

TESTIMONY OF

Carl Wilson

Department of Marine Resources

The Department of Marine Resources (DMR) is testifying

In Support Of

LD 2013 An Act to Authorize the Commissioner of Marine Resources to Adopt Emergency Rules to Protect Certain Marine Mammals in Exceptional Circumstances

Before the Committee on Marine Resources

Sponsored by Representative Hepler

Date of Hearing: February 12, 2026

Senator Tepler, Representative Hepler, and members of the Joint Standing Committee on Marine Resources, my name is Carl Wilson, Commissioner for DMR and I am testifying on behalf of the Department in support of LD 2013. This is a department bill, and we are grateful to Representative Hepler for sponsoring this bill on our behalf.

This bill would authorize the Commissioner of DMR to adopt emergency rules to limit the taking of marine organisms by method or location for the purpose of protecting endangered and threatened marine mammals. Fundamentally, LD 2013 gives DMR flexibility to manage “dynamically”, that is, in response to specific conditions, and allows quick response to developing situations.

You may recall, in January 2025 there was an unprecedented aggregation of over 90 endangered North Atlantic Right Whales (NARW) offshore Maine in and around Jeffrey’s Ledge, an area dense with lobster fishing during the winter months. Once the aggregation was visually sighted, the whales persisted for over three weeks. Fishermen from Maine were actively fishing gear while these whales were present, creating an area of potentially high entanglement risk. In considering what, if any actions DMR could take to quickly reduce entanglement risk, DMR determined that our existing emergency rulemaking authority would not allow the Department to implement an emergency closure in the lobster fishery in response to the right whale aggregation. Currently, under Title 12, section 6171, subsection 5, the Commissioner of DMR may adopt rules that limit the taking of a marine organism for the purpose of protecting another marine organism, but rules adopted under this provision are major substantive, and rules for this particular purpose are specifically prohibited from being adopted on an emergency basis. As a result, implementing gear modifications or limiting the setting of lobster gear in a specific area to protect an aggregation of right whales, like we experienced last January, is not allowed under DMR’s current emergency rulemaking authority. LD 2013 would create a narrow exception to the current prohibition to allow DMR to implement emergency rules that limit the taking of marine organisms to protect endangered marine mammals when necessary to mitigate an exceptionally high level of risk.

During those weeks in January and February 2025, some Maine fishermen took voluntary actions to reduce the risk of right whale entanglement in lobster gear in the area by removing endlines, delaying shifting gear to deeper water, or removing gear from the water. While DMR’s regulatory authority was limited during this event, DMR responded by arming Maine fishermen

with information about where and when the most recent whale sightings occurred, and outlining the area of highest entanglement risk based on sightings data and recent lobster vessel tracking information showing where fishing was occurring. With support from DMR, several members of the lobster industry acted proactively and reduced risk to whales. DMR thanks these fishermen as their actions not only reduced entanglement risk, but also highlighted the potential benefits of dynamic management.

Entanglements pose a risk not only to right whales, but also to the future of Maine's lobster fishery. As the Committee may be aware, the lobster fishery has been the focus of recent federal regulatory actions to reduce risk to NARWs. There has been extensive litigation on the most recent Biological Opinion. Under the ESA, the number of right whales that can be removed from the population annually is less than one. And in the coming year the Atlantic Large Whale Take Reduction Team (TRT) will be reconvening to develop rules that will be put in place when the pause to new whale regulations ends at the end of 2028. With this backdrop, an entanglement in Maine lobster gear not only threatens the risk of an area closure in future federal regulations, but it also reduces the NARW population, making it increasingly hard to achieve the risk reduction target established by NOAA Fisheries. The latter impacts all Maine lobstermen.

LD 2013 would increase the tools at DMR's disposal and Maine's negotiating power at future TRT meetings. Traditionally, static closures are used to protect NARW from entanglements during times and in areas where they are predicted to be present. To achieve a specific level of risk reduction these closures often cover large areas and extend for long periods of time. This has been demonstrated in Maine, where a closure spanning three lobster zones and three months was established in the last federal rulemaking. In previous TRT negotiations, DMR advocated to be able to use dynamic management as an approach to both protect right whales and limit the potential economic impacts on the lobster fishery. Dynamic management is an adaptive process where management actions are adjusted in real time based on changing conditions. However, as we are precluded from doing dynamic management under current rulemaking authorities, our ability to successfully negotiate for dynamic management options at future TRT meetings is currently nonexistent. Going into the next round of TRT negotiations with updated regulatory authority would put DMR in a stronger negotiating position. Having the ability to dynamically manage can help achieve better outcomes for fishermen by limiting when and where a closure occurs to when whales are present. Without an ability to do dynamic management, the most likely alternative facing the lobster industry is larger and longer static closures.

DMR has multiple data streams available to help inform when the Department would need to use emergency rulemaking for dynamic management. Funded by Consolidated Appropriation Act funds, the Department now has a robust monitoring enterprise which includes both aerial and boat-based visual surveys. The Department has also invested heavily in acoustic monitoring and is in the process of implementing real-time acoustics to help our ability to detect when right whales are present in Maine. This information, when coupled with fisheries data like vessel tracking from federal lobster boats, can be used to quickly inform the specifics of an emergency rule should one be needed. As a result, if an aggregation or other unique situation is observed, information can be shared with industry rapidly.

Finally, DMR plans to work closely with industry on developing dynamic management moving forward. In initial conversations with lobster industry at Zone Council meetings there is general support for the Department to explore the use of dynamic management, and council members have indicated a preference for DMR to lead the development of a dynamic management for Maine's lobster fishery over NOAA Fisheries as they know DMR will be held accountable to the fishing industry to develop an approach that balances protecting whales and providing opportunities for fishermen. At their last meeting the Lobster Advisory Council voted unanimously in support of this bill. Finally, the bill also requires that DMR submit a report to the Legislature detailing findings and recommendations related to this emergency rulemaking authority.

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