

## Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Elver Quota System for the 2021 season

TYPE OF RULE (*check one*):         Routine Technical         Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

### BRIEF SUMMARY:

This proposed rulemaking establishes the elver quota allocations for the 2021 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. 2021 allocations for individuals who held a license in 2020 will be the same as their 2020 allocations, plus any quota associated with licenses not renewed in 2020, or licenses suspended for the duration of the 2021 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 tending requirement, so that the contents of fyke nets and Sheldon box traps are removed at least once every 16 hours. The tending requirement is intended to reduce by-catch and elver mortality by requiring harvesters to check nets and box traps on a regular basis.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: February 12, 2021

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

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CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §6505-A; 12 M.R.S. §6171

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

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DEPARTMENT OF MARINE RESOURCES

CHAPTER 32 - EELS

TITLE INDEX

- 32.01 Definitions
- 32.02 Elver Harvest Reporting Requirements
- 32.03 Harvesting Regulations
- 32.04 Eel Harvest Reporting Requirements
- 32.05 Area Closures – Eel Fishing
- 32.07 Elver harvesting limitations; gear
- 32.35 Elver Quota System for ~~2020~~ 2021 Elver Season
- 32.40 Elver Transaction Cards
- 32.41 Elver Dealer Transaction Card
- 32.42 Elver Dealer Limitations and Requirements
- 32.43 Elver Exporter Requirements
- 32.45 Elver Dealer Record Keeping
- 32.50 Elver Dealer Meeting to Prepare for the Elver Season
- 32.60 Transport of Elvers Through the State of Maine

### 32.03 Harvesting Regulations

#### D. Elver Fyke Net and Sheldon Eel Trap Tending Requirement

An elver fyke net or Sheldon eel trap set in any tidal river, brook, stream or other watercourse must be tended and the contents of the net/trap removed at least once every 16 hours. An elver license holder who fails to remove the contents of their net/trap, at least once every 16 hours, is in violation of the tending requirement.

#### 32.35 Elver Quota System for ~~2020~~ 2021 Elver Season

- A. The total allowable catch of elvers for ~~2020~~ 2021 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 ~~2020~~ 2021 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 ~~2020~~ 2021 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. ~~1356~~ 1288.7 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

67.3 lbs was deducted from the amount of quota allocated to the Passamaquoddy Tribe for 2021 to compensate for the overage in their 2020 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 ~~2019~~ 2020 fishing season.
  2. Deduct any quota associated with licenses that were suspended for the duration of the ~~2019~~ 2020 season, but which will be eligible to harvest in the ~~2020~~ 2021 season.
  3. Calculate the poundage that would be allocated to license holders suspended for the duration of the ~~2020~~ 2021 elver season and for licenses not renewed in ~~2019~~ 2020 that is in excess of the quota needed to allocate to any new license holders authorized to fish in ~~2020~~ 2021 through the elver license lottery, and distribute that poundage equally across all other license holders.
  4. Round to the nearest tenth of a pound

## 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 2021 season

STATUTORY AUTHORITY: 12 M.R.S. §6505-A; 12 M.R.S. §6171

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: February 12, 2021

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 minimum tending requirement for fyke nets and Sheldon traps. Specifically, Marine Patrol Officers have observed nets and traps not being tended on a regular basis, which results in elver and bycatch mortality. Some elver harvesters have also brought this issue to the attention of Marine Patrol. Requiring tending at regular intervals is intended to address the issue raised by some harvesters and observed by Marine Patrol.

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 elver quota will be allocated amongst licensing authorities and individuals and a tending requirement for fyke nets and Sheldon traps.

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 and 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)]*

*Note: If necessary, additional pages may be used.*