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TESTIMONY OF John Sowles
In Opposition to LD 1146
Before the Committee on Marine Resources
Date of Hearing: April 13, 2021

Senator Miramant, Representative McCreight, and members of the Joint Standing Committee on Marine Resources. My name is John Sowles of North Yarmouth and am here to offer both a historical perspective on aquaculture regulation in Maine and some comments as they relate to concerns expressed in the Concept Draft “An Act to Protect Maine’s Ocean Waters and Support Regulatory Oversight and the Long-term Health of the Aquaculture Industry.” I began my State career around 1976 with the Department of Environmental Protection (DEP) just as marine aquaculture was emerging in Maine. There, I co-authored the Finfish Aquaculture Monitoring Program (sometime referred to as the FAMP), provided the DEP’s Land Bureau with biological impact opinions for both Natural Resources Protection Act (NRPA) and Site Location of Development Law (Site Law) applications, conducted and published original research into environmental effects of aquaculture, served on national and international aquaculture panels, and advised USEPA as they wrestled with the issue of permitting finfish aquaculture under the Clean Water Act. In 2000, I moved to the Department of Marine Resources (DMR) where, among other things, I supervised the Aquaculture Section. I retired in 2010 but remain active in marine science. With full disclosure, I am currently retained by Cooke USA to advise on science and permitting matters entirely unrelated to this bill and hearing. I am here as an interested citizen to share my experience with and knowledge of aquaculture policy and regulation in Maine.

BRIEF HISTORY/CONTEXT

- In 1973, the Legislature gave the DMR authority to lease state-owned waters for aquaculture.
- Prior to about 1980, aquaculture in Maine consisted of a handful of small, one-off operations, mostly steelhead, salmon, mussels and European oysters. I’m guessing there were fewer than 10 marine aquaculture operations in the entire state.
- By about 1982, concerns over environmental affects and use conflicts by marine users prompted the State to assess the growth of aquaculture and its perceived potential impacts on our coast. That summer (1982+/-) a fact-finding group of Legislators, DEP and DMR staff and public met to assess those concerns.
- Following that effort, the DMR established its Chapter 2 aquaculture regulations to ensure that aquaculture would not unreasonably or significantly affect existing uses or the environment while providing a predictable process for both aquaculturists and the public
- The Legislature also worked to address a concern of both DMR and DEP, that being the discharge of feed or other materials into public waters. From that, the Finfish Aquaculture Environmental Monitoring Program was created with standards to protect Maine’s water quality standards as well as those under the federal Clean Water Act.
- Also at the time, DMR, DEP, Department of Conservation, the US Army Corps, NMFS, USFWS and USEPA each had a role in permitting resulting in much overlap and duplication of effort. The agencies worked out agreements and processes with DMR that achieved the goals of their respective laws and regulations.
- So when Maine created its Natural Resource Protection Act (NRPA) and Site Laws (around 1988), aquaculture was exempted from both because the DMR’s leasing process and regulations were already effectively addressing those requirements.
- After many years of relatively few concerns but with marine aquaculture expanding, similar vocal concerns by some members of the public began to emerge by the early 2000s. The Joint Standing Committee on Marine Resources passed the “Resolve: To Establish a Task Force on the Planning and Development of Marine Aquaculture in Maine.”

- The 11-member Task Force conducted a comprehensive review of aquaculture in Maine. It did so **in the context of other uses**. In addition to the Task Force, a Stakeholder Advisory Committee (also 11 members) represented diverse interests participated throughout the process. Together, they held 10 public meetings around the state and addressed 12 categories of concerns. Convening the Task Force, stakeholders and public and preparing the report was a huge effort and expense on the part of the State.
- The Task Force agreed that final decision-making authority should remain with the Commissioner of the DMR based on a set of defined criteria and findings of fact. However, the report also supported changes to the leasing process to enhance public participation and added standards for noise, lights, height.
- In 2008, DEP implemented its waste discharge permit authority under EPA for net-pen aquaculture, thus retiring the need for the FAMP conducted by DMR.

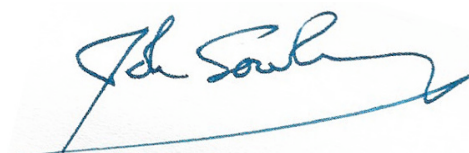
I have a few parting comments:

- I strongly urge you to familiarize yourselves with the Task Force report as it addresses virtually all the concerns noted in both the Concept Draft and in testimony. The full 193 page report is available at https://www.maine.gov/dmr/aquaculture/reports/documents/AQTF_FullReport2-13.pdf
- Requiring the DEP to apply redundant layers of permitting (NRPA and Site Permits) on top of standards already addressed by DMR's lease process not only affects aquaculturists but burdens DEP at the expense of processing other permits totally unrelated to aquaculture. For what gain?
- The current application process includes a preapplication (with a municipal officer present), draft application, public scoping session, site marking for a period of time before the hearing, riparian owner notification. With this abundant opportunity for the public and agency staff to convey concerns before the adjudicatory hearing, I don't see how anyone can say they don't have an opportunity to provide input.
- It is interesting to me that one of the objections is the high approval rate for applications. Considering it takes from 18 to 36 months for DMR to render a decision, any applicant with any sense does their best to ensure that they meet the criteria and minimize conflict before investing in a public hearing.
- The Commissioner already has the authority to modify and even revoke leases that are not complying with the lease agreement well before the lease term expires.
- Looking at other states' leasing processes is a good idea and I am sure this Committee and DMR (especially the staff caught in the crossfire) would welcome any suggestions from the supporters of this bill that would improve the process. But this does not need another study. Ironically, many states look to Maine for guidance as they write their own aquaculture regulations.

When marine aquaculture is well done, it has much to offer in terms of addressing challenges to wild fisheries, water quality, habitat impacts from non-aquaculture activities, and diversifying local economic opportunities. Aquaculture and aquaculture regulation in Maine has and continues to evolve and respond to our changing conditions. Examples include the revised waste discharge permit for finfish operations, endangered species rules, biosecurity measures, visual and noise standards and on and on. Over my career, I have watched those adaptations happen when there is something to respond to. In this case, I don't see it.

In summary, I believe that, while perhaps well intentioned, the angst this bill reflects is more about the number of **proposed** leases and the fear of **potential** impacts rather than actual leases and actual impacts. Unless or until someone can show me specific impacts and conflicts, I suggest that this bill is premature.

Respectfully,



John Sowles