

MAINE STATE LEGISLATURE

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H. 015

L.D. 1857

DATE: 4-1-04

(Filing No. H-844)

MAJORITY
MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
SECOND SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1383, L.D. 1857, Bill, "An Act To Implement the Recommendations of the Task Force on the Planning and Development of Marine Aquaculture in Maine"

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

PART A

Sec. A-1. 7 MRSA §401-B, first ¶, as enacted by PL 1983, c. 563, §1, is amended to read:

To further the purposes of this Part, the commissioner shall initiate and implement programs necessary to facilitate the effective, profitable marketing of Maine agricultural products. For the purposes of this subchapter, the terms "agricultural products" and "farm products" include, but are not limited to, products of aquaculture as defined in Title 12, section 6001, subsection 1. These programs shall include, but are not be limited to, the following.

Sec. A-2. 12 MRSA §6052, sub-§3, as amended by PL 2003, c. 60, §2, is further amended to read:

3. **Marketing.** Serve Except for aquaculture, serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assisting in marketing seafood, stimulating of consumer interest in and consumption of seafood, increasing the sales of seafood

COMMITTEE AMENDMENT

H. O. S.

COMMITTEE AMENDMENT "A" to H.P. 1383, L.D. 1857

domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species;

Sec. A-3. 12 MRSA §6072, sub-§2, ¶E, as amended by PL 1997, c. 609, §1, is further amended to read:

E. The Except as provided in subsection 13-A, the lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 250 300 acres; and

Sec. A-4. 12 MRSA §6072, sub-§4, ¶J, as enacted by PL 1987, c. 453, §1, is amended to read:

J. Include a nonrefundable application fee of at least \$100, but not more than \$1,000 \$2,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application.

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

5-A. Department site review. Prior to the lease hearing, the department shall conduct an assessment of the proposed site and surrounding area to determine the possible effects of the lease on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries and all other uses. This review must take place any time between April 1st and November 15th. This information must be provided to the intervenors and made available to the public 30 days before the hearing. As part of the site review, the department shall request information from the municipal harbor master about designated or traditional storm anchorages in proximity to the proposed lease. The commissioner may by rule establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed lease activity. The rules must provide a method of establishing a baseline to monitor the environmental effects of a lease activity. Rules adopted pursuant to under this subsection are major substantive rules pursuant to as defined by Title 5, chapter 375, subchapter II-A- 2-A.

Sec. A-6. 12 MRSA §6072, sub-§7-A, as amended by PL 2003, c. 247, §4, is further amended to read:

7-A. Decision. The In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed preject lease meets the following conditions as defined by rule+.

COMMITTEE AMENDMENT "A" to H.P. 1383, L.D. 1857

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A. ~~Will~~ The lease will not unreasonably interfere with the ingress and egress of riparian owners~~;~~.

B. ~~Will~~ The lease will not unreasonably interfere with navigation~~;~~.

C. ~~Will~~ The lease 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~~ The lease 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~~;~~.

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of ~~municipally--owned, state-owned--or--federally--owned--beaches--and--parks--or municipally--owned,--state-owned--or--federally--owned--docking facilities;~~ a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.

The Executive Department, State Planning Office shall maintain a list of conserved lands. The commissioner shall request this information from the State Planning Office prior to holding a preapplication proceeding.

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

COMMITTEE AMENDMENT

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 noise, light and visual impact criteria under ~~paragraph~~ paragraphs G and H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-7. 12 MRSA §6072, sub-§9, as amended by PL 1987, c. 453, §1 and PL 1995, c. 502, Pt. E, §30, is further amended to read:

9. Rents. After consulting with the Director of the Bureau of Parks and Lands, the commissioner shall determine the rent ~~which shall~~ that must be paid under each lease. The rent shall must represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than \$50 an acre or more than \$100 an acre. The commissioner ~~shall-have~~ has the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease. This discounted rate shall may not be less than \$50 an acre.

Sec. A-8. 12 MRSA §6072, sub-§12, as repealed and replaced by PL 2003, c. 247, §8, is amended to read:

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 Except as provided in subsection 13-A, the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than ~~250~~ 300 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.

A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given as required under subsection 6 and a hearing must be held if it is requested in writing by 5 persons. The commissioner may review multiple leases concurrently during the lease renewal process.

A lease renewal application must include a nonrefundable application fee of no more than \$1,500, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

Sec. A-9. 12 MRSA §6072, sub-§12-A, ¶B, as amended by PL 1997, c. 609, §3, is further amended to read:

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

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

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

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

(4) The Except as provided in subsection 13-A, the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 250 300 acres.

Sec. A-10. 12 MRSA §6072, sub-§12-A, ¶C is enacted to read:

C. A lease transfer application must include a nonrefundable application fee of not more than \$5,000, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

Sec. A-11. 12 MRSA §6072, sub-§13, ¶F, as amended by PL 1997, c. 138, §6, is further amended to read:

F. For defining application requirements, an application review process and decision criteria; and

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

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

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

H. For establishing following requirements and procedures.

Sec. A-14. 12 MRSA §6072, sub-§13-A is enacted to read:

13-A. Lease acreage increase; fallowing. The commissioner may authorize a person to exceed the 300-acre limit established in subsections 2, 12 and 12-A if that person submits an annual fallowing plan to the commissioner that identifies lease sites that have been actively operated during the lease period and will be fallowed for a 12-month period. A person may not be a tenant of any kind in leases covering an aggregate of more than 300 nonfallowed acres at any time. A person may not be a tenant of any kind in leases covering an aggregate of more than 500 acres including fallowed leases at any time. For purposes of this subsection, "fallow" means a lease site without cultured fish, shellfish, scallops and gear except marked mooring blocks. A lease site fallowed pursuant to an enforcement action may not be considered fallowed for the purpose of this subsection.

Sec. A-15. 12 MRSA §6072-A, sub-§15, as enacted by PL 1997, c. 231, §6, is amended to read:

15. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but 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 in Title 38, section 465-B.~~

Sec. A-16. 12 MRSA §6072-D is enacted to read:

§6072-D. Aquaculture Management Fund

1. Fund established. The Aquaculture Management Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing fund within the department. All income received by the commissioner under this section must be deposited

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with the Treasurer of State. Any balance remaining in the fund at the end of a fiscal year does not lapse and must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund.

2. Fees. In accordance with the authority of the commissioner to levy lease rents pursuant to section 6072, subsections 9 and 13 and section 6072-A, subsection 14 and application fees pursuant to section 6072, subsections 4, 12 and 12-A, the commissioner shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A 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 subsection. Any rent or fee assessed pursuant to this subsection that is in addition to the fees that are in effect on the effective date of this subsection must be credited to the fund. A person who does not pay the rent or fee commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

3. Additional revenues. The commissioner may expend annual revenues that are in excess of the operating expenses of a program under subsection 4 to address matters that the commissioner determines are of an emergency nature to the State's aquaculture industry, to address matters that the commissioner determines are of long-term interest to the State's aquaculture industry and to rebate revenues to all those persons who paid fees under subsection 2. The fund may receive money from any source for the purposes of this subsection.

4. Uses of fund. The commissioner may make expenditures from the fund to develop and manage effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data, process lease applications and make information about aquaculture available to the public.

5. Reports. On or before February 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all expenditures made from the fund in the previous fiscal year and a summary of work accomplished and planned.

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

The department is---responsible---for---establishing---and maintaining---a---comprehensive may establish and maintain an information base pertaining to all--aspects--of the siting, development and operation of finfish aquaculture facilities within the State.

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Sec. A-18. 12 MRSA §6077, sub-§§2 and 3, as enacted by PL 1991, c. 381, §6, are amended to read:

2. Data requirements. The commissioner shall ensure that, at a minimum, may collect information in the following site-specific categories is collected and organized in such a manner as, including, but not limited to, those listed in this subsection, to allow effective enforcement of all laws pertaining to finfish aquaculture at individual facilities:

- A. Geophysical site characteristics, including currents and bathymetry;
- B. Benthic habitat characteristics and effects, including changes in community structure and function;
- C. Water column effects, including water chemistry and plankton;
- D. Feeding and production data sufficient to estimate effluent loading;
- E. Smolt and broodstock introduction and transfer data;
- F. Disease incidence and use of chemical therapeutics; and
- G. Other ancillary information as the commissioner may find necessary.

3. Data collection; authority. The commissioner may require persons holding licenses related to finfish aquaculture under this Title to report information in the categories listed in subsection 2. Personnel retained by leaseholders to perform tasks required for data collection as specified in subsection 2 and this subsection must be reviewed and approved by the commissioner for acceptable professional qualifications and experience prior to performing any data collection services. Routine notations of site operation do not require approved personnel.

Sec. A-19. 12 MRSA §6078-A, sub-§2, ¶¶A and B, as enacted by PL 2003, c. 247, §19, are repealed.

Sec. A-20. 12 MRSA §6078-A, sub-§2, ¶C, as enacted by PL 2003, c. 247, §19, is amended to read:

- 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

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a civil violation for which a fine ~~not to exceed~~ of not more than \$1,000 may be adjudged.

Sec. A-21. 12 MRSA §6673, as amended by PL 1999, c. 267, §3, is further amended to read:

§6673. Municipal leasing of flats

A municipality, ~~which~~ that has established a shellfish conservation program as provided under section 6671, may lease areas in the intertidal zone to the extreme low water mark, within the municipality for the purpose of shellfish aquaculture. A municipality may grant a lease to any person. Municipal authority to grant a lease under this section does not limit in any way the authority of the commissioner to issue leases in the intertidal zone in accordance with sections 6072, 6072-A and 6072-B.

~~1. Municipal procedure. A lease application written on a form supplied by the commissioner may be approved by the municipal officers if they find that it conforms to the shellfish program, that it will not cause the total area under lease to exceed 1/4 of all the municipal intertidal zone that is open to the taking of shellfish and that granting it is in the best interests of the municipality. On approval, the lease must be forwarded to the commissioner.~~

1-A. Application. An application for a municipal lease must be on a form supplied by the municipality. The municipality shall publish a summary of the application in a newspaper of general circulation in the area of the proposed lease. A person may provide comments to the municipality on the proposed municipal lease within 30 days of publication of the application summary.

Prior to granting a lease, a municipality shall hold a public hearing in accordance with procedures established in ordinances adopted in subsection 3 if requested in writing by 5 or more persons.

~~2. Department procedure for review and approval. The commissioner shall use the same procedure and the same grounds for approval as required for aquaculture leases under section 6072, except:~~

~~A. Preference shall be given to municipal leases;~~

~~B. No rent shall be set, but there shall be an annual municipal lease fee of not less than \$1 per acre;~~

~~G. The municipality may establish the conditions and limits on the lease, and~~

~~D. The advice and consent of the advisory council shall not be required.~~

2-A. Decision. In evaluating a proposed lease, a municipal officer shall take into consideration the number and density of leases in the area and may approve a lease if the municipal officer finds the proposed project meets the following criteria.

A. The lease conforms to the municipality's shellfish conservation program.

B. The lease will not cause the total area under the lease to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.

C. Granting the lease is in the best interests of the municipality.

D. The lease will not unreasonably interfere with ingress and egress of riparian owners.

E. The lease will not unreasonably interfere with navigation.

F. The lease will not unreasonably interfere with fishing or other uses of the area. For purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, if 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.

G. The lease 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.

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

I. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or

2 docking facility owned by the Federal Government, the State
3 Government or a municipal government or certain conserved
4 lands. For purposes of this paragraph, "conserved lands"
5 means land in which fee ownership has been acquired by the
6 municipal government, State Government or Federal Government
7 in order to protect the important ecological, recreational,
8 scenic, cultural or historic attributes of that property.

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10 A municipality shall review the State Planning Office's list of
11 conserved lands compiled pursuant to section 6072, subsection
12 7-A, paragraph F prior to granting a lease.

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14 A municipality shall put its findings on each of the criteria
15 listed in this subsection in writing and make them available to
16 the public.

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18 3. Municipal leases. Prior to issuing any lease pursuant
19 to this section, a municipality shall adopt ordinances that
20 establish procedures for consideration of the proposed lease
21 under the decision criteria in subsection 2-A, including but not
22 limited to provisions for a public hearing process. An ordinance
23 proposed by a municipality under this subsection must be approved
24 in writing by the commissioner prior to its adoption.

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26 When approved, a municipal lease must be forwarded to the
27 commissioner. The municipality may charge a lease rental fee not
28 to exceed \$50 per acre. The municipality may establish
29 conditions and limits on the lease. A lease may be granted for a
30 period of up to 10 years and is renewable upon application by the
31 leaseholder. The terms and conditions of a municipal lease must
32 be monitored and enforced by the municipality.

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34 4. Renewals. A municipality shall give public notice for a
35 lease renewal as required under subsection 1-A, and a hearing
36 must be held if it is requested in writing by 5 or more persons.
37 If a public hearing is required, it must be held in accordance
38 with procedures established in an ordinance adopted pursuant to
39 subsection 3. Renewals may be granted as long as the lease
40 continues to meet the criteria of subsection 2-A. The findings
41 of the municipality regarding the criteria in subsection 2-A must
42 be in writing and available to the public.

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44 **Sec. A-22. 38 MRSA §3, as amended by PL 1991, c. 685, §1 and**
45 **c. 838, §16, is further amended to read:**

46 **§3. Mooring sites**

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48 In all harbors wherein channel lines have been established

by the municipal officers, as provided in section 2, and in all other coastal and tidal waters, harbors and great ponds where mooring rights of individuals are claimed to be invaded and protection is sought of the harbor master, the harbor master shall assign and indicate only to the masters or owners of boats and vessels the location that they may occupy for mooring purposes and shall change the location of those moorings from time to time when the crowded condition of that harbor or great pond, the need to conform to section 7-A or other conditions render the change desirable.

Unless permitted by an ordinance adopted under section 3-A, mooring assignments may not be transferred. Assignments may not be rented unless the provision for rental was part of the agreement when the mooring was assigned.

Assignment of these mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State. To the extent that there is any inconsistency between this subchapter and any law which that establishes or otherwise provides for a port authority, board of harbor commissioners or similar authority for any coastal waters of the State, that inconsistency shall must be resolved in favor of this subchapter.

Whenever practicable, the harbor master shall assign mooring privileges in those waters where individuals own the shore rights to a parcel of land, are masters or owners of a boat or vessel and are complainants, and shall locate suitable mooring privileges therefor for boats and vessels, temporarily or permanently, as the case may be, fronting their land, if so requested, but not to encroach upon the natural channel or channels established by municipal officers; provided that not more than one mooring may be assigned to any ~~shore-front~~ shorefront parcel of land under this privilege. Notwithstanding section 11, persons who, prior to January 1, 1987, owned shore rights of at least 100 feet of frontage regardless of the size of the lot shall have mooring privileges assigned according to this section. The limitation of one mooring assigned under this privilege shall does not prevent the owner of a ~~shore-front~~ shorefront parcel from receiving additional mooring assignments under the allocation system for all other residents.

A harbor master may refuse to assign mooring privileges to any vessel or boat owner or master who has not paid any fee, charge for services, forfeiture or penalty levied pursuant to this subchapter.

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural

moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B.

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels.

PART B

Sec. B-1. Bay management study. The Land and Water Resources Council established in the Maine Revised Statutes, Title 5, section 3331, referred to in this Part as "the council," shall undertake a study of bay management. The intent of this study is to explore and document potential new and innovative concepts for the management of Maine's embayments through a 2-year pilot initiative.

Sec. B-2. Study oversight. The council shall begin the study no later than September 1, 2004. The study must be carried out under the direction of the council with work performed by an interagency staff work group with input from a project steering committee. The project steering committee must include members of the public with expertise in relevant fields of interest such as marine resources, fisheries, natural resource conservation, aquaculture, economic development, planning, tourism and marine recreation uses.

Sec. B-3. Staffing assistance; technical assistance. The Executive Department, State Planning Office and the Department of Marine Resources shall provide staff services to the council. The council may also seek or contract for technical assistance from any other agency or institution and any individual or group that it determines appropriate to support the study.

Sec. B-4. Issues to be considered. In developing its recommendations on bay management, the council shall:

1. Establish definitions, principles, goals and objectives for bay management in the State;
2. Drawing on national and international examples, define a range of approaches for bay management that is feasible for use in Maine;
3. Establish clear criteria and standards for bay

management, including guidelines to inform voluntary planning efforts by citizen groups;

4. Identify data and information needs, mapping needs and information transfer needs for bay management;

5. Identify authorities that govern near-shore waters and identify changes needed to regulatory structures, including but not limited to statutes, regulations and grant programs;

6. Identify opportunities to create limited local authority for bay management; and

7. Identify state, local and volunteer resources and capacity needed for bay management.

Sec. B-5. Pilot projects. The council shall create one or more pilot projects of limited duration in a representative region or regions of the State where groups of marine resources users and other affected stakeholders investigate and discuss desired uses for specific land and water areas and determine methods for resolution of user conflicts. The council shall use the results of these pilot projects to shape the council's recommendations for bay management efforts.

Sec. B-6. Public meetings. When held, council meetings are open to the public for purposes of public input. The interagency staff work group shall meet to the extent necessary to fulfill its duties, including but not limited to work on pilot projects, in different regions of the State expressly for the purpose of receiving public comment and testimony on its work.

Sec. B-7. Reports. The interagency staff work group with the assistance of the project steering committee shall submit reports and updates on its work to the council as determined by the council. The council shall submit an interim report to the joint standing committee of the Legislature having jurisdiction over marine resources matters no later than January 15, 2006 updating the committee on the status and progress of the council's work. The council shall submit its final report and recommendations to the joint standing committee of the Legislature having jurisdiction over marine resources matters no later than January 15, 2007.

Sec. B-8. Funding. The Director of the State Planning Office shall use funds from the State Planning Office's existing resources and other outside sources for the costs incurred in carrying out the purposes of this Part.

PART C

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4 **Sec. C-1. Vision and principles for Maine aquaculture.** The
5 Legislature acknowledges that aquaculture is an important and
6 compatible element of Maine's diverse coastal economy.
7 Aquaculture contributes to satisfying global market demands and
8 can benefit local communities and the public interest by
9 producing high-quality products and providing economic
10 opportunities and by operating in an environmentally sustainable
11 fashion. The Legislature also recognizes that the State's
12 planning and regulatory processes should be adaptive, inclusive
13 and fair and should support the growth of the industry in an
14 economically competitive and environmentally sustainable way.
15 The following are guiding principles for aquaculture in Maine.

16 1. A working waterfront is critical to Maine's coastal
17 future. Marine aquaculture can be a part of Maine's working
18 waterfront.

19 2. Aquaculture is one of many uses of Maine's coastal
20 environment that can be made compatible with other activities
21 such as commercial fishing and in harmony with natural resources.

22 3. Marine aquaculture can be practiced in an
23 environmentally sustainable fashion and need not cause permanent
24 ecological damage.

25 4. Maine's aquaculture leasing program should practice
26 integrity in all aspects of its operation.

27 5. Maine should encourage local participation in
28 aquaculture permitting decisions.

29 6. Maine's aquaculture laws and regulations should provide
30 flexibility to address change while recognizing both the need for
31 regulatory stability and for stability in the use of the public
32 resource.

33 7. Maine's aquaculture leasing process should provide for
34 open communication among stakeholders.

35 8. Maine's aquaculture monitoring program should feature
36 state-of-the-art environmental monitoring.

37 9. Marine aquaculture may flourish only with high water
38 quality.

39 10. Marine aquaculture offers the potential to bring
40 substantial economic value and diversity to the State and its
41 communities.
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2 11. Maine should create a welcoming environment for a range
of investments in marine aquaculture.

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6 12. Maine should encourage the development of locally owned
and Maine-based operations.

8 13. Maine should provide and encourage incentives for
innovation in marine aquaculture.

10 **Sec. C-2. Appropriations and allocations.** The following
12 appropriations and allocations are made.

14 **MARINE RESOURCES, DEPARTMENT OF**

16 **Bureau of Resource Management 0027**

18 Initiative: Deallocates funds to reflect changes in the
functioning of the Aquaculture Monitoring, Research and
20 Development Fund.

22	Other Special Revenue Funds	2003-04	2004-05
24	All Other	\$0	(\$229,730)
26	Other Special Revenue Funds Total	<u>\$0</u>	<u>(\$229,730)</u>

28 **SUMMARY**

30 This amendment is the majority report and replaces the
32 bill. This amendment:

34 1. Removes the Department of Marine Resources as the
primary agency responsible for the promotion and marketing of the
36 aquaculture industry;

38 2. Defines agricultural products to include aquaculture
products;

40 3. Increases the number of lease acres a person may be a
42 tenant of from 250 to 300 and authorizes the Commissioner of
Marine Resources to allow a person to exceed the 300-acre lease
44 limit if that person provides a following plan to the
commissioner identifying lease sites that will remain fallow for
46 at least 12 months. It also limits the total amount of active
and fallowed lease acreage that may be held by one person to 500
48 acres, of which only 300 may be active;

50 4. Requires the commissioner to consider as part of the

COMMITTEE AMENDMENT "A" to H.P. 1383, L.D. 1857

criteria for granting a lease certain "conserved lands" that include governmental land held in fee to protect important ecological, recreational, scenic, cultural or historic attributes of that property;

5. Authorizes the commissioner to consider more than one lease renewal application at a public hearing;

6. Makes technical changes to reflect requirements in Maine Pollution Discharge Elimination System permits and to facilitate the transition from the finfish aquaculture monitoring program to the Maine Pollution Discharge Elimination System permit and to require finfish aquaculture leaseholders to get approval from the department of contractors to be used by leaseholders for data collection required by law;

7. Grants a municipality that has a shellfish conservation program the authority to lease mud flats within its jurisdiction. It requires the municipality to publish a summary of the proposed lease and allows for public comment for 30 days after the publication of the application summary. It also requires a municipality to adopt ordinances that establish procedures for consideration of a lease and requires the municipality to hold a public hearing prior to the granting of the lease if requested by 5 or more people in writing. This amendment provides the decision criteria a municipality must consider when making a decision on a proposed lease and requires that the municipality put its findings in writing. Additionally, it requires the municipality to forward an approved lease to the department and provides that a municipality may not charge more than \$50 an acre for a lease. It gives the municipality authority to put conditions and limits on a lease and caps the length of a lease at 10 years, renewable upon application of the leaseholder. Finally, it requires a municipality to hold a public hearing on a lease renewal application if requested in writing by 5 or more people and provides that a lease renewal must be granted if it continues to meet the decision criteria;

8. Establishes the Aquaculture Management Fund to develop and manage water quality licensing and monitoring criteria for aquaculture and to analyze collected data, process license applications and make information about aquaculture available to the public;

9. Increases certain aquaculture fees and establishes new fees related to aquaculture leases. Revenues raised pursuant to these fees are dedicated to the Aquaculture Management Fund;

10. Repeals the tax of 1¢ per pound assessed on finfish;

0.018

2 11. Provides that municipalities may not charge a mooring
3 fee for and do not have jurisdiction over siting or
4 specifications of structural moorings used to secure aquaculture
5 equipment. It grants authority to municipalities for boat and
6 vessel moorings inside the boundaries of an aquaculture lease
7 site. It prohibits a municipality from charging a mooring fee for
8 such moorings that is inconsistent with other mooring fees for
9 commercial vessels;

10 12. Requires the Land and Water Resources Council to
11 undertake a study of bay management. The intent of this study is
12 to explore and document potential new and innovative concepts for
13 the management of Maine's embayments through a 2-year pilot
14 initiative. It requires the council to begin this study no later
15 than September 1, 2004 and to submit an interim report by January
16 15, 2006 and a final report by January 15, 2007 to the joint
17 standing committee of the Legislature having jurisdiction over
18 marine resources matters. The study must be carried out under
19 the direction of the council with work performed by an
20 interagency staff work group with input of a project steering
21 committee consisting of members of the public with expertise in
22 relevant fields of interest. It also directs the council to
23 create one or more pilot projects of limited duration in a
24 representative region or regions of the State. The amendment
25 authorizes the interagency staff work group to meet as necessary
26 to fulfill its duties and specifies that meetings of the council
27 are open to the public. It further directs the Executive
28 Department, State Planning Office and the Department of Marine
29 Resources to provide staff services to the council and requires
30 that the Director of the State Planning Office use funds from the
31 State Planning Office's existing resources and other outside
32 sources to cover the costs associated with this study; and

34 13. Sets forth vision and principles statements as guidance
35 for the future of aquaculture in Maine.

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FISCAL NOTE REQUIRED
(See attached)

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



LD 1857

**An Act to Implement the Recommendations of the Task Force on the
Planning and Development of Marine Aquaculture in Maine**

LR 2749(02)

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Marine Resources

Fiscal Note Required: Yes

Majority Report

Fiscal Note

	2003-04	2004-05	Projections 2005-06	Projections 2006-07
Appropriations/Allocations				
Other Special Revenue Funds	\$0	(\$229,730)	(\$229,730)	(\$229,730)
Revenues				
Other Special Revenue Funds	\$0	(\$304,584)	(\$304,584)	(\$304,584)

Correctional and Judicial Impact Statements

Establishes new civil violations

Fiscal Detail and Notes

The repeal of the fees collected by the Aquaculture Monitoring, Research and Development Fund will result in a loss of dedicated revenues collected by the Department of Marine Resources. This fund is budgeted to receive \$395,994 in fiscal year 2004-05, although recent projections are in the \$140,000 to \$150,000 range. The dedicated revenue for this fund is to be largely replaced with new and adjusted dedicated revenues which will be deposited into a newly established Aquaculture Monitoring Fund.

The annual dedicated revenues for the new Aquaculture Monitoring Fund are estimated to be \$91,410 beginning in fiscal year 2004-05. The department plans to use the existing balance in the Aquaculture Monitoring, Research and Development Fund to fund a currently authorized Marine Resources Scientist II position through the end of fiscal year 2004-05. Beginning in fiscal year 2005-06, the department's budget will reflect the transfer of the Marine Resources Scientist II position to the newly established fund and annual Other Special Revenue Funds allocations of \$91,410 will be required as of that fiscal year. The allocation and revenue changes shown above will bring the net amounts down to the required \$91,410.

The additional costs associated with maintaining a list of conserved lands can be absorbed by the State Planning Office utilizing existing budgeted resources. Also, it is anticipated that the State Planning Office can use federal funds to assist in the study of bay management as proposed in Part B of the bill.