

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

**The Department of Marine Resources (DMR) is testifying
In Support of
LD 114 An Act to Address Airboat Operation in the State
Sponsored by Representative McCreight**

**And in Opposition to
LD 89 An Act to Regulate Airboats
Sponsored by Representative Sachs**

**Before the Committee on Inland Fisheries and Wildlife
Date of Hearing: April 12, 2021**

Senator Dill, Representative Landry, and members of the Joint Standing Committee on Inland Fisheries and Wildlife, my name is Patrick Keliher, Commissioner of the Department of Marine Resources, and I am offering combined testimony on behalf of the Department in support of LD 114, and in opposition to LD 89.

As you have heard, the Department of Marine Resources (DMR) participated in the Consensus Building Rule-making process with the Department of Inland Fisheries and Wildlife (IFW). This was a natural partnership, given that IFW is authorized to regulate watercraft and establish a decibel limit for airboats, but that the impacted party (shellfish harvesters) is regulated by DMR.

Although airboats have been used on the coast of Maine for decades, the tension around the noise they generate has certainly escalated over the last several summers. I am empathetic to the landowner complaints of excessively loud operations in the very early morning hours, and have been supportive of efforts to allow such “outlier” activity to be addressed. Many airboat operators conduct their activities as respectfully as possible, to avoid causing undue distress to coastal residents. Unfortunately, there are also instances of individuals who have not exercised that discipline, which is what has brought us to the conversation here today.

Through the Working Group process, it has been made clear that there are a number of factors that are contributing to this conflict. Increasing development along the coast, coupled with elimination of historical water access points has made the use of airboats even more essential from a harvester’s point of view. Airboats greatly increase a harvester’s ability to safely access flats that would not otherwise be feasible, and expand the time available to engage in harvesting activities. The value of this increased harvesting opportunity is demonstrated by the fact that shellfish harvesters have made the investment in this equipment - airboats are not cheap.

Through the consensus rule-making process, IFW and DMR staff sought a regulatory balance that would provide the landowners relief, while also permitting the ongoing use of airboats as a viable piece of harvesting equipment on Maine's working waterfront. The crux of this issue is the identification of the appropriate decibel limits. As the committee is aware, there are currently no decibel limits pertaining to airboats, as they were exempted from current motorboat standards. Through the consensus rule-making process, the three individuals representing airboat operators offered to support the decibel limits proposed in LD 114. I want to underscore the significance of their agreement with these limits. Given the lack of prior testing and existing data, these harvesters are far from certain how these limits will affect their operations and their ability to pursue their livelihoods as safely and efficiently as possible. However, they agreed in good faith, in order to provide a mechanism to address the most egregious instances of abuse. And yet, this has been portrayed as an insufficient concession on their part.

Contributing to the challenge of finding the "right" solution to the decibel limits is the deficiency of available data. IFW has invested considerable staff time and resources in collecting baseline data, and the Working Group had the benefit of one demonstration exercise using 3 airboats, which is documented in the report. While other states have similar conflict around airboats, no state has implemented a solution that is easily transferrable to Maine.

Given these realities, the Administration supports LD 114 as a logical interim step while more information can be collected. DMR and IFW have agreed to carry out the ongoing work with a stakeholder group as described in LD 114, which provides a pragmatic approach for the agencies to develop experience with the new testing protocol (SAE standards J1970, which has not previously been used by Game Wardens or Marine Patrol Officers) consider other methodologies through which airboat noise may be mitigated, and explore the questions around restoring harvester access. Neither DMR nor IFW has staff or resources to conduct the additional task proposed in LD 89 regarding the comprehensive survey of professional studies of airboat noise.

Imposing the stricter decibel limits proposed in LD 89 will jeopardize the ability of shellfish harvesters to safely make their living, as no one has collected sufficient data to know what is typical noise generated under normal operating practices, and under different sea, weather, and load situations.

In closing, I want to express DMR's concern regarding the "slippery slope" of noise regulation of commercial activities. Maine's commercial fishing industries generate over \$1.5 billion in economic activity annually. While existing watercraft decibel limits apply to all Maine registered vessels there has been no enforcement of these limits on commercial vessels. Given the uniquely loud nature of airboats resulting from their use of propellers, DMR does not disagree that some reasonable regulation of this type of commercial vessel is merited. However, an exemption for all other commercial vessels would give assurance that there will not be further restrictions on Maine's working waterfront.

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