change in the law.

- People who went over their quota should have a punishment equal to what they went over, or they should have to pay back double.

Individuals who were summonsed and convicted for going over their elver quota were subject to a mandatory one year suspension, which meant they lost access to their quota for the following fishing season. In addition, they are responsible to pay back the value of the overage to the state, in addition to a \$2000 fine. Any further penalties would have to be established in law.

- People who had no landings in 2014 because they were under suspension should have their quota reduced more than other license holders

Those individuals who were under suspension in 2014 have already lost their quota for one year as a result of their violation. The Department is not authorized to punish them further by taking away their quota for a second year. If that was to be the penalty for the violation, then the license suspension would have been for two years. Mandatory lengths of suspensions are determined in law.

In response to comments regarding allowable gear types

- Fyke nets should be prohibited, only dip nets should be allowed

The authority for some individuals to fish fyke nets is granted in law, not regulation. It would require a change in law in order for the fishery to become dip net only.

- Individuals holding dip net licenses should be allowed to obtain fyke nets instead

The law specifies that a fyke net license holder may relinquish the right to fish a fyke net in exchange for a dip net, but does not allow someone to surrender a dip net to obtain a fyke net. This would require a change in law.

In response to the statement regarding quota for the Aroostook Band of Micmacs

The percentage of quota allocated to the Aroostook Band of Micmacs is established in law. Under current law, if an agreement is reached by the Passamaquoddy Tribe, Penobscot Nation, Aroostook Band of Micmacs and Houlton Band of Maliseet Indians to change the division of the 21.9% that is allocated collectively, individual allocations can change without a change to the law. Otherwise, a change in law would be necessary to increase specific percentages.

In response to objections to any reduction in quota

The ASMFC decision to reduce the quota is based on the current understanding of the status of the stock. From Addendum IV to the Fisheries Management Plan:

The Benchmark Stock Assessment was completed and accepted for management use in May 2012. The assessment indicated that the American eel stock has declined in recent decades and the prevalence of significant downward trends in multiple surveys across the coast is cause for concern (ASMFC, 2012). The stock is considered depleted, however no overfishing determination can be made at this time based solely on the trend analyses performed (ASMFC, 2012). The ASMFC American Eel Technical Committee (TC) and Stock Assessment Subcommittee (SAS) caution that although commercial fishery landings and effort have declined from high levels in the 1970s and 1980s (with the recent exception of the glass eel fishery), current levels of fishing effort may still be too high given the additional stressors affecting the stock such as habitat loss, passage mortality, and disease as well as potentially shifting oceanographic conditions. Fishing on all life stages of eels, particularly young-of-the-year and in-river silver eels migrating to the spawning grounds, could be particularly detrimental to the stock, especially if other sources of mortality (e.g., turbine mortality, changing oceanographic conditions) cannot be readily controlled.

For these reasons, ASMFC evaluated several different options for quota reduction and in consideration of the management actions that have been implemented by Maine in recent years, agreed to smallest reduction that was evaluated (equivalent to the 2014 landings).

In response to the comment that more science is needed, and the state should seek an increase in quota based on habitat restoration work

Under Addendum IV, Maine is subject to the following requirement:

Any states or jurisdiction with a commercial glass eel fishery must implement a fishery independent life cycle survey covering glass, yellow, and silver eels within at least one river system. If possible and appropriate, the survey should be implemented in the river system where the glass eel survey (as required under Addendum III) is being conducted to take advantage of the long term glass eel survey data collection. At a minimum the survey must collect the following

information: fisheries independent index of abundance, age of entry into the fishery/survey, biomass and mortality of glass and yellow eels, sex composition, age structure, prevalence of *A. crassus*, and average length and weight of eels in the fishery/survey. Survey proposals will be subject to TC review and Board approval.

In addition, Maine will pursue an increase in overall quota for future seasons under the terms of Addendum IV:

Any state or jurisdiction can request an allowance for commercial harvest of glass eels based on stock enhancement programs implemented after January 1, 2011. Examples of stock enhancement programs include, but are not limited to, habitat restoration projects, fish passage improvements, or fish passage construction. Fish passage projects may focus on upstream or downstream passage or both. Stock enhancement programs must show a measurable increase in glass eel passage and/or glass eel survival. Harvest shall not be restricted to the basin of restoration (i.e. harvest may occur at any approved location within the state or jurisdiction). Harvest requests shall not exceed 25% of the quantified contribution provided by the stock enhancement program.

In response to the comment that the fishery does not need crew licenses

The creation of the crew license was proposed by the Maine Elver Fishermen's Association and passed into law last legislative session. The Department was directed to undertake this rule-making to define the activities that would be allowed under the new license.

In response to the question regarding whether there could be a delay in the season due to cold weather

The season is set in law to begin on March 22nd. Last season, due to the implementation of the swipe card system, the law allowed the Commissioner to delay the start of the 2014 season. However, he does not have that authority in 2015.

Rulemaking statement of impact on small business
5 MRS §8052, sub-§5-A and §8053, sub-§3, ¶F, and
Executive Order 20 FY 11/12, August 24, 2011 (replaces EO's 09, 13 & 14)

Agency: Department of Marine Resources

Chapter Number and Title of Rule: Chapter 32 Eels. Requirements for 2015 Elver Harvesting Season

1. An identification of the types and an estimate of the number of the small businesses subject to the proposed rule; and EO20 1.A. The impact of the proposed rule on job growth or creation:

There are 404 state licensed non-tribal elver harvesters and 23 state licensed elver dealers. Three federal recognized tribes have issued 516 elver harvester licenses.

2. The projected reporting, record-keeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record; and EO20 1.C. The cost to the public in terms of time and money required to comply with the rule and EO20 1.B. The burden imposed by any fees included in the rule:

The reporting, record-keeping and other administrative requirements are similar to those required with the implementation of the elver transaction swipe card system in 2015.

3. A brief statement of the probable impact on affected small businesses; and EO20 1.D. The extent to which other laws and regulations already address the subject matter of the rule:

No other law or regulation already addresses this subject matter.

4. A description of any less intrusive or less costly, reasonable alternative methods of achieving the purposes of the proposed rule; and EO20 1.E. The relevant Federal standards, if any and the specific need for Maine's rules to differ from them if such a need exists:

There is no less intrusive method of implementing these necessary measures that can be envisioned.

5. Indicate where a copy of the statement of impact on small business pursuant to section 8052, subsection 5-A may be obtained:

Information is available upon request from the DMR Commissioner's Office, State House Station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.