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**Testimony of Patrice McCarron  
Executive Director of the Maine Lobstermen's Association**

**Against  
LD 1810 An Act to Implement the Recommendations  
of the Governor's Ocean Energy Task Force**

**For the Committee on Utilities and Energy  
March 15, 2010**

Senator Hobbins, Representative Hinck, and members of the Joint Standing Committee on Utilities and Energy, my name is Patrice McCarron. I am the Executive Director of the Maine Lobstermen's Association (MLA), a state-wide fishing industry-based organization representing the interests Maine's lobster industry. The MLA has been monitoring the work of the Ocean Energy Task Force and the state's efforts to develop test sites for offshore energy in Maine state waters. The MLA is extremely concerned about the commercial ocean energy development in our inshore waters because such development will directly conflict with the centuries old lobster industry which is dependent on these waters.

The MLA recognizes the need to reduce our dependence on fossil fuels and become more energy independent, and have supported the state's goal to move in this direction. Last year, the MLA cautiously supported the development of wind energy test sites in state waters through LD 1465, as we saw the long-term value for the people of Maine. MLA supported the state's extensive outreach process with fishermen and affected communities in order to select demonstration sites with the least negative impacts to our fishermen and coastal communities. We did so with the understanding, as put forth by the State of Maine, that commercialization of offshore wind energy would be truly offshore – in federal waters only.

LD 1810 appears to be in conflict with the state's previous effort. LD 1810 facilitates the commercialization of ocean wind, tidal, and wave energy in state waters. The MLA, and many in the lobster industry, believed state officials who promised that the state's interests were limited to developing small scale, short-term test sites in state waters with commercialization

planned offshore. The MLA strongly oppose any permanent commercial development of ocean or wind energy sites in state waters.

Of Maine's 5,400 commercial lobstermen, 76% are limited to fishing in our state waters, within 3 miles of our coastline. Any commercial or permanent grouping of windmills, wave, or tidal technology in state waters would broadly impact Maine's lobster industry. Navigation would become increasingly difficult, fishing grounds would be lost, and gear conflicts will be more likely. The environmental consequences of these commercial developments are unknown. The lobster industry will experience economic hardship. As the economic backbone of our coastal communities, this hardship would be felt throughout our coastal communities.

The potential for these negative impacts on Maine's lobster industry is greatly reduced by restricting offshore wind to federal waters, since only 24% of Maine lobstermen hold a federal lobster permit and are able to fish beyond our state waters boundary. Maine's coastal wind resources are generally greater in more distant offshore waters than they are in our state waters. From our perspective, it simply does not make sense to pursue commercial wind development in state waters.

The MLA urges you to discourage the development of commercial wind farms in state waters. However, if commercial wind development is to occur, we offer several recommendations to strengthen the state's approach as outlined in LD 1810, and to align in more closely with the state's previous wind test site bill, LD 1465.

LD 1810 lacks proper safeguards to minimize impacts and ensure our commercial fisheries' sustainability. Proper safeguards include commercial industry consultation; continued monitoring of lobster and commercial fisheries species; continued industry association and lobster management zone input and participation; and remedial action should ocean wind, wave, or tidal technology displace commercial lobstermen.

Maine's lobster industry has been providing stable jobs and decent earnings for the citizens of Maine for hundreds of years. Nearly 80% of the state's lobster fishery occurs in state waters. Our fishermen know these waters well and depend on them for their living. The money earned by lobstermen support not only our lobstering families, but also an array of local businesses. If lobstermen are not earning money, the entire community will be hurt. It is imperative to be cognizant that there are precious few economic opportunities for the residents of our coastal communities, and many of these communities are highly dependent upon the economic success of the Maine lobster industry.

Therefore, the MLA cannot overstate the vital importance of establishing a process to consult the fishing industry during all stages of ocean and wind energy talks, permitting, troubleshooting, siting, implementation, and permitting renewals.

To ensure the commercial fishing industry's participation, the MLA recommends that the following changes to LD 1810 be made.

1. The Department of Marine Resources should be involved in each project. A commercial developer should be required to meet with all agencies whose jurisdiction is implicated in the siting process. Specifically, Department of Marine Resources should be present during the joint interagency pre-application meeting.<sup>1</sup>
2. Notice to implicated lobster zone management councils and the Marine Resources Advisory Council also should be required as part of the application process. 38 M.R.S. §480-E(1)(B) should require such notice by adopting a form of the following proposed language: “The department may not review an application for an offshore wind power project without providing: . . . [(3) Notice to any lobster management zone council(s) in whose zone the proposed project would be sited and to the Marine Resources Advisory Council.]”<sup>2</sup> Furthermore, the flush language under the same paragraph should specify that the lobster management zone council and the Marine Resources Advisory Council provide comments on a proposed project.

What remains unclear is the required permitting process for each commercial site. LD 1810 does not contain permitting requirements or standards; instead, it outlines how to obtain leases and easements of submerged lands and fee schedules. It is our understanding that the permitting process will be the same as or similar to that required for the testing sites off of Boons Island, Damariscove, and Monhegan Island as provided in LD 1465 pursuant to Title 38 M.R.S.

Continuity in language and permitting processes between LD 1810 and LD 1465 is vitally important. The State directly consulted the fishing industry before the passage of the LD 1465 on testing sites in state waters. The fishing industry was led to believe that commercialization would not occur in state waters. Without the fishing industry’s mandated participation in future projects, LD 1810 lacks support.

In MLA’s opinion, the only way for any commercial development in state waters to be considered “appropriately sited”, a term used throughout LD 1810, would be if the commercial fishing industry was included throughout the planning process. Any proposed commercial site should be held to the same rigorous permitting process as required for the test sites off of Damariscove, Monhegan Island, and Boons Island.

1. Lobster zone management councils, fishing industry representatives, and local municipalities must be included in the permitting process and be given the chance to issue comments.
2. Each applicant’s fish and wildlife monitoring plan should provide specifically for monitoring of Maine’s commercial fish species and their interaction throughout the term of the general permit and lease.<sup>3</sup>
3. The MLA recommends that each permit and lease holder be required to meet with respective lobster zone councils prior to drafting its annual report. Additionally, permit

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<sup>1</sup> 12 M.R.S. §1862(13)(B)(1), LD 1810, page 15.

<sup>2</sup> LD 1810, page 27.

<sup>3</sup> See 38 M.R.S. § 480-HH(3)(E), LD 1465.

and lease holders should provide a draft annual report to each council and include the councils' comments in the final draft.<sup>4</sup>

LD 1810 will require public-trust resources and traditional uses of marine resources to give way to private commercial projects. What the words "public trust," "customary," and "traditional," implicate remains unclear despite being used liberally throughout the bill. Special care should be taken to ensure that fishing (commercial and recreational) and navigation are defined customary and traditional uses of marine resources held in public trust. The bill makes this point, rather weakly.<sup>5</sup> Either an addition to the definition of "commercial fishing activity" or a separate definition of "public use," "public-trust use," "traditional," or "customary" would solidify the fishing industry's implication wherever these terms are used.

The MLA strongly recommends that 38 M.R.S. §480-D(1) include "commercial uses" in the new statutory language.<sup>6</sup> What we believe to be an unintended omission could prove to be a serious flaw if passed as is. The word "commercial" should be inserted so that the sentence reads, "Existing uses. The activity will not unreasonably interfere with existing, scenic, aesthetic, recreational, **commercial**, or navigational uses."<sup>7</sup> This additional language would make the bill internally consistent, especially with the Legislature's findings that any project should avoid, minimize, and compensate for harm to existing public-trust related uses.<sup>8</sup>

The MLA strongly supports the State's attempt to compensate for the displacement of existing uses by any ocean wind, tidal, or wave project. The proposed legal structure for collecting and disbursing funds is simply through a newly created trust into which commercial developers will be required to pay an annual lease fee and a rent based on a fee schedule established by the bureau's rule.<sup>9</sup> The MLA suggests that the bureau and state agencies consult with lobster management zone councils, fishing industry representatives, and local municipalities to quantify the loss to local fishing communities due to ocean, tidal, and wave energy projects. Because the rent charged will be the only means to quantify the loss to the fishing industry and coastal communities as well as the sole form of compensation, there must be mechanisms in place for open dialogue to accurately quantify the losses to our displaced fishermen. The MLA further suggests that the state consider establishing a fund to benefit Maine's fishing industry as whole to compensate of losses of fishing grounds and other unanticipated consequences as result of these commercial energy developments.

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<sup>4</sup> See 38 M.R.S. § 480-HH(3)(E)(7), LD 1465.

<sup>5</sup> "The Legislature finds that: . . . With appropriate provision for avoidance and minimization of and compensation for harm to existing public trust-related uses and resources, such as fishing and navigation . . . development of these renewable ocean energy resources in appropriate locations promises significant public trust-related benefits to the people of this State for whom the State holds and manages submerged lands and their resources." 12 M.R.S. §1862(13)(A)(4) LD 1810, page 15.

<sup>6</sup> LD 1810, page 26.

<sup>7</sup> 38 M.R.S. §480-D(1), LD 1810, page 26 (emphasis added).

<sup>8</sup> 12 M.R.S. §1862(13)(B)(4), LD 1810, page 15.

<sup>9</sup> 12 M.R.S. §1862(13)(B)(5-6), LD 1810, page 16.

As the largest commercial fishing industry group on the east coast, the MLA works to facilitate sound scientific, legislative, and regulatory management of marine resources. We support the State of Maine's endeavors to harness ocean wind technology, but implore regulators to ensure the sustainability of Maine's commercial fishing industry. While we applaud the State's open and inclusive approach previously taken with LD 1465, care must be taken to maintain open lines of communication between fishermen and windmill industry participants to ensure the success of mutual use of limited ocean resources.

The MLA continues to support the state's goal to develop offshore wind capabilities in truly offshore (federal) waters, and remain opposed to commercial wind development in state waters.

Thank you for your consideration of these comments.