

MAINE STATE LEGISLATURE

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MARINE RESOURCES

Reported by:

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STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 567, L.D. 1634, Bill, "An Act to Allow Certain Aquaculture Activities by Rule"

Amend the bill by striking out the title and substituting the following:

'An Act to License Certain Aquaculture Activities'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 12 MRSA §6072, sub-§1-A, as amended by PL 1997, c. 231, §2, is further amended to read:

1-A. Lease requirement; finfish and suspension culture. Except as provided in paragraphs B and B-1 and sections 6072-A and 6072-B and 6072-C, 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.

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

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2 registering under this paragraph must submit a completed
lease application on or before July 1, 1992. A registrant
4 whose application under this paragraph is denied shall
immediately cease operations at the facility and remove all
6 related structures from the coastal waters of the State.

8 B-1. A person operating a facility in the coastal waters of
the State for the suspended culture of a marine organism
10 other than shellfish that is not leased under this section
must register the facility with the commissioner on or
12 before January 1, 1994 on a form specified by the
commissioner. A person registering under this paragraph
14 must submit a completed lease application on or before July
1, 1994. A registrant whose application under this
16 paragraph is denied shall immediately cease operations at
the facility and remove all related structures from the
18 coastal waters of the State.

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

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

30 **Sec. 2. 12 MRSA §6072-C is enacted to read:**

32 **§6072-C. Limited-purpose aquaculture license**

34 **1. License required.** It is unlawful for a person to engage
in the activities authorized under this section without a current
36 limited-purpose aquaculture license or a lease issued under this
Part authorizing the activities.

38 **2. Licensed activities; criteria.** The holder of a
limited-purpose aquaculture license may utilize approved
40 aquaculture gear in a site in the coastal waters of the State
below the mean low-water mark to engage in certain aquaculture
42 activities that meet the criteria established in this subsection
and in rules adopted by the commissioner. The license also
44 authorizes unlicensed individuals to assist the license holder in
the licensed activities with the written permission of the
46 license holder. The commissioner may issue a limited-purpose
aquaculture license for certain aquaculture activities if the
48 following criteria are met:

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2 A. The proposed activity generates no discharge into coastal
waters;

4 B. The applicant proposes to utilize aquaculture gear and
markings approved by the commissioner in rules adopted
6 pursuant to subsection 8;

8 C. The gear, excluding mooring equipment, does not cover
more than 400 square feet of area and the gear does not
10 present an unreasonable impediment to safe navigation;

12 D. The proposed activity does not unreasonably interfere
with the ingress and egress of riparian owners;

14 E. The proposed activity does not unreasonably interfere
16 with fishing or other uses of the area, taking into
consideration the number and density of aquaculture leases
18 and licensed aquaculture activities in that area; and

20 F. The applicant holds no more than 3 other limited-purpose
aquaculture licenses issued under this section.

22 3. Eligibility. A limited-purpose aquaculture license may
24 be issued only to an individual and is a resident license.

26 4. License limitations. The issuance of a limited-purpose
aquaculture license does not constitute the issuance of a lease
28 of an area in, on or under the coastal waters.

30 5. Application. The application for a limited-purpose
aquaculture license must:

32 A. Be written on forms supplied by the commissioner;

34 B. Identify the species to be cultivated;

36 C. Describe the proposed source of organisms to be grown in
38 the approved aquaculture gear;

40 D. Describe the location of the approved aquaculture gear
deployment by coordinates or metes and bounds;

42 E. Include a clear set of plans that includes at a minimum:

44 (1) A location plan with an overhead plan view showing
46 the aquaculture gear deployed at the proposed
location. The area occupied by the gear must be drawn
48 to scale on the plan. The location plan must include a
north arrow, ebb and flood directions, any federal or

local channels and anchorages, any nearby structures and property lines for all riparian owners within 300 feet; and

(2) Two gear drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear;

F. Include documentation that riparian landowners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and

G. Include documentation that the municipal harbor master or appropriate municipal officers have been notified of the license application and proposed activity.

6. Fee. The application fee for a limited-purpose aquaculture license is \$50 and is nonrefundable. All fees collected under this subsection must be deposited in the Aquaculture Research Fund established in section 6081.

7. Prohibition; molesting gear. It is unlawful for a person other than a marine patrol officer, the licensed owner of the gear or the licensed owner's assistant, with written permission from the licensed owner, to utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear that is deployed under a current limited-purpose aquaculture license.

A. If a person violates this subsection by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall, upon finding a violation of this subsection:

(1) Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and

(2) Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

2 B. A penalty imposed under this subsection is in addition to
any penalty imposed under section 6204.

4 8. Rules. The commissioner shall adopt rules to implement
this section, including, but not limited to, rules establishing
the type of gear that is approved aquaculture gear for the
purposes of a limited-purpose aquaculture license, minimum
standards for maintaining gear, methods of gear identification
and license application and review procedures. Rules adopted
under this section are routine technical rules pursuant to Title
5, chapter 375, subchapter II-A.

12 Sec. 3. 12 MRSA §6081 is enacted to read:

14 **§6081. Aquaculture Research Fund**

16 The Aquaculture Research Fund, referred to in this section
as the "fund," is established as a dedicated, nonlapsing fund
within the department. In addition to the fees derived from the
limited-purpose aquaculture license, the commissioner may receive
on behalf of the fund funds from any source. The commissioner
shall use all money received into the fund for research and
management related to the aquaculture industry. Unexpended
balances in the fund at the end of the fiscal year do not lapse
but must be carried forward to the next fiscal year to be used
for the purposes of the fund.

28 **Sec. 4. Initial rules.** In the rules initially adopted pursuant
to the Maine Revised Statutes, Title 12, section 6072-C, the
30 Commissioner of Marine Resources shall include the following as
approved aquaculture gear: floating upwelling systems, shellfish
32 rafts, shellfish tray racks, floating trays, soft bags, semirigid
bags, over-wintering cages, lantern nets, spat collectors,
34 predator netting, fencing and brushing. The commissioner may
amend the rules to exclude any of the initial approved gear if
36 the commissioner determines the gear generates a discharge into
the coastal waters.

38 **Sec. 5. Allocation.** The following funds are allocated from
40 Other Special Revenue to carry out the purposes of this Act.

42 2000-01

44 **MARINE RESOURCES, DEPARTMENT OF**

46 **Bureau of Resource Management**

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All Other \$5,000

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Allocates funds from the Aquaculture Research Fund for research and management related to the aquaculture industry.'

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

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FISCAL NOTE

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2000-01

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APPROPRIATIONS/ALLOCATIONS

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Other Funds \$5,000

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REVENUES

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Other Funds \$5,000

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This bill includes an Other Special Revenue fund allocation of \$5,000 in fiscal year 2000-01 for the Department of Marine Resources from the establishment of the Aquaculture Research Fund to be used for research and management related to the aquaculture industry. Beginning in fiscal year 2000-01, the department will collect an estimated \$5,000 annually from limited-purpose aquaculture license fees, which will be deposited in the Aquaculture Research Fund.

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The Department of Marine Resources will incur some minor additional costs to adopt certain rules pertaining to aquaculture gear. These costs can be absorbed within the department's existing budgeted resources.

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This bill may increase prosecutions for Class D crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.36 per day per prisoner. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

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The additional workload, administrative costs and indigent defense costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by minor amounts.'

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SUMMARY

6 This amendment replaces the bill. The amendment establishes
8 a limited-purpose aquaculture license that authorizes the license
10 holder to utilize approved aquaculture gear to engage in certain
12 aquaculture activities and specifies the criteria for a license.
14 The amendment prohibits a person from molesting approved
16 aquaculture gear and establishes penalties for cutting or
damaging gear. The amendment requires the Commissioner of Marine
Resources to adopt rules implementing the new license
provisions. The amendment also establishes the Aquaculture
Research Fund and adds an allocation section and a fiscal note to
the bill.