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R.O.S.

L.D. 1857

DATE: 4-1-04

(Filing No. H-845)

MINORITY
MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "B" to H.P. 1383, L.D. 1857, Bill, "An Act To Implement the Recommendations of the Task Force on the Planning and Development of Marine Aquaculture in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 7 MRSA §401-B, first ¶, as enacted by PL 1983, c. 563, §1, is amended to read:

To further the purposes of this Part, the commissioner shall initiate and implement programs necessary to facilitate the effective, profitable marketing of Maine agricultural products. For the purposes of this subchapter, the terms "agricultural products" and "farm products" include, but are not limited to, products of aquaculture as defined in Title 12, section 6001, subsection 1. These programs shall include, but are not be limited to, the following.

Sec. A-2. 12 MRSA §6052, sub-§3, as amended by PL 2003, c. 60, §2, is further amended to read:

3. Marketing. Serve Except for aquaculture, serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assisting in marketing seafood, stimulating of consumer interest in and consumption of seafood, increasing the sales of seafood

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domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species;

Sec. A-3. 12 MRSA §6072, sub-§2, ¶E, as amended by PL 1997, c. 609, §1, is further amended to read:

E. The Except as provided in subsection 13-A, the lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 250 300 acres; and

Sec. A-4. 12 MRSA §6072, sub-§4, ¶J, as enacted by PL 1987, c. 453, §1, is amended to read:

J. Include a nonrefundable application fee of at least \$100, but not more than \$1,000 \$2,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application.

Sec. A-5. 12 MRSA §6072, sub-§5-A, as amended by PL 1997, c. 138, §4, is further amended to read:

5-A. Department site review. Prior to the lease hearing, the department shall conduct an assessment of the proposed site and surrounding area to determine the possible effects of the lease on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries and all other uses. ~~This review must take place any time between April 1st and November 15th.~~ This information must be provided to the intervenors and made available to the public 30 days before the hearing. As part of the site review, the department shall request information from the municipal harbor master about designated or traditional storm anchorages in proximity to the proposed lease. The commissioner may by rule establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed lease activity. The rules must provide a method of establishing a baseline to monitor the environmental effects of a lease activity. Rules adopted pursuant to ~~under~~ this subsection are major substantive rules pursuant to ~~as defined by~~ Title 5, chapter 375, subchapter II-A- 2-A.

Sec. A-6. 12 MRSA §6072, sub-§7-A, as amended by PL 2003, c. 247, §4, is further amended to read:

7-A. Decision. The In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed preject lease meets the following conditions as defined by rule+.

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A. ~~Will~~ The lease will not unreasonably interfere with the ingress and egress of riparian owners~~;~~.

B. ~~Will~~ The lease will not unreasonably interfere with navigation~~;~~.

C. ~~Will~~ The lease will not unreasonably interfere with fishing or other uses of the area ~~taking-into-consideration the-number-and-density-of-aquaculture-leases-in-an-area.~~ For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years~~;~~.

D. ~~Will~~ The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna~~;~~.

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site~~;~~.

F. The lease does not unreasonably interfere with public ~~the use or enjoyment within-1,000-feet of municipally-owned, state-owned--or--federally--owned--beaches--and--parks--or municipally--owned--state-owned--or--federally--owned--docking facilities;~~ a beach, park or docking facility or certain conserved lands. For purposes of this paragraph, "conserved lands" means:

(1) Land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property; or

(2) Land that has been protected through fee ownership or conservation easement with funding from the Land for Maine's Future Fund.

The Executive Department, State Planning Office shall maintain a list of conserved lands. The commissioner shall

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request this information from the State Planning Office prior to holding a preapplication proceeding.

G. ~~Will~~ The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site; ~~and.~~

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to ~~quantify-permissible-impact under-paragraph-G-and-to~~ establish noise, light and visual impact criteria under paragraphs G and H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-7. 12 MRSA §6072, sub-§9, as amended by PL 1987, c. 453, §1 and PL 1995, c. 502, Pt. E, §30, is further amended to read:

9. Rents. After consulting with the Director of the Bureau of Parks and Lands, the commissioner shall determine the rent ~~which-shall~~ that must be paid under each lease. The rent shall must represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than \$50 an acre or more than \$100 an acre. The commissioner ~~shall-have~~ has the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease. This discounted rate shall may not be less than \$50 an acre.

Sec. A-8. 12 MRSA §6072, sub-§12, as repealed and replaced by PL 2003, c. 247, §8, is amended to read:

- 12. Renewal.** The commissioner shall renew a lease if:
 - A. The commissioner receives, at least 90 days prior to the termination of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;
 - B. The lessee has complied with the lease agreement during the term of the lease;
 - C. The commissioner determines that renewal of the lease is in the best interest of the State;

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2 D. The Except as provided in subsection 13-A, the renewal
will not cause the lessee to become a tenant of any kind in
4 leases covering an aggregate of more than 250 300 acres; and

6 E. The lease is not being held for speculative purposes.

8 When aquaculture has not been routinely or substantially
conducted on a lease that is proposed for renewal, the
10 commissioner may renew the lease, as long as the proposed renewal
will continue to meet the criteria for approval in subsection 7-A.

12 A lease renewal is an adjudicatory proceeding under Title 5,
chapter 375, subchapter 4. Public notice must be given as
14 required under subsection 6 and a hearing must be held if it is
requested in writing by 5 persons. The commissioner may review
16 multiple leases concurrently during the lease renewal process.

18 A lease renewal application must include a nonrefundable
application fee of no more than \$1,500, the amount to be set by
20 the commissioner depending on the type of aquaculture permitted
by the lease.

22 **Sec. A-9. 12 MRSA §6072, sub-§12-A, ¶B,** as amended by PL 1997,
24 c. 609, §3, is further amended to read:

26 B. The commissioner may grant lease transfers if the
commissioner determines that:

28 (1) The change in lessee does not violate any of the
30 standards in subsection 7;

32 (2) The transfer is not intended to circumvent the
intent of subsection 8;

34 (3) The transfer is not for speculative purposes; and

36 (4) The Except as provided in subsection 13-A, the
38 transfer will not cause the transferee to be a tenant
of any kind in leases covering an aggregate of more
40 than 250 300 acres.

42 **Sec. A-10. 12 MRSA §6072, sub-§12-A, ¶C** is enacted to read:

44 C. A lease transfer application must include a
nonrefundable application fee of not more than \$5,000, the
46 amount to be set by the commissioner depending on the type
of aquaculture permitted by the lease.

48 **Sec. A-11. 12 MRSA §6072, sub-§13, ¶F,** as amended by PL 1997,
50 c. 138, §6, is further amended to read:

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2 F. For defining application requirements, an application
review process and decision criteria; and

4
6 **Sec. A-12. 12 MRSA §6072, sub-§13, ¶G**, as enacted by PL 1993,
c. 525, §2, is amended to read:

8 G. For adding or deleting authorization for the holder of an
aquaculture lease to grow specific species on the lease
10 site; and

12 **Sec. A-13. 12 MRSA §6072, sub-§13, ¶H** is enacted to read:

14 H. For establishing fallowing requirements and procedures.

16 **Sec. A-14. 12 MRSA §6072, sub-§13-A** is enacted to read:

18 13-A. Lease acreage increase; fallowing. The commissioner
19 may authorize a person to exceed the 300-acre limit established
20 in subsections 2, 12 and 12-A if that person submits an annual
21 fallowing plan to the commissioner that identifies lease sites
22 that have been actively operated during the lease period and will
23 be fallowed for a 12-month period. A person may not be a tenant
24 of any kind in leases covering an aggregate of more than 300
25 nonfallowed acres at any time. A person may not be a tenant of
26 any kind in leases covering an aggregate of more than 500 acres
27 including fallowed leases at any time. For purposes of this
28 subsection, "fallow" means a lease site without cultured fish,
29 shellfish, scallops and gear except marked mooring blocks. A
30 lease site fallowed pursuant to an enforcement action may not be
31 considered fallowed for the purpose of this subsection.

32
34 **Sec. A-15. 12 MRSA §6072-A, sub-§15**, as enacted by PL 1997, c.
231, §6, is amended to read:

36 **15. Conditions.** The commissioner may establish conditions
37 that govern the use of the leased area and limitations on the
38 aquaculture activities. These conditions must encourage the
39 greatest multiple, compatible uses of the leased area, but must
40 also address the ability of the lease site and surrounding area
41 to support ecologically significant flora and fauna and preserve
42 the exclusive rights of the lessee to the extent necessary to
43 carry out the lease purpose. The commissioner may grant the lease
44 on a conditional basis until the lessee has acquired all the
45 necessary federal, state and local permits. ~~A lease may not be~~
46 ~~approved unless the commissioner has received certification from~~
47 ~~the Department of Environmental Protection that the project will~~
48 ~~not violate the standards ascribed to the receiving waters~~
49 ~~classification in Title 38, section 465-B.~~

50 **Sec. A-16. 12 MRSA §6072-D** is enacted to read:

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2 **§6072-D. Aquaculture Management Fund**

4 **1. Fund established.** The Aquaculture Management Fund,
6 referred to in this section as "the fund," is established as a
8 dedicated, nonlapsing fund within the department. All income
10 received by the commissioner under this section must be deposited
12 with the Treasurer of State. Any balance remaining in the fund
at the end of a fiscal year does not lapse and must be carried
forward to the next fiscal year. Any interest earned on assets
of the fund is credited to the fund.

14 **2. Fees.** In accordance with the authority of the
16 commissioner to levy lease rents pursuant to section 6072,
18 subsections 9 and 13 and section 6072-A, subsection 14 and
20 application fees pursuant to section 6072, subsections 4, 12 and
22 12-A, the commissioner shall adopt routine technical rules as
24 defined in Title 5, chapter 375, subchapter 2-A to implement a
26 fee structure for lease rents and application fees that are in
addition to the minimum lease rents and application fees that are
in effect on the effective date of this subsection. Any rent or
fee assessed pursuant to this subsection that is in addition to
the fees that are in effect on the effective date of this
subsection must be credited to the fund. A person who does not
pay the rent or fee commits a civil violation for which a fine of
not more than \$1,000 may be adjudged.

28 **3. Additional revenues.** The commissioner may expend annual
30 revenues that are in excess of the operating expenses of a
32 program under subsection 4 to address matters that the
34 commissioner determines are of an emergency nature to the State's
36 aquaculture industry, to address matters that the commissioner
determines are of long-term interest to the State's aquaculture
industry and to rebate revenues to all those persons who paid
fees under subsection 2. The fund may receive money from any
source for the purposes of this subsection.

38 **4. Uses of fund.** The commissioner may make expenditures
40 from the fund to develop and manage effective and cost-efficient
42 water quality licensing and monitoring criteria, analyze and
evaluate monitoring data, process lease applications and make
information about aquaculture available to the public.

44 **5. Reports.** On or before February 1st of each year, the
46 commissioner shall report to the joint standing committee of the
48 Legislature having jurisdiction over marine resources matters on
all expenditures made from the fund in the previous fiscal year
and a summary of work accomplished and planned.

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2 **Sec. A-17. 12 MRSA §6077, first ¶**, as enacted by PL 1991, c.
381, §6, is amended to read:

4 The department ~~is---responsible---for---establishing---and~~
~~maintaining---a---comprehensive~~ may establish and maintain an
6 information base pertaining to all--aspects--of the siting,
development and operation of finfish aquaculture facilities
8 within the State.

10 **Sec. A-18. 12 MRSA §6077, sub-§§2 and 3**, as enacted by PL 1991,
c. 381, §6, are amended to read:

12 **2. Data requirements.** The commissioner ~~shall-ensure-that,~~
14 ~~at---a---minimum,~~ may collect information in the--following
site-specific categories ~~is--collected--and--organized--in--such--a~~
16 ~~manner-as,~~ including, but not limited to, those listed in this
subsection, to allow effective enforcement of all laws pertaining
18 to finfish aquaculture at individual facilities:

20 A. Geophysical site characteristics, including currents and
bathymetry;

22 B. Benthic habitat characteristics and effects, including
24 changes in community structure and function;

26 C. Water column effects, including water chemistry and
plankton;

28 D. Feeding and production data sufficient to estimate
30 effluent loading;

32 E. Smolt and broodstock introduction and transfer data;

34 F. Disease incidence and use of chemical therapeutics; and

36 G. Other ancillary information as the commissioner may find
necessary.

38 **3. Data collection; authority.** The commissioner may
40 require persons holding licenses related to finfish aquaculture
under this Title to report information in the categories listed
42 in subsection 2. Personnel retained by leaseholders to perform
tasks required for data collection as specified in subsection 2
44 and this subsection must be reviewed and approved by the
commissioner for acceptable professional qualifications and
46 experience prior to performing any data collection services.
Routine notations of site operation do not require approved
48 personnel.

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2 **Sec. A-19. 12 MRSA §6078-A, sub-§2, ¶¶A and B**, as enacted by
PL 2003, c. 247, §19, are repealed.

4 **Sec. A-20. 12 MRSA §6078-A, sub-§2, ¶C**, as enacted by PL 2003,
c. 247, §19, is amended to read:

6 C. The commissioner may develop by rule a fee schedule for
8 the production of shellfish reared on an aquaculture lease.
A person who does not pay a fee under this paragraph commits
10 a civil violation for which a fine ~~not to exceed~~ of not more
than \$1,000 may be adjudged.

12 **Sec. A-21. 12 MRSA §6673**, as amended by PL 1999, c. 267, §3,
14 is further amended to read:

16 **§6673. Municipal leasing of flats**

18 A municipality, ~~which~~ that has established a shellfish
conservation program as provided under section 6671, may lease
20 areas in the intertidal zone to the extreme low water mark,
within the municipality for the purpose of shellfish
22 aquaculture. A municipality may grant a lease to any person.
Municipal authority to grant a lease under this section does not
24 limit in any way the authority of the commissioner to issue
leases in the intertidal zone in accordance with sections 6072,
26 6072-A and 6072-B.

28 ~~1. Municipal procedure. A lease application written on a~~
~~form supplied by the commissioner may be approved by the~~
30 ~~municipal officers if they find that it conforms to the shellfish~~
~~program, that it will not cause the total area under lease to~~
32 ~~exceed 1/4 of all the municipal intertidal zone that is open to~~
~~the taking of shellfish and that granting it is in the best~~
34 ~~interests of the municipality. On approval, the lease must be~~
~~forwarded to the commissioner.~~

36 1-A. Application. An application for a municipal lease
38 must be on a form supplied by the municipality. The municipality
shall publish a summary of the application in a newspaper of
40 general circulation in the area of the proposed lease. A person
may provide comments to the municipality on the proposed
42 municipal lease within 30 days of publication of the application
summary.

44 Prior to granting a lease, a municipality shall hold a public
46 hearing in accordance with procedures established in ordinances
adopted in subsection 3 if requested in writing by 5 or more
48 persons.

50 ~~2. Department procedure for review and approval. The~~

1
2 ~~commissioner shall use the same procedure and the same grounds~~
3 ~~for approval as required for aquaculture leases under section~~
4 ~~6072, except:~~

5
6 ~~A. Preference shall be given to municipal leases;~~

7
8 ~~B. No rent shall be set, but there shall be an annual~~
9 ~~municipal lease fee of not less than \$1 per acre;~~

10
11 ~~C. The municipality may establish the conditions and limits~~
12 ~~on the lease; and~~

13
14 ~~D. The advice and consent of the advisory council shall not~~
15 ~~be required.~~

16
17 **2-A. Decision.** In evaluating a proposed lease, a municipal
18 officer shall take into consideration the number and density of
19 leases in the area and may approve a lease if the municipal
20 officer finds the proposed project meets the following criteria.

21
22 A. The lease conforms to the municipality's shellfish
23 conservation program.

24
25 B. The lease will not cause the total area under the lease
26 to exceed 1/4 of the entire municipal intertidal zone that
27 is open to the taking of shellfish.

28
29 C. Granting the lease is in the best interests of the
30 municipality.

31
32 D. The lease will not unreasonably interfere with ingress
33 and egress of riparian owners.

34
35 E. The lease will not unreasonably interfere with
36 navigation.

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38 F. The lease will not unreasonably interfere with fishing
39 or other uses of the area. For purposes of this paragraph,
40 "fishing" includes public access to a redeemable shellfish
41 resource, as defined by the department, for the purpose of
42 harvesting, provided that the resource is commercially
43 significant and subject to a pollution abatement plan that
44 predates the lease application, that includes verifiable
45 activities in the process of implementation and that is
46 reasonably expected to result in the opening of the area to
47 the taking of shellfish within 3 years.

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49 G. The lease will not unreasonably interfere with
50 significant wildlife habitat and marine habitat or with the
51 ability of the lease site and surrounding marine and upland

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2 areas to support existing ecologically significant flora and
fauna.

4 H. The applicant has demonstrated that there is an
available source of organisms to be cultured for the lease
6 site.

8 I. The lease does not unreasonably interfere with the use
or enjoyment of a beach, park or docking facility or certain
10 conserved lands. For purposes of this paragraph, "conserved
lands" means:

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14 (1) Land in which fee ownership has been acquired by
the municipal government, State Government or Federal
16 Government in order to protect the important
ecological, recreational, scenic, cultural or historic
18 attributes of that property; or

20 (2) Land that has been protected through fee ownership
or conservation easement with funding from the Land for
22 Maine's Future Fund.

24 A municipality shall review the State Planning Office's list of
conserved lands compiled pursuant to section 6072, subsection
26 7-A, paragraph F prior to granting a lease.

28 A municipality shall put its findings on each of the criteria
listed in this subsection in writing and make them available to
30 the public.

32 3. Municipal leases. Prior to issuing any lease pursuant
to this section, a municipality shall adopt ordinances that
34 establish procedures for consideration of the proposed lease
under the decision criteria in subsection 2-A, including but not
36 limited to provisions for a public hearing process. An ordinance
proposed by a municipality under this subsection must be approved
38 in writing by the commissioner prior to its adoption.

40 When approved, a municipal lease must be forwarded to the
commissioner. The municipality may charge a lease rental fee not
42 to exceed \$50 per acre. The municipality may establish
conditions and limits on the lease. A lease may be granted for a
44 period of up to 10 years and is renewable upon application by the
leaseholder. The terms and conditions of a municipal lease must
46 be monitored and enforced by the municipality.

48 4. Renewals. A municipality shall give public notice for a
lease renewal as required under subsection 1-A, and a hearing
must be held if it is requested in writing by 5 or more persons.
50 If a public hearing is required, it must be held in accordance

with procedures established in an ordinance adopted pursuant to subsection 3. Renewals may be granted as long as the lease continues to meet the criteria of subsection 2-A. The findings of the municipality regarding the criteria in subsection 2-A must be in writing and available to the public.

Sec. A-22. 38 MRSA §3, as amended by PL 1991, c. 685, §1 and c. 838, §16, is further amended to read:

§3. Mooring sites

In all harbors wherein channel lines have been established by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable.

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned.

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law which that establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency shall must be resolved in favor of this subchapter.

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any ~~shore-front~~ shorefront parcel of land under this privilege. Notwithstanding section 11, persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot shall have mooring privileges assigned according to this

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section. The limitation of one mooring assigned under this privilege shall does not prevent the owner of a ~~shore-front~~ shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents.

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter.

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B.

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels.

PART B

Sec. B-1. Bay management study. The Land and Water Resources Council established in the Maine Revised Statutes, Title 5, section 3331, referred to in this Part as "the council," shall undertake a study of bay management. The intent of this study is to explore and document potential new and innovative concepts for the management of Maine's embayments through a 2-year pilot initiative.

Sec. B-2. Study oversight. The council shall begin the study no later than September 1, 2004. The study must be carried out under the direction of the council with work performed by an interagency staff work group with input from a project steering committee. The project steering committee must include members of the public with expertise in relevant fields of interest such as marine resources, fisheries, natural resource conservation, aquaculture, economic development, planning, tourism and marine recreation uses.

Sec. B-3. Staffing assistance; technical assistance. The Executive Department, State Planning Office and the Department of Marine Resources shall provide staff services to the council. The council may also seek or contract for technical assistance from any other agency or institution and any individual or group that it determines appropriate to support the study.

2 **Sec. B-4. Issues to be considered.** In developing its
recommendations on bay management, the council shall:

4 1. Establish definitions, principles, goals and objectives
6 for bay management in the State;

8 2. Drawing on national and international examples, define a
range of approaches for bay management that is feasible for use
10 in Maine;

12 3. Establish clear criteria and standards for bay
management, including guidelines to inform voluntary planning
14 efforts by citizen groups;

16 4. Identify data and information needs, mapping needs and
information transfer needs for bay management;

18 5. Identify authorities that govern near-shore waters and
20 identify changes needed to regulatory structures, including but
not limited to statutes, regulations and grant programs;

22 6. Identify opportunities to create limited local authority
24 for bay management; and

26 7. Identify state, local and volunteer resources and
capacity needed for bay management.

28 **Sec. B-5. Pilot projects.** The council shall create one or more
30 pilot projects of limited duration in a representative region or
regions of the State where groups of marine resources users and
32 other affected stakeholders investigate and discuss desired uses
for specific land and water areas and determine methods for
34 resolution of user conflicts. The council shall use the results
of these pilot projects to shape the council's recommendations
36 for bay management efforts.

38 **Sec. B-6. Public meetings.** When held, council meetings are
open to the public for purposes of public input. The interagency
40 staff work group shall meet to the extent necessary to fulfill
its duties, including but not limited to work on pilot projects,
42 in different regions of the State expressly for the purpose of
receiving public comment and testimony on its work.

44 **Sec. B-7. Reports.** The interagency staff work group with the
46 assistance of the project steering committee shall submit reports
and updates on its work to the council as determined by the
48 council. The council shall submit an interim report to the joint
standing committee of the Legislature having jurisdiction over
50 marine resources matters no later than January 15, 2006

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2 updating the committee on the status and progress of the
3 council's work. The council shall submit its final report and
4 recommendations to the joint standing committee of the
5 Legislature having jurisdiction over marine resources matters no
6 later than January 15, 2007.

7 **Sec. B-8. Funding.** The Director of the State Planning Office
8 shall use funds from the State Planning Office's existing
9 resources and other outside sources for the costs incurred in
10 carrying out the purposes of this Part.

11 **PART C**

12
13 **Sec. C-1. Vision and principles for Maine aquaculture.** The
14 Legislature acknowledges that aquaculture is an important and
15 compatible element of Maine's diverse coastal economy.
16 Aquaculture contributes to satisfying global market demands and
17 can benefit local communities and the public interest by
18 producing high-quality products and providing economic
19 opportunities and by operating in an environmentally sustainable
20 fashion. The Legislature also recognizes that the State's
21 planning and regulatory processes should be adaptive, inclusive
22 and fair and should support the growth of the industry in an
23 economically competitive and environmentally sustainable way.
24 The following are guiding principles for aquaculture in Maine.

25
26 1. A working waterfront is critical to Maine's coastal
27 future. Marine aquaculture can be a part of Maine's working
28 waterfront.

29
30 2. Aquaculture is one of many uses of Maine's coastal
31 environment that can be made compatible with other activities
32 such as commercial fishing and in harmony with natural resources.

33
34 3. Marine aquaculture can be practiced in an
35 environmentally sustainable fashion and need not cause permanent
36 ecological damage.

37
38 4. Maine's aquaculture leasing program should practice
39 integrity in all aspects of its operation.

40
41 5. Maine should encourage local participation in
42 aquaculture permitting decisions.

43
44 6. Maine's aquaculture laws and regulations should provide
45 flexibility to address change while recognizing both the need for
46 regulatory stability and for stability in the use of the public
47 resource.
48

2 7. Maine's aquaculture leasing process should provide for open communication among stakeholders.

4 8. Maine's aquaculture monitoring program should feature state-of-the-art environmental monitoring.

6 9. Marine aquaculture may flourish only with high water quality.

10 10. Marine aquaculture offers the potential to bring substantial economic value and diversity to the State and its communities.

14 11. Maine should create a welcoming environment for a range of investments in marine aquaculture.

16 12. Maine should encourage the development of locally owned and Maine-based operations.

20 13. Maine should provide and encourage incentives for innovation in marine aquaculture.

22 **Sec. C-2. Appropriations and allocations.** The following appropriations and allocations are made.

24 **MARINE RESOURCES, DEPARTMENT OF**

26 **Bureau of Resource Management 0027**

30 Initiative: Deallocates funds to reflect changes in the functioning of the Aquaculture Monitoring, Research and Development Fund.

34	Other Special Revenue Funds	2003-04	2004-05
36	All Other	\$0	(\$229,730)
38	Other Special Revenue Funds Total	\$0	(\$229,730)'

40 **SUMMARY**

42 This amendment is the minority report and replaces the bill. This amendment:

- 44 1. Removes the Department of Marine Resources as the primary agency responsible for the promotion and marketing of the aquaculture industry;

202

COMMITTEE AMENDMENT "B" to H.P. 1383, L.D. 1857

2 2. Defines agricultural products to include aquaculture products;

4 3. Increases the number of lease acres a person may be a
6 tenant of from 250 to 300 and authorizes the Commissioner of
8 Marine Resources to allow a person to exceed the 300-acre lease
10 limit if that person provides a fallowing plan to the
12 commissioner identifying lease sites that will remain fallow for
at least 12 months. It also limits the total amount of active
and fallowed lease acreage that may be held by one person to 500
acres, of which only 300 may be active;

14 4. Expands the decision criteria the Commissioner of Marine
16 Resources must consider for a new lease to include private
18 beaches, parks and docking facilities. Current law limits these
20 criteria to leases within 1,000 feet of government-owned beaches,
22 parks and docking facilities. It requires the commissioner to
24 consider whether a proposed lease will interfere with certain
"conserved lands" that include governmental land held in fee to
protect important ecological, recreational, scenic, cultural or
historic attributes of that property and land that has been
protected through fee ownership or conservation easement with
funding from the Land For Maine's Future Fund;

26 5. Authorizes the commissioner to consider more than one
lease renewal application at a public hearing;

28 6. Makes technical changes to reflect requirements in Maine
30 Pollution Discharge Elimination System permits and to facilitate
32 the transition from the finfish aquaculture monitoring program to
34 the Maine Pollution Discharge Elimination System permit and to
require finfish aquaculture leaseholders to get approval from the
department of contractors to be used by leaseholders for data
collection required by law;

36 7. Grants a municipality that has a shellfish conservation
38 program the authority to lease mud flats within its
40 jurisdiction. It requires the municipality to publish a summary
42 of the proposed lease and allows for public comment for 30 days
44 after the publication of the application summary. It also
46 requires a municipality to adopt ordinances that establish
48 procedures for consideration of a lease and requires the
municipality to hold a public hearing prior to the granting of
the lease if requested by 5 or more people in writing. This
amendment provides the decision criteria a municipality must
consider when making a decision on a proposed lease and requires
that the municipality put its findings in writing. Additionally,
it requires the municipality to forward an approved lease to the
department and provides that a municipality may not charge more
than \$50 an acre for a lease. It gives the municipality

COMMITTEE AMENDMENT

authority to put conditions and limits on a lease and caps the length of a lease at 10 years, renewable upon application of the leaseholder. Finally, it requires a municipality to hold a public hearing on a lease renewal application if requested in writing by 5 or more people and provides that a lease renewal must be granted if it continues to meet the decision criteria;

8. Establishes the Aquaculture Management Fund to develop and manage water quality licensing and monitoring criteria for aquaculture and to analyze collected data, process license applications and make information about aquaculture available to the public;

9. Increases certain aquaculture fees and establishes new fees related to aquaculture leases. Revenues raised pursuant to these fees are dedicated to the Aquaculture Management Fund;

10. Repeals the tax of 1¢ per pound assessed on finfish;

11. Provides that municipalities may not charge a mooring fee for and do not have jurisdiction over siting or specifications of structural moorings used to secure aquaculture equipment. It grants authority to municipalities for boat and vessel moorings inside the boundaries of an aquaculture lease site. It prohibits a municipality from charging a mooring fee for such moorings that is inconsistent with other mooring fees for commercial vessels;

12. Requires the Land and Water Resources Council to undertake a study of bay management. The intent of this study is to explore and document potential new and innovative concepts for the management of Maine's embayments through a 2-year pilot initiative. It requires the council to begin this study no later than September 1, 2004 and to submit an interim report by January 15, 2006 and a final report by January 15, 2007 to the joint standing committee of the Legislature having jurisdiction over marine resources matters. The study must be carried out under the direction of the council with work performed by an interagency staff work group with input of a project steering committee consisting of members of the public with expertise in relevant fields of interest. It also directs the council to create one or more pilot projects of limited duration in a representative region or regions of the State. The amendment authorizes the interagency staff work group to meet as necessary to fulfill its duties and specifies that meetings of the council are open to the public. It further directs the Executive Department, State Planning Office and the Department of Marine Resources to provide staff services to the council and requires that the Director of the State Planning Office use funds from the

RWB

COMMITTEE AMENDMENT "B" to H.P. 1383, L.D. 1857

2 State Planning Office's existing resources and other outside
sources to cover the costs associated with this study; and

4 13. Sets forth vision and principles statements as guidance
for the future of aquaculture in Maine.

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8

10

FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1857

**An Act to Implement the Recommendations of the Task Force on the
Planning and Development of Marine Aquaculture in Maine**

LR 2749(03)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Marine Resources

Fiscal Note Required: Yes

Minority Report

Fiscal Note

	2003-04	2004-05	Projections 2005-06	Projections 2006-07
Appropriations/Allocations				
Other Special Revenue Funds	\$0	(\$229,730)	(\$229,730)	(\$229,730)
Revenues				
Other Special Revenue Funds	\$0	(\$304,584)	(\$304,584)	(\$304,584)

Correctional and Judicial Impact Statements

Establishes new civil violations

Fiscal Detail and Notes

The repeal of the fees collected by the Aquaculture Monitoring, Research and Development Fund will result in a loss of dedicated revenues collected by the Department of Marine Resources. This fund is budgeted to receive \$395,994 in fiscal year 2004-05, although recent projections are in the \$140,000 to \$150,000 range. The dedicated revenue for this fund is to be largely replaced with new and adjusted dedicated revenues which will be deposited into a newly established Aquaculture Monitoring Fund.

The annual dedicated revenues for the new Aquaculture Monitoring Fund are estimated to be \$91,410 beginning in fiscal year 2004-05. The department plans to use the existing balance in the Aquaculture Monitoring, Research and Development Fund to fund a currently authorized Marine Resources Scientist II position through the end of fiscal year 2004-05. Beginning in fiscal year 2005-06, the department's budget will reflect the transfer of the Marine Resources Scientist II position to the newly established fund and annual Other Special Revenue Funds allocations of \$91,410 will be required as of that fiscal year. The allocation and revenue changes shown above will bring the net amounts down to the required \$91,410.

The additional costs associated with maintaining a list of conserved lands can be absorbed by the State Planning Office utilizing existing budgeted resources. Also, it is anticipated that the State Planning Office can use federal funds to assist in the study of bay management as proposed in Part B of the bill.