



Testimony of the Island Institute Against LD 1146, An Act To Protect Maine's Ocean Waters and Support Regulatory Oversight and the Long-term Health of the Aquaculture Industry

April 13th, 2021

Senator Miramant, Representative McCreight, and members of the Committee on Marine Resources, my name is Nick Battista, and for the reasons set forth below, I am offering this testimony on behalf of the Island Institute against LD 1146.

The Island Institute is a 38-year-old nonprofit organization based in Rockland, Maine. We work to sustain Maine's island and coastal communities and are committed to a just, resilient, and vibrant future for the coast of Maine. We work in partnership with courageous leaders to support resilient communities and confront a changing world. The Island Institute's community development work focuses on: the marine economy, climate and energy pilots, small business, education, and leadership. Broadband is foundational to all of this work, and all Mainers need to have the ability to use high-speed, reliable internet.

Maine's small coastal communities are highly dependent on fisheries. For a sense of just how dependent Maine communities *are* on our fisheries, the value of lobster landings for Rockland, Stonington, and Vinalhaven are almost equal to the total combined value of all commercial fish species caught in New Hampshire, Connecticut, and Rhode Island.

This dependence coupled with environmental, economic, and regulatory changes means Maine's fisheries face an uncertain future. Opportunities for marine-related economic diversification are necessary to support Maine's island and remote coastal communities now and into the future.

Shellfish and seaweed aquaculture have emerged as sole or complementary income for fishermen and their families and a sustainable source for helping them continue to make a living from the water for years to come. For some fishing businesses, shellfish and seaweed aquaculture play a role similar to how Maine fishermen incorporated shrimp, groundfish, lobster, and other species into a year's worth of income in the past. An aquaculture business presents a viable alternative income stream for entrepreneurial fishermen.

From 2015-2019, our Aquaculture Business Development (ABD) program supported 133 people in assessing their options to start aquaculture businesses and helped grow 33 new aquaculture businesses—many founded by fishermen in an effort to diversify their income.

Through this work, we spent considerable time helping program participants understand the connections between their potential aquaculture operations, their businesses, and the regulatory

overlays that govern their industry. Many participants took a good look at aquaculture, developed a better understanding of whether their ideas would be feasible, and decided not to pursue an aquaculture business. Routinely, we found that site and species selection would limit business opportunities or complicate a business's effort to move forward through the regulatory process and into operation.

- **Site selection** – Site characteristics such as protection from wind and waves, water temperature and flow, bottom depth and composition, other uses in the area, regulatory closures, site accessibility, and distance from working waterfronts all matter. One side of a cove may have warm water flowing off of mudflats on an outgoing tide, while the other side of the cove may be much cooler. These slight differences may significantly impact how fast oysters grow and what they taste like.
- **Species selection** – Some species grow quickly, while some grow more slowly. Kelp is set out in the fall and harvested in the spring. Oysters may take three years of regular tending to reach market size. A mussel operation typically needs to be growing mussels at scale to justify the expensive capital equipment required to handle the product. While promising and grown elsewhere, scallops are just emerging as a viable opportunity in Maine.
- **Operating and business model** – Each species is grown with different gear types, and each gear type has its own needs for tending, cleaning, and growing out the organisms. Tending gear takes time and coordination of business operations, and these factors often play an underappreciated role in the aquaculturist's business model. The market opportunities to sell the product vary by species and business model.

The interplay between these factors related to the site, species, and business model often helped clarify for participants that aquaculture was not the right business for them. For those who moved forward through this multifaceted calculus, the regulatory structure provides clear guidance and guardrails that limit their options. Aquaculture leases in Maine cannot be issued if they unreasonably interfere with navigation, fishing, marine, and wildlife habitat, or the public use and enjoyment of various nearby facilities. The Commissioner needs to make findings for each of these areas based on the facts and information in the record. Further, the Commissioner may issue conditions on the use of the leased area and limits on the aquaculture activities that can be conducted. Leasing is an adjudatory process that protects the public interest, which is the proper process for the State to use when transferring significant or exclusive right to use the State's waters. While this doesn't mean that any use by any other industry is cause for denying a lease, it does mean that aquaculture is at the bottom of the pile when it comes to balancing different coastal uses.

The leasing process can be lengthy. Applicants incur costs when they submit the application and spend a significant amount of time preparing the application materials. For the most part, we have seen that prospective aquaculturists understand the robust regulatory structure and decision criteria for granting leases before they enter the process. Well-prepared applicants who have thoughtfully sited their projects and engaged the area stakeholders reduce the State's need to deny applications. Many potentially challenging aquaculture operations do not make it to the point of applying, let alone progressing through the process to a denial. We have seen that the straightforward, robust, existing regulatory process leads to successful applications.

In terms of the proposed concept draft, the Island Institute believes that the Committee should give consideration to the significant body of work that already exists in Maine. These large, collaborative, multi-stakeholder efforts have produced a considerable volume of material that

bears on many of the ideas contained in or at least implied by LD 1146's language. They have done so through a public process that has welcomed anyone interested in learning more.

- **Sustainable Ecological Aquaculture Network** – A five-year, \$20 million National Science Foundation funded EPSCoR research project was completed in January of 2020. A high-level overview of some of the work completed is available here <https://umaine.edu/epscor/2020/04/17/seanets-legacy-the-impact-of-interdisciplinary-aquaculture-research-on-the-state-of-maine/> and publications resulting from this work continue to emerge.
- **Maine Climate Council** – The Coastal and Marine Work Group made numerous recommendations in the spring of 2020 to support adaptation and mitigation to climate change. These recommendations were the result of a significant stakeholder process and incorporated multiple opportunities for those concerned about the future of this sector broadly to weigh in. One highly relevant recommendation from this group was to *"evaluate and implement ways in which Maine's fishery and aquaculture laws and regulations can provide the opportunity to address environmental change and emerging fisheries while recognizing the need for regulatory stability."*
- **10-year state strategic plan** – Recognized the growing importance of the aquaculture sector and the critical role it plays in addressing climate change, spurring innovation, and growing our workforce. Specifically, this report recommends *"Pursuing opportunities for sustainable fishing, such as aquaculture, to complement traditional fishing and meet the growing demand for a traceable food supply that is changing the way we fish and farm. Maine should also pursue the growth of support services, such as finfish vaccines, testing for exports, and veterinary support to grow ancillary economies."*

Two other efforts are underway that also may be relevant. Maine Sea Grant is conducting a review of aquaculture as part of an effort to create an aquaculture road map. And as you heard in February, SEAMaine is more broadly developing a road map for the marine economy.

The Island Institute supports having challenging conversations about the future of the coast. How these conversations happen, how they are framed, and when they occur are crucial to making strides towards addressing the complex challenges our coast is facing. Using the prior work in this space as a building block is foundational if the proposed study commission will generate helpful information. As noted in our testimony for LD 106, we routinely hear the need to address continued understanding between wild-caught fishing, aquaculture, and their uses of shared waters. This work falls not only to the State but to all participating in the process and starts with providing accurate, fact-based information.

The success of the study commission is far from guaranteed. Based on the absence of language to establish this commission, the qualifications of who might be on it, and clear terms under which it is operating, it is far from certain that a five-month study commission will generate significant new insight. The mixing of study review considerations with substantive policy change undercuts the credibility of this study commission's resulting work. From a stakeholder process perspective, this is a challenging way to start the conversation.

The concept draft also touches on policy and regulatory areas where the specific statutory text matters greatly. Concepts are outlined with specificity, but the actual language to implement these concepts is not proposed. The absence of specific language here makes it challenging to

provide suggestions to improve the language. That said, we offer the following in an effort to help move this conversation forward:

- **Lines 5-8** – It is unclear if this section is meant to have any statutory impact or if this is what would be a 'whereas' clause in a resolution or if this is actually a summary of the proposed changes. If this language is intended to have any impact, it needs significantly more detail in order to allow stakeholders to understand what the sponsor actually intends here.
- **Lines 9-11** – From the Island Institute's perspective, an organization that has supported over 30 fishermen and others in starting aquaculture businesses, the permitting framework for aquaculture in Maine is clear. That does not mean it is not complicated or time-consuming, but the steps and process are reasonably straightforward. Numerous resources exist to help both emerging aquaculturists participate effectively in this process.
- **Lines 9-11** – In terms of learning from other states, as an organization that believes in the value of learning from elsewhere, we also know it is essential to make sure information from other locations is couched in the appropriate context. For example, the shoreline in Harpswell is almost half as long as the entire shoreline of Rhode Island. We know that Maine fishermen regularly take twice as many commercial fishing trips as fishermen in any other state on the East Coast. What works in other states might not scale well to Maine. Blindly seeking to import best practices absent contextualizing those practices in the geography and communities along our coast creates significant opportunities for unintended consequences to adversely impact the very communities we are all trying to support.
- **Lines 18-23** – These lines contain several likely significant and substantive changes to the existing statute. Absent specific statutory language, it is hard to assess the potential impact. However, it is worth noting that language implicating transfers and renewals should be carefully reviewed for whether there are any impacts on bank loans or other financing options for growers. Additionally, the "further" on line 21 indicates that these ideas outlined above would apply to all leases, including those under 5 acres.
- **Lines 21-23** – This proposal likely has significant impacts on the aquaculture industry. Having supported fishermen from all parts of the coast in evaluating the suitability of a site for aquaculture, it is clear that many factors go into this decision. Some of these factors are environmental, some of them are business or operational decisions, and some are social factors. A 5-acre size limit is arbitrary, and this proposal would likely significantly restrict the growth of the aquaculture sector in the State. Absent the actual proposed statutory language, it is hard to assess these provisions as anything other than an attempt to stop the growth and development of the aquaculture industry in its tracks.
- **Line 27-36** – The relationship between the strategic plan proposed in this provision and the other parts of the concept draft is not clear. It seems the other review provisions and substantive policy changes should come after such an effort rather than before it. As noted above, this is an area where significant work has already been done.

We urge you to vote ONTP on this bill. If statutory text is subsequently proposed, please consider providing the businesses and individuals potentially impacted by that text the courtesy of being able to weigh in on the actual proposal through an additional public hearing instead of having to rely on merely a description of what might be intended.