



# HOUSE OF REPRESENTATIVES

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## **LD 1916 “An Act To Create a Legal Defense Fund for the Maine Lobster Industry”**

### **Rep. Billy Bob Faulkingham**

Testimony in Support  
February 8, 2022

Good morning Senator Miramant, Representative McCreight, and members of the Committee on Marine Resources. I am Representative Billy Bob Faulkingham and I am here to present LD 1916 *An Act To Create a Legal Defense Fund for the Maine Lobster Industry*.

First, really quickly I'd like to explain why this bill was submitted as a concept draft. The reason is that a large component of this bill involves the Lobster Marketing Collaborative. At the time of writing this bill, the Collaborative did not exist in statute, because it had expired in October. It expired when the bill we passed in committee to continue the collaborative for 5 more years wasn't signed into law in time to keep it from expiring. We fixed that on our first day of this session, but bills were due out of the Revisor's office before that, so they drew my bill as a concept draft to get it out. I've had our analyst Lynne Caswell write a corrected sponsor's amendment, and that's what I'll be presenting today.

The Maine Lobster Industry is under attack. We are facing crippling regulations and industry collapsing lawsuits. The threats we face aren't politically partisan in nature, and we would certainly win the battle of public opinion. But that's not where this battle is being fought. It's being fought in court. Common sense and science have been totally disregarded by radical extremists who have weaponized the Endangered Species Act to target an industry that itself is full of some of the most environmentally conscious, and conservation minded men and women you will ever meet. That is why we need the most vigorous legal defense we can obtain.

I won't get too deep into the details, but it bears repeating that the last time a North Atlantic right whale was entangled in Maine lobster gear was over 17 years ago, and it was successfully freed. No right whale death has ever been linked to the Maine lobster industry. Over the last two decades the industry has made many gear modifications, and altered the way we fish to reduce the risk of entanglement. It has worked.

There are several important legal actions happening right now. The Maine Lobstermen's Association is engaged in court in Washington DC. The Maine Attorney General, and the Maine Lobster Union have both filed as intervenor in that case. This is a case brought by several NGO's against the federal government that has led to the severe restrictions coming down on the lobster industry. There is also a case the Lobster Union has filed in Bangor against the seasonal closure of nearly 1,000 square miles of the Gulf of Maine. After an initial victory in that case there was an appeal that didn't go in the industry's favor. That case is ongoing. Finally, there is a case the Maine Lobsterman's Association has filed in Washington DC against the biological opinion. This is the so called "science" the federal government has used to conclude that the lobster industry must reduce risk by 98% by 2030.

So those are the current legal battles, now I'd like to talk about how we help supplement these legal efforts.

Maine lobstermen pay \$1,538,900 in trap tag fees that is used as revenue for DMR in the Lobster Management Fund. They also pay \$1,446,943 in license surcharge fees for marketing. Dealers contribute another \$537,400.00 to this fund. My proposed LD 1916 would direct \$.20 from each trap tag, and 20% of the marketing collaborative to a Legal Defense Fund, which would be managed by a commission made up of 6 licensed lobstermen and 3 licensed Lobster Dealers appointed equally, each by the Governor, Senate President, and Speaker of the House. \$.20 from the tag fees would raise \$410,373.33. 20% of the marketing collaborative would raise \$396,868.60. That's \$807,241.93 that will be put towards our much needed legal defense.

The beauty of this proposal is that this bill is funded by the industry. It won't cost the state or the taxpayers a penny from the general fund. There is precedent for a proposal like this. This bill is very similar and almost mirrors the type of thing that was done when the industry came to the state to form the Lobster Marketing Collaborative. This is the industry asking to use some of its own money as a funding source for it's necessary legal defense.

I'd like to speak briefly about the two funding sources. First the trap tags; I fished before trap tags, and I was around for the discussion when they were implemented. Trap tags were implemented as an enforcement mechanism to

manage the creation of a trap limit. The tags cost us \$.10 then and were to be used as a management tool, not as a source of revenue. We were told they would never increase more than the cost to produce them. At some point there was a push to increase them from \$.10 to \$.20 with the extra \$.10 going towards whale research for the benefit of the industry. The tag price increased several more times, and today it has recently increased to \$.75. I believe the most recent round of tags cost the state \$.16 to purchase. The most recent increase was \$.25. This proposal will divert \$.20 of that to the Legal Defense Fund. The Department will increase the revenue it sees in the Lobster Management Fund from \$.50 to \$.55 even after we designate this \$.20 for legal defense. I am aware that the department funds around 18 positions both full or part time with the Lobster Management Fund. I am fully committed to assisting the department in raising the revenue it needs through the general fund. We must not make an industry being crushed by government regulations bear the responsibility of those positions solely by themselves. They are only one fishery of many, and their industry contributes a billion dollars to the Maine economy.

Now I'd like to speak briefly about the other funding source. This proposal diverts 20% of surcharges from the Lobster Marketing Collaborative. This fund receives over \$1.9 million dollars. About 75% from Lobster licenses and 25% from Lobster dealer licenses. This proposal would leave the collaborative well-funded with \$1.6 million dollars. I don't believe this would significantly impact the work they do. However, I am committed to keeping that initiative well-funded and have a solution for that funding gap. I've raised the issue in the past, about equity of surcharge across license levels. To further explain, Maine Lobster licenses have 3 tiers, who each pay a different amount of surcharge. Currently class 3 funds 50% of the surcharge from fishermen, followed by class 2 at 37%, and finally class 1 at an anemic 13%. I believe these class 1 licenses are largely latent license holders, and have been getting a free ride on the surcharge fees. I would support increasing the surcharge on class 1 licenses, or even simply eliminating that class, and going to a two class license structure. I would also support a small surcharge on recreational licenses for the legal defense fund. Although, I wouldn't support a recreational surcharge going to promotion, as recreational licenses are targeting lobsters for sustenance, I do believe recreational license holders have a vested interest in protecting the access to that means of sustenance.

Finally, I would further recommend to the board a couple more changes to the draft. First, implementation: I would recommend an implementation date of January 1, 2023. We've already begun 2022, and a bill like this shouldn't be implemented mid-year, as it would create too many difficulties. If the bill goes into effect at the start of 2023, it gives the Department and the Collaborative the necessary time to prepare for implementation.

Secondly, length of terms: term lengths for the commission members weren't included in the draft. I recommend the committee drafts the terms for two years, with no term limits. Two years keeps the commission accountable to the industry and their purpose on the board.

Finally, the commission expiration: I've proposed that this fund with commission expire in 10 years if it's not renewed by a future legislature. I don't believe any creation of government should go on indefinitely without accountability. I've chosen 10 years in length because that is about the length of time we are looking at fighting these current regulations. 2030 is the year the Federal government has set to reduce us 98%. If the industry survives until then, and the Commission and Fund are no longer necessary I've set up any remaining funds to be directed 50/50 back the Lobster Management Fund, and Lobster Marketing Collaborative. If neither exists then, the funds will go to the Department.

Thank you for your time. I hope the committee will support LD 1916. Thank you for your consideration. I will answer any questions you may have.

Respectfully,

Representative Billy Bob Faulkingham