

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2352

H.P. 1703

House of Representatives, February 23, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Marine Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative STEVENS of Bangor.

Cosponsored by Representative CARTER of Winslow, Senator BRANNIGAN of Cumberland and Representative MARSH of West Gardiner.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act to Ensure and Maintain Water Quality.



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

PART A

Sec. A-1. 38 MRSA §361-A, sub-§4-A, as enacted by PL 1973, c. 450, §3, is amended to read:

4-A. Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, aquacultural feed, including medicated feed, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Sec. A-2. 38 MRSA §413, sub-§2-F, ¶B, as enacted by PL 1987, c. 769, Pt. A, §173, is amended to read:

B. As a condition of obtaining a leasehold from the Department of Marine Resources, the Department of Environmental Protection certifies that the aquaculture activities mentioned in this subsection will not have a significant adverse effect on water quality or violate the standards ascribed to the receiving waters' classifications and that the activities satisfy the requirements of section 417-A.

Sec. A-3. 38 MRSA §417-A is enacted to read:

§417-A. Net-pen aquaculture

1. Siting criteria; rules. The department shall adopt rules governing the siting of aquaculture activities based on the following criteria.

A. Mean current velocity of the affected water as measured midway between the bottom of the net-pens and the ocean floor must not be less than 5 centimeters per second and must be adequate to ensure good water exchange given other specific characteristics of the proposed leasehold site. Substantial tidal flow is not considered a substitute for good water exchange.

B. Minimum depth of water beneath the bottom of the net-pens at mean low water must not be less than 30 feet and must be deep enough to ensure dispersion of feces, pseudofeces and waste feed given other specific characteristics of the proposed leasehold site.

C. Annual permitted level of fish production in pounds per year must be limited to production appropriate to the specific characteristics of the proposed leasehold site.

2 D. Flushing time of semienclosed bodies of water for which
4 leasehold sites are proposed must be adequate, given other
6 specific characteristics of the site, to prevent the
stimulation of phytoplankton growth and the upwelling of
oxygen depleted water.

8 E. Regions where water characteristics and seabed features
10 promote accumulation of sediment or produce depositional
bottom sediments shall be avoided as leasehold sites.

12 F. Water column stability at the proposed leasehold site
14 must be appropriate to ensure dispersion of wastes and
regions of strong pycnocline must be avoided.

16 G. Natural levels of nutrients in waters at the proposed
18 leasehold site must be appropriate to ensure that soluble
nutrients from net-pen activities are not introduced into
20 regions of nutrient-limited waters where the nutrients risk
stimulating planktonic or benthic algal blooms.

22 H. The area affected by any aquaculture activity, including
24 patterns of sedimentation outfall from net-pens, may not
exceed 5 acres.

26 I. The minimum distance between leasehold sites for
28 aquaculture activities must be at least 2,500 feet under the
best site conditions and at least 5,000 feet under lesser
30 conditions.

32 2. Moratorium. The department may not certify any net-pen
aquaculture activities under section 413, subsection 2-F,
34 paragraph B, prior to adoption of rules under this section.

36 3. Monitoring. The department shall require monitoring at
each aquaculture leasehold site. These requirements include the
38 following.

40 A. Water column measurements must be taken at the leasehold
42 site before fish are placed in the net-pens and subsequently
during January, May, the period between July 15th and August
44 15th, and October of each year according to generally
accepted scientific protocols. The measurements must be
46 taken at slack water, ebb tide, 10 feet upstream of the
net-pens, 10 feet downstream of the net-pens, 100 feet
48 upstream of the net-pens, 100 feet downstream of the
net-pens and in the middle of the net-pens. Each of these
50 locations must be tested at 4 water depths: at or near the
surface; mid-level of net-pen depth; 5 feet below the depth
52 of the net-pens; and within one foot of the bottom. The
measurements include the following parameters of the water
column:

- (1) Dissolved oxygen;
- (2) Ammonium (NH4+);
- (3) Settleable solids;
- (4) Biological oxygen demand;
- (5) Turbidity;
- (6) pH;
- (7) Chlorophyll A;
- (8) Pathogens, including Vibrio spp., Clostridium perfringens and Aeromonas salmonicida; and
- (9) Alexandrium tamarensis, common red tide alga.

B. Sediment measurements must be taken at the leasehold site before fish are placed in the pens and subsequently during January, May, the period between July 15th and August 15th, and October of each year according to generally accepted scientific protocols. The measurements must be taken in the sediment beneath the net-pens, 10 feet upstream of the net-pens and 10 feet downstream of the net-pens, 100 feet upstream of the net-pens and 100 feet downstream of the net-pens. Each of these measurements must include sediment from the surface to a depth of 4 inches. The measurements include the following parameters of the sediment:

- (1) Pathogens, including Vibrio spp., Clostridium perfringens and Aeromonas salmonicida;
- (2) Antibiotics;
- (3) Antibiotic resistant bacteria;
- (4) Indigenous biota, including invertebrates and benthic algae as the department may specify;
- (5) Hydrogen sulfide; and
- (6) Cysts of Alexandrium tamarensis.

C. Collection and preparation of data required in this subsection must be accomplished by agents or agencies independent of the net-pen leaseholder and approved by the Commissioner of Environmental Protection. All costs associated with the required measurements, data collection and preparation and reporting are the responsibility of the net-pen leaseholder. The department shall be permitted to conduct at any time for its own purposes, the tests described in this subsection or other water quality or sediment tests as the department may require without advance notice to the leaseholder.

4. Reporting requirement. Any net-pen aquaculture leasehold is revoked if the exempt leaseholder fails to provide the information required in this section. The department shall require this information of all leaseholders after the net-pens are positioned but before fish are placed in them. The department shall require this information on or before December 31st of each year following the year the exemption was granted.

adopted hereunder, or of any lawful order of the commissioner; or

Sec. B-2. 7 MRSA §606, sub-§2, ¶¶ G as repealed and replaced by PL 1985, c. 506, Pt. A, §6, is amended to read:

G. For any person to apply pesticides in a manner inconsistent with rules for pesticide application adopted by the board, which rules are designed to minimize pesticide drift to the maximum extent practicable under currently available technology. Without limitation, these rules may prescribe procedures to be used for the application of pesticides, including the time, place, manner and method of that application, may restrict or prohibit use of pesticides in designated areas or during specified periods of time and may prescribe tolerance levels for pesticide residues in off-target areas. The board shall propose the rules by June 15, 1985.

Sec. B-3. 7 MRSA §606, sub-§2, ¶¶ H and I are enacted to read:

H. For any person to apply pesticides, fungicides, plant regulators, defoliant, disinfectants, algicides, chemical treatments, anesthetics or antifoulants to any aquaculture structure, net-pen or leasehold site without registering these chemicals in advance with the Board of Pesticides Control and without first posting written public notice of the following information at least 24 hours prior to application in the United States Post Office nearest the leasehold site, in the town office nearest the leasehold site and in a newspaper of general circulation that serves the region of the leasehold site:

(1) Name, address and telephone number of the aquaculture leaseholder;

(2) Name of person or persons responsible for applying treatment;

(3) Name and chemical composition of the treatment to be applied;

(4) Dosage to be applied;

(5) Time of treatment; and

(6) Reason for treatment; or

I. For tributyltin, TBT, to be used as an antifouling agent on aquaculture net-pens or on the surrounding predator control nets.

2 Sec. B-4. 7 MRSA §721-A is enacted to read:

4 §721-A. Prohibited aquacultural feed

6 Feed provided to fish at net-pen leasehold sites, must be in
8 pelletized form. A person may not use unpelletized wet feed
10 including minced fish or shellfish in net-pen aquaculture. Dead
12 fish from net-pen culture may not be utilized in fish feed
14 pellets.

12 Sec. B-5. 7 MRSA §1808-A is enacted to read:

14 §1808-A. Aquacultural use of antibiotics

16 A person may not introduce into the waters of the State at
18 any aquaculture leasehold site, either through fish feed or
20 direct application, any antibiotic without registering the
22 antibiotic in advance with the Board of Pesticides Control.

24 1. Notice. A person may not introduce into the waters of
26 the State at any aquaculture leasehold site any antibiotic
28 without posting written public notice of the following
30 information at least 24 hours prior to application in the United
32 States Post Office nearest the leasehold site, in the town office
34 nearest the leasehold site and in a newspaper of general
36 circulation that serves the region of the leasehold site:

38 A. Name, address and telephone number of the
40 aquaculture leaseholder;

42 B. Name of person or persons responsible for applying
44 antibiotic;

46 C. Name of the antibiotic to be applied;

48 D. Dosage to be applied;

50 E. Time of treatment; and

52 F. Reason for treatment.

 Sec. B-6. 7 MRSA §1817 is amended to read:

§1817. Disposition of carcasses

 The commissioner may cause the owner to make proper
disposition of carcasses of domestic animals, cultured fish and
marine animals that have died of, or been condemned for certain
contagious or infectious diseases, or carcasses of domestic
animals from farms, herds, flocks, aquaculture activities or
areas where certain contagious or infectious diseases are or have
been present. Proper disposition means burning, burying,

2 rendering or other disposition prescribed by the commissioner. A
3 person may not dispose of any fish waste or dead fish from any
4 leasehold aquaculture site in surface waters of the State.

6 PART C

8 Sec. C-1. 12 MRSA §6071, sub-§§1 and 2, as enacted by PL 1977,
9 c. 661, §5, are amended to read:

10 1. **Live importing prohibited.** It shall-be is unlawful to
11 introduce or import for introduction into any coastal waters any
12 live marine organism or to possess any of those introduced or
13 imported organisms without a permit issued by the commissioner.
14 A permit may not be granted for the importation or introduction
15 of any species exotic to the Gulf of Maine. This subsection
16 applies to the introduction of imported live marine organisms for
17 all purposes including aquaculture.

18 2. **Permits and regulations on importing.** The commissioner
19 may grant permits to possess, import and introduce an organism if
20 these these actions will do not endanger the indigenous marine
21 life or its environment. Prior to granting a permit to introduce
22 a nonindigenous an organism, which has not been previously
23 introduced under a permit, the commissioner shall hold a
24 hearing. This hearing may not be combined with any other hearing
25 held by the commission. The commissioner may adopt or amend
26 regulations governing the importing and introduction of organisms
27 and the issuing of permits, to the extent required to prevent the
28 introduction of bacteria, fungus, virus or any other infectious
29 or contagious disease or parasite, predator or other organism
30 that may be dangerous to indigenous marine life or its
31 environment.

32 Sec. C-2. 12 MRSA §6072, sub§1-A is enacted to read:

33 1-A. **Riparian owner.** For purposes of this subchapter,
34 "riparian owner" means a shore front property owner whose
35 property boundaries are within 1000 feet of the proposed lease
36 boundaries.

37 Sec. C-3. 12 MRSA §6072, sub-§4, ¶¶I and J, as enacted by PL
38 1987, c. 453, §1, is amended to read:

39 I. Describe the proposed source of organisms to be grown at
40 the site; and

41 J. Include a nonrefundable application fee of at least
42 \$100, but not more than \$1,000, the amount to be set by the
43 commissioner depending on the proposed acreage, type of
44 aquaculture proposed and complexity of the application; and

2 aquaculture purposes. Sections B-3 and B-5 prohibit the use of
moist feed and the disposing of dead marine organisms in waters
of the State. Part C applies generally to Title 12 aquaculture
4 permits and leases. Section C-1 prohibits the importation of
live marine organisms not indigenous to the Gulf of Maine and
6 requires a separate hearing to be held for importing permits.
Section C-2 and C-4 defines "riparian owner" and requires that
8 they be notified of aquaculture lease applications. Section C-5
establishes an escrow account for aquaculture leases.

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