

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

**The Department of Marine Resources (DMR) is testifying
Neither for nor Against
LD 1790 An Act Regarding Lobster Measurement
Before the Committee on Marine Resources
Sponsored by Representative Faulkingham
Date of Hearing: May 8, 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 the Department of Marine Resources, and I am testifying on behalf of the Department neither for nor against LD 1790.

Fundamentally, LD 1790 addresses the question of which is most appropriate body - the DMR Advisory Council or the Legislature - to provide the final approval for a change to the minimum or maximum size for lobster. That decision impacts how quickly Maine can act to protect this resource, and the fishery, when action is needed.

Historically, Maine's minimum and maximum lobster gauge sizes have been in statute. In 2022, the law was amended to allow the gauge to be changed by the Department through rule-making when necessary to comply with changes to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fisheries Management Plan (FMP) for American Lobster. That change was proposed shortly after Draft Addendum XXVII to Amendment 3 was approved for public comment. Addendum XXVII was ultimately approved by the Lobster Management Board, and was the first lobster plan to include a "trigger" such that once a particular change in the biological indices of the lobster resource occurred, an increase in the minimum lobster gauge (amongst other changes) was initiated.

With the development of Addendum XXVII, the Department became concerned that depending on the point in time when the trigger was reached and action taken by the Lobster Management Board, it might not be possible to make the change to the gauge in statute in a timely way and maintain compliance with the FMP. More specifically, if action was taken to initiate a gauge change at a time of year when the Legislature was not in session, we would need to wait for the Legislature to reconvene before initiating the process, wait for the passage of the bill, and if not done as an emergency, wait for it to take effect 90 days after the Legislature has adjourned. This could lead Maine to miss the implementation date, and potentially result in a non-compliance finding at ASMFC. If a state fails to comply with a management plan, the Secretary of Commerce may impose a moratorium for fishing in the state's waters.

Conversely, the Department can complete the rule making process within approximately 90 days. Like other agencies, DMR must follow the Maine Administrative Procedures Act, which includes notice to impacted individuals, and the opportunity for a hearing and to submit written comments. DMR must compile and respond to any comments received and may amend the rule based on those comments.

The Department develops a proposed adoption package, which is provided to the DMR Advisory Council for their consideration and vote. The Department cannot adopt a rule that does not receive approval from the majority of members of the DMR AC.

DMR sought the 2022 change in law regarding the process by which a gauge change is implemented largely in response to Addendum XXVII and a desire to be able to implement a timely regulatory change to avoid non-compliance. The recent experience with the proposed rule-making for the gauge has been instructive with regard to the challenges that are likely to occur whenever a gauge change is pending. If the process to advance a change advances through rule-making, the DMR Advisory Council will need to be willing to approve the rule in order for it to go into effect. The DMR Advisory Council is a 17 member Council, made up mainly of industry members, including harvesters and dealers. Conversely, if the change is advanced legislatively, this Committee will need to approve the change in order for it to be considered by the full Legislature.

These will never be easy decisions to make, regardless of which body is providing the final approval. The nature of fisheries management is to try to act to avoid a resource problem that will negatively impact future sustainability. However, those actions have impacts on the income of current participants, and there is never perfect scientific "proof" of what the outcome will be. As noted at the beginning of my testimony, this bill comes down to who is most appropriate to provide the final approval for such a change, and how quickly Maine can act to protect this resource and the fishery when action is needed.

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