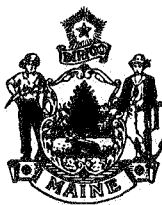


MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

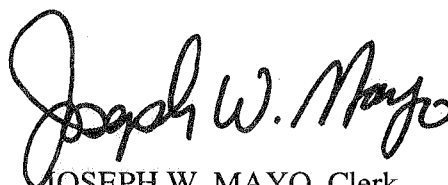
No. 468

H.P. 346

House of Representatives, January 23, 1997

An Act Pertaining to the Aquaculture Lease Law.

Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
Reference to the Committee on Marine Resources suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative HONEY of Boothbay.
Cosponsored by Representative ETNIER of Harpswell.

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

Sec. 1. 12 MRSA §6072, sub-§1-A, as amended by PL 1993, c. 409, §1, is further amended to read:

1-A. Lease requirement; finfish and suspension culture. Except as provided in paragraphs A, B and B-1 paragraph A, it is unlawful for a person who does not have a lease issued by the 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 any other marine organism.

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

~~B. A person operating a facility in the coastal waters of the State, on or before the effective date of this subsection, for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish that is not leased under this section must register the 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.~~

~~B-1. A person operating a facility in the coastal waters of the State for the suspended culture of a marine organism other than shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1994 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1994. 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.~~

~~C. The commissioner may not consider an application for a lease under this section on an area registered under paragraph B or B-1 from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B or B-1.~~

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

4
6 **Sec. 2. 12 MRSA §6072, sub-§1-B** is enacted to read:

8 **1-B. Experimental leases.** Notwithstanding subsection 1-A,
paragraph A, the commissioner may issue an experimental lease for:

10 A. Commercial aquaculture research purposes; or

12 B. If the commissioner determines that an emergency at an
aquaculture facility leased under subsection 1-A threatens
the health and safety of the marine organisms being raised
at that facility, the relocation of those organisms from
that leased facility to another location.

18 An experimental lease must be issued in accordance with the
provisions of this section, except that a hearing under
subsection 6 on an emergency lease is not required unless
requested by more than 5 persons.

22
24 **Sec. 3. 12 MRSA §6072, sub-§2, ¶B,** as amended by PL 1987, c.
453, §1, is repealed.

26 **Sec. 4. 12 MRSA §6072, sub-§2, ¶E,** as amended by PL 1995, c.
383, §1, is further amended to read:

28
30 E. The lease does not result in a person being a tenant of
any kind in leases covering an aggregate of more than 150
acres, ~~except that the aggregate amount may be up to 200~~
~~acres when the leases are used exclusively for the~~
~~aquaculture of marine organisms by methods other than~~
34 ~~suspended culture~~ 250 acres; and

36 **Sec. 5. 12 MRSA §6072, sub-§5,** as amended by PL 1987, c. 453,
§1, is further amended to read:

38
40 **5. Application review.** The commissioner shall review the
application and set a hearing date, except for experimental
leases, in which case a hearing date is set only if requested by
42 5 or more persons, if he the commissioner is satisfied that the
written application is complete, the application indicates that
44 the lease could be granted and the applicant has the financial
and technical capability to carry out the proposed activities. A
46 copy of the completed application and notice of hearing shall
must be forwarded to the municipality or municipalities in which
48 or adjacent to which the lease is proposed. A municipality shall
must be granted intervenor status upon written request.

50
52 **Sec. 6. 12 MRSA §6072, sub-§5-A,** as enacted by PL 1987, c.
453, §1, is amended to read:

2 **5-A. Department site review.** Prior to the lease hearing,
4 the department shall conduct an assessment of the proposed site
6 and surrounding area to determine the possible effects of the
8 lease on commercially and ecologically significant flora and
10 fauna and conflicts with traditional fisheries. This review shall
12 must take place between--May--and--September--inclusive during
14 periods of time that the commissioner defines as biologically
significant times for that species. This information shall must
be provided to the intervenors and made available to the public
30 days before the hearing. As part of the site review, the
department shall request information from the municipal harbor
master about designated or traditional storm anchorages in
proximity to the proposed lease.

16 **Sec. 7. 12 MRSA §6072, sub-§6, ¶C,** as enacted by PL 1987, c.
18 453, §1, is amended to read:

20 C. The Department of Environmental Protection and, the
22 Department of Conservation shall and the Department of
Inland Fisheries and Wildlife must be notified of all lease
applications.

24 **Sec. 8. 12 MRSA §6072, sub-§12,** as amended by PL 1995, c. 383,
26 §2, is further amended to read:

28 **12. Renewal.** The commissioner shall grant a lease renewal
30 unless the prior lessee has not complied with the lease agreement
32 during its term, substantially no research or aquaculture has
34 been conducted, the commissioner finds that it is not in the best
36 interest of the State to renew the lease or the renewal will
38 cause the lessee to continue being a tenant of any kind in leases
40 covering an aggregate of more than 150-acres--except-that-the
42 ~~aggregate amount may be up to 200-acres-when the leases are used~~
~~exclusively for the aquaculture of marine organisms by methods~~
~~other than suspended culture~~ 250 acres. Renewals may be granted
if applied for no later than 30 days after the lapse of the prior
lease. A lease renewal is an adjudicatory proceeding under the
Maine Administrative Procedure Act, Title 5, chapter 375,
subchapter IV. Public notice must be given as required under
subsection 6 ~~of this section~~ and a hearing must be held if it is
requested in writing by 5 persons.

44 **Sec. 9. 12 MRSA §6072, sub-§12-A, ¶B,** as amended by PL 1995,
46 c. 383, §3, is further amended to read:

48 B. The commissioner may grant lease transfers if the
commissioner determines that:

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

(2) The transfer is not intended to circumvent the intent of subsection 8;

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

(4) The transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than ~~150 acres, except that the aggregate amount may be up to 200 acres when the leases are used exclusively for the aquaculture of marine organisms by methods other than suspended culture~~ 250 acres.

Sec. 10. 12 MRSA §6072, sub-§13, ¶F, as amended by PL 1993, c. 525, §1, is further amended to read:

F. For defining application requirements, reviews and decision criteria; and

Sec. 11. 12 MRSA §6072, sub-§13, ¶G, as enacted by PL 1993, c. 525, §2, is amended to read:

G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species on the lease site; and

Sec. 12. 12 MRSA §6072, sub-§13, ¶H is enacted to read:

H. For other amendments to an existing lease that are consistent with the provisions of this section.

Sec. 13. 12 MRSA §6072, sub-§16, as enacted by PL 1991, c. 381, §4, is repealed.

SUMMARY

This bill accomplishes the following.

1. It provides for an experimental lease that may be for commercial aquaculture research as defined by the Commissioner of Marine Resources.

2. It eliminates the acreage cap for individual aquaculture leases and raises the individual ownership cap to 250 acres.

3. It provides that a hearing will be held for an experimental lease only in the event that 5 or more individuals request one.

4. It provides that the biological assessment of an aquaculture site will take place during that time of the year determined to be biologically significant.

2 5. It adds the Department of Inland Fisheries and Wildlife
4 to the list of state agencies to be notified of an aquaculture
hearing.

6 6. It raises the cap for total acreage to be owned by one
8 individual to 250 acres in the context of lease renewals.

10 7. It raises the cap for total acreage owned by one
individual to 250 acres in the context of transferring of leases.

12 8. It provides that a lease may be amended.

14 9. It repeals that section of the statutes that provides
for a lease by rule.