

**TESTIMONY OF
Deirdre Gilbert, Director State Marine Policy**

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

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

**Before the Committee on Marine Resources
Sponsored by Representative Kumiega
Date of Hearing: April 6, 2015**

Senator Baker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources, my name is Deirdre Gilbert, Director of State Marine Policy for the Department of Marine Resources, and I am testifying on behalf of the Department in support of LD 1038.

Under existing law, the Commissioner may undertake emergency rule-making when immediate action is necessary to protect or conserve any marine organism from "unusual damage or imminent depletion". In recent years, the Commissioner has used this authority in an innovative way to better manage the scallop fishery. At the request of the Scallop Advisory Council, the approach has been to provide a full 70-day season (which has exceeded what the scientific advice suggests is reasonable), with the understanding that the Commissioner will use emergency rule-making authority to shut down specific areas as information from the industry, Marine Patrol, and the scientific survey indicate that we have reached the target biomass removal.

While fishermen have appreciated the Commissioner's willingness to use this system to ensure they are able to access the greatest possible fishing opportunity, they have also expressed that philosophically, it does not seem fair that emergency action is possible to limit their opportunity, but that the converse is not available. That is, if new information or scientific advice suggests that too little opportunity was provided at the outset of a season, that there is no way to offer that opportunity without going through the full 90-day regular rule-making process.

The Department is concerned that unconstrained authority to provide additional opportunity would result in an untenable situation for any individual serving as Commissioner. We would anticipate constant pressure to increase seasons, daily limits, etc. It is important that there have been some thorough scientific analysis which would justify increased harvesting. This type of analysis is provided at the interstate and federal levels by the Atlantic States Marine Fisheries Commission and the New England Fisheries Management Council when they make changes to their Fisheries Management Plans. For that reason, we would be comfortable expanding the emergency rule-making authority to increase fishing opportunity when it has been provided by these bodies.

A recent example of where the Department could have used this authority occurred in the fall of 2014, when the spiny dogfish commercial daily trip limit was increased from 4,000 to 5,000 lbs. ASMFC took this action on August 6, 2014, with an effective date of September 8, 2014. Even though the Department did not hold a public hearing on this proposed change, it was October 7, 2014 before the change in the regulation became effective.

The Department has proposed this change in law so that in the future, any delay for Maine fishermen to access increased opportunity is minimized to the greatest degree possible.

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