

MAINE STATE LEGISLATURE

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H. O. S.

L.D. 1417

DATE: 5-7-03

(Filing No. H-282)

MARINE RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1040, L.D. 1417, Bill, "An Act To Make Changes to the Laws Governing Aquaculture Leasing"

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

Sec. 1. 5 MRSA §12004-I, sub-§57-C, as reallocated by RR 1995, c. 2, §9, is amended to read:

57-C.	Maine	Not	12 MRSA
Marine	Salmon	Authorized	§6080
Resources	Aquaculture		
	Advisory		
	Council		

Sec. 2. 12 MRSA §6072, sub-§1, as amended by PL 1983, c. 301, §1, is further amended to read:

1. Authority. The commissioner may lease areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section shall be is exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner. For the purposes of this section, the commissioner or the deputy

COMMITTEE AMENDMENT

H. 013

COMMITTEE AMENDMENT "A" to H.P. 1040, L.D. 1417

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commissioner serving in the place of the commissioner may authorize in writing qualified professional department staff to sign lease documents.

Sec. 3. 12 MRSA §6072, sub-§6, ¶D, as enacted by PL 1999, c. 591, §2, is repealed.

Sec. 4. 12 MRSA §6072, sub-§7-A, as amended by PL 1999, c. 267, §2, is further amended to read:

7-A. **Decision.** The commissioner may grant the lease if the proposed project meets the following conditions as defined by regulation rule:

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

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;

D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;

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

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

G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and

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H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to quantify permissible impact under paragraph G and to establish visual impact criteria under paragraph H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 12 MRSA §6072, sub-§7-B, as enacted by PL 1987, c. 453, §1, is amended to read:

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

Sec. 6. 12 MRSA §6072, sub-§10, as amended by PL 1987, c. 453, §1, is repealed and the following enacted in its place:

10. Notification of granted leases. After the granting of a lease:

A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located;

B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the

report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered confidential business record information for the purposes of section 6077.

Sec. 7. 12 MRSA §6072, sub-§11, as amended by PL 1987, c. 453, §1, is further amended to read:

11. **Monitoring and revocation of leases.** ~~The lease department shall be monitored by the department~~ monitor a lease under this section on an annual basis. ~~If substantially no research or aquaculture has been conducted within the preceding year, or if it~~ aquaculture has been conducted in a manner substantially injurious to marine organisms, ~~if no substantial aquaculture or research has been conducted over the course of the lease~~ or if any ~~other~~ condition of the lease has been violated, the commissioner shall ~~may~~ initiate revocation proceedings and may revoke the lease. A lease revocation ~~shall be~~ is an adjudicatory proceeding under ~~the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV 4.~~ A- The department shall hold a hearing with public notice shall be held prior to revoking any lease.

Sec. 8. 12 MRSA §6072, sub-§12, as amended by PL 1997, c. 609, §2, is repealed and the following enacted in its place:

12. Renewal. The commissioner shall renew a lease if:

A. The commissioner receives, at least 90 days prior to the termination of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;

B. The lessee has complied with the lease agreement during the term of the lease;

C. The commissioner determines that renewal of the lease is in the best interest of the State;

D. The renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 250 acres; and

E. The lease is not being held for speculative purposes.

When aquaculture has not been routinely or substantially conducted on a lease that is proposed for renewal, the commissioner may renew the lease, as long as the proposed renewal will continue to meet the criteria for approval in subsection 7-A.

2 A lease renewal is an adjudicatory proceeding under Title 5,
4 chapter 375, subchapter 4. Public notice must be given as
6 required under subsection 6 and a hearing must be held if it is
8 requested in writing by 5 persons.

10 **Sec. 9. 12 MRSA §6072-A, sub-§1,** as enacted by PL 1997, c.
12 231, §6, is amended to read:

14 1. **Authority.** The commissioner may issue a limited-purpose
16 lease for areas in, on and under the coastal waters, including
18 the public lands beneath those waters and portions of the
20 intertidal zone, for commercial aquaculture research and
development or for scientific research. The commissioner or the
deputy commissioner acting on the commissioner's behalf may
authorize in writing qualified professional department staff to
issue a final decision and sign a lease document on an
application for a limited-purpose lease. A decision issued by
department staff pursuant to this subsection is a final agency
action with respect to that lease application.

22 **Sec. 10. 12 MRSA §6072-A, sub-§5,** as amended by PL 2001, c.
24 122, §1, is further amended to read:

26 5. **Notice of application.** ~~The applicant~~ Upon determining
28 that an application is complete, the commissioner shall provide
notice of a limited-purpose lease application to owners of
30 riparian land within 1,000 feet of the proposed location of the
lease and to the municipal officers of the municipality in which
32 the limited-purpose lease activity would take place. The
applicant shall provide the names and addresses of known riparian
landowners within 1,000 feet of the proposed location of the
lease. The names and addresses must be taken from the current
property tax roster on file at the local municipal office or with
the Department of Administrative and Financial Services, Bureau
of Revenue Services for an unorganized territory. The
36 commissioner shall publish a summary of the application in a
38 newspaper of general circulation in the area proposed for a
limited-purpose lease. A person may provide, within 30 days of
40 receipt of notice or within 30 days of publication of a
limited-purpose lease summary, to the commissioner comments on
42 the proposed limited-purpose lease.

44 **Sec. 11. 12 MRSA §6072-A, sub-§7,** as amended by PL 2001, c.
46 122, §1, is further amended to read:

48 7. **Notice of public hearing.** The applicant commissioner
shall provide notice of a public hearing to owners of riparian
land within 1,000 feet of the proposed location of the lease and
50 to the municipal officers of 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.

Sec. 12. 12 MRSA §6072-A, sub-§17, as enacted by PL 1997, c. 231, §6, is repealed.

Sec. 13. 12 MRSA §6072-A, sub-§17-A is enacted to read:

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

C. The lessee shall annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. Upon written request, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located.

Sec. 14. 12 MRSA §6072-A, sub-§21, as enacted by PL 1997, c. 231, §6, is repealed.

Sec. 15. 12 MRSA §6072-A, sub-§22 is enacted to read:

22. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. The department shall hold a hearing with public notice prior to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.

2 **Sec. 16. 12 MRSA §6072-C, sub-§2**, as enacted by PL 1999, c.
567, §2, is amended to read:

4 **2. Licensed activities; criteria.** The holder of a
6 limited-purpose aquaculture license may utilize approved
aquaculture gear in a site in the coastal waters of the State
8 below the mean low-water mark to engage in certain aquaculture
activities that meet the criteria established in this subsection
and in rules adopted by the commissioner. The license also
10 authorizes unlicensed individuals to assist the license holder in
the licensed activities with the written permission of the
12 license holder. The commissioner, or qualified professional
department staff designated in writing by the commissioner, may
14 issue a limited-purpose aquaculture license for certain
aquaculture activities if the following criteria are met:

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

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

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

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

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

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

38 **Sec. 17. 12 MRSA §6077, sub-§4, ¶A**, as enacted by PL 1991, c.
40 381, §6, is amended to read:

42 A. Information submitted to the department under this
44 section may be designated by the submitter as being only for
the confidential use of the department, its agents and
46 employees, other agencies of State Government, as authorized
by the Governor, employees of the United States
48 Environmental Protection Agency, the United States Army
Corps of Engineers, the United States Fish and Wildlife
Service, the National Marine Fisheries Services, the United
50 States Department of Agriculture, the Attorney General and

2 employees of the municipality in which the aquaculture
3 facility is located. The designation must be clearly
4 indicated on each page or other portion of information. The
5 commissioner shall establish procedures to ensure that
6 information so designated is segregated from public records
7 of the department. The department's public records must
8 include the indication that information so designated has
9 been submitted to the department, giving the name of the
10 submitter and the general nature of the information. Upon a
11 request for information, the scope of which includes
12 information so designated, the commissioner shall notify the
13 submitter. Within 15 days after receipt of the notice, the
14 submitter shall demonstrate to the satisfaction of the
15 department that the designated information should not be
16 disclosed because the information is a trade secret or
17 production, commercial or financial information, the
18 disclosure of which would impair the competitive position of
19 the submitter and would make available information not
20 otherwise publicly available. Unless such a demonstration
21 is made, the information must be disclosed and becomes a
22 public record. The department may grant or deny disclosure
23 for the whole or any part of the designated information
24 requested and within 15 days shall give written notice of
25 the decision to the submitter and the person requesting the
26 designated information. A person aggrieved by a decision of
27 the department may appeal to the Superior Court. All
28 information provided by the department to the municipality
29 under this paragraph is confidential and not a public record
30 under Title 1, chapter 13. If a request for the information
31 is submitted to the municipality, the municipality shall
32 submit that request to the commissioner to be processed by
33 the department as provided in this paragraph.

34 **Sec. 18. 12 MRSA §6078**, as amended by PL 1999, c. 156, §4, is
35 repealed.

36 **Sec. 19. 12 MRSA §6078-A** is enacted to read:

37 **§6078-A. Aquaculture Monitoring, Research and Development Fund**

38 **1. Fund established.** The Aquaculture Monitoring, Research
39 and Development Fund, referred to in this section as "the fund,"
40 is established. All income received by the commissioner under
41 this section must be deposited with the Treasurer of State,
42 tracked according to its source and credited to the fund. Any
43 balance remaining in the fund at the end of a fiscal year does
44 not lapse but must be carried forward to the next fiscal year.
45 Any interest earned on assets of the fund is credited to the
46 fund. All records related to harvests submitted by aquaculture
47 producers shall be maintained in the fund.

lease holders are considered confidential business record information for the purposes of section 6077.

2. Fees. The following fees must be assessed and credited to the fund.

A. A person producing finfish in an aquacultural facility subject to section 6072 shall pay to the commissioner a fee of 1¢ per pound of whole fish harvested. The person shall pay the fee within 30 days of harvest. Timely payment of the fee is a condition of a lease granted under section 6072 for the production of finfish in net-pen aquacultural facilities. The commissioner may assess a late payment charge on an overdue payment computed at the annual interest rate established by the State Tax Assessor under Title 36, section 186. The commissioner may establish by rule any procedural requirements for collection of the fee, including without limitation monthly reporting of harvest amounts and reporting forms. A person who does not pay the fee commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

The commissioner may develop by rule an alternative production fee schedule based on the amount of feed that is used at finfish facilities. Any alternative production fee must be designed to return an equivalent and sufficient revenue stream to the production fee in this paragraph in order to support the purposes of subsection 3.

B. In accordance with the authority of the commissioner to levy lease rents pursuant to section 6072, subsection 9 and section 6072-A, subsection 14 and application fees pursuant to section 6072, subsection 4, the commissioner shall adopt rules to implement a fee structure for lease rents and application fees that are in addition to the minimum lease rents and application fees that are in effect on the effective date of this paragraph. Any rent or fee assessed in addition to the fees that are in effect on the effective date of this paragraph must be credited to the fund. A person who does not pay the rent or fee commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

C. The commissioner may develop by rule a fee schedule for the production of shellfish reared on an aquaculture lease. A person who does not pay a fee under this paragraph commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

2 A fee received pursuant to this section must be accounted for
3 separately within the fund according to whether it is from a
4 finfish or shellfish source so that at any point the commissioner
5 or the Marine Resources Advisory Council may determine the total
6 fund balance and proportional expenditures attributable to each
7 revenue source.

8 3. Expenditures; purpose. The commissioner may make
9 expenditures from the fund to develop effective and
10 cost-efficient water quality licensing and monitoring criteria,
11 analyze and evaluate monitoring data and process lease
12 applications. The commissioner shall expend the fund amounts in
13 proportion to the amounts of revenue from finfish sources and
14 shellfish sources. In developing a program of expenditures, the
15 commissioner shall consult with the Aquaculture Advisory Council
16 established under Title 5, section 12004-I, subsection 57-C. The
17 commissioner may contract for services privately or under
18 memoranda of agreement with other state agencies.

19 4. Additional revenues. The commissioner may expend annual
20 revenues that are in excess of the operating expenses of a
21 program under subsection 3 to address matters that the
22 commissioner determines are of an emergency nature to the State's
23 aquaculture industry, to address matters that the commissioner
24 determines are of long-term interest to the State's aquaculture
25 industry and to rebate revenues to all those persons who paid
26 fees under subsection 2. A rebate must be in the same proportion
27 to the total of all rebates as the recipient's fees for that
28 period are to the total of all fees levied for that period. The
29 commissioner shall consult with the Aquaculture Advisory Council
30 established under Title 5, section 12004-I, subsection 57-C when
31 determining expenditures under this subsection.

32 5. Reports. On or before February 1st of each year, the
33 commissioner shall report to the joint standing committee of the
34 Legislature having jurisdiction over marine resources matters on
35 all expenditures made from the fund in the previous fiscal year
36 and on all work accomplished and planned. The joint standing
37 committee may introduce and report out legislation it determines
38 necessary to modify the provisions of this section.

39 6. Rules. The commissioner may adopt rules pursuant to
40 this section only after consultation with the aquaculture
41 industry that clearly establish the recommended framework for
42 lease rents, application fees and production fees as well as the
43 related personnel or contracting costs funded by the recommended
44 fee increases. Rules adopted pursuant to this subsection are
45 major substantive rules as defined in Title 5, chapter 375,
46 subchapter 2-A.

2 **Sec. 20. 12 MRSA §6080**, as amended by PL 1999, c. 156, §5, is
further amended to read:

4 **§6080. Aquaculture Advisory Council**

6 **1. Appointment; composition.** The Maine-Salmon Aquaculture
Advisory Council, referred to in this section as the "council"
8 and established by Title 5, section 12004-I, subsection 57-C,
consists of ~~4~~ 5 members. The commissioner or the commissioner's
10 designee is a nonvoting, ex officio member of the council. The
commissioner shall appoint ~~3~~ 4 members from the State's salmon
12 aquaculture industry. No more than 2 of the appointed members
may represent similar segments of the State's salmon aquaculture
14 industry.

16 **2. Term.** Council members serve for 3 years and continue
serving until a successor is duly appointed and qualified. In
18 the case of a vacancy, the commissioner shall promptly fill the
vacancy.

20 **3. Purpose.** The council shall make recommendations to the
22 commissioner concerning expenditures from the Salmon Aquaculture
Monitoring, Research and Development Fund for the purposes
24 described under section ~~6078,--subsections--4--and--7~~ 6078-A,
subsections 3 and 4.

26 **4. Chair and officers.** The council annually shall choose
28 one of its members to serve as chair for a one-year term. The
council may select other officers and designate their duties.

30 **5. Meetings.** The council shall meet at least once each
32 year. It may also meet at other times at the call of the chair
or the chair's designee or the commissioner or the commissioner's
34 designee. The council may conduct a meeting by means of a
conference call linking 2 or more members of the council.

36 **Sec. 21. Transfers from existing accounts.** The Department of
38 Marine Resources may transfer the existing balance and
encumbrances from the Salmon Aquaculture Monitoring, Research and
40 Development Fund at any time prior to its lapsing to the
Aquaculture Monitoring, Research and Development Fund in order to
42 fund any of the activities outlined in the Maine Revised
Statutes, Title 12, section 6080.

44 **Sec. 22. Transition clause.** The operation, purpose, duties and
46 obligations of the Maine Salmon Aquaculture Advisory Council are
transferred to the Aquaculture Advisory Council. Members serving
48 on the Maine Salmon Aquaculture Advisory Council on the effective
date of this Act may continue to serve out their terms as members
50 of the Aquaculture Advisory Council.'

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SUMMARY

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6 This amendment strikes the bill and makes changes to several
8 sections of the marine resources laws that regulate the leasing
10 and monitoring of public waters for marine aquaculture. These
12 changes affect the issuance of standard and limited-purpose
14 aquaculture leases. The changes are as follows.

10

12 1. It proposes to allow qualified professional staff to
14 sign lease documents following the approval of a standard lease
16 by the Commissioner of Marine Resources, and to allow the
18 commissioner or deputy commissioner to delegate the approval of
20 limited-purpose leases to qualified professional staff.

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18 2. It repeals a requirement that the applicant for a
20 standard aquaculture lease publish notice of public hearing for
22 the lease in the newspaper.

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22 3. It deletes language regarding Department of
24 Environmental Protection certification of water quality.

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26 4. It changes language on the notification of granted
28 leases to remove a requirement of public notice in a local paper
and adds a requirement that the Department of Marine Resources
notify riparian landowners, intervenors and the municipality that
a lease has been granted.

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32 5. It amends language on the revocation of standard
aquaculture leases to allow the Commissioner of Marine Resources
discretion in when to initiate revocation proceedings.

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36 6. It repeals current language on the renewal of standard
38 leases in order to enact new language on the renewal of standard
40 leases that requires earlier notice of intent to renew and adds a
requirement that leases not routinely used must be determined to
still meet all of the approval criteria in the Maine Revised
Statutes, Title 12, section 6072, subsection 7-A.

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42 7. It clarifies that the existing exclusive jurisdiction of
44 the Commissioner of Marine Resources to regulate aquaculture
46 activities on state submerged lands below the mean low-water mark
includes all types of equipment to be located within a
limited-purpose aquaculture lease. Language is also proposed to
allow qualified professional staff to sign decision documents and
leases.

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50 8. It changes language to require the Department of Marine
Resources to notify riparian landowners when a complete

limited-purpose aquaculture lease application is being reviewed by the department. The applicant is required to submit the names and addresses of the riparian landowners.

9. It changes language to require the Department of Marine Resources and not the applicant to publish notice of a public hearing for a limited-purpose aquaculture lease application.

10. It deletes a provision on municipal approval and adds new language concerning municipal participation in the limited-purpose aquaculture lease process.

11. It changes language on notification on the issuance of limited-purpose aquaculture leases. The requirement to record the lease in the registry of deeds and publish notice in the paper is removed, and a requirement that the Department of Marine Resources notify riparian landowners, intervenors and the municipality is added.

12. It repeals the existing language on monitoring limited-purpose aquaculture leases in order to enact new language on monitoring limited-purpose aquaculture to allow the Commissioner of Marine Resources discretion in when to initiate revocation proceedings.

13. It adds the United States Department of Agriculture to the list of federal agencies permitted to use confidential data submitted by lease holders at the direction of the Commissioner of Marine Resources.

14. It authorizes a dedicated fund that will receive fees from both finfish and shellfish growers in order to fund monitoring, research and development of marine aquaculture. These fees will be determined by rulemaking by the Department of Marine Resources and are derived from the weight of harvested fish, application fees and lease rents.

15. It renames the Maine Salmon Aquaculture Advisory Council the Aquaculture Advisory Council and alters its membership to include members from both shellfish and finfish aquaculture.

16. It adds unreasonable noise and visual impacts to conditions the Commissioner of Marine Resources must consider when granting an aquaculture lease and makes any rules adopted to quantify these impacts major substantive rules.

FISCAL NOTE REQUIRED
(See attached)

**121st Maine Legislature
Office of Fiscal and Program Review**



LD 1417

An Act to Make Changes to the Laws Governing Aquaculture Leasing

LR 1908(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

Undetermined current biennium revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

This bill authorizes the Commissioner of Marine Resources to establish certain fees; the revenues from which will be deposited into the Aquaculture Monitoring, Research and Development Fund. The amounts will depend on the fee schedule established by the Commissioner and can not be determined at this time.