

130th Legislature  
**Senate of  
Maine**  
Senate District 12

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**Testimony for**

**LD 883**

**An Act To Protect Endangered Species Whose Life Cycles Include Maine Land or Waters**

Good morning Sen. Dill, Rep. Landry, and distinguished members of the Inland Fisheries and Wildlife Committee. My name is Dave Miramant, and I proudly represent all of the people of Appleton, Camden, Criehaven, Cushing, Friendship, Hope, Isle au Haut, Matinicus, Muscle Ridge Islands, North Haven, Owl's Head, Rockland, Rockport, South Thomaston, St. George, Thomaston, Union, Vinalhaven and Warren in the Maine Senate.

I come before you today to introduce LD 883, An Act To Protect Endangered Species Whose Life Cycles Include Maine Land or Waters.

This is another bill that the Revisor's Office had trouble with. The drafter really wanted my request to fit into the current law although what I was doing was changing the law back to the way it had been until 1996. Despite two attempts(all that we are allowed), it comes down to needing an amendment to get it right. The amendment replaces the bill as written. I asked that your analyst, Mr. Clark distribute it to you for this hearing.

I was made aware of this problem by some very committed fly fishers who realized that although the Atlantic Salmon is on the US Endangered Species List, it is only listed as a Priority 1 Species of Greatest Conservation Need under the MDIFW authored 2015 [Wildlife Action Plan](#). This is two levels below Endangered, and the same classification given to Arctic charr (formerly known as blueback trout and Sunapee trout,) a rare but not critically endangered species in Maine.

Maine has two state-level ESA programs: [Maine Endangered Species Act](#) (MESA) and [Maine Marine Endangered Species Act](#) (MMESA.) MESA was enacted in 1975, two years after the federal ESA was established. It was managed by Maine Department of Inland Fisheries and

Wildlife (MDIFW) and Maine Department of Marine Resources (MDMR) depending on the species. MMESA was enacted in 2003 to separate inland from marine species. At that time, all previously listed marine species were transferred from MESA to MMESA, and by default from MDIFW to MDMR.

“The Legislature finds that various species of fish and wildlife have been and are in danger of being rendered extinct within the state of Maine, and that these species are of esthetic, ecological, educational, historical, recreational and scientific value to the people of the State. The Legislature, therefore, declares that it is the policy of the State to conserve, by according such protection as is necessary to maintain and enhance their numbers, all species of fish or wildlife found in the State, as well as the ecosystems upon which they depend.” – 107th Maine Legislature, 1975

From 1975 through 1994, federally-listed species were automatically listed at the state level under MESA. In 1995, the Maine Legislature ([LD 428](#)) eliminated the mandatory listing of federally-listed species provision, requiring that all new state listings be approved by the legislature. In 1996, the legislature passed an emergency bill ([LD 1645](#)) that changed the designation of Endangered species from the Secretary of the Interior to the Commissioner of MDIFW.

State ESA programs allow for state-only listings, and up-listing of federally listed species (threatened to endangered), when the situation at the state level is worse than it is at the national level. They are not intended to challenge federal listings, as by the time the federal government lists a species as threatened or endangered under the ESA, it is in trouble throughout its range. Failing to list a federally-listed species at the state level flies in the face of the intent of both federal and state law.

Thirty-six states (or 72%) mandate state-level listing of all federally listed species found in their state, and at the same level or higher. Four other states have statutes that say state listing of federally listed species is “recommended” or “highly recommended.” Only 10 states – Alabama, Alaska, Arkansas, California, Colorado, Maine, Nevada, South Dakota, West Virginia, and Wyoming – do not require, or even recommend, listing federally-listed species at the state level. And to be fair, in the case of Alaska, California and Colorado, most federally-listed species are listed at the state level.”

This bill makes the law return to the way the MESA and MMESA programs were handled prior to 1996. It removes ambiguity and possible preference or inadequate listing of species under these acts by state officials or the legislature.

Thanks to Midcurrent and Bob Mallard for the article: [States Defying the Federal ESA: Bad Science and Bad Politics](#)

Thank you for your consideration, I am glad to answer questions if I can.

**LD 883**  
**SPONSOR AMENDMENT**  
**Offered by Sen. Miramant**

Amend the bill by striking everything after the enacting clause and before the summary and replacing with the following:

**Sec. 1. 12 MRSA §6973** is amended to read:

**§6973. Designation of marine species as state endangered or state threatened**

**1. Commissioner's authority.** The commissioner may recommend a marine species found in the State for designation as a state endangered or state threatened marine species under section 6975 if that species is listed as an endangered or threatened species by the United States Secretary of the Interior, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

**2. Modification to list.** The commissioner may recommend that a marine species designated as a state endangered or state threatened species be removed from the list in section 6975 or recommend other changes to that list.

**3. Public notice and hearings.** Prior to recommending an addition, deletion or other change to the list of state endangered and state threatened marine species in section 6975, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

**4. Rulemaking.** The commissioner by rule shall designate a marine species as a state endangered or state threatened marine species if that species:

A. Is listed as an endangered or threatened species by the United States Secretary of the Interior or Secretary of Commerce, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended;

B. Uses waters of the State for any part of its life cycle; and

C. Is not listed in section 6975, 12803 or rules adopted under subsection 12803.

Rules adopted under this subsection are routine technical rules as defined in Title 5, Chapter 375, Subchapter 2-A.

**Sec. 2. 12 MRSA § 6974** is repealed.

~~§6974. Legislative authority~~

~~The Legislature has sole authority to designate a marine species as a state endangered or state threatened species or to remove a species or change the designation of a species listed in section 6975.~~

Sec. 3. 12 MRSA §6975 is amended to read:

**§6975. List of state endangered and state threatened marine species**

~~In addition to species designated by rule pursuant to section 6973, the~~ The list of state endangered or state threatened marine species by common name, scientific name and status ~~is~~ are as follows:

1. **Right whale.** Right whale, *Eubalaena glacialis*, endangered;
2. **Humpback whale.** Humpback whale, *Megaptera novaeangliae*, endangered;
3. **Finback whale.** Finback whale, *Balaenoptera physalus*, endangered;
4. **Sperm whale.** Sperm whale, *Physeter catodon*, endangered;
5. **Sei whale.** Sei whale, *Balaenoptera borealis*, endangered;
6. **Leatherback turtle.** Leatherback turtle, *Dermochelys coriacea*, endangered;
7. **Atlantic ridley turtle.** Atlantic ridley turtle, *Lepidochelys kempii*, endangered;
8. **Loggerhead turtle.** Loggerhead turtle, *Caretta caretta*, threatened; and
9. **Shortnose sturgeon.** Shortnose sturgeon, *Acipenser brevirostrum*, endangered.

Sec. 4. 12 MRSA §12803 is amended to read:

**§12803. Designation of endangered species**

1. **Standards.** The commissioner shall recommend a species to be listed as endangered or threatened under subsection 3 whenever the commissioner finds one of the following to exist:

- A. The present or threatened destruction, modification or curtailment of its habitat or range;
- B. Overutilization for commercial, sporting, scientific, educational or other purposes;
- C. Disease or predation;
- D. Inadequacy of existing regulatory mechanisms; or
- E. Other natural or manmade factors affecting its continued existence within the State.

2. **Commissioner's duties.** In recommending a species to be listed as endangered or threatened under subsection 3, the commissioner shall:

- A. Make use of the best scientific, commercial and other data available;

B. Consult, as appropriate, with federal agencies, other interested state agencies, other states having a common interest in the species and interested persons and organizations; and

C. Maintain a list of all species that the Legislature has designated to be endangered or threatened, naming each species by both its scientific and common name, if any, and specifying over what portion of its range each species so designated is endangered or threatened.

**3. Legislative authority list.** ~~The Legislature, as sole authority, shall designate a species as a state endangered or state threatened species.~~ In addition to the species designated by rule under subsection 6, The list of state endangered or state threatened species by common name, scientific name and status is are as follows:

- A. Least tern, *Sterna antillarum*, endangered;
- B. Golden eagle, *Aquila chrysaetos*, endangered;
- C. Piping plover, *Charadrius melodus*, endangered;
- D. Sedge wren, *Cistothorus platensis*, endangered;
- E. Grasshopper sparrow, *Ammodramus savannarum*, endangered;
- F. Box turtle, *Terrapene carolina*, endangered;
- G. Black racer, *Coluber constrictor*, endangered;
- H. Roseate tern, *Sterna dougallii*, endangered;
- I. Northern bog lemming, *Synaptomys borealis*, threatened;
- J. Blanding's turtle, *Emydoidea blandingii*, endangered;
- K. Black tern, *Chlidonias niger*, endangered;
- L. American pipit, *Anthus rubescens* (breeding population only), endangered;
- M. Peregrine falcon, *Falco peregrinus* (breeding population only), endangered;
- N. Roaring Brook mayfly, *Epeorus frisoni*, threatened;
- O. Ringed boghaunter, *Williamsonia lintneri*, threatened;
- P. Clayton's copper, *Lycaena dorcas claytoni*, threatened;
- Q. Edwards' hairstreak, *Satyrium edwardsii*, endangered;
- R. Hessel's hairstreak, *Callophrys hesseli*, endangered;
- S. Katahdin arctic, *Oenis polixenes katahdin*, endangered;
- T. Spotted turtle, *Clemmys guttata*, threatened;
- U.
- V. Razorbill, *Alca torda*, threatened;
- W. Atlantic puffin, *Fratercula arctica*, threatened;
- X. Harlequin duck, *Histrionicus histrionicus*, threatened;
- Y. Arctic tern, *Sterna paradisaea*, threatened;

Amend the bill by striking everything after the enacting clause and before the summary and replacing with the following:

**Sec. 1. 12 MRSA §6973 is amended to read:**

**§6973. Designation of marine species as state endangered or state threatened**

**1. Commissioner's authority.** The commissioner may recommend a marine species found in the State for designation as a state endangered or state threatened marine species under section 6975 if that species is listed as an endangered or threatened species by the United States Secretary of the Interior, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended.

**2. Modification to list.** The commissioner may recommend that a marine species designated as a state endangered or state threatened species be removed from the list in section 6975 or recommend other changes to that list.

**3. Public notice and hearings.** Prior to recommending an addition, deletion or other change to the list of state endangered and state threatened marine species in section 6975, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

**4. Rulemaking.** The commissioner by rule shall designate a marine species as a state endangered or state threatened marine species if that species:

A. Is listed as an endangered or threatened species by the United States Secretary of the Interior or Secretary of Commerce, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended;

B. Uses waters of the State for any part of its life cycle; and

C. Is not listed in section 6975, 12803 or rules adopted under subsection 12803.

Rules adopted under this subsection are routine technical rules as defined in Title 5, Chapter 375, Subchapter 2-A.

**Sec. 2. 12 MRSA § 6974 is repealed.**

~~§6974. Legislative authority~~

- Z. Upland sandpiper, *Bartramia longicauda*, threatened;
- AA. Swamp darter, *Etheostoma fusiforme*, threatened;
- BB. Tidewater mucket, *Leptodea ochracea*, threatened;
- CC. Yellow lampmussel, *Lampsilis cariosa*, threatened;
- DD. Tomah mayfly, *Siphonisca aerodromia*, threatened;
- EE.
- FF. Twilight moth, *Lycia rachelae*, threatened;
- GG. Pine barrens zanclognatha, *Zanclognatha martha*, threatened;
- HH. Redfin pickerel, *Esox americanus americanus*, endangered;
- II. Juniper hairstreak, *Callophrys gryneus*, endangered;
- JJ. Rapids clubtail, *Gomphus quadricolor*, endangered;
- KK. New England cottontail, *Sylvilagus transitionalis*, endangered;
- LL. Black-crowned night heron, *Nycticorax nycticorax*, endangered;
- MM. Common gallinule, *Gallinula galeata*, threatened;
- NN. Great cormorant, *Phalacrocorax carbo* (breeding population only), threatened;
- OO. Short-eared owl, *Asio flammeus* (breeding population only), threatened;
- PP. Purple lesser fritillary, *Boloria chariclea grandis*, threatened;
- QQ. Sleepy duskywing, *Erynnis brizo*, threatened;
- RR. Boreal snaketail, *Ophiogomphus colubrinus*, threatened;
- SS. Brook floater, *Alasmidonta varicosa*, threatened;
- TT. Barrow's goldeneye, *Bucephala islandica*, threatened;
- UU. Least bittern, *Ixobrychus exilis*, endangered;
- VV. Cobblestone tiger beetle, *Cicindela marginipennis*, endangered;
- WW. Frigga fritillary, *Boloria frigga*, endangered;
- XX. Little brown bat, *Myotis lucifugus*, endangered;
- YY. Northern long-eared bat, *Myotis septentrionalis*, endangered;
- ZZ. Eastern small-footed bat, *Myotis leibii*, threatened; and
- AAA. Six-whorl vertigo, *Vertigo morsei*, endangered.

**4. Process for recommendation; notice and hearings.** Prior to recommending an addition, deletion or other change to the endangered and threatened species listed in subsection 3, the commissioner shall provide for public notice and public hearings on that proposed recommendation in accordance with the provisions of Title 5, chapter 375, subchapter 2.

**5. Designation by Legislature.** The Legislature may not amend the list of endangered or threatened species in subsection 3 except upon the recommendation of the commissioner.

**6. Rulemaking.** The commissioner by rule shall designate a species as a state endangered or state threatened species if that species:

A. Is listed as an endangered or threatened species by the United States Secretary of the Interior or Secretary of Commerce, pursuant to the United States Endangered Species Act of 1973, Public Law 93-205, as amended;

B. Uses the land or waters of the State for any part of its life cycle; and

C. Is not listed in subsection 3, section 6975 or rules adopted under 6973

Rules adopted under this subsection are routine technical rules as defined in Title 5, Chapter 375, Subchapter 2-A.

### SUMMARY

This amendment replaces the bill. This amendment does the following.

1. Requires the Commissioner of Marine Resources to designate a marine species as a state endangered or state threatened species if the species is listed as an endangered or threatened species under the United States Endangered Species Act, the species uses the waters of the State for any part of its life cycle and the species is not already so designated in state law or rule.
2. Requires the Commissioner of Inland Fisheries and Wildlife to designate a species as a state endangered or state threatened species if the species is listed as an endangered or threatened species under the United States Endangered Species Act, the species uses the land or waters of the State for any part of its life cycle and the species is not already so designated in state law or rule.
3. Removes provisions of law that provide that the Legislature is the sole authority to designate species as endangered or threatened.
4. Continues to authorize the Commissioner of Marine Resources and the Commissioner of Inland Fisheries and Wildlife to recommend additional species to the Legislature for listing as an endangered or threatened species.