

**TESTIMONY OF**  
**Patrick Keliher**  
**Department of Marine Resources**  
**The Department of Marine Resources (DMR) is testifying**  
**In Opposition to**  
**LD 563 An Act to Assert State Sovereignty over Ocean Waters**  
**up to 12 Nautical Miles off the State's Coast**  
**Before the Committee on Marine Resources**  
**Sponsored by Senator Brakey**  
**Date of Hearing: April 6, 2023**

Senator Reny, Representative Hepler, and members of the Joint Standing Committee on Marine Resources, my name is Patrick Keliher, Commissioner for the Department of Marine Resources, and I am testifying on behalf of the Department in opposition to LD 563.

LD 563 creates a new subsection of law regarding Maine's territorial waters. Under the existing definition of territorial waters in Title 12, this term means all waters of the State within the rise and fall of the tide seaward to the 3 nautical mile line. This bill amends Title 1 to claim Maine's jurisdiction over and control of all waters, and all submerged lands lying under those waters, within the rise and fall of the tide seaward for 12 nautical miles.

Whether or not the State of Maine could unilaterally assert its sovereignty or jurisdiction beyond the 3-mile limit under the current constitutional and statutory framework was explored in a legal and policy analysis prepared for DMR by the Marine Law Institute of the University of Maine in 1997. Their determination was that such a claim would not be legitimate. The seaward boundary of the states is defined by the Submerged Lands Act (SLA). The SLA is a U.S. federal law that recognized the title of the states to submerged navigable lands within their boundaries at the time they entered the Union. They include navigable waterways, such as rivers, as well as marine waters within the state's boundaries, generally three geographical miles from the coastline. Because the Submerged Lands Act is federal law, any inconsistent state law would be preempted under the Supremacy Clause.

Some states have pursued an argument in court that for historical reasons, they are entitled to a boundary of three marine leagues instead of three nautical miles (one marine league equals three nautical miles). Another approach to modifying the State's boundary would be to seek an amendment to the federal Submerged Lands Act extending state's jurisdiction. These are among the potentially available avenues to achieving a legally valid change in the State's seaward boundary.

Setting aside the issues of legality, it is also worth discussing what such a change could actually accomplish. In a press conference earlier this year, it was noted that this bill was a response to the overregulation of Maine's lobster industry by the federal government. However, it is important to understand that application of the Endangered Species Act or the Marine

Mammal Protection Act is not limited to federal waters, so such a change of state waters jurisdiction would have no effect on the applicability of the federal whale regulations.

In fact, expanding state waters out to 12 miles would increase the amount of risk associated with the Maine lobster fishery, by allowing more of the fishing effort (and associated vertical lines) to move offshore. Currently license holders that do not have a federal permit are limited to fishing within 3 miles of the coast. If those same license holders could fish as far offshore as 12 miles it will result in a higher rate of co-occurrence with right whales, creating more risk, that will then need to be further mitigated.

Finally, successfully obtaining jurisdiction over the waters out to 12 miles would come with many other obligations for DMR, which would require additional resources for the Department to meet. Some examples of this include:

- Marine Patrol enforcement of Title 12 marine resource laws and regulations may incur an added boat fuel and operating cost expense due to fishing activity in State waters being more spread out because fishermen without federal licenses would be able to fish out to 12 miles, rather than being limited to within 3 miles. It may take a patrol boat more time and resources to board and inspect 10 lobster boats spread out in a 10x12 nautical mile area rather than a 10x3 nm area. This logic would also apply to locating, hauling, and inspecting fixed gear.
- The current MOU with the USCG for Recreational Boating Safety specifies that MMP will investigate and complete reports on all recreational boating accidents occurring upon waters of concurrent jurisdiction (currently coastal waters out to 3nm). A change to a 12nm State jurisdiction would potentially result in an increase in time and expense to investigate and report on additional boating casualties. This increase would not be 4x the current effort due to the fact the majority of the recreational boating activity occurs near shore, however there would undoubtedly be an unquantified increase in effort and expense.
- MMP officers may currently enforce Title 17A criminal law within the State's 3nm jurisdiction. Increasing the State jurisdiction to 12nm would again, similar to the recreational boating accident investigation effort, increase BMP's potential workload investigating and taking enforcement action for incidents involving Title 17A violations. The State's exercise of criminal jurisdiction beyond the federally recognized 3-mile limit could conflict with and be preempted by federal laws establishing criminal jurisdiction beyond 3 miles with the US Coast Guard and the FBI.

While the Department shares the frustration caused by the expectation of additional federal regulations on Maine's lobster industry, LD 563 cannot achieve the jurisdictional change that it seeks, it would not provide the relief from federal regulations sought, it would increase the amount of risk the fishery presents, and it would create new and unwanted responsibilities for DMR. For these reasons, we ask the committee to vote Ought Not to Pass. Thank you for your consideration, and I would be happy to answer any questions you might have.