

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Elver Quota System for the 2018 season

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

CONCISE SUMMARY:

This rule establishes the elver quota allocations for the 2018 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. 2018 allocations for individuals who held a license in 2017 will be the same as their 2017 allocations, less any quota that was associated with licenses suspended for the 2017 season, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which will be distributed evenly to all license holders. Individuals who become eligible to purchase an elver license in the 2018 elver license lottery will receive a quota of 4 lbs. The rule-making also deletes language that has been moved to Chapter 55.

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

AGENCY CONTACT PERSON: Amanda Ellis (207) 624-6573
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
Augusta, Maine 04333
WEB SITE: <http://www.maine.gov/dmr/rulemaking/>
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6573
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

DEPARTMENT OF MARINE RESOURCES

Chapter 32 - Eel Regulations

32.05 Area Closures – Eel Fishing

- ~~1. Sheepscot River – It shall be unlawful to use any type of net or seine in the Sheepscot River and its tributaries between the Wiscasset-North Edgecomb Bridge and the so-called Headtide Dam at Alna.~~
- 2.1. Kennebec River and Cobbosseecontee Stream – It shall be unlawful to fish for or take eels from 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 eels from its confluence with the Kennebec River and all waters upstream.

Exceptions:

- ~~A. The fishing of lamprey eels within these waters shall be under the direction of the Commissioner of Marine Resources who may issue permits to take lamprey eels at places and by means designated by him or her.~~
- ~~B. This section does not apply to the taking of river herring under any other law or regulation.~~
- ~~C. Elver fyke or dip nets may be fished in the Sheepscot River for the harvest of elvers only. Persons issued an elver license in accordance with 12 M.R.S. §6505-A or §6302-A and who fish in accordance with current elver laws and regulations are not in violation of this regulation.~~

32.35 Elver Quota System for ~~2017~~ 2018 Elver Season

- A. The total allowable catch of elvers for ~~2017~~ 2018 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 ~~2017~~ 2018 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 2017 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. ~~4284.3~~ 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

~~71.7 lbs was deducted from the amount of quota allocated to the Passamaquoddy Tribe for 2017 to compensate for the overage in their 2016 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 ~~2016~~ 2017 fishing season.
 2. Deduct any quota associated with licenses that were suspended for the duration of the 2017 season, but which will be eligible to harvest in the 2018 season.

3. Calculate the poundage that would be allocated to license holders suspended for the duration of the 2017 2018 elver season and for licenses not renewed in 2016-2017 that is in excess of the quota needed to allocate to new license holders authorized to fish in 2018 through the elver license lottery, and distribute that poundage equally across all other license holders
4. Round to the nearest tenth of a pound.

D-1 An individual licensed to fish for elvers under 12 MRS 6505-A(1) as a result of winning a license through the 2018 elver license lottery will be allocated 4 lbs of quota.

Basis Statement

This rule establishes the elver quota allocations for the 2018 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. The 2018 allocations for individuals who held a license in 2017 are the same as their 2017 allocations, less any quota that was associated with licenses suspended for the 2017 season, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which are distributed evenly to all license holders. Individuals who are eligible to purchase an elver license in the 2018 elver license lottery are allocated a quota of 4 lbs. The rule also deletes language that was moved to Chapter 55.

Based on the comments received during the rulemaking process, the Department has made the following changes:

- Removed the proposed limitation on additional allocation for elver license holders that had a quota of 50 lbs or more in 2017. This limitation had been suggested by representatives of the Maine Elver Harvesters Association, but based on the comments received it was agreed that every license holder should be eligible for any redistribution of quota, regardless of the amount of their existing allocation.
- Clarified the allocation formula to deduct quota that allocated in 2017 that is associated with licenses that were suspended in 2017, but which will be returning to the fishery in 2018. This is necessary to ensure that Maine does not exceed the quota that is allocated through the Atlantic States Marine Fisheries Commission.

Summary of Comments

Notice of this proposed rulemaking appeared on December 27, 2017 in the five major daily newspapers as published by the Secretary of State. On December 27, 2017, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: January 18, 2018 at 4:30PM, DMR Offices, Rm 118 Marquardt Building, 32 Blossom Lane, Augusta, Maine. The comment period closed January 29, 2018.

Total comments received: 17

Comments in opposition: 16

Comments in favor: 0

Neutral comments: 1

I. Augusta Public Hearing

Attendance

Members of the Public (14)	DMR Staff (4)
Suzanne Smith, John Taylor, Abden Simmons, Lucas Wallace, Bill Sheldon, John Sheldon, Frank Sprague, George William, Bridget Parker, Angela Young, Darrell Young, Tristan Smith, Shelly Geidel, and Lance Geidel.	Patrick Keliher, Deirdre Gilbert, Jeff Nichols, and John Cornish

Opposed (3)

Lucas Wallace

I think it is completely ridiculous to discriminate against 3% of the license holders – the very license holders who never let go of their license and depended on the elver fishery every year, good and bad. The same fishermen who have lost the most and fished the longest. There is no consideration for these 14 license holders at all. Just want to brush their right and efforts aside so they can get more faster. Who will be next? 20 pound fishermen only get half as much as five pound fishermen? Where does it stop? If this weight bit gets put into law, 50 pounds will be put down; it will become a cap. For all once a person reaches 50 pounds, the fisherman will never get any more. That's my opinion. I think it's drawing it right out and I think it's setting itself right up. What happens if we get a lot of quota back from the Atlantic States. We're wide open. A license holder would only reach 50 pounds and be done. Then all the new license holders would get all the quota, not the veteran fishermen. Any fisherman who might reach 50 pounds in their lifetime will be affected by this. And why shouldn't you have a little more than a new fisherman? This whole bit seems to be geared toward the lottery fishermen, not the fishermen who have been fishing 25 plus years and have been working toward getting back some quota that many had taken away. Is this how we treat veterans of any occupation? And for what? Tenths of ounces a little quicker and a cap? It's not what I would consider a good deal. Thank you.

Darrell Young

We've taken a 35 percent cut was the first cut. We come home and we got 41.8 cut and then we went back down and got another 13.6 which adds up to 54.4. The big guys – the 13 people with over 50 pounds got cut the most. So I feel we shouldn't take it away from them. They deserve it more than anyone so I'm against it. (clarified that he is not speaking on behalf of the Maine Elver Harvesters Association).

Tristan Smith

I agree with everything in the bill except for the 50 pound cap. It doesn't affect me but I don't think it's very fair to those fishermen that probably were in it for a long time and it's discriminatory and I don't think it's fair.

Written Comments

Comment period closed January 29, 2018

Opposed (13)**Jeff Clark, via email, January 14, 2018**

I am writing in regard to the allocation of the eel quota to persons with 50 pounds or less. I oppose the exclusion of all harvesters with quotas over 50 pounds. My hard work and honest commitment to this industry has gotten me to the quota I have. Now it seems like I am being punished for being good at my job by being excluded from the allocation. I feel the quota that comes up for allocation should be evenly distributed between all valid licensed harvesters, no exceptions. I also think that if an individual's 10 or 25 pound quota comes up for allocation due to death or loss of license, the quota should remain intact and be available in the lottery to all fisherman including licensed harvesters.

Albert Levi Wallace (submitted by April Wallace), via email, January 25, 2018

I am writing on behalf of Albert Levi Wallace in regards to the elver proposal. He strongly disagrees in the recent proposal of allowing veteran fishermen not to be included in the "shared or overage quota." There should not be anyone that is not included, it should be shared equally across the board. This is discrimination towards the 13 fishermen with the highest quota. Whether it is 1oz or 100oz, it should be equally divided, you don't go to work and expect the new guy to get a raise and you not to be considered? Do you? Thank you for your time.

Julie Keene, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended. It should be fairly given to everyone!

Adam Boutin, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Christine Keene, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Dorothy Davis, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Martin Cassidy, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Desten Keene, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Susan Boutin, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

John Seeley, via email, January 29, 2018

I am submitting the following comment on the rule making proposal. I believe the system of evenly distributing any quota from licenses not renewed or suspended should be left as is. I do not agree with limiting people who have 50 lbs or more to not receiving additional quota if there is any to allocate from licenses not suspended.

Agency response to comments in opposition to the rule: Individuals who submitted comments were opposed to limiting the allocation of additional quota to elver harvesters with a quota of 50 lbs or greater in 2017. Representatives from the Maine Elver Fishermen Association originally made the recommendation to impose such a limitation. Based on the comments in opposition to the recommendation, the Department has removed the proposed limitation on quota redistribution for elver license holders that had a quota of 50 lbs or more in 2017.

Neutral (1)

Rene Cloutier, Marine Patrol, via email, January 29, 2019

I want to comment on the formula for computing elver quota. The formula needs to take into account the elver fishermen that are currently under suspension but will be returning to the fishery with their originally allotted quota.

Agency response to comment: The formula has been clarified to explicitly account for the quota that must be reallocated to the fishermen who were suspended in 2017 but who will reenter the fishery in 2018.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573;
web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 32 Elver Quota System for the 2018 Season

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

DATE AND PLACE OF PUBLIC HEARING:

January 18, 2018 4:30 PM DMR Offices, Rm 118 Marquardt Building, 32 Blossom Lane, Augusta, Maine

COMMENT DEADLINE: **1/29/2018**

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

This proposed rulemaking establishes the elver quota allocations for the 2018 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. 2018 allocations for individuals who held a license in 2017 will be the same as their 2017 allocations, plus any quota associated with licenses not renewed in 2017, or licenses suspended for the duration of the 2018 season, which will be distributed evenly to all license holders with an allocation of less than 50 lbs in 2017. Individuals who become eligible to purchase an elver license in the 2018 elver license lottery will receive a quota of 4 lbs. The rule-making also deletes language that has been moved to Chapter 55.

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)]

The rule will provide for allocation of elver quota for the 2018 elver fishing season.

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 the elver industry.

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

Enforcement of this rule will not require additional activity in this agency.

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