

**TESTIMONY OF
Patrick Keliher
Commissioner**

**The Department of Marine Resources (DMR) is testifying
In Support of**

**L.D. 1233 An Act To Improve Enforcement of Maine's Marine Resources Laws
Senator Burns**

Date of Hearing: April 28, 2015

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources, my name is Patrick Keliher, Commissioner for the Department of Marine Resources, and I am testifying on behalf of the Department in favor of LD 1233. We appreciate Senator Burns's willingness to bring forward this legislation on our behalf.

This bill encompasses a number of proposed law changes that range from procedural amendments, to more significant proposals. I will walk through the bill section by section in order to explain the basis for each suggested change.

Section 1 amends 12 MRS §6210, which is the procedure for the assessment of a penalty for pecuniary gain. This section of law was new last session, and creates the process by which the Department may collect the value of a product that is sold in violation of the law. In this case, it refers to the value of elvers that are sold in excess of an individual's quota. Section 2 lays out the process for notice, but does not specify when the notice is deemed received. In keeping with the law that guides our notices of suspension, we are suggesting that the notice be deemed received three days after its mailing. This is important, because it establishes the point from which the recipient of the notice has 10 days to request a hearing.

Section 2 creates a new authority for the Department to withhold the renewal of a license pending the payment of a pecuniary gain fine. Following the 2013 elver season there were a significant number of individuals who had not paid the pecuniary gain fines assessed for exceeding their elver quota (mostly for violations of 2 lbs or less). If there is no consequence for exceeding the quota, these infractions will only expand, jeopardizing Maine's elver fishery. With the number of violations, the only leverage that the Department can create is the ability to withhold license renewal until the penalty is paid. This is consistent with our existing ability to deny license renewal until an individual has complied with reporting requirements.

Section 3 is the most significant policy change proposed by this legislation. It would amend the Department's existing "consent to inspection" authority to include the ability to place covert electronic surveillance devices on vessels in order to enforce the laws and regulations concerning the deployment and retrieval of lobster gear. Under current law, Marine Patrol may obtain a search warrant through the Court for placement of such equipment without the knowledge of the fisherman only when there is probable cause, and only for criminal violations.

If the violation is a civil violation, they can only obtain the search warrant *with 24 hours notice to the individual*, which tends to temporarily cease the illegal behavior that the search warrant is seeking to identify.

The enforcement challenge currently facing the lobster industry that can only be effectively addressed by the proposed change in law is the increasing occurrence of illegal fishing practices taking place in the growing offshore fishery. These include fishing untagged gear (a civil violation), fishing over the trap limit (a civil violation), trap molesting (a civil violation), fishing trawls with no buoys marking them – so called “sunken trawls” (a criminal violation) or fishing the majority of gear in a zone other than your declared zone (a criminal violation). Through a combination of these practices, license holders can circumvent the existing trap limits to fish amounts of gear in excess of their fellow fishermen, or in places that they are not legally authorized to fish. Marine Patrol has been successful in some very specific circumstances with some high profile cases in recent weeks. Again, I would emphasize that in both of those instances there was a criminal violation involved that allowed for the use of the tracker with a warrant from the Court, without the knowledge of the fisherman. If the suspected violations were only civil in nature, the warrant would only have been available with notice to the fisherman.

The growing knowledge along the coast that these types of violations are increasing is creating growing unrest among law-abiding lobstermen. This proposed change in law is at the request of Marine Patrol to provide them with the necessary tool to do their job of protecting Maine’s lobster resources for the benefit of all license holders, and for future generations. It is important to understand that the Department would use this authority only when there was clear probable cause to suspect a violation.

The Department is aware that there are some individuals in the industry who are concerned about removing the need for the warrant. Another possible approach to this issue would be to continue to require the warrant from the Court, but to provide an exception to the notice requirement for the civil violations that are of specific interest. There is precedent for this approach which we are exploring, and can provide at the work session.

Section 4 addresses the same notice requirement that was identified in Section 1, but for the Department’s administrative suspension process.

Section 5 places a time limit of 60 days for an administrative suspension hearing to be held, in order to prevent an individual from using delay tactics to avoid the imposition of a license suspension. This is in response to specific incidents where there were unreasonable delays in conducting a suspension hearing, because the license holder can continue to fish until the hearing is held. We have received complaints from other fishermen who do not understand why someone with an egregious violation can continue to fish indefinitely by continuing to delay their hearing. This change seeks to set an outer limit in the time frame that the hearing can be delayed without the consent of both parties.

Section 6 amends the penalty for scrubbing egged lobsters from a one year license suspension to license revocation. To understand the magnitude of what is lost when a lobsterman scrubs an egg-bearing female, it is useful to consider the number of eggs these lobsters produce. A 3.25" lobster (just legal size) would carry approximately 8,400 eggs. A 5" (maximum size) has 45,000 eggs. If this lobster is protected through v-notching to the maximum size (~4 molts) a conservative estimate of what this lobster would contribute to the system is 116,000 eggs. This is clearly a tremendous loss of future productivity to the resource, in order to illegally take just one lobster. This violation is the most egregious with regard to its impacts on the resource, but currently only has a one year suspension. In contrast, trap molesting is a mandatory 3 year suspension. Our conversations with the industry indicate that they strongly support making the penalty for this violation revocation of the license.

Finally, Section 7 would specify that the notice of failure to comply with monthly reporting requirements will be by mail and not by email or phone. License holders sometimes do not provide an email address and we cannot always reach people by phone. In order to notify someone that they have failed to meet a monthly reporting requirement, it is more effective to mail them a letter.

In addition to the bill as drafted, we have recently identified a need for Marine Patrol to be able to sell promotional items (t-shirts) and use the proceeds of those sales to promote Patrol, and facilitate recruitment of future officers. This is similar to authority that is provided to the Warden Service within IFW, and the Department can bring forward language to the work session if this is of interest to the committee.

Thank you for your time here today. I would be happy to answer any questions you may have.