

TESTIMONY OF
Patrick Keliher
Department of Marine Resources
The Department of Marine Resources (DMR) is testifying
In Opposition to
LD 553 An Act to Assert State Sovereignty over Ocean Waters and Marine Resources
up to 12 Nautical Miles off the State's Coast
Before the Committee on Marine Resources
Sponsored by Senator Martin
Date of Hearing: March 6, 2025

Senator Tepler, Representative Hepler, and members of the Joint Standing Committee on Marine Resources, my name is Patrick Keliher, Commissioner for the Department of Marine Resources, and I am testifying on behalf of the Department in opposition to LD 553.

LD 553 is similar, although not identical, to legislation introduced, and subsequently killed, in the 131st Legislature. Many of the issues I will raise were also raised at that time. This current bill provides that, notwithstanding any provision of law to the contrary, the State owns and may exercise jurisdiction over and control all waters within the rise and fall of the tide seaward 12 nautical miles and makes other changes to the law governing the State's sovereignty over and ownership of offshore waters, submerged lands and the harvesting of marine resources.

As with the last time this topic was discussed, there are at least three topics to consider with regard to this proposed change:

1. Does the State have the authority to do this?
2. Does it achieve the goal intended?
3. What are the other practical impacts of making this change?

With regard to authority, whether or not the State of Maine could unilaterally assert its sovereignty or jurisdiction beyond the 3-mile limit under the current constitutional and statutory framework was explored in a legal and policy analysis prepared for DMR by the Marine Law Institute of the University of Maine in 1997. Their determination was that such a claim would not be legitimate. The seaward boundary of the states is defined by the Submerged Lands Act (SLA). The SLA is a U.S. federal law that recognized the title of the states to submerged navigable lands within their boundaries at the time they entered the Union. They include navigable waterways, such as rivers, as well as marine waters within the state's boundaries, generally three geographical miles from the coastline. Because the Submerged Lands Act is federal law, any inconsistent state law would be preempted under the Supremacy Clause.

Some states have pursued an argument in court that for historical reasons, they are entitled to a boundary of three marine leagues instead of three nautical miles (one marine league equals three nautical miles). Another approach would be to pursue a Congressional action to modify

the State's boundary by seeking an amendment to the federal Submerged Lands Act extending state's jurisdiction. These are among the potentially available avenues to achieving a legally valid change in the State's seaward boundary.

Setting aside the issues of legality, it is also worth discussing what such a change could actually accomplish. The emergency preamble of the bill suggests that the motivation for the legislation may be the current restrictions in herring catch limits. Herring is jointly managed by the Atlantic States Marine Fisheries Commission (in state waters) and the New England Fishery Management Council (in federal waters). Herring quotas are allocated by management areas, and Maine's fleet fishes in Area 1A. The definition of that management area goes to the shoreline (not state waters) so extending state waters does not have any effect on the available quota or federal jurisdiction over that quota.

As noted, the herring resource has been subject to significant catch reductions. Atlantic herring are overfished and are in a rebuilding plan. The herring industry took a significant cut in quota starting in 2019. The Governor, at the recommendation of DMR, requested that a fishery disaster be declared. In 2022 Congress declared and appropriated funds, and DMR allocated and distributed said funds to the industry.

Unfortunately, the 2024 stock assessment did not show any improvements in the stock. This continued poor stock condition, along with a harvest control rule which is conservative at low biomass levels, resulted in very low quotas for 2025 and 2026. In particular, the quota for 2025 is almost another 90% reduction from 2024, and represents the lowest quota ever for the herring fishery. At the NEFMC meeting in January 2025, because the Atlantic herring catch in 2024 was substantially below the ABC (which is the quota for the whole East coast), the Council initiated a process to see if there can be any resulting liberalizations in the 2025 Atlantic herring quota.

Beyond herring, it is important to understand that if it were legally possible to extend state waters out to 12 miles, it would mean that for all the fisheries for which there are federal permitting requirements, fishermen would not need those permits unless they were fishing outside of 12 miles. This would cause a tremendous shift in effort in our fisheries, that would negatively impact current federal permit holders and create other management problems. For example, while there are nearly 5000 state licensed lobster harvesters, only 1200 of them hold a federal permit and can fish outside 3 miles. If the State were to extend its jurisdiction to 12 miles, all state license holders would be able to fish out to 12 miles, instead of the current 3 mile limit. This would shift a significant amount of effort, and therefore also risk from the fishery further offshore, exacerbating the current regulatory challenges with right whales.

Finally, successfully obtaining jurisdiction over the waters out to 12 miles would come with many other obligations for DMR, which would require additional resources for the Department to meet. Some examples of this include:

- Marine Patrol enforcement of Title 12 marine resource laws and regulations will incur an added boat fuel and operating cost expense due to fishing activity in State waters being more spread out because fishermen without federal licenses would be able to fish out to 12 miles, rather than being limited to within 3 miles. It will take a patrol boat more time and resources to board and inspect 10 lobster boats spread out in a 10x12 nautical mile area rather than a 10x3 nm area. This logic would also apply to locating, hauling, and inspecting fixed gear.
- The current MOU with the USCG for Recreational Boating Safety specifies that MMP will investigate and complete reports on all recreational boating accidents occurring upon waters of concurrent jurisdiction (currently coastal waters out to 3nm). A change to a 12nm State jurisdiction will result in an increase in time and expense to investigate and report on additional boating casualties. This increase would not be 4x the current effort due to the fact the majority of the recreational boating activity occurs near shore, however there would undoubtedly be an unquantified increase in effort and expense.
- MMP officers may currently enforce Title 17A criminal law within the State's 3nm jurisdiction. Increasing the State jurisdiction to 12nm would again, similar to the recreational boating accident investigation effort, increase BMP's potential workload investigating and taking enforcement action for incidents involving Title 17A violations. The State's exercise of criminal jurisdiction beyond the federally recognized 3-mile limit could conflict with and be preempted by federal laws establishing criminal jurisdiction beyond 3 miles with the US Coast Guard and the FBI.

In closing, LD 553 cannot achieve the jurisdictional change that it seeks, it would not provide the relief from federal regulations sought, it would negatively impact current Maine license holders who also hold a federal permit, create new management problems, and create new, costly and unwanted responsibilities for DMR. For these reasons, we ask the committee to vote Ought Not to Pass. Thank you for your consideration, and I would be happy to answer any questions you might have.