

**TESTIMONY OF  
Patrick Keliher  
Department of Marine Resources**

**The Department of Marine Resources (DMR) is testifying  
Neither For Nor Against  
LD 710 An Act to Fund the Lobster Legal Defense Fund  
Before the Committee on Marine Resources  
Sponsored by Representative Faulkingham  
Date of Hearing: March 23, 2023**

Senator Reny, Representative Hepler, and members of the Joint Standing Committee on Marine Resources, my name is Patrick Keliher, Commissioner of the Department of Marine Resources, and I am testifying on behalf of the Department neither for nor against LD 710.

LD 710 would provide a one-time General Fund appropriation of \$500,000 to reimburse the Maine Lobstermen's Association and the Maine Lobstermen's Union for legal costs incurred and paid in legal proceedings involving the NOAA regulations implementing the Atlantic Large Whale Take Reduction Plan.

During the last legislative session, LD 1916 was passed, creating the Lobster Legal Defense Fund. The revenues for this fund were generated by diverting 20% of the revenues collected through a lobster license surcharge for the Maine Lobster Marketing Collaborative (MLMC). The total annual revenues for the MLMC from the license surcharge are \$1.9 million, so 20% of those revenues are ~\$380,000. LD 1916 became effective on August 8, 2022. From the effective date through the end of 2022, the total funds collected for the Lobster Legal Defense Fund were just over \$43,000. During the first two months of 2023, an additional \$117,000 was collected. The variability in the amount of funds collected each month reflects the pattern of lobster license sales throughout the calendar year. Under LD 1916, the diversion of funds from the MLMC to the Lobster Legal Defense Fund continues through June 2024.

In addition to the funds provided to industry associations by LD 1916, the Governor's budget included \$3 million for DMR to hire outside counsel to represent the State in the lawsuits pertaining the protection of the North Atlantic Right Whale. DMR has hired one of the country's top firms in defense of Maine's lobster industry, with extensive experience in both the Endangered Species Act and the Marine Mammal Protection Act.

Changing the source of funding for the Lobster Legal Defense fund for industry association expenses from the license surcharge to a general fund appropriation raises a policy question about the appropriate use of state funds, and the implications of setting this precedent. The State is providing for the defense of the lobster industry by funding the work done by attorneys representing the State. Should the State also provide for the defense of the lobster industry by funding the work down by attorneys representing industry associations? In this regard, the State is funding work that it has no

oversight over, or requirement for input into. Would the Legislature be willing to do this on behalf of other industries, fighting legal battles that are equally important to them?

The work of the Maine Lobster Marketing Collaborative has been very important and valuable to the Maine Lobster industry, and especially during the period of the lawsuits. Amongst their other activities, the MLMC provides a critical PR function, reminding the public of the long-standing conservation and stewardship practices of the Maine lobster industry. Their work in 2023 will be detrimentally affected by the reduction in their budget. The Department strongly supports the work of the MLMC and does not wish to see their budget negatively affected. However, we also have deep reservations about the use of State funds for legal work by industry associations.

I want to make it clear that we recognize the challenges the industry groups face when it comes to raising the needed funds to support their legal teams. In fact, Governor Mills also recognized this as she was reviewing the MLA Case against NOAA. Understanding how critical it was to the viability of the fishery, she put her money where her mouth is, and contributed \$100,000 from her discretionary fund.

If the Committee wishes to find a way to further support the industry, we would prefer the ongoing diversion of industry fees to the precedent that would be established by a new general fund appropriation.

Thank you for your consideration, and I would be happy to answer any questions you might have.