

MAINE STATE LEGISLATURE

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(New Draft of H.P. 418, L.D. 563).
(New Title)

FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1840

H.P. 1346 House of Representatives, June 12, 1987
Reported by Representative RICE from the Committee on
Marine Resources and printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative COLES of
Harpwell. Cosponsored by Representatives MITCHELL of
Freeport, SALSBURY of Bar Harbor and Senator MATTHEWS of
Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

**AN ACT to Amend the Aquaculture
Leasing Statutes.**

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

Sec. 1. 12 MRSA §6072, as amended by PL 1983, c.
301, §§1 to 4, is further amended to read:

§6072. Research and aquaculture leases

1. **Authority.** The commissioner may lease areas
in, on and under the coastal waters including the
public lands beneath those waters and portions of the
intertidal zone for scientific research or for
aquaculture of marine organisms. The commissioner may

1 grant a lease to any person. Except as provided in
2 this Part, the commissioner's power to lease lands
3 under this section shall be exclusive. For the pur-
4 poses of this section, the deputy commissioner may
5 serve in the place of the commissioner.

6 2. Limitations of lease. The commissioner shall
7 determine the provisions of each lease, provided:

8 A. A lease shall not exceed a term of 10 years;

9 B. A lease may be granted for tracts not to ex-
10 ceed 5 acres in area. The commissioner may grant
11 contiguous lease tracts to a single applicant;
12 and

13 ~~C.--No applicant shall be permitted to lease more~~
14 ~~than 200 acres.~~

15 E. The lease does not result in a person being a
16 tenant of any kind in leases covering an aggre-
17 gate of more than 150 acres; and

18 F. No single lease may exceed 100 acres in size.

19 3. Municipal approval. In any municipality with
20 a shellfish conservation program under section 6671,
21 the commissioner may not lease more than 2 acres of
22 the intertidal zone within the municipality without
23 the consent of the municipal officers.

24 4. Applications. The application shall:

25 A. Be written on forms supplied by the commis-
26 sioner;

27 B. Describe the location of the proposed lease
28 tract by coordinates or metes and bounds;

29 C. Identify the species to be cultivated;

30 ~~D.--Describe--the--impact--of--the--project--on--exist-~~
31 ~~ing--or--potential--uses--of--the--area;~~

32 D-1. Characterize the physical and ecological
33 impact of the project on existing uses of the
34 site and any adverse effects on the existing uses

- 1 of the area, as defined by regulation promulgated
2 by the Commissioner of Marine Resources;
- 3 D-2. Characterize the physical and ecological
4 impact of the project on potential uses of the
5 site and any adverse effects on the potential
6 uses of the area, as defined by regulation
7 promulgated by the Commissioner of Marine Re-
8 sources;
- 9 E. Describe the degree of exclusive use required
10 by the project;
- 11 F. Include written permission of every riparian
12 owner whose land to the low water mark will be
13 actually used; and
- 14 G. Include a map of the lease area and its ad-
15 joining waters and shorelands, with the names and
16 addresses of the known riparian owners. as listed
17 in the municipal tax records;
- 18 H. Include an environmental evaluation of the
19 site upon which the decision to seek a lease was
20 made. The evaluation shall include, but not be
21 limited to, bottom characteristics, resident
22 flora, fauna and hydrography of the site if ap-
23 propriate for the proposed lease;
- 24 I. Describe the proposed source of organisms to
25 be grown at the site; and
- 26 J. Include a nonrefundable application fee of at
27 least \$100, but not more than \$1,000, the amount
28 to be set by the commissioner depending on the
29 proposed acreage, type of aquaculture proposed
30 and complexity of the application.
- 31 5. Application review. The commissioner shall
32 review the application and set a hearing date if he
33 is satisfied that the written application is complete
34 and, the application indicates that the lease could
35 be granted and the applicant has the financial and
36 technical capability to carry out the proposed
37 activities. A copy of the completed application and
38 notice of hearing shall be forwarded to the municipi-
39 palty or municipalities in which or adjacent to

1 which the lease is proposed. A municipality shall be
2 granted intervenor status upon written request.

3 5-A. Department site review. Prior to the lease
4 hearing, the department shall conduct an assessment
5 of the proposed site and surrounding area to deter-
6 mine the possible effects of the lease on commercial-
7 ly and ecologically significant flora and fauna and
8 conflicts with traditional fisheries. This review
9 shall take place between May and September inclusive.
10 This information shall be provided to the intervenors
11 and made available to the public 30 days before the
12 hearing. As part of the site review, the department
13 shall request information from the municipal harbor
14 master about designated or traditional storm anchor-
15 ages in proximity to the proposed lease.

16 6. Hearing procedure. Prior to granting a lease,
17 the commissioner shall hold a hearing. The hearing
18 shall be an adjudicatory proceeding and shall be held
19 in the manner provided under the Maine Administrative
20 Procedure Act, Title 5, chapter 375, subchapter IV
21 and the specific procedures of this section.

22 A. Notwithstanding the provisions of Title 5,
23 section 9052, subsection 1, paragraph A, personal
24 notice of the hearing shall be required to be
25 given only to the lessee and the known riparian
26 owners, the municipal officials of the municipal-
27 ity or municipalities in which or adjacent to
28 which the lease is located and any interested
29 parties that have provided a written request for
30 notification.

31 B. Under the provisions of Title 5, section
32 9052, the leasing procedure shall require notice
33 to the general public.

34 C. The Department of Environmental Protection
35 and Department of Conservation shall be notified
36 of all lease applications.

37 ~~7. Decision. The commissioner may grant the~~
38 ~~lease, if he is satisfied that the proposed project~~
39 ~~will not unreasonably interfere with the ingress and~~
40 ~~egress of riparian owners, navigation, fishing or~~
41 ~~other uses of the area and is not in conflict with~~

1 applicable-coastal-zoning-statutes-or-ordinances.-The
2 commissioner-may-establish-conditions-that-govern-the
3 use-of-the-leased-area-and--the--limitations--on--the
4 aquaculture--activities.--These--conditions--shall-en-
5 courage-the-greatest-multiple,-compatible-uses-of-the
6 leased-area,-but-shall-also--preserve--the--exclusive
7 rights-of-the-lessee-to-the-extent-necessary-to-carry
8 out-the-lease-purpose.

9 7-A. Decision. The commissioner may grant the
10 lease if the proposed project meets the following
11 conditions as defined by regulation:

12 A. Will not unreasonably interfere with the in-
13 gress and egress of riparian owners;

14 B. Will not unreasonably interfere with naviga-
15 tion;

16 C. Will not unreasonably interfere with fishing
17 or other uses of the area taking into considera-
18 tion the number and density of aquaculture leases
19 in an area;

20 D. Will not unreasonably interfere with the
21 ability of the lease site and surrounding areas
22 to support existing ecologically significant
23 flora and fauna;

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

27 F. The lease does not unreasonably interfere
28 with public use or enjoyment within 1,000 feet of
29 municipally owned, state owned or federally owned
30 beaches and parks or municipally owned, state
31 owned or federally owned docking facilities.

32 7-B. Conditions. The commissioner may establish
33 conditions that govern the use of the leased area and
34 limitations on the aquaculture activities. These con-
35 ditions shall encourage the greatest multiple, com-
36 patible uses of the leased area, but shall also ad-
37 dress the ability of the lease site and surrounding
38 area to support ecologically significant flora and
39 fauna and preserve the exclusive rights of the lessee

1 to the extent necessary to carry out the lease pur-
2 pose. The commissioner may grant the lease on a con-
3 ditional basis until the lessee has acquired all the
4 necessary federal, state and local permits. A lease
5 may not be approved unless the commissioner has re-
6 ceived certification from the Department of Environ-
7 mental Protection that the project will not violate
8 the standards ascribed to the receiving waters clas-
9 sification, Title 38, section 465-B.

10 8. Preference. If more than one person applies
11 to lease an area, preference shall be given as fol-
12 lows:

13 A. First, to the department;

14 B. Second, to the riparian owner of the
15 intertidal zone within the leased area;

16 C. Third, to fishermen who have traditionally
17 fished in or near the proposed lease area; and

18 D. Fourth, to the riparian owner within 100 feet
19 of leased coastal waters.

20 9. Rents. After consulting with the Director of
21 the Bureau of Public Lands, the commissioner shall
22 determine the rent which shall be paid under each
23 lease. The rent shall represent a fair value based
24 upon the use of and any structures in the leased ar-
25 ea, but in no instance may the rental fee be set at
26 less than \$50 an acre. The commissioner shall have
27 the discretion to increase the rental fees for cate-
28 gories of leases. These changes may take effect over
29 the term of a lease. The commissioner also may dis-
30 count a portion of the rental fee during the first 2
31 years of operation of a new lease. This discounted
32 rate shall not be less than \$50 an acre.

33 10. Lessee's actions. After being granted a
34 lease, each lessee shall:

35 A. Record the lease in the registry of deeds of
36 each county in which the leased area is located;

37 B. Publish a notice in the newspaper in which
38 the commissioner published notice or would have

1 published notice of any public hearing. The no-
2 tice shall describe the area leased and enumerate
3 any restriction in the leased area; and

4 C. Mark the leased area in a manner prescribed
5 by the commissioner; and

6 D. Annually submit to the department a seeding
7 and harvesting report for the past year and plan
8 for the coming year. Upon written request, a copy
9 of the report shall be provided by the department
10 to the municipality or municipalities in which or
11 adjacent to which the lease is located.

12 11. Revocation. The lease shall be monitored by
13 the department on an annual basis. If substantially
14 no research or aquaculture has been conducted within
15 the preceding year, or if it has been conducted in a
16 manner substantially injurious to marine organisms,
17 or if any other condition of the lease has been vio-
18 lated, the commissioner shall initiate revocation
19 proceedings and may revoke the lease. A lease revoca-
20 tion shall be an adjudicatory proceeding under the
21 Maine Administrative Procedure Act, Title 5, chapter
22 375, subchapter IV. A hearing with public notice
23 shall be held prior to revoking any lease.

24 12. Renewal. The commissioner shall grant a
25 lease renewal unless the prior lessee has not com-
26 plied with the lease agreement during its term, sub-
27 stantially no research or aquaculture has been con-
28 ducted, or the commissioner finds that it is not in
29 the best interest of the State to renew the lease or
30 the renewal will cause the lessee to continue being a
31 tenant of any kind in leases covering an aggregate of
32 more than 150 acres. Renewals may be granted if ap-
33 plied for no later than 30 days after the lapse of
34 the prior lease. A lease renewal shall be an adjudi-
35 catory proceeding under the Maine Administrative Pro-
36 cedure Act, Title 5, chapter 375, subchapter IV. Pub-
37 lic notice shall be given as required under subsec-
38 tion 6 of this section and a hearing shall be held if
39 it is requested by an interested person in writing by
40 5 persons.

41 12-A. Transferability. A lease may be trans-
42 ferred to another person for the remaining portion of
43 its term subject to the following conditions.

1 A. Lease transfers shall be subject to the same
2 procedural requirements as initial applications,
3 except that a public hearing is not mandatory un-
4 less requested by an interested person in writing
5 by 5 persons.

6 B. The commissioner may grant lease transfers if
7 he determines that:

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

10 (2) The transfer is not intended to circum-
11 vent the intent of subsection 8; and

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

14 (4) The transfer will not cause the trans-
15 feree to be a tenant of any kind in leases
16 covering an aggregate of more than 150
17 acres.

18 13. Regulations. The commissioner may adopt or
19 amend regulations:

20 A. Establishing minimum standards for maintain-
21 ing leases;

22 B. For procedures to issue, transfer, review or
23 revoke leases; and

24 C. For notices and hearings to the extent that
25 those procedures are not established by this sec-
26 tion or the Maine Administrative Procedure Act,
27 Title 5, chapter 375;

28 D. For regulating the harvest of wild organisms
29 to be cultured on aquaculture leases;

30 E. For establishing and revaluing fees and rents
31 related to aquaculture; and

32 F. For defining application requirements and de-
33 cision criteria.

1 14. Conflicts. Whenever a project described in
2 a pending aquaculture lease conflicts or could con-
3 flict with a project described in a pending submerged
4 lands act lease, the commissioner and the Commission-
5 er of Conservation shall determine which project is
6 in the best interests of the State.

7 15. Rules. The commissioner shall promulgate
8 rules by January 1, 1988, to define a mussel seed
9 size or seed management and harvest season.

10 **Sec. 2. Appropriation.** The following funds are
11 appropriated from the General Fund to carry out the
12 purposes of this Act.

13		<u>1987-88</u>	<u>1988-89</u>
14	<u>MARINE RESOURCES, DEPARTMENT OF</u>		
15	Bureau of Administration		
16	Positions	(1)	(1)
17	Personal Services	\$28,264	\$37,685
18	All Other	6,000	8,000
19	Capital Expenditures	9,000	

20 These funds are
21 for a full-time
22 employee to han-
23 dle lease pro-
24 ceedings.

25	Bureau of Development		
26	Positions	(1)	(1)
27	Personal Services	\$28,264	\$37,685
28	All Other	6,000	8,000
29	Capital Expenditures	9,000	

30 These funds are
31 for a full-time
32 employee to im-
33 plement
34 aquaculture man-
35 agement
36 initiatives
37 within the de-
38 partment.

1
2 TOTAL \$86,528 \$91,370

3 FISCAL NOTE

4 This new draft will result in an increase in un-
5 dedicated revenue to the General Fund in which the
6 exact amount cannot be determined. This undetermined
7 revenue will be derived from a proposed application
8 fee and an increase in the rental fee for aquaculture
9 leases.

10 STATEMENT OF FACT

11 Aquaculture has been practiced in the State for
12 over 10 years. This new draft updates the laws for
13 leasing submerged lands for aquaculture and incorpo-
14 rates the experience of the State into new laws. This
15 new draft tightens the language limiting the number
16 of acres a person or corporation may lease and re-
17 duces the total from 200 acres to 150 acres.

18 The new draft also changes the laws to require
19 more information in the application for a lease and
20 stipulates an application fee. The department is re-
21 quired to do a thorough site assessment prior to the
22 hearing. The criteria for granting a lease decision
23 have been expanded to include the character of the
24 site, the source of organisms to be cultured at the
25 site and interference with public use or enjoyment of
26 public beaches, parks or docking facilities.

27 This new draft also changes the rent structure
28 for aquaculture leases, setting a minimum rent at \$50
29 an acre and giving the commissioner discretion to in-
30 crease the rate for categories of aquaculture leases
31 over the course of a lease agreement. A rental dis-
32 count may be given to new leaseholders for the first
33 2 years of operation.

34 A leaseholder is required to submit an annual re-
35 port of past and planned activities relating to the
36 lease and the department is required to monitor the
37 lease annually.

1 The commissioner is given the authority to
2 promulgate regulations relating to the leasing pro-
3 cess and is required to develop regulations for
4 mussel management.

5 To carry out the purposes of this Act, an appro-
6 priation is added for 2 new positions. Aquaculture
7 activity has increased tremendously in the past few
8 years and these positions are needed to help the de-
9 partment manage and monitor this increased activity.

10

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