

**TESTIMONY OF
Patrick Keliher, Commissioner**

**The Department of Marine Resources (DMR) is testifying
in Opposition to**

LD 353, An Act to Ensure Maine's Elver Fishermen Can Fully Access Maine's Elver Resource

**Before the Committee on Marine Resources
Sponsored by Representative Pierce
Date of Hearing: March 4, 2015**

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources, my name is Patrick Keliher, Commissioner of the Department of Marine Resources, and I am testifying on behalf of the Department on LD 353.

This bill addresses a number of aspects of the management of the elver fishery. The Department supports several of the changes, but has concerns with the major policy change, which is transferability of quota between license holders.

The Department supports sections 1 through 4, which creates the opportunity for a license lottery. These changes also address the sections of law which prevent someone who has been convicted of fishing for elvers without an elver license from being eligible for the lottery for one year for a first offense, and permanently for a second offense. We would suggest amending this by making the penalty for the first offense for fishing without a license permanent loss of eligibility for the lottery.

The Department has concerns regarding Sections 5 and 6, which provide for transferability of the individual elver fishing quota. In the 2014 fishing season, the Department moved away from using only effort controls (such as restrictions on the number of licenses and pieces of gear) to manage this fishery. We now also limit the total amount of harvest that may be taken in the fishery. We do this by taking the total allowable catch, and assigning a specific amount of elver quota to each license holder. In 2014, allocations were based on a formula that considered an individual's recent landings in the fishery. This program is a way of controlling landings, but was never designed, or intended, to address some of the social, economic and environmental concerns that are often seeking resolution when an individual transferable fishing quota program is implemented in a commercial fishery.

The State is interested in exploring new tools that could allow additional license holders to join this fishery, and other limited entry fisheries. However, as policy makers we need to ensure that we are consistent as we approach such changes to our fisheries and licensing systems. As I mentioned in a recent presentation, it is imperative that we think more holistically about how

we resolve entry and exiting our fisheries and I would encourage that we take the needed time to look at all our fisheries and not deal with them individually.

If the Committee wants to explore this concept further, I would ask that you consider the following concerns. First, we are concerned that transferability in a fishery with such high value would result in considerable consolidation of quota in the hands of a select few who can afford to obtain it from other harvesters. Because there is not any capital investment (such as a fishing vessel) in this fishery, individuals have no real long-term investment that would warrant the need to accumulate a large amount of quota. Another potential consequence is that a dealer could fund the transfer of quota to those harvesters who will sell only to him or her, leading to market control. I do not believe we could effectively prevent these outcomes in the elver fishery through law or regulation, and for this reason, I oppose this proposal.

All of that said, the Department has heard from some fishermen that an injury or personal issue can occasionally prevent them from harvesting their elver quota, and this can leave them with significant financial loss for the season. For some fishermen, this is the basis for their interest in transferable quota. Many of our state fisheries have a medical waiver provision that allows for the transfer of the opportunity to fish under that license to another licensed harvester on a temporary basis (usually a year or two). To provide parity with these other fisheries for the elver fishery, the Department would support an amendment to this bill allowing the temporary transfer of a harvester's entire annual quota, prior to the season's start, to another license holder. If the Committee is interested in pursuing this concept further, we would be happy to draft language for the work session.

Section 7 presents a different concern, due to the fact that we strive to treat all license holders equally under the law. While we are now managing with output controls under the hard catch limit in the state fishery, the Passamaquoddy tribe does not have a license limitation and may issue as many licenses as they wish in a given year. Allowing license holders to select their gear could result in a significant increase in fyke nets if there was a significant increase in the number of Passamaquoddy license holders, and they all chose this gear. This may cause additional gear conflict or habitat degradation.

Finally, the Department notes the emergency preamble on this bill, and while we understand it was intended to provide additional time for the Department's rulemaking process to implement these proposed changes, we do not believe that it is necessary in order to achieve those limited changes which we have supported in our testimony. Since we are opposing the underlying changes that would require the rulemaking authorities outlined in Sections 8 and 9, we will not address these and do not believe they are necessary. Elver season begins by law on March 22nd, so any changes sought for this coming season that required rule-making would require that the start date be delayed.

Thank you for your consideration, and I would be happy to answer any questions you may have.