

*127th Legislature*  
*Senate of*  
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*Senate District 7*

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**Testimony of  
Senator Brian Langley**

**LD 1038, "An Act To Amend the Emergency Rule-making Authority of the Department of  
Marine Resources"**

**Joint Standing Committee on Marine Resources**

**April 6, 2015**

Senator Baker, Representative Kumiega, fellow members of the Marine Resources Committee: my name is Brian Langley and I am proud to represent Senate District 7, which is comprised of 27 towns in Hancock County. I am pleased to present LD 1038, "An Act To Amend the Emergency Rule-making Authority of the Department of Marine Resources" on behalf of the Department of Marine Resources.

Under existing law, the Commissioner may undertake rule-making to limit the taking of marine organisms in one or more of the following ways: time, method, number, weight, length or location. Under most circumstances, this is done as what is known as "regular" rule-making, which follows a process set forth under the Administrative Procedures Act, which includes public notice, public hearings and comment, and advice and consent from the DMR Advisory Council before the rule can be adopted. Generally speaking, this process takes between 90 to 120 days in most instances.

In a limited set of circumstances, the Commissioner is authorized to undertake "emergency rule-making." The standard for using the emergency rule-making process is quite high. Specifically, the Department must justify that immediate action is necessary to protect or conserve any marine organism from "unusual damage or imminent depletion." At these times, the rule is effective immediately upon publication in a newspaper of general circulation in the area of the state affected. However, it is only effective for 90 days, so if the need for the rule exceeds that timeframe, the Department must undertake concurrent regular rule-making.

The Department frequently hears from fishermen that they do not think it is fair that emergency action can be taken to protect a marine organism from depletion, but not when there is additional opportunity to be granted to fishermen. Under currently law, the additional opportunity always takes the 3 to 4 months of regular rule-making to provide.

In light of this, the Department has discussed what circumstances might warrant being able to grant fishermen additional access on an emergency basis. One area that seemed appropriate is where an interstate (such as the Atlantic States Marine Fisheries Commission) or federal (such as the New England Fisheries Management Council) management body has made a change to a

fisheries management plan that would increase opportunity for Maine fishermen. The proposed change in law would provide that at such times, the Department could use the emergency procedures to grant that opportunity immediately. In this way, the potential economic gain that Maine fishermen could experience is not unnecessarily delayed. The Department can speak to some recent examples regarding how such authority would have been used, were it available.

Thank you for your consideration of this legislation. I ask that any questions you may have be deferred to the Department of Marine Resources during their testimony and others who might follow.