

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 937

H. P. 731

House of Representatives, February 15, 1973

Referred to the Committee on Marine Resources. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Brown of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Lease Management and Cultivation Areas in Maine's Coastal Waters.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 12, § 3401, sub-§§ 8-A and 28-A, additional. Section 3401 of Title 12 of the Revised Statutes is amended by adding 2 new subsections, 8-A and 28-A, to read as follows:

8-A. Cultivation. "Cultivation" means the artificial control or manipulation by man of any marine species at some stage in its life history for the purpose of increasing yield or improving quality.

28-A. Species. "Species" as used in the laws administered by the Department of Sea and Shore Fisheries means the scientific name used in the classification of marine organisms.

Sec. 2. R. S., T. 12, c. 414, additional. Title 12 of the Revised Statutes is amended by adding a new chapter 414 to read as follows:

CHAPTER 414

LEASING OF AREAS FOR CULTIVATION OF MARINE
RESOURCES

§ 3721. Areas that can be leased

The Commissioner of Sea and Shore Fisheries, with the consent of the advisory council, and if not in conflict with the Maine Coastal Plan and any applicable coastal zoning ordinances, may lease to a qualified person, persons,

or corporation areas in and on Maine coastal waters, public lands under Maine's coastal waters and portions of the intertidal zone for the harvesting and cultivation of fish or shellfish. The commissioner may grant a lease upon such terms and conditions as he may deem proper, but not for a term longer than 10 years or shorter than 5 years. No tract leased by the commissioner shall cover more than 5 acres. A person may lease as many tracts as the commissioner may grant providing that no one person or corporation shall be entitled to a total area of more than 200 acres.

§ 3722. Application

A person or corporation desiring to obtain a lease for the use of a tract of Maine's coastal water areas, public land under Maine's coastal waters, or land in the intertidal zone must make application in writing to the Commissioner of Sea and Shore Fisheries containing the following information:

1. Description. Location and description of the area by metes and bounds or coordinates as appropriate;
2. Species. The specie or species to be managed or cultivated;
3. Project. A description of the proposed management or cultivation project in sufficient detail to enable the commissioner to determine:
 - A. The compatibility of the project with other present or potential uses of the requested area; and
 - B. Degree of exclusive use of the area essential to the proposed project;
4. Owner's permission. That the applicant either owns or has written permission from the owner to use whatever land above high water mark and to exercise any riparian right on the flats necessary to successfully carry out the proposed project.

§ 3723. Satisfaction of certain requirements before notice of hearing

The commissioner shall give notice of a hearing on the application, if he is satisfied that all the following provisions are met:

1. Information. That the application contains sufficient information to show that the applicant is entitled to the lease provided in this chapter;
2. —true. That information contained in the application is true;
3. Riparian owners. That granting of the lease will not unreasonably interfere with the egress or ingress of any riparian owners;
4. Navigation. That the granting of the lease will not unreasonably interfere with navigation;
5. Preexisting uses. That granting of the lease not in conflict with the Maine Coastal Plan, applicable coastal zoning ordinances and does not unreasonably interfere with preexisting uses.

§ 3724. Notice

The commissioner shall give notice of hearings as follows:

1. **Publication.** The commissioner shall cause notice to be published once a week for 2 consecutive weeks 2 weeks prior to the hearing in some newspaper of general circulation in the county where the proposed location is situated, and notice posted in 2 public places 2 weeks prior to the hearing, in the municipality or municipalities where the waters or flats are situated or to which they are adjacent.

2. **Time and place of hearing.** The commissioner shall state in the notice, the time and place of hearing, the name of the applicants and the general area where work is to be undertaken.

§ 3725. Lease

The commissioner may grant the lease, if after the hearings, he is satisfied that all conditions are met and that the interests of the State will be promoted by cultivation or planting in the requested area.

1. **Preference.** In the case of more than one applicant for the lease of a given area, preference shall be given as follows:

A. On the flats, preference shall be given to the riparian owner;

B. In coastal water areas or public land under coastal waters, preference shall be given to:

- (1) Fishermen who have traditionally and effectively fished in the area;
- (2) The owner of an area above ordinary low water mark, if the lease is granted within 100 feet of ordinary low water mark.

2. **Rents.** The commissioner shall set the rents for the areas so leased.

§ 3725. To record lease

The applicant shall record the lease in the registry of deeds of each county where the flats, public land under coastal waters or coastal water areas are located. The applicant shall cause public notice of the issuance of the lease, a description of the area and an enumeration of all restrictions of activity in the area, by publishing information as to the location and nature of the lease once in a daily newspaper of general circulation in the county where the area to be used is located.

§ 3726. Area to be marked

The applicant shall mark the leased area in a manner prescribed by the commissioner.

§ 3727. Grievance procedure

Any person aggrieved by a decision of the Commissioner of Sea and Shore Fisheries upon an application for a cultivation or management lease under this section may petition directly to the Superior Court for a reversal or modification of such a decision, provided that:

1. **Objections.** The objections were raised at the hearing required by this chapter; and

2. Evidence. The evidence of law or facts to substantiate such objections were presented at such hearing ;

3. Decision detrimental. Decisions made by the commissioner pertaining to enforcement of health regulations or a determination that cultivation of a particular species would be detrimental to marine fishery resources are not appealable.

§ 3728. Revocation of the lease

The commissioner may revoke any lease so granted, after notice and hearing, in accordance with section 3752, to the holder thereof, if no cultivation or management project is carried out within the year after the lease is granted, or such cultivation has been injurious to marine species in the area, or that conditions stipulated in the lease have not been met.

§ 3729. Rights

A holder of a lease under section 3725 shall have the exclusive right to cultivate and harvest the species stipulated in his lease. Holders of leases for cultivation of any species on flats or land under coastal waters are entitled to take all of that species in the specified leased area.

A holder of a lease under section 3725 must also obtain a special license under section 3703, subsection 1, paragraph A, if a variance is sought in the applicability of the fishery laws and regulations administered by the Commissioner of Sea and Shore Fisheries.

§ 3730. Renewal of lease

Any holder of a lease granted under sections 3721 and 3725 shall, upon expiration of the lease, have preference in the releasing of the area unless the former lessee shall be in arrears for rent. An application for renewal shall be granted without notice or public hearing provided that no renewal shall be granted when the Commissioner of Sea and Shore Fisheries shall, for interests of the State, cease to lease said area.

§ 3731. Interference or unlawful taking

Any person who interferes with, annoys or molests another in the enjoyment of any leased authorized under this chapter shall be subject to a fine of not less than \$100 nor more than \$500 for each offense, or by imprisonment for not more than 90 days.

STATEMENT OF FACT

The fishing industry has always been of great importance to the economy of the State and the well-being of a substantial number of its citizens. In recent years the industry has been beset with scarcity of fish, high costs, and ever increasing foreign competition. The Legislature believes that the competitive position of Maine's commercial fisheries can be enhanced in part by

improved management techniques and the cultivation of marine species in their natural environment. If the encouragement of private investment in the management and cultivation of fishery resources is to be successful, the investor must be permitted to carry on his activity in an area set apart for his use and he must have exclusive rights to harvest the species he is cultivating in the area so designated. Therefore, the Commissioner of Sea and Shore Fisheries is authorized to lease areas in and under Maine's coastal waters subject to the foregoing considerations.