

**TESTIMONY OF
Meredith Mendelson
Department of Marine Resources**

**The Department of Marine Resources (DMR) is testifying
In Opposition to
LD 1146 An Act To Protect Maine's Ocean Waters and Support Regulatory Oversight
and the Long-term Health of the Aquaculture Industry
Before the Committee on Marine Resources
Sponsored by Representative Alley
Date of Hearing: April 13, 2021**

Senator Miramant, Representative McCreight, and members of the Joint Standing Committee on Marine Resources, my name is Meredith Mendelson, Deputy Commissioner of the Department of Marine Resources, and I am testifying on behalf of the Department in opposition to LD 1146.

As with all concept drafts, it is difficult to comment on this bill as proposed legislation, as many of the specific details are not provided at this time. Generally, the bill appears to seek to require a review of all aspects of Maine's aquaculture leasing and licensing process and the resources available to the Department to carry out its responsibilities relative to the aquaculture industry, as well as the development of a statewide aquaculture strategic plan, including the possibility of expedited permitting areas for leases over 5 acres.

Despite the exhaustive review proposed, the bill also proposes a number of legislative changes that have had not the benefit of any broad-based discussion of the actual merits of any of the specific proposals.

The bill proposes that for leases greater than 5 acres in size, the current exemption from the Natural Resources Protection Act (NRPA) and the site location development laws would be removed. Maine's aquaculture leasing and licensing laws preceded NRPA, and at the time NRPA was created, the leasing process and regulations for aquaculture were determined to effectively address the same considerations as NRPA. For that reason, aquaculture lease proposals were exempted from NRPA. DMR has consulted with DEP on this current proposal, and DEP has indicated that they would find the removal of this exemption to create a duplicative process at DEP. Specifically, DEP would be basing their review on input from DMR. However, to administer and conduct this duplicative process would require 2-3 FTEs at the Environmental Scientist III level at DEP. It would also require increased administration on the part of DMR aquaculture or environmental permit review staff.

In addition, the bill amends the laws governing the lease size requirements to provide that each lease may not exceed 50 acres in area. The existing size limit for individual leases is 100 acres. There is currently one existing lease in excess of 50 acres. However, leases larger than 50 acres

are not inherently a source of conflict. The existing lease in excess of 50 acres is an 89.78 acre lease for bottom culture of blue mussels in Eastern Bay in the town of Lamoine. There is no gear on the site, only buoys to mark the site. In July of this year, this lease will have been in existence for 20 years. The lease allows for compatible uses such as lobstering and recreational fishing.

The bill also seeks to prevent a person from having an ownership interest in more than 10 leases, or total lease areas in excess of 100 acres. At present there is no limit on the number of leases a person may hold. The current limitation on the aggregate number of acres a person may hold is 1,000 acres, a limit that is established in regulation. The Legislature empowered the commissioner to establish lease acreage limits in excess of 500 acres and up to 1500 acres if “the commissioner determines that the increase is beneficial for the management of aquaculture, and is environmentally and economically appropriate” (12 MRS §6072 §§13-A paragraph B).

Limiting a person to holding no more than 100 acres would impact two existing businesses in Maine – Acadia Aquafarms and Cooke Aquaculture. Further, it would end the existence of finfish aquaculture in Maine, as it would not be economically or environmentally feasible to pursue. The existing acreage limit allows a finfish aquaculturist to fallow sites, and use rotational management to responsibly manage the environmental impacts of growing finfish. While Cooke Aquaculture currently holds 24 leases totaling 617.69 acres, not all of that acreage is in production at any given time. As you are aware, Cooke Aquaculture is a significant source of employment in Washington county and termination of their operations as this legislation would require would have significant economic impacts.

Beyond the specific proposals, the broad review of every aspect of aquaculture in Maine that LD 1146 suggests is not a workable approach to these issues. Instead, the Department has been conducting targeted outreach on a number of fronts to understand and address specific challenges. As some examples of these efforts:

- DMR staff have reached out to specific municipalities with offers to meet to address their specific concerns. Municipalities have a unique role with regard to aquaculture applications in their area and their experience with the leasing process varies widely based on the history of aquaculture in their area. For example, Damariscotta has been participating in the lease process for decades, but is now facing the challenge of understanding the limitations of that river system. Conversely, Chebeague Island has seen increasing applications most recently, and is building their capacity to effectively engage in the leasing process.
- In December 2020, DMR staff organized and held “Public Hearing 101” virtual meetings, to assist interested members of the public in understanding the public hearing process, and how to effectively provide input on pending applications. Aquaculture lease hearings are adjudicatory proceedings, which can be intimidating for all parties. The more that the Department can do to explain this process outside the proceeding for a specific proposal, the better the information we will receive to inform lease decisions.

These meetings were well attended by 25-35 participants at each event, and the Department received positive feedback on this effort.

- Understanding that consistent marking of aquaculture gear across municipalities was of interest, DMR Aquaculture Division staff convened a multi-town working group of harbormasters, growers, and fishermen to develop recommendations. The group developed a proposal for a universal marking system for aquaculture sites in Maine so that aquaculture leases and licenses are easily identifiable. This proposal will be reviewed by the Aquaculture Advisory Council and may be adopted into regulation.
- Within the Department's Coastal Zone Management grant beginning this summer, DMR has proposed funding to support planning for expanded engagement in discussions around continued aquaculture development. Given the broad nature of this topic, it is important to appropriately frame this conversation, to ensure that the input that is received is constructive, and can subsequently be implemented in a meaningful way.
- Finally, DMR has been working with ME Sea Grant for well over a year to identify ways to engage different constituencies in public conversations regarding aquaculture in Maine, and intends to continue those efforts so that those plans may be implemented when appropriate. DMR anticipates partnering with Sea Grant and others in the development and implementation of the expanded aquaculture development discussions mentioned above.

As the committee is well aware, there are very real limitations resulting from COVID that impact how conversations can be held. Over a year into the pandemic, the Department is well versed on the strengths and weaknesses of virtual meetings, and has a good sense of input we can collect in this manner, and what is best saved for in-person communication. Further, COVID forced us to pause the hearing schedule until it was determined that we could hold remote hearings, and staff are working diligently through many delayed hearings at this time. An open-ended, state-wide conversation on every aspect of aquaculture with no identified framework to enable constructive feedback that could actually be used to implement change, is not feasible or beneficial to anyone involved. For the Department, it would serve only to prevent staff from carrying out their work, further delaying existing applications. But more importantly, it could also create frustration or confusion in the public about the appropriate channels for resolutions of any identified concerns. The Department believes that further dialogue is appropriate and warranted, but must be well-crafted and deliberate to ensure that public input is able to be used effectively to reach an outcome.

For these reasons, I urge you to vote Ought Not to Pass on this concept draft. Thank you for your consideration, and I would be happy to answer any questions you might have.