

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

2

4

6

8

10

12

14

16

18

20

22

24

26

28

30

32

34

36

38

40

42

44

STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "^A" to H.P. 55, L.D. 76, Bill, "An Act
Regarding Aquaculture"

Amend the bill by inserting after the title before enacting
clause the following:

**'Emergency preamble. Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and**

**Whereas, key research is required to allow efficient
environmental monitoring; and**

**Whereas, current staffing levels limit the ability of the
State to process aquaculture lease applications; and**

**Whereas, the primary aquaculture field season will end prior
to the regular effective date; and**

**Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
safety; now, therefore,'**

Further amend the bill in section 2 in subsection 4 in the
4th line (page 1, line 20 in L.D.) by inserting after the
following: "salmon" the following: ', exclusive of rainbow
trout,' and in the 5th line (page 1, line 21 in L.D) by striking
out the following: "United States" and inserting in its place
the following: 'North America' and in the 8th line (page 1, line
24 in L.D.) by inserting after the following: "salmon" the

2 following: ', exclusive of rainbow trout,' and in the 9th line
(page 1, line 25 in L.D.) by striking out the following: "United
4 States" and inserting in its place the following: 'North America'

6 Further amend the bill by striking out all of sections 3 and
4 and inserting in their place the following:

8 'Sec. 3. 12 MRSA §6072, sub-§1-A is enacted to read:

10 1-A. Lease requirement; finfish and suspension shellfish
12 culture. Except as provided in paragraphs A and B, it is
14 unlawful for a person who does not have a lease issued by the
16 commissioner under this section to construct or operate in the
coastal waters of the State a facility for the culture of finfish
in nets, pens or other enclosures or for the suspended culture of
shellfish.

18 A. The commissioner may grant an exemption from this
20 subsection for legitimate research for a term not to exceed
22 2 years, renewable upon application. Legitimate research
does not include commercial aquaculture production of
finfish or shellfish in the coastal waters of the State.

24 B. A person operating a facility in the coastal waters of
26 the State, on or before the effective date of this
28 subsection, for the culture of finfish in nets, pens or
30 other enclosures or for the suspended culture of shellfish
32 that is not leased under this section must register the
34 facility with the commissioner on or before January 1, 1992
on a form specified by the commissioner. A person
registering under this paragraph must submit a completed
lease application on or before July 1, 1992. A registrant
whose application under this paragraph is denied shall
immediately cease operations at the facility and remove all
related structures from the coastal waters of the State.

36 C. The commissioner may not consider an application for a
38 lease under this section on an area registered under
40 paragraph B from a person other than the registrant prior to
rendering a final decision on any application submitted by a
registrant under paragraph B.

42 A person who violates this subsection is subject to a civil
44 penalty, payable to the State, of no more than \$1,000 for each
day of the violation.

46 Sec. 4. 12 MRSA §6072, sub-§16 is enacted to read:

48 16. Lease-by-rule; small-scale finfish and suspended
50 shellfish operations. The commissioner shall adopt by rule a
leasing procedure for the aquaculture of finfish and suspended

2 aquaculture of shellfish that waives the provisions of
3 subsections 5, 5-A and 6.

4 A. The commissioner shall limit eligibility for this
5 procedure to applicants proposing aquaculture operations
6 with a whole fish production level no higher than 20,000
7 pounds per year of finfish or seeding level of no more than
8 50,000 seed per year for shellfish.

10 B. An applicant for a lease under this subsection must
11 submit an application consistent with subsection 4. The
12 commissioner shall approve, deny or approve with conditions
13 any completed application under this subsection within 45
14 days of receipt. Any application not acted on within this
15 period is deemed approved.

16 C. Upon receipt of an application under this subsection, the
17 commissioner shall notify the municipal officers of the
18 municipality or municipalities in which or adjacent to which
19 the lease is proposed.

22 D. In making a decision on an application under this
23 subsection, the commissioner shall consider all comments
24 submitted in writing within 30 days of receipt of the
25 application.

26 E. The commissioner may conduct an assessment of the
27 proposed site and surrounding area to determine the possible
28 effects of the lease on commercially and ecologically
29 significant flora and fauna and conflicts with traditional
30 fisheries and navigation, including storm anchorages.

32 F. The commissioner shall develop a set of standard
33 conditions that incorporate the siting criteria of
34 subsection 7-A and other provisions of this section as
35 applicable. The commissioner shall attach these standard
36 conditions to any lease granted under this subsection.

38 G. Expansion of whole fish production levels beyond 20,000
39 pounds per year of finfish or seeding level beyond 50,000
40 seed per year for shellfish at any site leased under this
41 subsection is contingent upon issuance of a new lease
42 subject to this section.

44 H. A person may not hold, directly or indirectly, more than
45 one lease granted under this subsection at any given time.

48 I. The term of a lease granted under this subsection is 10
49 years.

50

Sec. 5. 12 MRSA §6073-A is enacted to read:

2 §6073-A Minimum size exemption; aquaculture.

4 The holder of a lease issued under section 6072 is exempt
6 from any requirement regarding the minimum or maximum length or
8 other minimum or maximum size requirement for finfish cultivated
10 on the leased area. The exemption applies only to those
12 organisms actually cultivated on the leased area. The
14 commissioner shall require a system of identification of
16 organisms exempted under this section.'

12 Further amend the bill in section 5 in that part designated
14 "§6077." in subsection 4 in the first line (page 3, line 7 in
16 L.D.) by striking out the following: "Except" and inserting in
its place the following: 'Notwithstanding section 6173 and
except'

18 Further amend the bill in section 5 in that part designated
20 "§6077." in subsection 4 in paragraph A in the 6th line (page 3,
22 line 22 in L.D.) by inserting after the following: "Agency." the
following: 'the United States Army Corps of Engineers, the
United States Fish and Wildlife Service, the National Marine
Fisheries Services.'

24 Further amend the bill in section 5 in that part designated
26 "§6077." in subsection 4 in paragraph C in the first line (page
28 4, line 9 in L.D.) by inserting after the following: "state" the
following: 'or federal'

30 Further amend the bill by striking out all of section 6 and
32 inserting in its place the following:

34 'Sec. 6. 12 MRSA §§6078 and 6079 are enacted to read:

36 §6078. Salmon aquaculture monitoring and research fund

38 1. Fund established. All income received by the
40 commissioner under this section must be deposited with the
42 Treasurer of State, to be credited to the Salmon Aquaculture
Monitoring and Research Fund, established as a nonlapsing fund.
Any interest earned on this money must also be credited to the
fund.

44 2. Allocations from the fund. Expenditures from the fund
46 are subject to legislative approval in the same manner as
48 appropriations from the General Fund. The joint standing
committee of the Legislature having jurisdiction over
appropriations must approve the allocations.

50 3. Production fee assessed. A person producing salmon in
52 aquacultural facilities subject to section 6072 shall pay to the
commissioner a fee of 1¢ per pound of whole fish harvested. The

2 person shall pay the fee within 30 days of harvest. Timely
3 payment of the fee is a condition of any lease granted under
4 section 6072 for the production of salmon in net-pen aquacultural
5 facilities. The commissioner may assess a late payment charge on
6 any overdue payments computed at the annual interest rate
7 established by the State Tax Assessor under Title 36, section
8 186. The commissioner may establish by rule any procedural
9 requirements for collection of the fee including without
10 limitation monthly reporting of harvest amounts and reporting
11 forms. Failure to pay the fee is a civil violation punishable by
12 a civil penalty not to exceed \$1,000.

13 4. Expenditures; purpose. The commissioner may make
14 expenditures from the fund only for the purposes of developing
15 effective and cost-efficient water quality licensing and
16 monitoring criteria, analyzing and evaluating monitoring data and
17 processing lease applications. In developing a program of
18 expenditures, the commissioner shall consult with members of the
19 salmon aquaculture industry. The commissioner may contract for
20 services privately or under memoranda of agreement with other
21 state agencies.

22 5. Revenues; rebates; reports. The commissioner shall
23 rebate to those persons who have paid fees under subsection 3 in
24 the preceding 3 fiscal years all revenues that have exceeded
25 allocations from the fund in those years. A rebate must be in
26 the same proportion to the total of all rebates as the
27 recipient's fees for that period are to the total of all fees
28 levied for that period.

29 A. On or before February 1, 1993, the commissioner shall
30 report to the joint standing committee of the Legislature
31 having jurisdiction over marine resource matters. The
32 commissioner shall report on revenues received under this
33 section in fiscal year 1991-92 and up to the date of the
34 report in fiscal year 1992-93 along with estimated revenues
35 for the remainder of that fiscal year. The commissioner
36 shall include in this report the department's budget
37 submission for the following biennium. The commissioner
38 shall report on all expenditures from the fund up to the
39 date of the report. The committee may introduce and report
40 legislation it determines necessary to modify the provisions
41 of this section.

42 B. On or before February 1, 1994, the commissioner shall
43 report to the joint standing committee of the Legislature
44 having jurisdiction over marine resource matters on all
45 expenditures made from the fund and on all work accomplished
46 and planned. The commissioner shall also report on the
47 department's experience in coordinating the aquaculture
48 lease application and monitoring requirements of the State
49 Department of Fish and Game.

2 with those of the Federal Government. The committee may
3 introduce and report legislation it determines necessary to
4 modify the provisions of this section.

6 6. Repeal. This section is repealed on July 1, 1994.

8 §6079. Aquacultural use of antibiotics; notice

10 1. Notice required. When introducing an antibiotic into the
11 waters of the State at a research site under section 6072,
12 subsection 1-A, paragraph A or an aquaculture leasehold site, a
13 person shall post written public notice in the municipality
14 nearest the leasehold site in the same location as that generally
15 used to post notice of town meetings or city elections. The
16 notice must include the following information:

18 A. The name and address of the aquaculture leaseholder and
19 an in-state telephone number for the leaseholder that can be
20 called to get further information on the antibiotic
21 application;

22 B. The name of the person or persons responsible for
23 applying the antibiotic;

24 C. The name of the antibiotic to be applied;

25 D. The dosage to be applied;

26 E. The time and duration of treatment; and

27 F. The date of posting.'

28 Further amend the bill by striking out all of section 7 and
29 inserting in its place the following:

30 'Sec. 7. Allocation. The following funds are allocated from
31 Other Special Revenue to carry out the purposes of this Act.

32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

	1991-92	1992-93
--	---------	---------

**MARINE RESOURCES,
DEPARTMENT OF**

**Salmon Aquaculture Monitoring
and Research Fund**

Positions	(1)	(1)
Personal Services	\$25,500	\$34,000
All Other	71,625	67,500
Capital Expenditures	10,000	

2 Provides funds for a Marine
3 Scientist I position,
4 contractual services as
5 specified in this Act and
6 general operating expenses to
7 process lease applications,
8 analyze existing monitoring
9 data, develop and analyze
10 water quality licensing and
11 monitoring criteria.

12
13 **DEPARTMENT OF MARINE RESOURCES**
14 **TOTAL** \$107,125 \$101,500'

15 Further amend the bill by renumbering the sections to read
16 consecutively.

17
18 Further amend the bill by inserting before the statement of
19 fact the following:

20
21 **'Emergency clause.** In view of the emergency cited in the
22 preamble, this Act takes effect when approved.

23

24
25 **FISCAL NOTE**

26
27 **1991-92** **1992-93**

28
29 **APPROPRIATIONS/ALLOCATIONS**

30
31 Other Funds \$107,125 \$101,500

32
33 **REVENUES**

34
35 Other Funds \$120,000 \$120,000

36
37 This bill establishes the Salmon Aquaculture Monitoring and
38 Research Fund to be administered by the Department of Marine
39 Resources. A fee of 1¢ per pound on salmon produced in
40 aquaculture facilities will generate approximately \$120,000
41 annually in dedicated revenue to the fund, based on 12,000,000
42 pounds of salmon landings. The Department of Marine Resources
43 will require allocations of \$107,125 in fiscal year 1991-92 and
44 \$101,500 in fiscal year 1992-93 for a Marine Scientist I and
45 other expenses for aquaculture monitoring and research.

46
47 The additional work load and administrative costs associated
48 with a minimal number of new cases will be absorbed within
49 budgeted resources of the Judicial Department. The collection of
50 additional fines will increase General Fund revenue. The amount
51 of revenue can not be determined at this time.

2 Sentences imposed for a Class D offense must be served in a
county jail facility. The projected costs to a county for each
4 person sentenced under the new Class D crime is approximately
\$6,780 and is based on an average length of stay of about 119
6 days.'

8

STATEMENT OF FACT

10

This amendment provides for the continued importation of
12 rainbow trout and clarifies the proposed prohibition on other
salmon species from any waters west of the North American
14 continental divide.

16

The amendment provides a mechanism for existing unleased
aquaculture facilities to come into compliance with the new
18 requirement that all net-pen finfish and suspended shellfish
aquaculture operations obtain leases from the Department of
20 Marine Resources.

22

The amendment also clarifies the lease-by-rule provisions of
the original bill.

24

The amendment also exempts aquaculturalists from minimum
26 size requirements relating to those finfish actually cultivated
on the lease site.

28

The amendment also makes minor changes to the
30 confidentiality provisions of the original bill.

32

The amendment also requires that public notice be posted
whenever antibiotics are applied at aquaculture sites.

34

The amendment provides a funding mechanism to support
36 necessary research, monitoring and industry services. The
funding mechanism is repealed by its own terms on July 1, 1994.
38 An allocation is included along with the necessary fiscal note.

Reported by the Committee on Marine Resources
Reproduced and distributed under the direction of the Clerk of the
(5/20/91) (Filing No. H-373)