

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1417

H.P. 1040

House of Representatives, March 20, 2003

### **An Act To Make Changes to the Laws Governing Aquaculture Leasing**

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BULL of Freeport.

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

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

6           57-C.       Maine           Not           12 MRSA  
Marine       Salmon       Authorized   §6080  
8       Resources   Aquaculture  
              Advisory  
10           Council

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

14  
16       **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 and to authorize placement of all structures within an aquaculture lease 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 commissioner serving in the place of the commissioner may authorize in writing qualified professional department staff to sign lease documents.

28       **Sec. 3. 12 MRSA §6072, sub-§3**, as amended by PL 1999, c. 267, §1, is repealed.

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

34       **3-A. Municipal participation.** Prior to filing an application for a lease with the department under this section, an applicant shall attend a preapplication meeting to describe the proposed application with representatives of the municipality in which the proposed lease is located.

40       The department shall send a copy of the completed application to the governing board of the municipality as well as the harbor master, if such a position exists.

44       The department shall provide a municipality with an opportunity to provide written comment prior to a public hearing under subsection 6 on a proposed application with respect to any of the decision criteria under this section, including designated or traditional storm anchorages and the type of mooring gear specified in the lease application. The municipality may submit an opinion supported by facts on whether a proposed lease is

2 located within a channel designated under the authority of Title  
3 38, section 2 and whether the proposed lease will unreasonably  
4 interfere with navigation. The department shall evaluate such a  
5 submission with regard to the approval criteria in subsection  
6 7-A, paragraphs A, B and F.

7 A municipality may recommend conditions on a proposed lease in  
8 writing to the department during the comment period under this  
9 subsection. The department shall consider any conditions  
10 recommended by the municipality, and the department shall provide  
11 a written explanation to the municipality at the time a draft  
12 decision is written if the condition is not imposed on a proposed  
13 lease.

14 A municipality has intervenor status upon written request to the  
15 department.

16 In a municipality with a shellfish conservation program under  
17 section 6671, the commissioner may not lease areas in the  
18 intertidal zone within the municipality without the consent of  
19 the municipal officers.

20 Once a lease is issued, a municipality may issue a mooring  
21 permit. The fee for a mooring permit is the same as that  
22 assigned for other commercial moorings within the municipality.  
23 A mooring permit may be issued on a plan basis for all moorings  
24 located within an aquaculture lease but may not be issued for  
25 each individual mooring block or anchor.

26 Nothing in this section limits a municipality's ability to  
27 enforce the provisions of an issued mooring permit.

28 **Sec. 5. 12 MRSA §6072, sub-§4, as amended by PL 1997, c. 138,**  
29 **§§2 and 3, is repealed.**

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

31 **4-B. Applications.** This subsection governs applications  
32 under this section.

33 A. The department shall conduct a preapplication meeting  
34 with an applicant prior to the submission of an application  
35 under this section to the department. The purpose of this  
36 meeting is to review the requirements for an application and  
37 to provide specific recommendations to the applicant  
38 regarding the requirements for either an environmental  
39 baseline under subsection 5-A or characterization.

40 For a meeting on an application that proposes a discharge  
41 into state or coastal waters, the department shall provide

2 the Department of Environmental Protection the opportunity  
3 to participate and to recommend materials to be submitted.

4 B. An application submitted under this section must:

6 (1) Be written on forms supplied by the commissioner;

8 (2) Describe the location of the proposed lease area  
10 by coordinates or metes and bounds;

12 (3) Identify the species to be cultivated;

14 (4) Characterize the physical and ecological impact of  
16 the project on existing uses of the site and any  
18 adverse effects on the existing uses of the area, as  
20 defined by rules adopted by the commissioner;

22 (5) Describe the degree of exclusive use required by  
24 the project;

26 (6) Include written permission of every riparian owner  
28 whose land to the low-water mark will be actually used;

30 (7) Include a map of the proposed lease area and its  
32 adjoining waters and shorelands, with the names and  
34 addresses of the known riparian owners under  
36 subparagraph (6) as listed in the municipal tax records;

38 (8) Include an environmental evaluation of the site  
40 upon which the decision to seek a lease was made. The  
42 evaluation must include, but is not limited to, bottom  
44 characteristics, resident flora and fauna and  
46 hydrography of the site if appropriate for the proposed  
48 lease;

50 (9) Describe the proposed source of the organisms to  
be grown at the site; and

(10) Include a nonrefundable application fee of at  
least \$100 but not more than \$1,000, the amount to be  
set by the commissioner depending on the proposed  
acreage, type of aquaculture proposed and complexity of  
the application.

Sec. 7. 12 MRSA §6072, sub-§5, as amended by PL 1999, c. 591,  
§1, is further amended to read:

5. **Application review.** The commissioner shall review the  
application and set a hearing date if the commissioner is  
satisfied that the written application is complete, and the

2 application indicates that the lease could be granted ~~and the~~  
3 ~~applicant has the financial and technical capability to carry out~~  
4 ~~the proposed activities.~~ When the commissioner has determined  
5 that the application is complete, the commissioner shall forward  
6 a copy of the completed application and notice of hearing to the  
7 known riparian owners within 1,000 feet of the proposed lease and  
8 ~~to the municipality or municipalities in which or adjacent to~~  
9 ~~which the lease is proposed. A municipality must be granted~~  
10 ~~intervenor status upon written request.~~

11 **Sec. 8. 12 MRSA §6072, sub-§5-A,** as amended by PL 1997, c.  
12 138, §4, is further amended to read:

13 **5-A. Department site review.** Prior to the lease hearing,  
14 the department shall conduct an assessment of the proposed site  
15 and surrounding area to determine the possible effects compliance  
16 of the lease on commercially and ecologically significant flora  
17 and fauna and conflicts with traditional fisheries with the  
18 decision criteria outlined in subsection 7-A. ~~This~~ The review  
19 must consider the impact on commercially and ecologically  
20 significant flora and fauna and conflicts with traditional  
21 fisheries and take place any time between April 1st and November  
22 15th. This information must be provided to the intervenors and  
23 made available to the public 30 days before the hearing. ~~As part~~  
24 ~~of the site review, the department shall request information from~~  
25 ~~the municipal harbor master about designated or traditional stern~~  
26 ~~ancherages in proximity to the proposed lease.~~ The commissioner  
27 may by rule establish levels of assessment appropriate to the  
28 scale or potential environmental risk posed by a proposed lease  
29 activity. The rules must provide a method of establishing a  
30 baseline to monitor the environmental effects of a lease  
31 activity. Rules adopted pursuant to this subsection are major  
32 substantive rules pursuant to Title 5, chapter 375, subchapter  
33 II-A 2-A.

34 **Sec. 9. 12 MRSA §6072, sub-§6, ¶D,** as enacted by PL 1999, c.  
35 591, §2, is repealed.

36 **Sec. 10. 12 MRSA §6072, sub-§7-B,** as enacted by PL 1987, c.  
37 453, §1, is amended to read:

38 **7-B. Conditions.** The commissioner may establish conditions  
39 that govern the use of the leased area and limitations on the  
40 aquaculture activities. These conditions shall must encourage the  
41 greatest multiple, compatible uses of the leased area, but shall  
42 must also address the ability of the lease site and surrounding  
43 area to support ecologically significant flora and fauna and  
44 preserve the exclusive rights of the lessee to the extent  
45 necessary to carry out the lease purpose. The commissioner may  
46 grant the lease on a conditional basis until the lessee has  
47  
48  
49  
50

2 acquired all the necessary federal, state and local permits,  
including, but not limited to, a national pollution discharge  
4 ~~elimination permit required by the Federal Government. A lease~~  
~~may not be approved unless the commissioner has received~~  
6 ~~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.~~

8  
10 **Sec. 11. 12 MRSA §6072, sub-§10**, as amended by PL 1987, c.  
453, §1, is repealed and the following enacted in its place:

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

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

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

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

26 D. The lessee shall annually submit to the department a  
28 seeding and harvesting report for the past year and a  
seeding and harvesting plan for the coming year. Upon  
30 written request, the department shall provide a copy of the  
32 report to the municipality or municipalities in which or  
adjacent to which the lease is located.

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

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

2           **Sec. 13. 12 MRSA §6072, sub-§12**, as amended by PL 1997, c.  
4           609, §2, is repealed and the following enacted in its place:

6           12. **Renewal.** The commissioner may renew a lease provided  
8           that:

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

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

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

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

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

34           When aquaculture has not been routinely or substantially  
36           conducted on a lease that is proposed for renewal, the  
38           commissioner may renew the lease, provided that the proposed  
40           renewal will continue to meet the criteria for approval in  
42           section 7-A.

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

**Sec. 14. 12 MRSA §6072-A, sub-§1**, as enacted by PL 1997, c.  
          231, §6, is amended to read:

1. **Authority.** The commissioner may issue a limited-purpose  
          lease for areas in, on and under the coastal waters, including  
          the public lands beneath those waters and portions of the  
          intertidal zone, for commercial aquaculture research and  
          development or for scientific research. **Except as provided in  
          this Part, the commissioner's power to lease lands and to  
          authorize placement of all structures within an aquaculture lease  
          under this section is exclusive. 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**



2 pursuant to this subsection is a final agency action with respect  
3 to that lease application.

4 **Sec. 15. 12 MRSA §6072-A, sub-§§5, 7 and 8,** as amended by PL  
5 2001, c. 122, §1, are further amended to read:

6  
7 **5. Notice of application.** ~~The applicant~~ Upon determining  
8 that an application is complete, the commissioner shall provide  
9 notice of a limited-purpose lease application to owners of  
10 riparian land within 1,000 feet of the proposed location of the  
11 lease and to the municipal officers of the municipality in which  
12 the limited-purpose lease activity would take place. The  
13 applicant shall provide the names and addresses of riparian  
14 landowners within 1,000 feet of the proposed location of the  
15 lease. The riparian names and addresses must be taken from the  
16 current property tax roster on file at the local municipal office  
17 or with the Bureau of Revenue Services for an unorganized  
18 territory. The commissioner shall publish a summary of the  
19 application in a newspaper of general circulation in the area  
20 proposed for a limited-purpose lease. A person may provide,  
21 within 30 days of receipt of notice or within 30 days of  
22 publication of a limited-purpose lease summary, to the  
23 commissioner comments on the proposed limited-purpose lease.

24  
25 **7. Notice of public hearing.** ~~The applicant~~ commissioner  
26 shall provide notice of a public hearing to owners of riparian  
27 land within 1,000 feet of the proposed location of the lease and  
28 to the municipal officers of the municipality in which the  
29 limited-purpose lease activity would take place. The  
30 commissioner shall publish notice of a public hearing in a  
31 newspaper of general circulation in the area proposed for a  
32 limited-purpose lease at least 30 days before the hearing.

33  
34 **8. Rules; general and lease application.** The commissioner  
35 may adopt rules to implement the provisions of this section.  
36 Within 180 days of the effective date of this section, the  
37 commissioner shall adopt rules regarding a limited-purpose lease  
38 application. The rules must require an applicant to, at a  
39 minimum, meet the requirements of section 6072, subsection 2,  
40 paragraph E and subsection ~~4-~~ 4-B, paragraphs A, B, C, E, F, G  
41 and J paragraph B. The rules must also require an applicant to  
42 provide to the department proof of access to the lease area. If  
43 access will be across riparian land, the applicant shall provide  
44 to the department the written permission of every riparian owner  
45 whose land will be used to access the lease area.

46  
47 **Sec. 16. 12 MRSA §6072-A, sub-§11,** as enacted by PL 1997, c.  
48 231, §6, is repealed.

Sec. 17. 12 MRSA §6072-A, sub-§11-A is enacted to read:

2  
3 11-A. Municipal participation. Prior to filing an  
4 application with the department under this section, an applicant  
5 shall attend a preapplication meeting with representatives of the  
6 municipality in which the proposed lease is located to describe  
7 the proposed application.

8  
9 The department shall send a copy of the completed application to  
10 the governing board of the municipality as well as the harbor  
11 master, if such a position exists.

12  
13 The department shall provide a municipality with an opportunity  
14 to provide written comment prior to a public hearing under  
15 subsection 6 on a proposed application with respect to any of the  
16 decision criteria under this section, including designated or  
17 traditional storm anchorages and the type of mooring gear  
18 specified in the lease application. The municipality may submit  
19 an opinion supported by facts on whether a proposed lease is  
20 located within a channel designated under the authority of Title  
21 38, section 2 and whether the proposed lease will unreasonably  
22 interfere with navigation. The department shall evaluate such a  
23 submission with regard to the approval criteria in subsection 13,  
24 paragraphs A, B and F.

25  
26 A municipality may recommend conditions on a proposed lease in  
27 writing to the department during the comment period under this  
28 subsection. The department shall consider any conditions  
29 recommended by the municipality, and the department shall provide  
30 a written explanation to the municipality at the time a draft  
31 decision is written if the condition is not imposed on a proposed  
32 lease.

33  
34 A municipality has intervenor status upon written request to the  
35 department.

36  
37 In a municipality with a shellfish conservation program under  
38 section 6671, the commissioner may not lease areas in the  
39 intertidal zone within the municipality without the consent of  
40 the municipal officers.

41  
42 Once a lease is issued, a municipality may issue a mooring  
43 permit. The fee for a mooring permit is the same as that  
44 assigned for other commercial moorings within the municipality.  
45 A mooring permit may be issued on a plan basis for all moorings  
46 located within an aquaculture lease but may not be issued for  
47 each individual mooring block or anchor.

48  
49 Nothing in this section limits a municipality's ability to  
50 enforce the provisions of an issued mooring permit.

2           **Sec. 18. 12 MRSA §6072-A, sub-§17**, as enacted by PL 1997, c.  
231, §6, is repealed:

4           **Sec. 19. 12 MRSA §6072-A, sub-§17-A** is enacted to read:

6           **17-A. Notification of granted leases.** After the granting  
8 of a limited-purpose lease:

10           A. The department shall notify all riparian owners and  
12 interested parties and the municipality in which the lease  
14 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.

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

20           C. The lessee shall annually submit to the commissioner a  
22 report for the past year on results of the scientific  
24 research or commercial research and development undertaken  
26 at the lease site and a plan for the coming year. Results  
28 of commercial research and development submitted to the  
30 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.

32           **Sec. 20. 12 MRSA §6072-A, sub-§21**, as enacted by PL 1997, c.  
231, §6, is repealed.

34           **Sec. 21. 12 MRSA §6072-A, sub-§22** is enacted to read:

36           **22. Monitoring and revocation of leases.** The department  
38 shall monitor a lease under this section on an annual basis. If  
40 aquaculture has been conducted in a manner substantially  
42 injurious to marine organisms, if no substantial aquaculture or  
44 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.

46           **Sec. 22. 12 MRSA §6077, sub-§4, ¶A**, as enacted by PL 1991, c.  
48 381, §6, is amended to read:

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

43 **Sec. 23. 12 MRSA §6078**, as amended by PL 1999, c. 156, §4, is  
44 repealed.

45 **Sec. 24. 12 MRSA §6078-A** is enacted to read:

46 **§6078-A. Aquaculture Monitoring, Research and Development Fund**

2       1. Fund established. The Aquaculture Monitoring, Research  
and Development Fund, referred to in this section as "the fund,"  
4       is established. All income received by the commissioner under  
this section must be deposited with the Treasurer of State,  
6       tracked according to its source and credited to the fund. Any  
balance remaining in the fund at the end of a fiscal year does  
8       not lapse but must be carried forward to the next fiscal year.  
Any interest earned on assets of the fund is credited to the  
10      fund. All records related to harvests submitted by aquaculture  
lease holders are considered confidential business record  
information for the purposes of section 6077.

12  
14      2. Fees. The following fees must be assessed and credited  
to the fund.

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

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

38  
40      B. In accordance with the authority of the commissioner to  
levy lease rents pursuant to section 6072, subsection 9 and  
42      section 6072-A, subsection 14 and application fees pursuant  
to section 6072, subsection 4-B, the commissioner shall  
44      adopt rules to implement a fee structure for lease rents and  
application fees that are in addition to the minimum lease  
46      rents and application fees that are in effect on the  
effective date of this paragraph. Any rent or fee assessed  
48      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

2 violation for which a forfeiture not to exceed \$1,000 may be  
3 adjudged.

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

10 A fee received pursuant to this section must be accounted  
11 separately within the fund according to whether it is from a  
12 finfish or shellfish source so that at any point the commissioner  
13 or the Marine Resources Advisory Council may determine the total  
14 fund balance and proportional expenditures attributable to each  
15 revenue source.

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

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

42  
43 **5. Reports.** On or before February 1st of each year, the  
44 commissioner shall report to the joint standing committee of the  
45 Legislature having jurisdiction over marine resources matters on  
46 all expenditures made from the fund in the previous fiscal year  
47 and on all work accomplished and planned. The joint standing  
48 committee may introduce and report out legislation it determines  
49 necessary to modify the provisions of this section.

2           6. Rules. The commissioner may adopt rules pursuant to  
3 this section only after consultation with the aquaculture  
4 industry that clearly establishes the recommended framework for  
5 lease rents, application fees and production fees as well as the  
6 related personnel or contracting costs funded by the recommended  
7 fee increases. Rules adopted pursuant to this paragraph are  
8 routine technical rules as defined in Title 5, chapter 375,  
9 subchapter 2-A.

10           **Sec. 25. 12 MRSA §6080**, as amended by PL 1999, c. 156, §5, is  
11 further amended to read:

12           **§6080. Aquaculture Advisory Council**

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

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

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

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

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

38           **Sec. 26. Transfers from existing accounts.** The department may  
39 transfer the existing balance and encumbrances from the Salmon  
40 Aquaculture Monitoring, Research and Development Fund at any time  
41 prior to its lapsing to the Aquaculture Monitoring, Research and  
42 Development Fund in order to fund any of the activities outlined  
43 in this section.

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## SUMMARY

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This bill makes changes to several sections of the marine resources laws that regulate the leasing and monitoring of public waters for aquaculture. These changes affect the issuance of standard and limited-purpose aquaculture leases.

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1. It clarifies that the existing exclusive jurisdiction of the Commissioner of Marine Resources to regulate aquaculture activities on state submerged lands below the mean low-water mark includes all types of equipment to be located within a standard aquaculture lease. Language is also proposed to allow qualified staff to sign lease documents following the approval of a standard lease by the commissioner.

18

2. It repeals a provision on municipal approval and enacts new language concerning municipal participation in the standard aquaculture lease process.

22

3. It creates a new section that outlines the role of municipalities in the review and issuance of standard aquaculture leases, including preapplication meetings, submission of comments to the Department of Marine Resources on all decision criteria and establishing conditions on leases. This new section contains provisions already located in other relevant laws that are included here for clarity as well as new provisions that expand the scope of municipal participation in the leasing of state waters. This section also clarifies that the issuance of a mooring permit by a municipality is not preempted by the Commissioner of Marine Resources' exclusive authority to grant aquaculture leases.

36

4. It creates a requirement for a preapplication meeting to be held with the Department of Marine Resources to guide an applicant in preparing an application for a standard lease.

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5. It removes language requiring the Department of Marine Resources to determine financial and technical capacity prior to conducting a public hearing on a standard lease application so that public comment can be received on this approval criterion. It also deletes language on municipal involvement that has been moved to the Maine Revised Statutes, Title 12, section 6072, subsection 3-A.

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6. It changes language to expand the factors considered by the Department of Marine Resources in the site review of proposed standard aquaculture leases to conform with current practice.

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

6           8. It deletes language regarding Department of  
Environmental Protection certification of water quality and lists  
8 the current requirement for a discharge permit to be obtained for  
affected lease applications.

10           9. It changes language on the notification of granted  
12 leases to remove a requirement on public notice in a local paper  
and adds a requirement that the Department of Marine Resources  
14 notify riparian landowners, the municipality and interested  
parties that a lease has been granted.

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

20           11. It repeals current language on the renewal of standard  
22 leases.

24           12. It enacts new language on the renewal of standard  
26 leases that requires earlier notice of intent to renew and adds a  
requirement that leases not routinely used must be determined to  
28 still meet all of the approval criteria in the Maine Revised  
Statutes, Title 12, subsection 6072, subsection 7-A.

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

38           14. It changes language to require the Department of Marine  
Resources to notify riparian landowners when a complete  
40 limited-purpose aquaculture lease application is being reviewed  
by the department. The applicant is required to submit the names  
42 and addresses of the riparian landowners.

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

48           16. It repeals a provision on municipal approval and enacts  
50 new language concerning municipal participation in the  
limited-purpose aquaculture lease process.

2           17. It creates a new section that outlines the role of  
4 municipalities in the review and issuance of limited-purpose  
6 aquaculture leases, including preapplication meetings, submission  
8 of comments to the Department of Marine Resources on all decision  
10 criteria and establishing conditions on leases. This new section  
12 contains provisions already located in other relevant laws that  
14 are included here for clarity as well as new provisions that  
16 expand the scope of municipal participation in the leasing of  
18 state waters. This section also clarifies that the issuance of a  
20 mooring permit by a municipality is not preempted by the  
22 Commissioner of Marine Resources' exclusive authority to grant  
24 aquaculture leases.

16           18. It changes language on notification concerning the  
18 issuance of limited-purpose aquaculture leases are notified. The  
20 requirement to record the lease in the registry of deeds and  
22 publish notice in the paper is removed, and a requirement that  
24 the Department of Marine Resources notify riparian landowners,  
interested persons and the municipality is added.

22           19. It repeals the existing language on monitoring  
24 limited-purpose aquaculture leases.

26           20. It amends the existing language on monitoring  
28 limited-purpose aquaculture to allow the Commissioner of Marine  
30 Resources discretion in when to initiate revocation proceedings.

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

34           22. It authorizes a dedicated fund that will receive fees  
36 from both finfish and shellfish growers in order to fund  
38 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.

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