

MAINE STATE LEGISLATURE

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L.D. 1723

Date: 3/11/14

(Filing No. H-672)

MARINE RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1233, L.D. 1723, Bill, "An Act To Improve Enforcement of Marine Resources Laws"

Amend the bill by inserting after the title and before the enacting clause the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the elver fishing season begins March 22, 2014 and changes made to elver fishing licensing laws by this legislation must be made prior to the beginning of this season; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out all of sections 5 and 6 and inserting the following:

Sec. 5. 12 MRSA §6207, sub-§5, as enacted by PL 1977, c. 661, §5, is amended to read:

5. Items or proceeds forfeited if no court appearance. If no claimant appears at the time of the hearing on the libel, on return of service of the officer in compliance with the order of notice, the judge shall declare the items forfeited to the State.

A. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds over to the ~~judge who shall dispose of them in the same manner that he disposes of fines collected under marine resources' laws~~ commissioner, who shall deposit them in the Marine Science, Management and Enforcement Fund established under subsection 12.

Sec. 6. 12 MRSA §6207, sub-§9, as enacted by PL 1977, c. 661, §5, is amended to read:

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1 **9. Forfeiture; executions for cost; appeal; recognizance.** If the judge finds that
 2 the claimant is not entitled to any item claimed, the judge shall render judgment against
 3 the claimant for the State for costs to be taxed as in civil cases before the judge. The
 4 judge shall issue an execution for the costs as in civil cases. The judge shall declare the
 5 articles forfeited to the State. If the items have been sold in accordance with subsection
 6 4, the officer shall turn the proceeds of the sale over to the ~~judge who shall dispose of~~
 7 ~~them in the same manner he disposes of fines collected under marine resources' laws~~
 8 commissioner, who shall deposit them in the Marine Science, Management and
 9 Enforcement Fund established under subsection 12.

10 A. The claimant may appeal to the Superior Court next to be held within the county
 11 where the judge's court is located, and, if ~~he~~ the claimant appeals, the judge may
 12 order the claimant to recognize with sureties as on appeals in civil cases.

13 B. The judge may order that the items or proceeds of sale remain in the custody of
 14 the officer pending the appeal.

15 **Sec. 7. 12 MRSA §6207, sub-§12** is enacted to read:

16 **12. Science, management and enforcement fund.** The Marine Science,
 17 Management and Enforcement Fund, referred to in this subsection as "the fund," is
 18 established within the department. The fund receives all funds deposited by the
 19 commissioner pursuant to this section. All money received by the fund must be used to
 20 fund scientific research, management or enforcement activities related to marine
 21 resources. Unexpended balances in the fund at the end of a fiscal year do not lapse but
 22 must be carried forward to the next fiscal year to be used for the purposes of the fund.
 23 Any interest earned on the money in the fund must be credited to the fund. To the extent
 24 practicable, funds received from the sale of items or articles forfeited under this section as
 25 a result of a violation of law relating to a particular species must be used for scientific
 26 research, management or enforcement activities related to that species.

27 **Sec. 8. 12 MRSA §6210** is enacted to read:

28 **§6210. Procedure for administrative assessment of penalty for pecuniary gain**

29 The department in an adjudicatory proceeding may impose an administrative penalty
 30 for a violation of section 6864, subsection 7-A equal to the pecuniary gain from that
 31 violation in accordance with this section.

32 **1. Definition.** As used in this section, unless the context otherwise indicates,
 33 "pecuniary gain" means the amount of money or the value of property at the time a
 34 person violates section 6864, subsection 7-A that the person derives from the violation.

35 **2. Initiation and notice.** If the Chief of the Bureau of Marine Patrol delivers to the
 36 commissioner a written statement under oath that the chief has probable cause to suspect
 37 that a violation of section 6864, subsection 7-A has been committed, the commissioner
 38 shall immediately examine the statement and determine whether to conduct an
 39 adjudicatory proceeding for the purpose of imposing an administrative penalty under this
 40 section. If the commissioner determines that the imposition of a penalty is necessary, the
 41 commissioner shall immediately notify the person who is alleged to have violated the law
 42 in accordance with Title 5, section 9052. The notice must state that the person may
 43 request a hearing in writing within 10 days of the notice.

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1 3. Hearing. If a hearing is requested pursuant to subsection 2, it must be held within
2 30 business days after receipt by the commissioner of the request for a hearing, except
3 that a hearing may be held more than 30 business days after the request if the delay is
4 requested by the person requesting the hearing and mutually agreed to in writing. The
5 hearing must be held in accordance with the Maine Administrative Procedure Act, except
6 that:

7 A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether
8 the person requesting the hearing committed a violation of section 6864, subsection
9 7-A; and

10 B. Notwithstanding Title 5, section 9061, the decision of the presiding officer under
11 Title 5, section 9062 must be made not more than 10 business days after completion
12 of the hearing. The presiding officer must be the commissioner or the commissioner's
13 designee.

14 Any decision to impose an administrative penalty under this section must be based on
15 evidence in the record of the pecuniary gain, which may include evidence of the fair
16 market value of any elvers illegally possessed by the person at the time the violation was
17 committed. The penalty may be based on evidence of the amount of money or value of
18 property the person received for elvers sold in violation of section 6864, subsection 7-A.

19 4. Appeal. A decision of the commissioner or the commissioner's designee to assess
20 an administrative penalty for pecuniary gain pursuant to this section may be appealed to
21 the Superior Court if the appeal is filed with the court within 30 days of the decision.

22 5. Request for hearing on penalty amount; place of hearing. The license holder
23 may request a hearing regarding the amount of the administrative penalty assessed under
24 this section. A hearing must be requested in writing within 10 days from the receipt of the
25 notice of the penalty. The hearing must be held within 10 days of the request unless a
26 longer period of time is mutually agreed to by the commissioner or the commissioner's
27 designee and the license holder who requests the hearing in writing. The hearing must be
28 conducted in the Augusta area.

29 6. Disposition of penalty. The commissioner shall deposit any payments for
30 administrative penalties collected pursuant to this section into the Eel and Elver
31 Management Fund established under section 6505-D.

32 **Sec. 9. 12 MRSA §6305**, as amended by PL 2013, c. 49, §2, is further amended to
33 read:

34 **§6305. Possession of license, photo identification and transaction card**

35 **1. Exhibit on demand.** When any person is engaged in an activity ~~which~~ that is
36 licensed under marine resources' laws, ~~he~~ that person shall have that license in that
37 person's actual possession and shall, on the request of a marine patrol officer or other
38 authorized person, exhibit his that person's license.

39 **1-A. Photo identification.** When a person is engaged in an activity for which a
40 license is required under section 6302-A, subsection 3, paragraph E, E-1, F or G or
41 section 6505-A, that person shall have a government-issued identification card with that
42 person's photograph and date of birth in that person's actual possession and shall, on the

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1 request of a marine patrol officer or other authorized person, present a the government-
2 issued identification card with ~~the~~ that person's photograph and date of birth.

3 **1-B. Elver transaction card.** When a person is engaged in an activity for which a
4 license is required under section 6302-A, subsection 3, paragraph E, E-1, F or G or
5 section 6505-A, that person shall have the elver transaction card issued by the department
6 under section 6505-A to that person in that person's actual possession and shall, on the
7 request of a marine patrol officer or other authorized person, present the elver transaction
8 card.

9 **2. Prima facie evidence.** A failure to exhibit a license and an elver transaction card
10 if an elver transaction card is required within a reasonable time, when requested, ~~shall be~~
11 is prima facie evidence that the person is not licensed.

12 **3. Crew members.** If crew members are included in the license for any operation,
13 any bona fide crew member may carry out that operation if the license is in ~~his~~ that crew
14 member's possession.'

15 Amend the bill by striking out all of section 8 and inserting the following:

16 '**Sec. 8. 12 MRSA §6401**, as amended by PL 2001, c. 421, Pt. B, §17 and affected
17 by Pt. C, §1, is further amended to read:

18 **§6401. Suspension or revocation based on conviction or adjudication**

19 **1. Violation of marine resources laws.** The Notwithstanding specific penalties
20 authorized under this Part, the commissioner may suspend any licenses or certificates
21 issued under this Part if a person is convicted or adjudicated in court of violating any
22 section of the marine resources laws.

23 **2. Length of suspension.** The suspension of a license or certificate may not exceed:

- 24 A. One year from the date of the first conviction or adjudication;
- 25 B. Two years from the date of the 2nd conviction or adjudication; and
- 26 C. Three years from the date of the 3rd or subsequent conviction or adjudication.

27 **3. Applicable standards.** Any conviction or adjudication occurring more than 7
28 years before the last conviction or adjudication may not be counted in determining
29 lengths of suspension.

30 **4. Revocation following 6 or more violations.** The commissioner may permanently
31 revoke any licenses or certificates of a license holder or certificate holder following the
32 conviction or adjudication of the license holder or certificate holder for a 6th or
33 subsequent violation of marine resources laws.'

34 Amend the bill by inserting after section 9 the following:

35 '**Sec. 10. 12 MRSA §6412**, as enacted by PL 2013, c. 282, §2, is amended to read:

36 **§6412. Suspension of license or certificate for failure to comply with reporting**
37 **requirements**

38 **1. Authority to suspend.** The commissioner, in accordance with this section, may
39 suspend a license or certificate issued under this Part if the holder of the license or

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1 certificate fails to comply with reporting requirements established by section 6864,
2 subsection 8 or by rule pursuant to section 6173. A license or certificate suspended under
3 this section remains suspended until the suspension is rescinded by the commissioner.
4 The commissioner shall rescind a suspension when:

5 A. The commissioner determines and provides notice to the holder of the suspended
6 license or certificate that the holder has come into compliance with the reporting
7 requirements established by section 6864, subsection 8 or by rule pursuant to section
8 6173; and

9 B. The holder pays to the department a \$25 administrative fee.

10 When a suspension is rescinded, the license or certificate is reinstated. Until the
11 suspension is rescinded, the holder of the suspended license or certificate is not eligible to
12 hold, apply for or obtain that license or certificate.

13 **1-A. Process for suspension for failing to comply with daily reporting by elver**
14 **dealers.** If the commissioner determines that a person licensed under section 6864 has
15 failed to comply with the daily reporting requirement under section 6864, subsection 8,
16 the commissioner shall notify the person at the telephone number provided on the
17 person's license application or at another telephone number provided in writing by the
18 dealer for this purpose. If the license holder has not complied with the reporting
19 requirements within 24 hours of the requirement to submit the report, the commissioner
20 shall serve a notice of suspension in hand to the license holder or mail the notice to the
21 license holder. If the notice is mailed to the license holder, the notice is deemed received
22 3 days after the mailing. The notice must:

23 A. Describe the information that the license holder is required to provide that the
24 department has not received; and

25 B. State that, unless all the information described in paragraph A is provided to the
26 department or the license holder requests a hearing, the license will be suspended 12
27 hours after the license holder's receipt of the notice.

28 Notwithstanding subsection 4, if the license holder has not complied with the reporting
29 requirements or requested a hearing within 12 hours after receipt of the notice, the
30 commissioner shall suspend the license.

31 **2. Process for suspension for failing to comply with weekly reporting.** If the
32 commissioner determines that a person who holds a license or certificate under this Part
33 has failed to comply with a weekly reporting requirement established by rule pursuant to
34 section 6173, the commissioner shall notify the person at the telephone number provided
35 on the application for the license or certificate and by e-mail if an e-mail address is
36 provided on the application. If the license or certificate holder has not complied with the
37 reporting requirements within 2 days after the commissioner has provided the notice, the
38 commissioner shall mail a notice of suspension to the license or certificate holder ~~by~~
39 ~~certified mail or the notice must be served in hand.~~ The notice is deemed received 3 days
40 after the mailing. The notice must:

41 A. Describe the information that the license or certificate holder is required to
42 provide pursuant to this Part that the department has not received; and

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1 B. State that, unless all the information described in paragraph A is provided to the
2 department or the license or certificate holder requests a hearing, the license or
3 certificate will be suspended in 3 business days after the license or certificate holder's
4 receipt of the notice.

5 If the license or certificate holder has not complied with the reporting requirements or
6 requested a hearing within 3 business days after receipt of the notice, the commissioner
7 shall suspend the license or certificate.

8 **3. Process for suspension for failing to comply with monthly reporting.** If the
9 commissioner determines that a person who holds a license or certificate under this Part
10 has failed to comply with a monthly reporting requirement established by rule pursuant to
11 section 6173, the commissioner shall notify the person at the telephone number provided
12 on the application for the license or certificate and by e-mail if an e-mail address is
13 provided on the application. If the license or certificate holder has not complied with the
14 reporting requirements within 45 days after the commissioner has provided the notice, the
15 commissioner shall mail a notice of suspension to the license or certificate holder ~~by~~
16 ~~certified mail or the notice must be served in hand.~~ The notice is deemed received 3 days
17 after the mailing. The notice must:

18 A. Describe the information that the license or certificate holder is required to
19 provide pursuant to this Part that the department has not received; and

20 B. State that, unless all the information described in paragraph A is provided to the
21 department or the license or certificate holder requests a hearing, the license or
22 certificate will be suspended in 3 business days after the license or certificate holder's
23 receipt of the notice.

24 If the license or certificate holder has not complied with the reporting requirements or
25 requested a hearing within 3 business days after receipt of the notice, the commissioner
26 shall suspend the license or certificate.

27 **4. Hearing.** A license or certificate holder receiving a written notice of suspension
28 pursuant to this section may request a hearing on the suspension by contacting the
29 department within 3 business days of receipt of the notice. If a hearing is requested, the
30 suspension is stayed until a decision is issued following the hearing. The hearing must be
31 held within 3 business days of the request, unless another time is agreed to by both the
32 department and the license or certificate holder. The hearing must be conducted in the
33 Augusta area. The hearing must be held in accordance with:

34 A. Title 5, section 9057, regarding evidence, except the issues are limited to whether
35 the license or certificate holder has complied with reporting requirements established
36 by rule pursuant to section 6173;

37 B. Title 5, section 9058, regarding notice;

38 C. Title 5, section 9059, regarding records;

39 D. Title 5, section 9061, regarding decisions, except the deadline for making a
40 decision is one business day after completion of the hearing; and

41 E. Title 5, section 9062, subsections 3 and 4, regarding a presiding officer's duties
42 and reporting requirements, except that notwithstanding Title 5, section 9062,

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1 subsection 1, the presiding officer must be the commissioner or the commissioner's
2 designee.'

3 Amend the bill by inserting after section 17 the following:

4 'Sec. 18. 12 MRSA §6445-A, sub-§1, ¶A, as enacted by PL 2013, c. 282, §4, is
5 amended to read:

6 A. Sells lobsters or crabs under the direct supervision of the holder of the Class II or
7 Class III lobster and crab fishing license under whose authority the lobster or crabs
8 were taken to a purchaser who holds a valid wholesale seafood license with a lobster
9 permit or a valid retail seafood license; and

10 Sec. 19. 12 MRSA §6505-A, sub-§1, as amended by PL 2003, c. 452, Pt. F, §11
11 and affected by Pt. X, §2, is further amended to read:

12 1. **License required.** ~~A Except as provided in section 6302-A, a person may not fish~~
13 ~~for or take elvers or possess, ship, transport or sell elvers that the person has taken~~ engage
14 in the activities authorized under subsection 1-A unless the person is issued one of the
15 following elver fishing licenses under this section:

- 16 A. A resident elver fishing license for one device;
17 B. A resident elver fishing license for 2 devices;
18 C. A nonresident elver fishing license for one device; ~~or~~
19 D. A nonresident elver fishing license for 2 devices;
20 E. A resident elver fishing license with crew for one device;
21 F. A resident elver fishing license with crew for 2 devices;
22 G. A nonresident elver fishing license with crew for one device; or
23 H. A nonresident elver fishing license with crew for 2 devices.

24 The department may not issue a license under paragraph E, F, G or H until January 1,
25 2015.

26 Sec. 20. 12 MRSA §6505-A, sub-§§1-A to 1-E are enacted to read:

27 1-A. Licensed activity. The holder of an elver fishing license or elver fishing
28 license with crew may fish for, take or possess elvers. The holder of an elver fishing
29 license or elver fishing license with crew may transport and sell within state limits elvers
30 that the license holder has taken. The holder of an elver fishing license with crew is
31 liable for the licensed activities under this subsection of an unlicensed crew member
32 assisting that license holder pursuant to subsection 1-B. Only the license holder to whom
33 a tag is issued may empty an elver fyke net.

34 1-B. License limitations. An elver fishing license with crew authorizes the license
35 holder to engage in the licensed activities under subsection 1-A. The holder of an elver
36 fishing license with crew may engage one unlicensed crew member to assist the license
37 holder only in certain activities as authorized by rule, and the unlicensed crew member
38 may assist only under the direct supervision of the license holder.

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1-C. Elver transaction card issued. The department may issue an elver transaction card to each license holder under this section and to each license holder under section 6302-A, subsection 3, paragraphs E, E-1, F and G. The license holder shall use the elver transaction card to meet electronic reporting requirements established by rule pursuant to section 6173. The elver transaction card must include the license holder's name and license number.

1-D. Use of elver transaction card required. The holder of an elver fishing license issued under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G may not sell or transfer elvers the license holder has taken to an elver dealer licensed under section 6864 unless the holder of the elver fishing license presents to the elver dealer the elver transaction card issued to that person under subsection 1-C.

1-E. Elver transaction card limited. A person may not possess an elver transaction card unless that person holds a license issued under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G and the elver transaction card was issued to that person pursuant to subsection 1-C.

Sec. 21. 12 MRSA §6505-A, sub-§4, as amended by PL 2009, c. 213, Pt. G, §6, is further amended to read:

- 4. Fees.** Fees for elver fishing licenses are:
 - A. For a person who is a resident, \$105; and
 - B. For a person who is a nonresident, \$442;
 - C. For a person who is a resident with crew, \$305; and
 - D. For a person who is a nonresident with crew, \$1,326.

Fifty dollars of each license fee collected under ~~this subsection~~ accrues paragraphs A and B and \$200 of each license fee collected under paragraphs C and D accrue to the Eel and Elver Management Fund established in section 6505-D.

Sec. 22. 12 MRSA §6575-A, sub-§1, as enacted by PL 2013, c. 49, §12, is amended to read:

1. Prohibition. It is unlawful for a person to fish for or take elvers from noon ~~Tuesday to noon Wednesday and from noon Saturday~~ Friday to noon Sunday. A person may leave an elver fyke net or a Sheldon eel trap in the waters of the State during the closed period if the net or trap is left in a condition that prevents the capture of elvers. The terminal portion of a fyke net cod end must contain a rigid device with an opening not less than 3 inches in diameter and not exceeding 6 inches in length that is unobstructed by any other portion of the net.

Sec. 23. 12 MRSA §6575-B, sub-§8 is enacted to read:

8. St. Croix River; use of fyke nets prohibited. It is unlawful for a person to use an elver fyke net to fish for or take elvers from the St. Croix River and its tributaries, as defined by the department by rule. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 24. 12 MRSA §6575-D, as amended by PL 2013, c. 49, §14, is further amended to read:

1 **§6575-D. Molesting elver fishing gear**

2 **1. Prohibition.** A Except as provided in subsection 1-A, a person other than a
 3 marine patrol officer or the license holder issued a tag for an elver fyke net or a Sheldon
 4 eel trap may not utilize, transfer, alter, possess or in any manner handle the net or trap
 5 unless that person has been issued an elver fishing a license to fish for elvers with an
 6 elver fyke net under section 6302-A, subsection 3, paragraph E, E-1, F or G or section
 7 6505-A and; or a license to fish for elvers with crew with an elver fyke net under section
 8 6505-A and the license holder issued the tag for the elver fyke net is present and assisting
 9 in setting, tending or removing the net.

10 ~~B. Is issued written permission by a marine patrol officer to tend the net or trap of a~~
 11 ~~license holder issued a tag. A marine patrol officer may issue a person written~~
 12 ~~permission for the person to tend the license holder's net or trap only for the purpose~~
 13 ~~of releasing captured elvers into the waters of the State if the license holder can not~~
 14 ~~tend the net or trap because of a disability or personal or family medical condition. If~~
 15 ~~the license holder is unable to tend the net or trap for more than 2 weeks, the net or~~
 16 ~~trap must be removed from the water.~~

17 **1-A. Restriction on emptying net or trap; exception.** A person other than the
 18 license holder identified on the tag for an elver fyke net or a Sheldon eel trap may not
 19 empty that net or trap unless that person has been issued an elver fishing license for the
 20 same gear type and has been issued written permission by a marine patrol officer to tend
 21 that net or trap. A marine patrol officer may issue a person written permission for the
 22 person to tend the license holder's net or trap only for the purpose of releasing captured
 23 elvers into the waters of the State if the license holder is temporarily unable to tend that
 24 net or trap because of a disability or personal or family medical condition. If the license
 25 holder is unable to tend that net or trap for more than 2 consecutive weeks, the net or trap
 26 must be removed from the water.

27 **2. Violation.** A person who violates this section commits a Class D crime for which
 28 a fine of \$2,000 must be imposed, none of which may be suspended. Violation of this
 29 section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

30 **Sec. 25. 12 MRSA §6575-H, sub-§1, ¶B,** as enacted by PL 2013, c. 301, §12, is
 31 amended to read:

32 B. A person may not accept payment for elvers in any form other than a check or
 33 cashier's check that identifies both the buyer, by whom the landings will be reported,
 34 and the seller, unless the purchaser provides to the seller a written or electronic
 35 receipt that identifies both the seller and buyer, each of whom must be a person
 36 holding a license issued under section 6864, a person who, pursuant to section 6864,
 37 subsection 9, is an authorized representative of a person holding a license issued
 38 under section 6864 or a person holding a license issued under section 6302-A,
 39 subsection 3, paragraph E, E-1, F or G or section 6505-A.

40 **Sec. 26. 12 MRSA §6575-I, sub-§2,** as enacted by PL 2013, c. 301, §13, is
 41 amended to read:

42 **2. Violation.** A person who violates this section commits a ~~civil violation~~ Class D
 43 crime for which a fine of \$2,000 must be ~~adjudged~~ imposed, none of which may be

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1 ~~suspended. A court may not suspend any portion of a fine imposed under this subsection.~~
2 ~~Violation of this section is a strict liability crime as defined in Title 17-A, section 34,~~
3 ~~subsection 4-A.'~~

4 Amend the bill by inserting after section 19 the following:

5 **'Sec. 20. 12 MRSA §6852, sub-§1,** as amended by PL 2013, c. 282, §11 and
6 affected by §12, is further amended to read:

7 **1. License required.** A person may not ~~buy, sell, transport, ship or serve a marine~~
8 ~~organism in the retail trade other than an ornamental marine organism used for exhibition~~
9 ~~in a marine aquarium~~ engage in the activities authorized under subsection 2 without a
10 retail seafood license or other license issued under this Part authorizing the activities. ~~For~~
11 ~~purposes of this section, "marine organism" means an organism that may not be harvested~~
12 ~~in this State without a commercial harvesting license issued under this Part.~~

13 **Sec. 21. 12 MRSA §6852, sub-§2,** as amended by PL 2013, c. 282, §11 and
14 affected by §12, is further amended to read:

15 **2. License activity.** The holder of a retail seafood license may, in the retail trade,
16 buy, sell, transport, ship or serve:

17 ~~A. Any marine organism, except that any shellstock must be bought~~ Shellstock,
18 which must be purchased from a wholesale seafood license holder certified under
19 section 6856; ~~and~~

20 D. Crayfish;

21 F. Lobsters; and

22 G. Any marine organism that is purchased directly from a harvester licensed under
23 this Part.

24 A holder of a retail seafood license when buying directly from a harvester may buy only
25 from a harvester who possesses the license or permit for that species as required under
26 this Part. The harvester shall make the applicable marine resources license or permit
27 available for inspection upon the retail seafood license holder's request.'

28 Amend the bill by inserting after section 20 the following:

29 **'Sec. 21. 12 MRSA §6864, sub-§3,** as amended by PL 2011, c. 549, §9, is further
30 amended to read:

31 **3. Supplemental license.** A supplemental license must be obtained for each vehicle
32 or additional permanent facility. Beginning with the 2015 elver fishing season,
33 supplemental license authorizes a person to possess, ship, transport or sell elvers.

34 **Sec. 22. 12 MRSA §6864, sub-§7-A** is enacted to read:

35 7-A. Use of elver transaction card required. The department shall issue to a dealer
36 licensed under this section an electronic recording device that records the information on
37 an elver transaction card issued by the department under section 6505-A, subsection 1-C.
38 A dealer licensed under this section shall record each purchase or transfer of elvers from
39 a harvester by using that harvester's elver transaction card. A dealer may not purchase
40 elvers from a harvester that does not present an elver transaction card.

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Sec. 23. 12 MRSA §6864, sub-§8, as enacted by PL 2005, c. 533, §4, is repealed and the following enacted in its place:

8. Reporting. A dealer licensed under this section shall submit reports electronically to the department using an approved electronic format on a daily basis for the entire elver fishing season. The reporting period begins daily at 12:01 a.m. Eastern Standard Time and ends at 12:00 midnight. Reports must be received by the department by 2:00 p.m. of the following day, including the day following the last day of the season. If a correction is needed following the entry of a transaction, the dealer shall contact the department directly to request the correction. If an extension of time is needed, the dealer shall contact the department directly to request the extension.

Sec. 24. 12 MRSA §6864, sub-§8-A is enacted to read:

8-A. Seizure of equipment. If a dealer licensed under this section fails to report, or fails to report accurately, and does not contact the department to request an extension of time or to correct information in accordance with subsection 8, a marine patrol officer may seize any recording equipment issued by the department under subsection 7-A. A marine patrol officer may also seize any department-issued equipment if an extension is requested but is not granted.

Sec. 25. 12 MRSA §6864, sub-§10, as amended by PL 2013, c. 301, §22, is further amended to read:

10. Purchase of elvers. A ~~Until May 31, 2014,~~ a person who holds an elver dealer's license, or the authorized representative of that person under subsection 9, may purchase elvers from licensed harvesters at locations other than the permanent facility identified on the license holder's license. ~~Beginning in 2015,~~ a person who holds an elver dealer's license or the license holder's authorized representative may purchase elvers from licensed harvesters only at the permanent facility identified on the license holder's license. The license holder or the license holder's authorized representative shall keep a ~~record~~ records on forms supplied by the department that identify each harvester from which elvers were purchased and the amount of elvers purchased from each harvester and each dealer to whom elvers were sold and the amount of elvers sold to each dealer. At all times, the license holder or the license holder's authorized representative must be able to fully account for the amount of elvers in the license holder's or the licence holder's authorized representative's possession. On the request of a marine patrol officer, the license holder or the license holder's authorized representative shall weigh the amount of elvers in the license holder's or the licence holder's authorized representative's possession for the purpose of determining if the amount of elvers meets the license holder's or the license holder's authorized representative's records. The license holder or the license holder's authorized representative shall make the ~~record~~ records available for inspection by a marine patrol officer. If the license holder's or the license holder's authorized representative's records do not match the amount of elvers in the license holder's or the license holder's authorized representative's possession, the entire bulk pile is subject to seizure pursuant to section 6575-J. The license holder or the license holder's authorized representative may not purchase elvers with any form of payment other than a check or cashier's check that identifies both the seller and the buyer, ~~unless the purchaser provides the seller a written or electronic receipt that identifies both the seller and buyer,~~ each of whom must be a person holding a license issued under this section, a person who,

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1 pursuant to subsection 9, is an authorized representative of a person holding a license
2 issued under this section or a person holding a license issued under section 6302-A,
3 subsection 3, paragraph E, E-1, F or G or section 6505-A.

4 **Sec. 26. 12 MRSA §6864, sub-§13** is enacted to read:

5 **13. Record-keeping required.** An elver dealer shall maintain paper records
6 pertaining to all elver purchases and shipments. These records must be made available to
7 the department upon request, and:

8 A. Each license holder must have a business address at which the records are
9 maintained;

10 B. The records must be complete, accurate and legible;

11 C. The records must be sufficient to allow each purchase and shipment of elvers to
12 be tracked by date of purchase from harvester, by harvester name and landings
13 number and by buyer to whom the elvers were sold; and

14 D. The records must be retained for a minimum of 3 years.'

15 Amend the bill by inserting after section 21 the following:

16 **'Sec. 22. 2014 elver fishing season; license holders permitted to assist.** A
17 person licensed under the Maine Revised Statutes, Title 12, section 6302-A, subsection
18 3, paragraph E, E-1, F or G or Title 12, section 6505-A to harvest elvers may, under the
19 direct supervision of another person licensed under Title 12, section 6302-A, subsection
20 3, paragraph E, E-1, F or G or Title 12, section 6505-A who is present, directly involved
21 with the licensed activity and providing direct supervision, assist that person, except that:

22 1. A person licensed under Title 12, section 6302-A, subsection 3, paragraph E, E-1,
23 F or G or Title 12, section 6505-A may sell only those elvers that person has taken;

24 2. A person licensed under Title 12, section 6302-A, subsection 3, paragraph E, E-1,
25 F or G or Title 12, section 6505-A may empty the cod end of an elver fyke net only if that
26 person was issued the tag attached to that elver fyke net;

27 3. A person licensed under Title 12, section 6302-A, subsection 3, paragraph E, E-1,
28 F or G or Title 12, section 6505-A who is not authorized to fish for elvers with an elver
29 dip net may not fish for elvers with an elver dip net; and

30 4. A person licensed under Title 12, section 6302-A, subsection 3, paragraph E, E-1,
31 F or G or Title 12, section 6505-A to fish for elvers with an elver dip net may not
32 continue to utilize an elver dip net to fish for or take elvers if that person has met or
33 exceeded the elver individual fishing quota allocated to that person for that elver fishing
34 season.

35 This section is repealed June 1, 2014.

36 **Sec. 23. 2014 elver harvesting; open season; start date.** Notwithstanding the
37 Maine Revised Statutes, Title 12, section 6575, subsection 1, the Commissioner of
38 Marine Resources may delay the start of the 2014 elver fishing season if necessary to
39 establish, implement and administer the elver transaction card system under Title 12,
40 section 6505-A, subsection 1-C.

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Sec. 24. Appropriations and allocations. The following appropriations and allocations are made.

**MARINE RESOURCES, DEPARTMENT OF
Marine Science, Management and Enforcement Fund N172**

Initiative: Provides an allocation of \$500 in fiscal year 2014-15 to establish the Marine Science, Management and Enforcement Fund to be used for scientific research, management and marine resources enforcement.

OTHER SPECIAL REVENUE FUNDS	2013-14	2014-15
All Other	\$0	\$500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$500

Sec. 25. Effective date. Those sections of this Act that amend the Maine Revised Statutes, Title 12, section 6852, subsections 1 and 2 take effect April 1, 2014.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment, which is the unanimous report of the committee, adds an emergency preamble and emergency clause to the bill. This amendment also:

1. Creates the Marine Science, Management and Enforcement Fund for the deposit of funds received from the proceeds of the sale of seized items that have been forfeited to the State;
2. Creates an administrative process for assessing a penalty for pecuniary gain realized from the unlawful purchase, sale or fishing of elvers;
3. Establishes an elver transaction card to be issued by the Department of Marine Resources to the holders of elver fishing licenses issued by the Department of Marine Resources and the federally recognized Indian tribes in the State and requires the holder of an elver fishing license to present the card issued to that person, which includes that person's name and license number, in order to sell or transfer elvers the license holder has taken to a dealer;
4. Requires every individual fishing for elvers to possess on that individual's actual person an elver fishing license, government-issued photo identification card and elver transaction card. Failure to present the elver fishing license and elver transaction card if required constitutes prima facie evidence of a violation;
5. Clarifies for revocation purposes that a habitual violator is a license holder and, notwithstanding other specific penalties that may be applied, the Commissioner of Marine Resources is authorized to suspend licenses for violating marine resources laws;

- 1 6. Provides a process for suspending an elver dealer's license for failure to comply
2 with daily reporting requirements that includes telephone notification or, after 24 hours,
3 mailing or providing the notice in hand to the license holder. The amendment stipulates
4 that the notice must describe the information that is sought by the department and state
5 that, if the information is not provided or a hearing requested within 12 hours, the license
6 suspension is in effect. Current law allows a license holder 3 days to provide the missing
7 information or to request a hearing;
- 8 7. Requires unlicensed crew to sell lobsters or crabs only under the direct supervision
9 of the Class II or Class III license holder under whose authority the lobster or crabs were
10 taken;
- 11 8. Establishes for the 2015 season an elver fishing license for a resident with crew
12 for a fee of \$305 and a nonresident with crew for a fee of \$1,326 and allocates \$200 of
13 each license fee to the Eel and Elver Management Fund;
- 14 9. Allows, for the 2014 elver fishing season only, elver fishing license holders to
15 assist each other under the direct supervision of another license holder, as long as each
16 person sells only elvers that person has taken and the person issued the tag attached to the
17 elver fyke net is the only person to empty the cod end of the elver fyke net, whoever is
18 licensed to fish with an elver fyke net may not fish with an elver dip net and anyone
19 licensed to fish for elvers with an elver dip net may not continue to fish for or take elvers
20 with an elver dip net once that person has met that person's quota;
- 21 10. Provides an exception for a person other than the license holder identified on the
22 tag for an elver fyke net or a Sheldon eel trap to empty that net or trap if a license holder
23 is temporarily disabled or has a personal or family medical condition for 2 weeks only
24 and with written permission from a marine patrol officer. That person may tend the
25 license holder's net or trap only for the purpose of releasing captured elvers into the
26 waters of the State. The license holder issued the tag for the elver fyke net or Sheldon eel
27 trap must be present and assisting in setting, tending or removing the net or trap;
- 28 11. Prohibits fishing for or taking elvers from noon Friday to noon Sunday. Current
29 law prohibits fishing for or taking elvers from noon Tuesday to noon Wednesday and
30 from noon Saturday to noon Sunday;
- 31 12. Restricts elver fishing to the use of elver dip nets only and prohibits the use of
32 elver fyke nets to fish for or take elvers in the St. Croix River;
- 33 13. Clarifies that payment for elvers, which already must be by check or cashier's
34 check and must identify both the seller and the buyer, must indicate the buyer under
35 whose license the landings will be reported;
- 36 14. Makes the assistance of illegal harvest of elvers a Class D strict liability crime
37 with a \$2,000 mandatory fine. This offense is a civil violation under current law;
- 38 15. Clarifies that a retail seafood license is required to sell shellstock, crayfish,
39 lobsters and any marine organism that is purchased directly from a harvester; and

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COMMITTEE AMENDMENT "A" to H.P. 1233, L.D. 1723

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16. Authorizes the commissioner to delay the start to the 2014 elver fishing season if necessary in order to establish, implement and administer the elver transaction card system.

FISCAL NOTE REQUIRED

(See attached)



126th MAINE LEGISLATURE

LD 1723

LR 2541(02)

An Act To Improve Enforcement of Marine Resources Laws

Fiscal Note for Bill as Amended by Committee Amendment "A" (H672)

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

	FY 2013-14	FY 2014-15	Projections FY 2015-16	Projections FY 2016-17
Appropriations/Allocations				
Other Special Revenue Funds	\$0	\$500	\$500	\$500

Correctional and Judicial Impact Statements

Establishes new Class D crimes.

Decreases the number of civil violations.

A potential increase in fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

The bill creates four new categories of elver licenses for residents with crew and nonresidents with crew at fees of \$305 and \$1326 respectively. \$200 of each license fee, as well as penalties assessed on those unlawfully purchasing, selling or fishing elvers, will be credited to the Eel and Elver Management Fund. The bill includes a \$500 base allocation, beginning in fiscal year 2014-15, to establish the Marine Science, Management and Enforcement Fund within the Department of Marine Resources to be used for scientific research, management or other marine resources enforcement. This new fund will receive any money gained through the sale of any marine organism seized prior to being libeled.