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Re: LD 1416: An Act Regarding Interstate Shellfish Depuration

Greetings, Senator Baker, Representative Kumiega, and Honorable Members of the Joint Standing Committee on Marine Resources,

My name is Lori Howell. My husband and I own Spinney Creek Shellfish, Inc. As many of you know, our company is the only depuration company left in Maine, and just one of four certified in the United States. Depuration is a process whereby clams and other molluscan shellfish are placed in perforated racks in flowing sterilized seawater. This process allows shellfish to be harvested from growing waters classified as either approved or conditionally approved as well as restricted or conditionally restricted and then purified in the depuration system. In plain language the word "restricted" means, "moderately contaminated." Quality assurance testing is required as well as many other safeguards. The process is intended to remediate shellfish from those moderately contaminated restricted waters as well as assure the quality of shellfish from approved or conditionally approved areas. Our company has been in business for thirty two years. We operate a state-of-the-art facility that includes a laboratory that conforms to the requirements of the National Shellfish Sanitation Program.

The National Shellfish Sanitation Program is what is called a "cooperative program." Shellfish producing states as well as non-producing states, industry, scientists, the public and the FDA all have input into the provisions of the National Program. Ultimately FDA is the one with the big stick, ensuring that the program is appropriately implemented at the state level nationwide.

There is an imminent deal in the works whereby Maine would allow the harvest of shellfish from its restricted and conditionally restricted areas and allow them to be transported to Massachusetts to be processed in a state-owned depuration facility.

As a shellfish dealer, like all other shellfish dealers, we need to be certified. The National Shellfish Sanitation Program is based on the very premise that all shellfish handling activities must take place in a certified facility by a certified dealer. The Massachusetts facility, to which Maine's shellfish are proposed to be sent, is not certified. If this state wants to ship its fine shellfish to Massachusetts to be made safe for consumption, Maine should ensure that the shellfish will be processed in a certified facility by a certified dealer.

LD 1416 requires that if Maine allows its restricted area shellfish to be shipped to Massachusetts to be depurated, that Massachusetts must allow their restricted area shellfish to be exported to Maine for processing. There is no reason that this should be a one way street. Being

familiar with the personalities of the regulators as well as the regulatory structure there, there would be many roadblocks to deparating Massachusetts shellfish in Maine. If any such deal is entered by these states, let's ensure that the flow of product is both directions.

The Massachusetts facility is owned by the state and heavily subsidized by the tax payers. The fee charged for the deparation of Maine shellfish would be approximately 20% of the actual cost.

Our business is a private facility, a family owned business, with an impeccable national and international reputation for top notch shellfish handling and research. We are not owned, controlled or associated in any way with any Massachusetts business; we are not owned, controlled, or associated with one of the largest seafood companies in the country. We built this business with our own hands and at our own expense. We receive no subsidies, no tax credits; no incentives and we pay our taxes... to Maine. In short, our business is everything that economic and political leaders alike want to attract to our state. Competing with an out of state, state-subsidized operation would undermine our business; negatively impact our bottom line, threaten our own livelihood and those of our well-trained and valued Maine-resident staff and well as that of those harvesters who work with us.

I want to visit the topic of the subsidy for a moment. Subsidies are often put in place to support the public interest. This is what Massachusetts decided on many years ago. They determined they had a public interest in allowing clams from contaminated areas in Massachusetts to be harvested and made safe for consumption. However, subsidies can violate both legal and ethical principles if they discriminate against one producer in favor of another. A subsidy granted by an individual state may be unconstitutional if it discriminates against out-of-state producers, violating the Privileges and Immunities Clause or the Dormant Commerce Clause of the US Constitution.

Subsidies can be detrimental, in other words, "perverse," to society in the sense that they contribute to over exploit natural resources. Subsidies for logging, mining, and other harvest activities are examples areas where perverse subsidies are well-known to cause over-exploitation of resources through the subsidized reward for extraction.

Many years ago there were as many as eight deparation plants in Maine. Twenty-five years ago there were three. Now there is one. In fact, the State of Maine asked us to build up our capacity so that we could deparate clams when the last of the other plants closed. Why are we down to one plant? Certainly, food safety regulations have become stricter, but the larger reason is that deparation plants go out of business when the resource dwindles. Currently there is not enough resource in restricted areas to support the one plant that we have here in Maine. Why should we ship our shellfish to Massachusetts for processing? Exporting Maine shellfish to Massachusetts means loss of processing jobs in Maine.

But exporting clams to Massachusetts for processing also means devastation of the resource in Maine. Spinney Creek Shellfish is an excellent steward of the clam flats. We work the flats only to a certain level. We spend thousands of dollars each year walking flats and surveying clam populations. We estimate the number of days each area will support and use this to plan our harvest activities for the future. We plan long-term, looking at both the current year and out several years into the future. We know what areas will dig well in the summer vs. the winter; what areas are most

affected by red tide, which dig well on big draining tides, and which are usable on moderate tides. We utilize this information and harvest in accordance with what is sustainable and what will yield the greatest long term benefit. In short we exercise diligence and discipline; restraint.

With multiple plants, and especially when one of those plants has no capital investment, no trained staff, and no incentive to invest and steward the resource for the long term, you will see a gold-rush mentality, a land grab, and rush to dig every area without discipline with the result being a tragedy of the commons. The increased harvest will be a flash in the pan; a short term grab for a resource that is rapidly depleted.

Although there are many depuration areas in Maine, the number of areas do not reflect the extent of the resource. Many areas are smaller than this room; many have never had clams; many areas were recently downgraded from approved to restricted meaning that, again, there are no clams in them. Many other areas have or will have abatement plans in place while a town attempts to address abatable point source pollution, meaning the area cannot be harvested. Right now Spinney Creek Shellfish does not have nearly enough harvestable flats to fill our needs or fill our tanks.

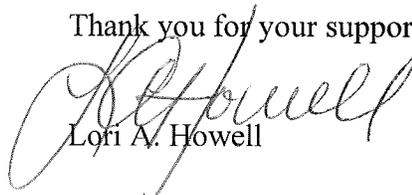
In addition, the Maine clam industry is facing a shortage. Harvesters and dealers alike realize this. Poor management, overfishing, green crabs, climate change and the natural cycle of clam seed recruitment have all contributed to this shortage. The good news is we see small seed on the flats and believe; we hope; this will be a 2-3 year problem. How has Spinney Creek Shellfish prepared for this shortage? Last year we began investing even more heavily in traveling the state, walking flats; looking at even the smallest areas to determine if a day or two of harvest is possible. We have reduced staff and brought some maintenance issues previously done by a contractor in-house. In addition, my husband and I reduced our pay and I have taken an additional job. We have prepared responsibly. To learn that the state is about to allow the precious and scarce resource that we depend upon to be shipped for cheap, below-market processing, to Massachusetts is a deadly blow.

Think about the message that this sends to others thinking of starting Maine businesses. Maine... Open for Business... Come and invest and then we'll sell you out. I don't think that this is the message that the Governor, or any of the rest of us want to send.

We have long understood that another plant could be built in Maine... but any new Maine plant would be held to the same standards; and would have similar cost structures. In essence, a more level playing field.

Do the responsible thing; say no to involvement with an unconstitutional subsidy that will undermine a Maine business, say no to a deal that will send the wrong message about Maine's business environment; say no to a deal with will result in rapid resource depletion; say no to sending Maine clams to an uncertified facility, but say yes to keeping these Maine processing jobs and long term harvesting jobs in Maine. Say yes to LD 1416.

Thank you for your support,



Lori A. Howell