

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Elver Quota System for the 2020 season

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This proposed rulemaking establishes the elver quota allocations for the 2020 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. 2020 allocations for individuals who held a license in 2019 will be the same as their 2019 allocations, plus any quota associated with licenses not renewed in 2019, or licenses suspended for the duration of the 2020 season, in excess of that which is allocated to new license holders, which will be distributed evenly to all existing license holders. Finally, the proposed rule establishes a \$500 fee for the inspection of elver export events by Maine Marine Patrol.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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Please approve bottom portion of this form and assign appropriate MFASIS number.

APPROVED FOR PAYMENT _____ DATE: _____
 FUND AGENCY S-UNIT APP OBJT AMOUNT
Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta
 010 13A 1120 10 4946 regulations

DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 - EELS

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- 32.02 Elver Harvest Reporting Requirements
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- 32.45 Elver Dealer Record Keeping
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- 32.60 Transport of Elvers Through the State of Maine

32.35 Elver Quota System for ~~2019~~ 2020 Elver Season

- A. The total allowable catch of elvers for ~~2019~~ 2020 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 ~~2019~~ 2020 is 7,566 lbs.
- C. The total allowable catch of elvers for individuals licensed to fish for elvers under 6302-A, established in accordance with 12 M.R.S. §6505-A(3-A)(C) for ~~2019~~ 2020 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. ~~1304.3~~ 1356 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

~~51.7 lbs was deducted from the amount of quota allocated to the Passamaquoddy Tribe for 2019 to compensate for the overage in their 2018 quota, in accordance with §6302-B.~~

- 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 ~~2018-2019~~ fishing season.
 2. Deduct any quota associated with licenses that were suspended for the duration of the ~~2018-2019~~ season, but which will be eligible to harvest in the ~~2019~~ 2020 season.
 3. Calculate the poundage that would be allocated to license holders suspended for the duration of the ~~2019~~ 2020 elver season and for licenses not renewed in ~~2018-2019~~ that is in excess of the quota needed to allocate to any new license holders authorized to fish in 2020 through the elver license lottery, and distribute that poundage equally across all other license holders.
 4. Round to the nearest tenth of a pound

32.43 Elver Exporter Requirements

1. Forty-eight (48) hours prior to preparing elvers for export out of the state, the elver export license holder must notify the Maine Marine Patrol of their intention to prepare a shipment of elvers for export.
2. The elver export license holder must make arrangements for Maine Marine Patrol to be present when they are preparing the elvers for shipment. A Maine Marine Patrol Officer must be present to witness the weighing and packing of the elvers for export.
3. Upon completion of the packing of the elvers for export out of the state of Maine, the Marine Patrol Officer will seal the shipment of elvers. Seals must remain intact and untampered with until the elvers reach their destination for shipment out of the country. The absence of a seal, or a seal that has been broken or otherwise shows signs of having been tampered with is prima facie evidence that the elvers are illegal and subject to seizure.
4. The Marine Patrol Officer will mark the package of elvers with weight of the elvers contained within the package and the total weight of the package. If this information is not on the package, it is prima facie evidence that the elvers are illegal and subject to seizure.
5. The fee for the inspection of a shipment of elvers for export is \$500 per export event. The elver export license holder requesting the inspection must pay the fee to DMR within 2 business days of the completion of the elver export inspection. No additional exports may be authorized until the fee from the prior export event has been paid in full.

32.50 ~~Mandatory~~ Elver Dealer Meeting to Prepare for the ~~2019~~ Elver Season

The commissioner may hold a mandatory elver dealer meeting in advance of the elver season. If a meeting is held, any An individual licensed under 12 M.R.S. §6864 or §6865, and any authorized representative of a license holder must attend a meeting held at the Department offices in Augusta. Notice of the date and time of the meeting will be emailed 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.

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: Chapter 32 Elver Quota System for the 2020 season

STATUTORY AUTHORITY: 12 M.R.S. §6505-A; 12 M.R.S. §6865

DATE AND PLACE OF PUBLIC HEARING(S): 4:00 PM January 29, 2020 Rm 118 DMR Offices, Marquardt Building, Augusta, ME (Snow date 1:30 PM January 31, 2020, Rm 118 DMR Offices, Marquardt Building, Augusta, ME)

COMMENT DEADLINE: February 10, 2020

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

Each year, the method of calculating annual elver quota must be specified for the upcoming season. In addition, this rule-making establishes a fee for inspecting elver export events that is authorized in statute.

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

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

The elver quota will be allocated amongst licensing authorities and individuals and a fee for the inspection of elver export events will be established.

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]: The Interstate Fisheries Management Plan for American Eel, input from Maine Marine Patrol regarding enforcement needs.

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

Enforcement of these proposed amendments will 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)]

Basis Statement

This rule establishes the elver quota allocations for the 2020 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. 2020 allocations for individuals who held a license in 2019 are the same as their 2019 allocations, plus any quota associated with licenses not renewed in 2019, or licenses suspended for the duration of the 2020 season, in excess of that which is allocated to new license holders, which will be distributed evenly to all existing license holders. Finally, the rule establishes a \$500 fee for the inspection of elver export events by Maine Marine Patrol.

Based on the comments received, the Department is not recommending any changes to what was originally proposed.

Summary of Comments

Notice of this proposed rulemaking appeared on January 8, 2020 in the five major daily newspapers as published by the Secretary of State. On January 8, 2020, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices.¹ Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: 4:00 PM January 29, 2020 Rm 118 DMR Offices, Marquardt Building, Augusta. The comment period closed February 10, 2020.

I. Augusta Public Hearing

Members of the Public	DMR Staff
Bill Sheldon, John Sheldon, Don Sprague, Jake Levesque, Amanda Poland, John Tayler, Lance Geidel, and Shelly Geidel	Deirdre Gilbert and Amanda Ellis

Those who attended the public hearing did not offer any public comment on the proposed rule.

Written Comments

Comment period closed February 10, 2020

Henry John Bear, received via email, January 1, 2020

A 500 lb Maliseet quota is justified as an interim adjustment to your plan in order to partially provide for participating Maliseet health and safety needs of those directly relying on the commercial fishery. This proposal is submitted on a non-derogation of 1776 Maliseet Treaty rights and aboriginal title rights basis. 107 lb elver quota you propose is grossly flawed and inadequate and has not met and will not meet our pending dental, health and housing needs guaranteed under our still valid Treaty. Tribes have a first priority by Treaty. Increase the tribal quota accordingly. Do not attempt to reduce the already minimized tribal and individual quotas. The days where white people have 150 lb individual quotas and tribal members have 2 lbs is over. Furthermore, do not license exporters who do not intend to buy and sell, and to remain exporters in Maine unless they commit to do for each and every day of the entire season from 21 March through 7 June 2020...even if their is even 1/100 th of a pound of quota remaining to be harvested and sold. Finally, adjust the entire "Elver System" to a debit card system, which will work to instantly prevent overages at point-at-sale. The existing fails fishermen operating on the coasts with unintended, negative and, near criminal, consequences. Again, adjust your plan accordingly.

Kaytie Hicks, received via email, January 15, 2020

I do not agree with the proposed rule making for the upcoming elver season. The aroostook band of micmacs have 39 pounds for the entire tribe that is comparable in size to the maliseet tribe. Our tribe doesn't even receive 1 percent of the quota, we have .4 percent. Some state license holders have more then 39 pounds for themselves. If this was a truly fair, we wouldn't be separated from tribal and non tribal. We as people are supposed to be treated equal, we are not any different then the "state" people. Our tribe has been asking for a quota increase for years, while the state has excess

¹ DMR filed the proposed rule with the Secretary of State's (SOS) Office on December 23, 2019 for publication on January 1, 2020. DMR processed industry notice of the proposed rule on January 1, 2020. Shortly after processing industry notice, the SOS informed DMR that the rule was not published on January 1, 2020 as originally scheduled. This required DMR to modify the filing based on a publication date of January 8, 2020, which meant a revision to the hearing date and comment deadline. DMR notified industry of the revised hearing and comment deadline.

quota that they refuse to allow us to use. We have 8 licenses, each license holder has less than 5 pounds. The same 8 people do not have potential to get a quota increase but new state license holders do? This is completely unfair.

Department Response:

Allocations for Federally Recognized Tribes:

Two commenters raised concerns with quota allocations for the Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs. The commenters wanted quota increases for each tribe referenced. Elver quota for federally recognized tribes are specified in statute and cannot be changed in regulation.

The overall annual quota is set by the Atlantic States Marine Fisheries Commission. In accordance with statute, 21.9% of the overall annual quota is allocated to the federally recognized Indian tribes in the State. The federally recognized tribes may decide how to divide the 21.9% of annual quota amongst themselves. An agreement concerning the division of quota between the tribes must be provided, in writing, to the Commissioner prior to March 1st of the year in which the quota is allocated. If no agreement is reached, the annual elver allocations for each of the federally recognized tribes default to the percentages specified in 12 M.R.S.A. §6302-B(1).

Therefore, to increase quota would require an overall increase in the annual quota set by the Atlantic States Marine Fisheries Commission, or that the tribes reach an agreement on how to divide the 21.9% of quota, so that the tribes referenced by the commenters received a larger percentage of the overall quota allocated to the federally recognized Indian tribes of the State.

To clarify, this rule establishes the elver quota allocations for the 2020 season for individuals licensed under §§6505-A and 6302-A, and the method of calculating individual elver quota allocations for individuals licensed under §6505-A. Allocations for the federally recognized Indian tribes specified in rule are consistent with the requirements set forth in statute.

Number of Elver Licenses Allocated to Each Tribe:

One commenter referenced that the Aroostook Band of Micmacs have 8 elver license holders and that these license holders receive less than 5 pounds of quota. Individual elver license allocations for the federally recognized tribes are specified in statute. In accordance with statute, each of the federally recognized tribes shall allocate to each person whom it issues an elver license a specific amount of their annual quota allocation. The tribes have discretion in determining specific allocations for each individual elver license holder.

Adjustment of the Elver System:

One commenter suggested changing the elver fishery to a debit system that would prevent overages at the point of sale. Individuals purchasing elvers (elver dealers) are required to “sync” their computers once every 24 hours to ensure that all sales are transmitted to the State. It is possible that there could be sales that were immediately transmitted, so if a harvester were to sell twice in one night, the system may not prevent them from going over their quota. Ultimately, the harvester is responsible for knowing how much quota they were allocated, and keeping track of how much quota they have sold, and should not be relying on the transaction card system to keep track of that for them.