

NOTICE OF AGENCY EMERGENCY RULE-MAKING

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32.03: Amendment to Elver Harvesting Regulations Area Closures

CONCISE SUMMARY: Beginning at 8:00am on March 30, 2020, the coastal waters of the state are open to the fishing for, or taking of elvers. Protocols have been developed for elver harvesters and dealers to follow, which minimize the potential for the spread of COVID-19. For these reasons, this emergency rulemaking amends the March 22, 2020 closure of the elver fishery, which was authorized under 12 MRS §6171-A.

EFFECTIVE DATE: March 29, 2020

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 EELS AND ELVERS

32.03 Harvesting Regulations

1. Elvers

A. Area Closures

~~Effective March 22, 2020~~ Beginning at 8:00am on March 30, 2020 it shall be unlawful to fish for or take or possess elvers from coastal waters of the state.

It shall be unlawful to fish for, take or possess elvers in the following areas:

- 1) Camden Harbor- upstream of a line drawn from the northernmost point of the granite pier of the Camden Town Landing, to the southernmost point of the granite wall that borders on the northern side of the Megunticook River.
- 2) Franklin-by any means other than dip net, from May 1 to May 31 of any year within 327 feet (109 yards) downstream of the bridge that crosses Mill Brook on the Grist Mill Road in the town of Franklin.
- 3) Bangor- in the Penobscot River upstream of a line approximately 3100 feet downstream of where the Veazie dam once existed. The line will run on the downstream side of the Bangor Water District Pipeline crossing and will be identified by red posts on both sides of the river. The eastern end of the closure line will be identified by a red post located in front of the Eddington Salmon Club. The closure line will run in a westerly direction across the river and be identified by a second red post located in the town of Veazie.
- 4) Brewer- in the Sedgeunkedunk Stream upstream of the Route 15 crossing.
- 5) Bangor- in the Kenduskeag Stream upstream of the Harlow Street bridge.
- 6) Bangor- in the Peniajawoc Stream upstream of the Route 2 crossing
- 7) Ellsworth- in Card's Brook upstream of the Route 230 crossing.
- 8) Tremont- in Seal Cove upstream of the Route 102-A bridge.
- 9) Gardiner – within the Kennebec River, bounded on the northern side by the northern side of the Gardiner-Randolph bridge, and on the southern side by the southernmost end of the Gardiner seawall to a red painted post located on eastern shore of the Kennebec River directly across from the seawall. Cobbosseecontee Stream is closed to fishing for, taking, or possessing elvers from its confluence with the Kennebec River and all waters upstream.

Basis Statement

Effective March 22, 2020, the Commissioner adopted an emergency rulemaking to close the coastal waters of the state to fishing for, taking, or possessing elvers. The elver fishery is typically undertaken in a manner that causes fishermen to be in close proximity on Maine's rivers, which would support the continued spread of COVID-19. Early in the season, fishermen are concentrated in the southern part of the State, where the number of cases and evidence of community transmission is highest. Therefore, in order to protect public health, the Commissioner temporarily closed the coastal waters of the State to fishing for, taking, and possessing elvers.

The temporary closure allowed Commissioner Keliher to work with Tribal leadership, industry leadership, and Maine Marine Patrol to develop a plan to allow the elver fishery to occur in a way that does not present unnecessary risk to the participants, or other residents of the State. The plan includes provisions for license holders to be able to catch and sell elvers on behalf of other license holders, in accordance with Executive Order 21 FY 19/20. The plan also includes agreement amongst elver dealers to follow specific protocols, consistent with guidance provided by the Maine Center for Disease Control, in sales transactions to minimize the potential for the spread of disease. Based on the development of these plans, the risk to public health presented by this fishery is mitigated, and the amendment opens the coastal waters of the state to elver fishing beginning at 8:00am on Monday, March 30, 2020.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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CHAPTER NUMBER AND RULE: **32.03 Amendment to Elver Harvesting Regulations Area Closures**

STATUTORY AUTHORITY: **12 M.R.S. §6171-A**

DATE AND PLACE OF PUBLIC HEARING: NA; Emergency Rulemaking

COMMENT DEADLINE: NA; Emergency Rulemaking

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [see §8057-A(1)(A)&(C)]

Elver season was originally scheduled to begin on March 22, 2020. However, early in the season, elver fishermen would be concentrated in the southern part of the State, where the number of cases of COVID-19 and evidence of community transmission was highest. Therefore, effective March 22, 2020, the Commissioner closed the coastal waters of the State to the fishing for and taking of elvers to protect public health. The delay allowed the Department to develop protocols, consistent with guidance issued by relevant state agencies, for harvesters and dealers to follow, which help limit the spread of COVID-19. This action amends the existing emergency rule, so that beginning at 8:00am on March 30, 2020 the coastal waters of the state are open to elver fishing.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [see §8057-A(1)(B)&(D)]

This action will amend an emergency rule currently in effect, so that the coastal waters of the state are open to elver fishing at 8:00am on March 30, 2020.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [see §§8057-A(1)(E) & 8063-B]

Guidance issued by the Maine Center for Disease Control and Prevention (MECDC), Governor Janet T. Mills, and consultation with industry leaders, tribal leadership, and Marine Patrol.

ESTIMATED FISCAL IMPACT OF THE RULE: [see §8057-A(1)(C)]

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[see §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [see §8057-A(2)(B)]

BENEFITS OF THE RULE: [see §8057-A(2)(C)]

Note: If necessary, additional pages may be used.