

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1990

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Legislative Document

No. 76

H.P. 55

House of Representatives, December 27, 1990

Reported by Representative COLES from the Subcommittee to Study Salmon Aquaculture in Maine.

Reference to the Joint Standing Committee on Marine Resources suggested and printing ordered under Joint Rule 19.

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

EDWIN H. PERT, Clerk

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

---

An Act Regarding Aquaculture.

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

2  
4       **Sec. 1. 12 MRSA §558-A, sub-§10** is enacted to read:

6       10. Aquaculture exemption. A lease for the use of  
8       submerged lands under this section is not required for the  
10       development and operation of any aquaculture facility if the  
12       owner or operator of the facility has obtained a lease from the  
14       Commissioner of Marine Resources under section 6072. Ancillary  
16       equipment and facilities permanently occupying submerged lands on  
18       the lease site and not explicitly included in the lease granted  
20       by the Commissioner of Marine Resources are not exempt from the  
22       requirements of this section.

24       **Sec. 2. 12 MRSA §6071, sub-§4** is enacted to read:

26       4. Salmon imports prohibited. It is unlawful to import for  
28       introduction into any waters of the State any Atlantic salmon,  
30       live or as eggs, that originate in any Icelandic or European  
32       territorial waters or any other species of salmon originating  
34       west of the United States continental divide. After January 1,  
36       1995, it is unlawful to introduce into any waters of the State  
38       any Atlantic salmon that originate in any Icelandic or European  
40       territorial waters or any other species of salmon originating  
42       west of the United States continental divide including any fish  
44       raised within the State from eggs or broodstock that are subject  
46       to the import prohibition under this subsection. The  
48       commissioner may grant an exemption from the provisions of this  
50       subsection for a term not to exceed 2 years, renewable upon  
52       application, for legitimate research. Legitimate research does  
      not include pilot, demonstration or full-scale aquaculture  
      production of salmon in the coastal waters of the State.

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

56       1-A. Lease requirement; finfish and suspension shellfish  
58       culture. It is unlawful for a person to construct or operate in  
60       the coastal waters of the State a facility for the culture of  
62       finfish in nets, pens or other enclosures or for the suspended  
64       culture of shellfish without a lease issued by the commissioner  
66       under this section. A person who violates this subsection is  
68       subject to a civil penalty, payable to the State, of no more than  
70       \$1,000 for each day of the violation.

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

74       16. Permit-by-rule; small-scale salmon operations. The  
76       commissioner may adopt by rule a leasing procedure for the  
78       aquaculture of finfish that waives the provisions of subsections  
80       5 and 6. The commissioner shall limit eligibility for this  
82       procedure to applicants proposing aquaculture operations with a  
      production level no higher than 20,000 pounds per year of

2 finfish. The commissioner shall develop a set of standard  
4 conditions that incorporate the siting criteria of subsection 7  
6 and other provisions of this section as applicable. The  
8 commissioner shall attach these standard conditions to any lease  
10 granted under the provisions of this subsection. Expansion of  
12 production levels beyond 20,000 pounds per year of finfish at any  
14 site leased under this subsection is contingent upon issuance of  
16 a new lease subject to all provisions of this section. A person  
18 may not hold, directly or indirectly, more than one lease granted  
20 under this subsection at any given time.

22 Sec. 5. 12 MRSA §6077 is enacted to read:

24 **§6077. Aquaculture monitoring program**

26 The department is responsible for establishing and  
28 maintaining a comprehensive information base pertaining to all  
30 aspects of the siting, development and operation of finfish  
32 aquaculture facilities within the State.

34 **1. Coordination.** The commissioner shall coordinate the data  
36 collection efforts of the department with those of other state  
38 agencies that regulate or assist the finfish aquaculture  
40 industry. All agencies of the State shall cooperate with the  
42 department in the establishment of the information system and  
44 shall provide all available information requested by the  
46 commissioner.

48 **2. Data requirements.** The commissioner shall ensure that,  
50 at a minimum, information in the following site-specific  
52 categories is collected and organized in such a manner as to  
allow effective enforcement of all laws pertaining to finfish  
aquaculture at individual facilities:

A. Geophysical site characteristics, including currents and  
bathymetry;

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

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

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

D. Smolt and broodstock introduction and transfer data;

E. Disease incidence and use of chemical therapeutics; and

F. Other ancillary information as the commissioner may find  
necessary.

2           3. Data collection; authority. The commissioner may  
3           require persons holding licenses related to finfish aquaculture  
4           under this Title to report information in the categories listed  
5           in subsection 2.

6  
7           4. Confidentiality. Except as provided in paragraphs A and  
8           B, information obtained by the department under this section is a  
9           public record as provided by Title 1, chapter 13, subchapter I.

10           In addition to remedies provided under Title 1, chapter 13,  
11           subchapter I, the Superior Court may assess against the  
12           department reasonable attorney's fees and other litigation costs  
13           reasonably incurred by an aggrieved person who prevails in the  
14           appeal of the department's denial for a request for information.

15  
16           A. Information submitted to the department under this  
17           section may be designated by the submitter as being only for  
18           the confidential use of the department, its agents and  
19           employees, other agencies of State Government, as authorized  
20           by the Governor, employees of the United States  
21           Environmental Protection Agency, the Attorney General and  
22           employees of the municipality in which the aquaculture  
23           facility is located. The designation must be clearly  
24           indicated on each page or other portion of information. The  
25           commissioner shall establish procedures to ensure that  
26           information so designated is segregated from public records  
27           of the department. The department's public records must  
28           include the indication that information so designated has  
29           been submitted to the department, giving the name of the  
30           submitter and the general nature of the information. Upon a  
31           request for information, the scope of which includes  
32           information so designated, the commissioner shall notify the  
33           submitter. Within 15 days after receipt of the notice, the  
34           submitter shall demonstrate to the satisfaction of the  
35           department that the designated information should not be  
36           disclosed because the information is a trade secret or  
37           production, commercial or financial information, the  
38           disclosure of which would impair the competitive position of  
39           the submitter and would make available information not  
40           otherwise publicly available. Unless such a demonstration  
41           is made, the information must be disclosed and becomes a  
42           public record. The department may grant or deny disclosure  
43           for the whole or any part of the designated information  
44           requested and within 15 days shall give written notice of  
45           the decision to the submitter and the person requesting the  
46           designated information. A person aggrieved by a decision of  
47           the department may appeal to the Superior Court. All  
48           information provided by the department to the municipality  
49           under this paragraph is confidential and not a public record  
50           under Title 1, chapter 13. If a request for the information  
51           is submitted to the municipality, the municipality shall  
52

2 submit that request to the commissioner to be processed by  
the department as provided in this paragraph.

4 B. The commissioner may not release the designated  
information prior to the expiration of the time allowed for  
6 the filing of an appeal or to the rendering of the decision  
on any appeal.

8  
10 C. Any information that is collected by any other state  
agency or information required by the department for the  
12 purpose of obtaining a permit, license, certification or  
other approval may not be designated or treated as  
14 designated information under paragraph A.

16 D. The commissioner may adopt rules to carry out the  
purposes of this section. The rules must be consistent with  
18 the provisions of Title 1, chapter 13, subchapter I.

20 E. It is unlawful to disclose designated information to any  
person not authorized by this section.

22 (1) Any person who solicits, accepts or agrees to  
accept, or who promises, offers or gives any pecuniary  
24 benefit in return for the disclosure of designated  
information is guilty of a Class D crime and subject to  
26 the civil penalty of subparagraph (2).

28 (2) A person who knowingly discloses designated  
information, knowing that the disclosure is not  
30 authorized, is subject to a civil penalty of not more  
32 than \$5,000.

34 (3) In any action under this paragraph, the court  
shall first declare that the information is a trade  
36 secret or production, commercial or financial  
information, the disclosure of which would impair the  
38 competitive position of the submitter and would make  
available information not otherwise publicly available.

40 **Sec. 6. 12 MRSA §6553, sub-§9 is enacted to read:**

42 9. Exemption. A person holding a lease under section 6072  
for the aquaculture of Atlantic salmon is exempt from the  
44 provisions of this section.

46 **Sec. 7. Appropriation.** The following funds are appropriated  
48 from the General Fund to carry out the purposes of this Act.

	1991-92	1992-93
2		
4	<b>MARINE RESOURCES, DEPARTMENT OF</b>	
6	Positions	(2.0) (2.0)
6	Personal Services	\$75,000 \$75,000
8	All Other	20,000 10,000
8	Capital Expenditures	8,000
10	Provides funds for 2	
12	positions to assist in the	
14	leasing and monitoring of	
	aquaculture operations and to	
	undertake related research.	
16	<b>DEPARTMENT OF MARINE RESOURCES</b>	
18	<b>TOTAL</b>	<u>\$103,000</u> <u>\$85,000</u>
20	<b>ENVIRONMENTAL PROTECTION,</b>	
20	<b>DEPARTMENT OF</b>	
22	Positions	(1.0) (1.0)
24	Personal Services	\$33,987 \$35,484
24	All Other	97,795 84,623
26	Capital Expenditures	1,000
28	Provides funds to support	
30	marine research on the	
32	environmental effects of	
34	net-pen finfish aquaculture	
	operations. Research will	
	concentrate on nutrient	
	loading and biologically	
	based compliance criteria for	
	net-pen aquaculture.	
36	<b>DEPARTMENT OF ENVIRONMENTAL</b>	
38	<b>PROTECTION</b>	
40	<b>TOTAL</b>	<u>\$131,782</u> <u>\$121,107</u>
42	<b>TOTAL APPROPRIATIONS</b>	<u>\$234,782</u> <u>\$206,107</u>

#### STATEMENT OF FACT

46 This bill is the unanimous report of the Subcommittee to  
48 Study Salmon Aquaculture in Maine of the Joint Standing Committee  
50 on Marine Resources authorized under Joint Rule 19. The bill  
implements the statutory recommendation of the study subcommittee.

2 Sections 1 and 3 require aquaculture leases for all finfish  
and suspension aquaculture and coordinates the leasing programs  
4 of the Department of Marine Resources and the Bureau of Public  
Lands.

6 Section 2 prohibits the importation of live salmon or salmon  
eggs from Icelandic and European waters and from any area west of  
8 the United States continental divide. This prohibition is  
consistent with current federal requirements. Aquaculturalists  
10 with these stocks already in the State are given until 1995 to  
use their existing stocks.

12 Section 4 authorizes a permit-by-rule program within the  
14 Department of Marine Resources to reduce unnecessary regulatory  
overhead on very small finfish aquaculture operations so long as  
16 all existing environmental standards are met.

18 Section 5 establishes an environmental data collection  
program coordinated by the Department of Marine Resources.

20 Section 6 provides an exemption from the minimum size  
22 provisions of Atlantic salmon laws for salmon aquaculturalists.

24 Section 7 provides 2 additional staff for the aquaculture  
siting and monitoring program within the Department of Marine  
26 Resources and provides funds for environmental research and  
monitoring related to salmon aquaculture.

28