

**TESTIMONY OF  
Deirdre Gilbert  
Department of Marine Resources**

**The Department of Marine Resources (DMR) is testifying  
In Opposition to  
LD 1596 An Act to Support Maine's Sea Farmers  
Before the Committee on Marine Resources  
Sponsored by Representative Reilly  
Date of Hearing: April 24, 2025**

Senator Tepler, Representative Hepler, and members of the Joint Standing Committee on Marine Resources, my name is Deirdre Gilbert, Director of State Marine Policy for DMR and I am testifying on behalf of the Department in opposition to LD 1596.

LD 1596 makes four primary changes to the statutes pertaining to aquaculture leasing:

1. It changes the current process by which operational activities on a lease site may be modified;
2. It addresses the use of 3<sup>rd</sup> parties to conduct site dives for prospective standard leases;
3. It directs the Aquaculture Advisory Council to create a subcommittee to address equity issues in the aquaculture industry; and
4. It directs DMR to create guidelines for shellfish hatcheries that receive state funding.

**1. Operational Amendments**

Under current law, the holder of a standard aquaculture lease may seek modifications to their lease to add or delete specific species, or to use a different gear type, and to modify their operations accordingly. Such changes are not adjudicatory proceedings, but do require notice to the public, riparian landowners, and the municipality in which the lease is located and DMR must provide an opportunity to submit written comments on the proposal. Any authorization to make changes must be consistent with findings on the decision criteria that were made when the lease was granted.

LD 1596 proposes to replace a portion of the existing amendment process with a system that categorizes leases as one of three operational types (bottom, submerged, or surface) and would allow the commissioner to authorize a change in operational type if the change does not significantly increase navigational hazards or the environmental effects of the operation, and the operational type does not change from bottom to submerged, or from bottom or submerged to surface.

Concurrent with the submission of this bill, the Aquaculture Advisory Council has formed a committee that has been working on a proposal to modify the current amendment process. This committee is comprised of aquaculture industry members representing various sectors of the industry (both large and small operations) as well as Department staff. Under the current framework, lease amendments are time-consuming, and occupy limited Department resources that could be used toward processing lease applications. For these reasons, DMR agrees that a thoughtful review of how the existing process could be revised is warranted. However, we would prefer to allow the committee to

complete their work and make their recommendation before advancing any statutory changes. There are some identified flaws in the bill, including the fact that many leases actually include a mix of operational types, which would preclude their classification as proposed and in fact reduce their current flexibility. In addition, experimental leases for commercial purposes are currently not eligible for lease amendments because the lease term is only for 3 years and it does not seem unreasonable that a lease holder would adhere to their proposed operations for at least that duration.

## **2. Site dives by 3<sup>rd</sup> parties**

Under current law, the Department is required to conduct an assessment of a proposed lease site and surrounding area, to determine the possible effects of the lease on commercially and ecologically significant flora and fauna, and conflicts with traditional fisheries and other uses. As part of that site review, the Department may dive a site or use an ROV to document current conditions. Any information collected is included in a site report which must be made public and available to any intervenors at least 30 days prior to the public hearing on the lease. At the hearing, the site report is entered into the record as an exhibit and Department staff may be asked to provide testimony on the contents and then cross-examined accordingly.

LD 1596 proposes that if a site dive is to be conducted and if the applicant must pay for the site dive, that they may contract with any qualified third party to conduct the site dive and not be limited to a 3<sup>rd</sup> party selected by the Department. For clarity, applicants are not required to pay for the site dives, and at this time, site dives are only conducted by the Department for the purpose of generating the site report. There have been prior requests by the aquaculture industry to allow applicants to hire 3<sup>rd</sup> parties to complete the site dives as a means of speeding up the lease application process. However, it has not been clear if proponents also envision that 3<sup>rd</sup> parties would also develop the site report, or be expected to testify under oath on its contents at the hearing.

It is potentially a conflict of interest that someone paid by the applicant would be providing this information in lieu of the Department. Further, as the decision-maker on the proposed lease, there is value in the Department having firsthand knowledge of the lease site. In addition, the Department ensures that all visits and reports are conducted and produced in accordance with regulation. A 3<sup>rd</sup> party invites the potential for procedural challenges. Finally, this change has been suggested as a means of allowing an applicant to advance their lease application without having to wait for the Department's schedule. However because the lease process is a pipeline, advancing a lot of site visits will just create a bottleneck somewhere else – at the point of the hearing, or writing lease decisions for example. With recent investments in the Aquaculture Division and implementation of programmatic efficiencies, current staff can conduct more than 50 site visits annually. In 2024, a total of 58 applications were received.

## **3. Aquaculture Advisory Council Subcommittee**

With recent statutory changes to improve the functionality of the Aquaculture Advisory Council, the Council has developed a workplan that currently includes 3 committees: Developing a Pathway for Upwellers other than an LPA, Lease Application Processing Time Expectations, and the Lease

Amendment Process. The Council has also listed Gear Tagging/Standards and Evaluating the Current Bonding System for future committees. To our knowledge, the Council has not been approached with the suggestion to form a committee to study and address equity issues for persons seeking to enter the aquaculture industry. The Department would suggest that any proponents of such a committee bring that proposal to the Council for their consideration, rather than have this body direct their workplan. The Aquaculture Advisory Council has bylaws that outline how committees are formed, who may be appointed and the requirement for a committee charge to define their work.

#### **4. Shellfish Hatcheries**

Finally, LD 1596 directs the Department to establish guidelines for the operation and administration of shellfish hatcheries that receive state funding and that are operated by nonprofit organizations, tribal governments and other nongovernmental entities. The Department must make those guidelines available to those entities and to the public and must take all reasonable actions to ensure compliance with the guidelines by those entities. For clarity, there are currently no shellfish hatcheries that receive state funding. Having spoken to the bill sponsor, the Department's understanding is that this is an effort to explore the feasibility of establishing state funded hatcheries, to reduce reliance on private or out of state hatcheries. The Department does not have staff capacity to undertake such a study. We would suggest that this topic be pursued by an industry association or interested NGO. Also, to avoid any confusion, DMR does have a pathologist that currently inspects and certifies shellfish hatcheries in accordance with statute and regulation, which includes annual hatchery inspections and clean pathology reports. Several in-state and out of state shellfish hatcheries are currently approved to sell a variety of shellfish species to growers.

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