

MAINE STATE LEGISLATURE

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MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 584, L.D. 775, Bill, "An Act Concerning Applied Aquaculture Research in the Coastal Waters of the State"

Amend the bill by striking out everything after the title and before the summary and inserting in its place the following:

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

Whereas, commercial aquaculture research is needed to determine the survival of particular species already under cultivation; and

Whereas, it is vital for the Commissioner of Marine Resources to have the authority to issue emergency aquaculture leases for the relocation of shellfish to protect existing aquaculture shellfish from unanticipated threats; 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,

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

Sec. 1. 12 MRSA §558-A, sub-§10, as enacted by PL 1991, c. 381, §1, is amended to read:

COMMITTEE AMENDMENT

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

Sec. 2. 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 and sections 6072-A and 6072-B, 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.

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.

Sec. 3. 12 MRSA §6072, sub-§4-A is enacted to read:

4-A. Application information. A person who applies for a lease in an area for which that person has been issued a limited-purpose lease under section 6072-A or an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for a limited-purpose lease or an emergency lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

Sec. 4. 12 MRSA §6072, sub-§8, as enacted by PL 1977, c. 661, §5, is amended to read:

8. Preference. ~~If~~ Except as provided in subsection 8-A, if more than one person applies to lease an area, preference shall must be given as follows:

A. First, to the department;

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

C. Third, to ~~fishermen~~ a person who fishes commercially and who have ~~has~~ traditionally fished in or near the proposed lease area; and

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

Sec. 5. 12 MRSA §6072, sub-§8-A is enacted to read:

8-A. Preference for limited-purpose lease areas. If more than one person applies to lease an area for which a person has been granted a limited-purpose lease under section 6072-A and the person who holds that limited-purpose lease is an applicant to

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2 lease that area under this section and that application was
3 submitted before the expiration of that limited-purpose lease,
4 preference must be given as follows:

5 A. First, to the person who holds a limited-purpose lease
6 for the area;

7 B. Second, to the department;

8 C. Third, to the riparian owner of the intertidal zone in
9 which the leased area is located;

10 D. Fourth, to a person who fishes commercially and who has
11 traditionally fished in or near the proposed lease area; and

12 E. Fifth, to the riparian owner within 100 feet of leased
13 coastal waters.

14 **Sec. 6. 12 MRSA §§6072-A and 6072-B are enacted to read:**

15 **§6072-A. Limited-purpose lease for commercial or scientific**
16 **research**

17 **1. Authority.** The commissioner may issue a limited-purpose
18 lease for areas in, on and under the coastal waters including the
19 public lands beneath those waters and portions of the intertidal
20 zone for commercial aquaculture research and development or for
21 scientific research.

22 **2. Suspended culture.** A person issued a limited-purpose
23 lease under this section may construct or operate in the coastal
24 waters of the State a facility for the culture of finfish in
25 nets, pens or other enclosures or for the suspended culture of
26 any other marine organism.

27 **3. Limit on duration.** A limited-purpose lease may not be
28 issued for a period greater than 3 years.

29 **4. Size limitation.** A limited-purpose lease may not be
30 issued for an area in excess of 2 acres.

31 **5. Notice of application.** The commissioner shall provide
32 notice of a limited-purpose lease application to owners of
33 riparian land upon which the limited-purpose lease activity would
34 take place and to the municipality in which the limited-purpose
35 lease activity would take place. The commissioner shall publish
36 a summary of the application in a newspaper of general
37 circulation in the area proposed for a limited-purpose lease. A
38 person may provide, within 30 days of receipt of notice or within

30 days of publication of a limited-purpose lease summary, the commissioner comments on the proposed limited purpose lease.

6. Public hearing. The commissioner may hold a public hearing on the proposed limited-purpose lease. The commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment periods provided in subsection 5.

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land upon which limited-purpose lease activity would take place and to the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing.

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J.

9. Application information. A person who applies for a lease in an area for which that person has been issued an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for an emergency aquaculture lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

10. Assessment of proposed activities. Within 180 days of the effective date of this section, the commissioner shall by rule establish a method for conducting an assessment of the proposed limited-purpose lease site and surrounding area to determine the possible effects of the proposed limited-purpose lease activity on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. The rules must establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed limited-purpose lease activity. The rules must provide a method for establishing a baseline to monitor the environmental effects of a limited-purpose lease activity.

2 11. Municipal approval. In any municipality with a
3 shellfish conservation program under section 6671, the
4 commissioner may not issue a limited-purpose lease under this
5 section for the intertidal zone within the municipality without
6 the consent of the municipal officers.

7 12. Preference. If more than one person applies to lease
8 an area, preference must be given as follows:

9 A. First, to the department;

10 B. Second, to the riparian owner of the intertidal zone in
11 which the leased area is located;

12 C. Third, to a person who fishes commercially and who has
13 traditionally fished in or near the proposed lease area; and

14 D. Fourth, to the riparian owner within 100 feet of leased
15 coastal waters.

16 13. Decision. The commissioner may grant a lease if a
17 proposed project:

18 A. Will not unreasonably interfere with the ingress and
19 egress of riparian owners;

20 B. Will not unreasonably interfere with navigation;

21 C. Will not unreasonably interfere with fishing or other
22 uses of the area taking into consideration the number and
23 density of aquaculture leases in an area;

24 D. Will not unreasonably interfere with the ability of the
25 lease site and surrounding areas to support existing
26 ecologically significant flora and fauna;

27 E. The applicant has demonstrated that there is an
28 available source of organisms to be cultured for the lease
29 site; and

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

35 The commissioner may by rule develop criteria for an applicant to
36 meet the terms of this subsection.

2 14. Fee. The commissioner shall by rule determine the
rental fee for a limited-purpose lease.

4 15. Conditions. The commissioner may establish conditions
6 that govern the use of the leased area and limitations on the
aquaculture activities. These conditions must encourage the
8 greatest multiple, compatible uses of the leased area, but must
also address the ability of the lease site and surrounding area
10 to support ecologically significant flora and fauna and preserve
the exclusive rights of the lessee to the extent necessary to
12 carry out the lease purpose. The commissioner may grant the lease
on a conditional basis until the lessee has acquired all the
14 necessary federal, state and local permits. A lease may not be
approved unless the commissioner has received certification from
16 the Department of Environmental Protection that the project will
not violate the standards ascribed to the receiving waters
18 classification in Title 38, section 465-B.

20 16. Statement of rights conveyed. The commissioner shall
include the following statement in a lease issued under this
22 section: "A limited-purpose lease for scientific research or
commercial aquaculture research and development conveys only
24 those rights specified in the lease."

26 17. Actions required of lease holder. After being granted
a limited-purpose lease, a lessee shall:

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

30 B. Publish a notice in the newspaper in which the
32 commissioner published notice or would have published notice
of any public hearing. The notice must describe the area
34 leased and list any restriction in the leased area;

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

38 D. Annually submit to the commissioner a report for the
40 past year on results of the scientific research or
commercial research and development undertaken at the lease
42 site and a plan for the coming year. Results of commercial
research and development submitted to the commissioner are
44 confidential records for the purposes of Title 1, section
402, subsection 3, paragraph A. Upon written request, a
46 copy of the public records in the report must be provided by
the commissioner to the municipality or municipalities in
48 which or adjacent to which the lease is located.

18. Scientific lease renewal. A limited-purpose lease for scientific research may be renewed. The commissioner must hold a public hearing before deciding upon the request for renewal. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease;

B. Research has not been conducted during the term of the lease; or

C. It is not in the best interest of the State to renew the limited-purpose lease.

19. Commercial lease not renewable. A limited-purpose lease for commercial aquaculture research and development may not be renewed.

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits a completed application under section 6072 for that lease area before the expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072, that person's limited-purpose lease remains in effect until the effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect until 30 days after the commissioner's decision.

21. Monitoring lease. The commissioner shall monitor annually the limited-purpose lease. If no substantial research has been conducted within the preceding year, or if research has been conducted in a manner injurious to marine organisms, or if any other condition of the limited-purpose lease has been violated, the commissioner shall initiate revocation proceedings and may revoke the lease.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-B. Emergency aquaculture lease for shellfish

1. Authority. The commissioner may issue an emergency aquaculture lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for the emergency aquaculture relocation of

2 shellfish from an area for which a lease has been issued pursuant
3 to section 6072 or section 6072-A when the health and safety of
4 those shellfish are threatened.

5 2. Limitation. The commissioner may not issue a lease
6 under this section unless:

7 A. The applicant holds a lease pursuant to section 6072 or
8 6072-A;

9 B. The applicant demonstrates to the commissioner that the
10 health and safety of shellfish at the leased area are
11 threatened; and

12 C. The commissioner determines the relocation of those
13 shellfish to an emergency aquaculture lease area would not
14 threaten the water quality of the receiving waters or the
15 health of marine organisms in those waters.

16 3. Permission of intertidal land owners. The commissioner
17 may not grant an emergency aquaculture lease unless the applicant
18 obtains the written permission of every owner of intertidal land
19 in, on or over which the emergency aquaculture activity occurs.

20 4. No fee. The commissioner may not charge a fee for an
21 emergency aquaculture lease.

22 5. Suspended culture. A person issued an emergency
23 aquaculture lease under this section may construct or operate in
24 the coastal waters of the State a facility for the suspended
25 culture of shellfish.

26 6. Limit on duration. An emergency aquaculture lease may
27 not be issued for a period greater than 6 months.

28 7. Extension of emergency aquaculture lease. If a person
29 who holds an emergency aquaculture lease submits an application
30 under section 6072 or 6072-A for that lease area within 60 days
31 of being granted the emergency aquaculture lease, and if the
32 commissioner's decision under section 6072 or 6072-A occurs after
33 the expiration of that emergency aquaculture lease, the emergency
34 aquaculture lease remains in effect until the commissioner makes
35 a decision. If the commissioner grants that person a lease under
36 section 6072 or 6072-A, that person's emergency aquaculture lease
37 remains in effect until the effective date of the lease issued
38 under section 6072 or 6072-A. If the commissioner denies that
39 person a lease under section 6072 or 6072-A, that person's
40 emergency aquaculture lease remains in effect until 30 days after
41 the commissioner's decision.

2 8. Public notice. Upon granting an emergency aquaculture
3 lease, the commissioner shall provide notice to the municipality
4 in which the emergency aquaculture lease area is located. Within
5 at least 30 days from granting an emergency aquaculture lease,
6 the commissioner shall publish notice of the emergency
7 aquaculture lease in a newspaper of general circulation in the
8 lease area. The notice must describe the area leased and list any
9 restriction in the leased area.

10 9. Actions required of lease holder. After being granted
11 an emergency aquaculture lease, a lessee shall:

12
13 A. Record the lease in the registry of deeds of each county
14 in which the leased area is located; and

15
16 B. Mark the leased area in a manner prescribed by the
17 commissioner.

18
19 10. Conditions. The commissioner may establish conditions
20 that govern the use of the emergency aquaculture lease area and
21 limitations on the aquaculture activities. These conditions must
22 encourage the greatest multiple, compatible uses of the leased
23 area, but must also address the ability of the lease site and
24 surrounding area to support ecologically significant flora and
25 fauna and preserve the exclusive rights of the lessee to the
26 extent necessary to carry out the lease purpose. The commissioner
27 may grant the lease on a conditional basis until the lessee has
28 acquired all the necessary federal, state and local permits. A
29 lease may not be approved unless the commissioner has received
30 certification from the Department of Environmental Protection
31 that the project will not violate the standards ascribed to the
32 receiving waters classification in Title 38, section 465-B.

33
34 11. Rules. The commissioner may adopt rules to establish
35 application requirements, a process for application review and a
36 process for deciding upon lease applications and otherwise
37 implement the provisions of this section.

38
39 Rules adopted pursuant to this section are routine technical
40 rules pursuant to Title 5, chapter 375, subchapter II-A.

41
42 Sec. 7. 12 MRSA §6079, sub-§1, as enacted by PL 1991, c. 381,
43 §7, is amended to read:

44
45 1. Notice required. When introducing an antibiotic into the
46 waters of the State at a research site under section 6072,
47 ~~subsection 1-A, paragraph A~~ 6072-A or an aquaculture leasehold
48 site, a person shall post written public notice in the
49 municipality nearest the leasehold site in the same location as

that generally used to post notice of town meetings or city elections. The notice must include the following information:

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

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

C. The name of the antibiotic to be applied;

D. The dosage to be applied;

E. The time and duration of treatment; and

F. The date of posting.

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

Further amend the bill by inserting at the end before the summary the following:

FISCAL NOTE

Authorizing the Department of Marine Resources to grant certain limited purpose leases for submerged lands will result in insignificant increases of General Fund revenue from lease fees.

The Department of Marine Resources will incur some minor additional costs to adopt certain rules pertaining to limited purpose leases for submerged lands and certain emergency aquaculture leases. These costs can be absorbed within the department's existing budgeted resources.'

SUMMARY

This amendment replaces the bill. It authorizes the Commissioner of Marine Resources to grant a limited-purpose lease of submerged lands for scientific research or commercial aquaculture research and development. A limited-purpose lease may cover a maximum of 2 acres and be issued for a period of 3 years or less, unless application is made for a full aquaculture lease, in which case the limited-purpose lease may be occupied until the Commissioner of Marine Resources renders a decision on the full aquaculture lease. The amendment also authorizes the

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COMMITTEE AMENDMENT "A" to H.P. 584, L.D. 775

2 Commissioner of Marine Resources to grant an emergency
aquaculture lease to relocate shellfish from an aquaculture lease
area where the health and safety of the shellfish are threatened.
4 An emergency aquaculture lease may be issued for a period of 6
months or less, unless application is made for a full aquaculture
6 lease or a limited-purpose aquaculture lease, in which case the
emergency aquaculture lease may be occupied until the
8 Commissioner of Marine Resources renders a decision on the other
lease application.

COMMITTEE AMENDMENT