

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 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:

9. Forfeiture; executions for cost; appeal; recognizance. If the judge finds that the claimant is not entitled to any item claimed, the judge shall render judgment against the claimant for the State for costs to be taxed as in civil cases before the judge. The judge shall issue an execution for the costs as in civil cases. The judge shall declare the articles forfeited to the State. If the items have been sold in accordance with subsection 4, the officer shall turn the proceeds of the sale over to the judge ~~who shall dispose of them in the same manner 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.

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

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

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

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

Sec. 8. 12 MRSA §6210 is enacted 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 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 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 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 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 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. 9. 12 MRSA §6305, as amended by PL 2013, c. 49, §2, is further amended to read:

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

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

1-A. Photo identification. When a person is engaged in an activity for which a license is required under section 6302-A, subsection 3, paragraph E, E-1, F or G or section 6505-A, that person shall ~~have a~~ government-issued identification card with that person's photograph and date of birth in that person's actual possession and shall, on the request of a marine patrol officer or other authorized person, present ~~at~~the government-issued identification card with ~~thethat~~ person's photograph and date of birth.

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

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

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

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

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

§ 6401. Suspension or revocation based on conviction or adjudication

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

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

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

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

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

Amend the bill by inserting after section 9 the following:

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

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

1. Authority to suspend. The commissioner, in accordance with this section, may suspend a license or certificate issued under this Part if the holder of the license or certificate fails to comply with reporting requirements established by section 6864, subsection 8 or by rule pursuant to section 6173. A license or certificate suspended under this section remains suspended until the suspension is rescinded by the commissioner. The commissioner shall rescind a suspension when:

- A. The commissioner determines and provides notice to the holder of the suspended license or certificate that the holder has come into compliance with the reporting requirements established by section 6864, subsection 8 or by rule pursuant to section 6173; and
- B. The holder pays to the department a \$25 administrative fee.

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

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

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

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

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

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

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

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

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

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

- A. Describe the information that the license or certificate holder is required to provide pursuant to this Part that the department has not received; and
- B. State that, unless all the information described in paragraph A is provided to the department or the license or certificate holder requests a hearing, the license or certificate will be suspended in 3 business days after the license or certificate holder's receipt of the notice.

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

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

- A. Title 5, section 9057, regarding evidence, except the issues are limited to whether the license or certificate holder has complied with reporting requirements established by rule pursuant to section 6173;
- B. Title 5, section 9058, regarding notice;
- C. Title 5, section 9059, regarding records;
- D. Title 5, section 9061, regarding decisions, except the deadline for making a decision is one business day after completion of the hearing; and
- E. Title 5, section 9062, subsections 3 and 4, regarding a presiding officer's duties and reporting requirements, except that notwithstanding Title 5, section 9062, subsection 1, the presiding officer must be the commissioner or the commissioner's designee.'

Amend the bill by inserting after section 17 the following:

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

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

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

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

- A. A resident elver fishing license for one device;
- B. A resident elver fishing license for 2 devices;
- C. A nonresident elver fishing license for one device; ~~or~~
- D. A nonresident elver fishing license for 2 devices.;
- E. A resident elver fishing license with crew for one device;
- F. A resident elver fishing license with crew for 2 devices;
- G. A nonresident elver fishing license with crew for one device; or
- H. A nonresident elver fishing license with crew for 2 devices.

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

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

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

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

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:

§ 6575-D.Molesting elver fishing gear

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

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

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

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

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

~~B. A person may not accept payment for elvers in any form other than a check or cashier's check that identifies both the buyer, by whom the landings will be reported, and the seller, unless the purchaser provides to 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 section 6864, a person who, pursuant to~~

section 6864, subsection 9, is an authorized representative of a person holding a license issued under section 6864 or a person holding a license issued under section 6302-A, subsection 3, paragraph E, E-1, F or G or section 6505-A.

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

2. Violation. A person who violates this section commits a ~~civil violation~~Class D crime for which a fine of \$2,000 must be ~~adjudged imposed, none of which may be suspended. A court may not suspend any portion of a fine imposed under this subsection.~~Violated of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

Amend the bill by inserting after section 19 the following:

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

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

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

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

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

D. Crayfish;

F. Lobsters; and

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

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

Amend the bill by inserting after section 20 the following:

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

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

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

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

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. 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 of records on forms supplied by the department that identifies 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 license 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 recordrecords 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, pursuant to subsection 9, is an authorized representative of a person holding a license issued under this section or a person holding a license issued under section 6302-A, subsection 3, paragraph E, E-1, F or G or section 6505-A.

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

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

- A. Each license holder must have a business address at which the records are maintained;
- B. The records must be complete, accurate and legible;
- C. The records must be sufficient to allow each purchase and shipment of elvers to be tracked by date of purchase from harvester, by harvester name and landings number and by buyer to whom the elvers were sold; and
- D. The records must be retained for a minimum of 3 years.'

Amend the bill by inserting after section 21 the following:

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

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

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

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

This section is repealed June 1, 2014.

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

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;
6. Provides a process for suspending an elver dealer's license for failure to comply with daily reporting requirements that includes telephone notification or, after 24 hours, mailing or providing the notice in hand to the license holder. The amendment stipulates that the notice must describe the information that is sought by the department and state that, if the information is not provided or a hearing requested within 12 hours, the license suspension is in effect. Current law allows a license holder 3 days to provide the missing information or to request a hearing;
7. Requires unlicensed crew to sell lobsters or crabs only under the direct supervision of the Class II or Class III license holder under whose authority the lobster or crabs were taken;
8. Establishes for the 2015 season an elver fishing license for a resident with crew for a fee of \$305 and a nonresident with crew for a fee of \$1,326 and allocates \$200 of each license fee to the Eel and Elver Management Fund;
9. Allows, for the 2014 elver fishing season only, elver fishing license holders to assist each other under the direct supervision of another license holder, as long as each person sells only elvers that person has taken and the person issued the tag attached to the elver fyke net is the only person to empty the cod end of the elver fyke net, whoever is licensed to fish with an elver fyke net may not fish with an elver dip net and anyone licensed to fish for elvers with an elver dip net may not continue to fish for or take elvers with an elver dip net once that person has met that person's quota;
10. Provides an exception for a person other than the license holder identified on the tag for an elver fyke net or a Sheldon eel trap to empty that net or trap if a license holder is temporarily disabled or has a personal or family medical condition for 2 weeks only and with written permission from a marine patrol officer. That person may tend the license holder's net or trap only for the purpose of releasing captured elvers into the waters of the State. The license holder issued the tag for the elver fyke net or Sheldon eel trap must be present and assisting in setting, tending or removing the net or trap;

11. Prohibits fishing for or taking elvers from noon Friday to noon Sunday. Current law prohibits fishing for or taking elvers from noon Tuesday to noon Wednesday and from noon Saturday to noon Sunday;

12. Restricts elver fishing to the use of elver dip nets only and prohibits the use of elver fyke nets to fish for or take elvers in the St. Croix River;

13. Clarifies that payment for elvers, which already must be by check or cashier's check and must identify both the seller and the buyer, must indicate the buyer under whose license the landings will be reported;

14. Makes the assistance of illegal harvest of elvers a Class D strict liability crime with a \$2,000 mandatory fine. This offense is a civil violation under current law;

15. Clarifies that a retail seafood license is required to sell shellstock, crayfish, lobsters and any marine organism that is purchased directly from a harvester; and

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)