

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 32 Elver Quota System for the 2024 Season and Temporary Medical Transfers of Elver Quota

CONCISE SUMMARY:

This rulemaking establishes the elver quota allocations for the 2024 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 quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2023 season. 2024 allocations for individuals who held a license in 2023 will be the same as their 2023 allocations, plus any quota associated with licenses not renewed in 2023, or licenses suspended for the duration of the 2023 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. In addition, the rulemaking specifies the parameters for a temporary medical transfer of elver quota.

ADOPTED RULE NUMBER:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

EFFECTIVE DATE:

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

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DEPARTMENT OF MARINE RESOURCES

Chapter 32: EEL REGULATIONS

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32.03 Harvesting Regulations

1. Elvers

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 ~~2023~~ 2024 Elver Season

- A. The total allowable catch of elvers for ~~2023~~ 2024 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 ~~2023~~ 2024 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 ~~2023~~ 2024 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. ~~1287.29~~ 1271.40 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

~~69.03~~ 84.92 lbs. was deducted from the amount of quota allocated to the Passamaquoddy Tribe for ~~2023~~ 2024 to compensate for the overage in their ~~2022~~ 2023 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 ~~2022~~ 2023 fishing season.
2. Deduct any quota associated with licenses that were suspended for the duration of the ~~2022~~ 2023 season, but which will be eligible to harvest in the ~~2023~~ 2024 season.
3. Calculate the poundage that would be allocated to license holders suspended for the duration of the ~~2023~~ 2024 elver season and for licenses not renewed in ~~2022~~ 2023 that is in excess of the quota needed to allocate to any new license holders authorized to fish in 2024 through the elver license lottery, and distribute that poundage equally across all other license holders.
4. Round to the nearest tenth of a pound.

32.36 Temporary Medical Transfer

Consistent with the requirements provided in 12 M.R.S. §6575-L, the Commissioner may authorize the holder of an elver fishing license to fish for, take and sell the elver quota allocated to another elver license holder, upon request of the license holder to whom that quota was originally allocated (the "transferor") when a substantial illness or medical condition prevents that individual from fishing.

- A. The transferor shall specify to the Commissioner whether they want their remaining quota to be transferred to the other license holder's quota, or whether they want the other license holder to harvest and sell the quota using the transaction card of the transferor.
- B. If the transferor selects to have another elver license holder harvest their elvers using the transferor's transaction card, that elver license holder must have that transaction card in their possession whenever they are harvesting elvers on behalf of the transferor.
- C. The transferor may designate only one other elver license holder to receive their quota or harvest their elvers.
- D. If the transferor's request to have another elver license holder receive the transferor's quota is approved, all of the transferor's quota that remains unharvested at the time the request was made will be transferred, in its entirety. If the transferor's request to have the other elver license holder harvest and sell their remaining quota using the transferor's transaction card is approved, all of the transferor's quota that remains unharvested at the time the request was made must be harvested by the other elver license holder.

Basis Statement

This rulemaking establishes the elver quota allocations for the 2024 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 quota for the Passamaquoddy Tribe has been adjusted in accordance with their overage in the 2023 season. 2024 allocations for individuals who held a license in 2023 will be the same as their 2023 allocations, plus any quota associated with licenses not renewed in 2023, or licenses suspended for the duration of the 2023 season, in excess of that which is allocated to new license holders authorized through the lottery, which will be distributed evenly to all existing license holders. In addition, the rulemaking specifies the parameters for a temporary medical transfer of elver quota.

In response to comments received, the Passamaquoddy quota for 2024 was further adjusted to accurately reflect the overage in 2023 to include elvers originally libeled by Maine Marine Patrol, but which were subsequently awarded to the Passamaquoddy harvesters. In addition, the rule was amended for consistency with a legislative change from last session, which allows crew members of individuals holding fyke net with crew licenses to empty the cod end of the fyke net, provided they are under the direct supervision of the license holder.

Summary of Comments

On January 24, 2024, the rule was posted on DMR’s website. Notice was also published on January 24, 2024 in the five major daily newspapers by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR’s rulemaking and elver notices. A public hearing was held February 15, 2024: 4:00 p.m. at DMR’s Augusta Office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams.

The 2/15/2024 hybrid hearing was attended by the following individuals, and two comments were received at the hearing.

Name	Affiliation
Deirdre Gilbert, Casey Clark	Maine Department of Marine Resources
Terry Lee Smith, Jacob Levesque, John Sheldon, Robbie Begin, Keith P. Bouchard, Suzanne Smith, Ira Simmons, Amanda Poland, Bill Sheldon, John Taylor, Andrew Hallinan, Shelly Geidel, Lance Geidel, Kristine Simmons, Michael-Corey Hinton	Members of the Public

Michael-Corey Hinton: I'm commenting on behalf of the Passamaquoddy Tribe and I don't so much have a comment on the particulars of the numbers in the rules and how you're proceeding here. But the Passamaquoddy Tribe would like to just comment with respect to the process for closing down the fishery at the end of the season with the Tribe, which we believe resulted in an overage here. But that should be and could be avoided in the future with technology this day and age, with the use of swipe cards, we feel there's an unnecessary lag in what's referred to as the real time data that's being relied on DMR. And we think that frankly, the Tribe would be able to

be better situated to avoid overages if the Tribe was able to be in a greater co-management role with DMR in terms of recording catches and integrated into the regulatory structure. With that not in place, we have situations where there is at times really great communication between DMR officials like the Commissioner and the Chiefs for example. And there's good communication when the Tribe's quota for the entire community is coming down to a close. But when there are limited windows and we're really getting close to the end, what we found is that some tribal members have been allowed to actually sell catch and dealers have been taking and paying for and accepting eels when in fact those quota numbers have been met. And DMR data isn't being updated fast enough to reflect that.

So essentially folks are unknowingly engaging in violations. And we've actually seen this happen in ways that is sometimes concerning. We know that in some situations, DMR officers have taken possession of eels and sold those eels. And so we're just concerned with, we're trying to have a very precise approach to not going over and we feel like we're interested in exploring how, you know, a better use of technology and communication could avoid it in the future.

I would also like to say that the quota as a whole for the state of Maine, the Passamaquoddy would like to comment on our position, that the quota as a whole should be increased. We're preparing to comment to the Atlantic States Marine Fisheries Commission, about what we perceive as the health of the resource and ongoing efforts to restore American eel habitat that will lead to long-term sustainable growth in the population. We feel that an increased focus by the Tribe and by the state of Maine and other stakeholders that would improve habitat that would avoid eel destruction and hydroelectric dams and in turbines could lead to and sustain long term increases in population, which would leave absolutely no question about whether quotas for any stakeholders in the fishery could be increased.

We feel that that's something that the science would support and we feel that greater economic opportunity for individual tribal members and for individual fishers in the state is something that we can all agree would be a good thing.

We feel that as a result, the current approach to overage is unfair and unjustified, and we would like the state to work with the Tribe to approach the Atlantic States Marine Fisheries Commission about raising the quota and to take a more precise approach to dealing with overage. Thank you very much.

Amanda Poland (Elver dealer): Just so we are crystal clear on how it works for the dealers – those computers, they are all hooked to the internet. And they shut down, every single dealer. Those swipe cards – everybody's. When the season's over – when everything shuts off, it is shut down. They don't discriminate – they're done. So, I want that on record.

Received by email January 24, 2024

To whom it may concern,

The quota is ridiculous for the Passamaquoddy Tribe. No matter what it is a lose lose situation for the tribe. If we go over, you take quota from us. If we don't go over and do not meet the

quota, you will say we couldn't fill the quota and take more away from us. If we don't go over, you don't give us the difference back. Do better state of Maine and make it fair!

Thank you!

-Mihku Sabattus
Sent from my iPhone

Received by email February 26, 2024

I would suggest modifying CH 32.03-1-C-(2) *Authorized Activities of Unlicensed Crew Members* to reflect the recent change in statute allowing an unlicensed crew member to empty a fyke net (T12 Section 6505-A-1-B). This change would bring the statute and regulation into alignment and would prevent any misunderstanding about what an unlicensed crew member is authorized to assist with.



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DMR Response to Comments

Management of the Passamaquoddy Quota and Fishing

Under current law, the Passamaquoddy Tribe is assigned a specific percentage of the overall state quota. The law also requires the Tribe to assign a specific amount of its elver quota to each of its license holders, unless the Tribe and the Department enter into an MOU under which tribal members may fish under a "derby". That is the type of fishery the Tribe has selected for the majority of the time Maine has been subject to a quota managed fishery. Under the terms of the derby fishery selected by the Tribe, each license holder may fish for and sell up to 5 lbs of elver quota until such time as the quota is reached and the fishery is closed.

The Department does not have complete real-time data regarding elver sales because elver dealers are not required to upload their transaction data more frequently than at least once every 24 hours. For this reason, as noted, the Commissioner and the Chiefs are in close communication toward the end of the fishery as Tribal members collectively begin to approach the overall Tribal quota. An analysis is done that considers many variables including the level of participation and the tidal cycle in order to select a time to close that is likely to ensure that the quota is reached, but not excessively exceeded, impacting the following year's fishing season. In recent years, there has been less than a 5% overage, which is quite reasonable, given the complexity of the determination.

There has been prior discussion of whether the Chiefs would want to shut down the fishery (i.e. turn off all swipe cards) abruptly as soon as it is known the quota has been reached, but that has not been preferred by tribal leadership to date, as it will leave some members holding elvers that they are unable to sell. Instead, license holders have been notified regarding when cards will be shut off and when nets must be removed, giving all participants equal opportunity to make their final sales. If the Passamaquoddy Chiefs would prefer a different approach in the 2024 season, the Department would be open to that discussion.

Elver dealers are not able to continue to purchase elvers after the closing time that is agreed to by the tribal leadership and DMR because the swipe cards stop working at the time the fishery is closed. If an elver dealer purchases elvers without recording that transaction with a swipe card, their inventory will be greater than what the swipe card system reflects. If they are checked by Marine Patrol and that is the case, the Department can seize all elvers in the dealer's possession (not just the overage). For this reason, there is a significant disincentive to purchasing elvers outside the swipe card system.

With regard to the comment of Marine Patrol taking possession and selling elvers, when that is the case, the elvers are libeled and the funds are held pending the disposition of the case. Those elvers are not attributed to the Tribe while the case is pending. During the 2023 season, there were just under 10 lbs of elvers that were in this situation. The Department has further adjusted the Passamaquoddy quota to include those elvers, as the license holders were ultimately awarded those funds.

Authorized Activities of Unlicensed Crew Members

The rule has been amended to remove the existing prohibition on crew members of fyke net with crew licenses from emptying the net. In accordance with a recent legislative change, a crew member may empty the net if they are under the direct supervision of the license holder.

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 2024 Season and Temporary Medical Transfers of Elver Quota

STATUTORY AUTHORITY: 12 M.R.S. §6505-A; §6575-L

DATE AND PLACE OF PUBLIC HEARING(S): February 15, 2024: 4:00 p.m. at DMR's Augusta Office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 15th hearing is cancelled due to inclement weather an alternate hearing will be held on February 16th at 3:00 pm in Room 224 of the same location, and Remotely via Microsoft Teams. Remote access information is posted to DMR's website under "Meetings."

COMMENT DEADLINE: February 26, 2024

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, the Legislature has authorized the temporary medical transfer of elver quota, and this rule specifies the parameters under which such transfers may be requested.

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. License holders will understand the parameters of temporary medical transfers of elver quota.

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 12 MRS 6302-B which specifies how elver quota is distributed.

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.