

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Maine's Elver Fishery'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

'**Sec. 1. 12 MRSA §6210**, as enacted by PL 2013, c. 468, §8, is amended to read:

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

The department in an adjudicatory proceeding may impose an administrative penalty for a violation of section 6575-K or section 6864, subsection 7-A equal to the pecuniary gain from that violation in accordance with this section.

1. Definition. As used in this section, unless the context otherwise indicates, "pecuniary gain" means the amount of money or the value of property at the time a person violates section 6575-K or section 6864, subsection 7-A that the person derives from the violation.

2. Initiation and notice. If the Chief of the Bureau of Marine Patrol delivers to the commissioner a written statement under oath that the chief has probable cause to suspect that a violation of section 6575-K or section 6864, subsection 7-A has been committed, the commissioner shall immediately examine the statement and determine whether to conduct an adjudicatory proceeding for the purpose of imposing an administrative penalty under this section. If the commissioner determines that the imposition of a penalty is necessary, the commissioner shall immediately notify the person who is alleged to have violated the law in accordance with Title 5, section 9052. The notice must state that the person may request a hearing in writing within 10 days of the notice.

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

A. Notwithstanding Title 5, section 9057, issues of the hearing are limited to whether the person requesting the hearing committed a violation of section 6575-K or section 6864, subsection 7-A; and

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

Any decision to impose an administrative penalty under this section must be based on evidence in the record of the pecuniary gain, which may include evidence of the fair market value of any elvers illegally possessed by the person at the time the violation was committed. The penalty may be based on evidence of the amount of money or value of property the person received for elvers sold in violation of section 6575-K or section 6864, subsection 7-A.

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

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

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

Sec. 4. 12 MRSA §6404-M is enacted to read:

§ 6404-M. Suspension or revocation based on conviction of a violation of an elver individual fishing quota

The commissioner shall suspend or revoke the elver fishing license of any license holder convicted of violating section 6575-K.

1. First offense. For the first offense, the commissioner shall suspend the license holder's license for one year.

2. Second offense. For a 2nd offense, the commissioner shall permanently revoke the license holder's license.

Sec. 7. 12 MRSA §6505-A, sub-§3-A is enacted to read:

3-A. Elver fishing quotas. The commissioner may adopt rules to establish, implement and administer an elver individual fishing quota system in order to ensure that the elver fishery annual landings do not exceed the overall annual quota established by the Atlantic States Marine Fisheries Commission. A person issued a license under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G may not take, possess or sell elvers in excess of the weight quota allocated to that person under the quota system. The rules must:

A. Establish an overall annual quota for the State; and

B. Specify a formula to establish individual elver fishing quotas for persons licensed under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G. The formula may take into account the amount of elvers a person licensed under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G lawfully harvested in previous seasons, based on final harvesting reports. The rules must specify the date by which harvester reports are considered final for the purpose of determining individual quotas.

If persons issued licenses under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G collectively exceed the overall annual quota, the number of pounds by which the license holders exceeded that overall annual quota must be deducted from the following year's overall annual quota. If the overage exceeds the overall annual quota allocated to a person licensed under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G for the following year, the overage must be deducted from the overall annual quota allocated to a person licensed under this section or section 6302-A, subsection 3, paragraph E, E-1, F or G in subsequent years until the entire overage has been accounted for.

The commissioner may adopt or amend rules on an emergency basis if immediate action is necessary to establish and implement the elver individual fishing quota in advance of the beginning of the elver fishing season.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 12 MRSA §6575-K is enacted to read:

§ 6575-K. Elver individual fishing quota

1. Prohibition on possession or sale of elvers in excess of elver individual fishing quota. A person may not possess or sell a weight of elvers that exceeds the elver individual fishing quota that person has been allocated for the fishing season pursuant to section 6505-A, subsection 3-A.

2. Prohibition on fishing after elver individual fishing quota has been reached. A person who has sold a weight of elvers that meets or exceeds that person's elver individual fishing quota may not fish for or possess elvers for the remainder of the season, except that such a person who has been issued a license to fish for elvers may in accordance with section 6575-D assist another person who has been issued a license to fish for elvers who has not met or exceeded that person's elver individual fishing quota as provided in section 6505-A, subsection 3-A. All gear tagged by a license holder who has met or exceeded that person's elver individual fishing quota must be removed. A marine patrol officer may seize the elver transaction card of a license holder who has met or exceeded that person's elver individual fishing quota.

3. Violation. An individual who in fact violates this section commits a crime in accordance with section 6204 for which a fine of \$2,000 must be imposed, none of which may be suspended.'

SUMMARY

This amendment, which is the minority report of the committee and replaces the bill, authorizes the Commissioner of Marine Resources to establish by rule an elver fishing quota for the State and to allocate elver individual fishing quotas to elver harvesters licensed by the State and Maine's federally recognized Indian tribes by a formula that may take into account previous years' landings. The majority report allocates a portion of the State's overall elver fishing quota to the tribes and directs each of the tribes to assign elver individual fishing quotas to its members. This amendment leaves in place the statute limiting the number of elver fishing licenses that may be issued by the Passamaquoddy Tribe to tribal members to 200 licenses. This amendment makes it a Class D strict liability crime with a mandatory \$2,000 fine for violating prohibitions on possessing, fishing for or selling elvers in excess of a person's elver individual fishing quota and on fishing after a person's elver individual fishing quota has been met.

FISCAL NOTE REQUIRED

(See attached)