

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

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Legislative Document

No. 1857

H.P. 1383

House of Representatives, February 18, 2004

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

Reported by Representative BULL of Freeport for the Task Force on the Planning and Development of Marine Aquaculture in Maine pursuant to Resolve 2003, chapter 40 and chapter 101, section 3.

Reference to the Committee on Marine Resources suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 5 MRSA §13056, sub-§6**, as amended by PL 2003, c. 159,
5 §2, is further amended to read:

6 **6. Implement programs.** Implement economic and community
7 development programs which that are assigned to the department by
8 the Governor or Legislature, including those formerly
9 administered by the following other state agencies:

10 A. The programs of the State Development Office; and

11 B. Other community planning and development assistance
12 programs of the State Planning Office; and

13 C. Aquaculture industry development;

14
15
16
17 **Sec. 2. 7 MRSA §401-B, first ¶**, as enacted by PL 1983, c. 563,
18 §1, is amended to read:

19
20 To further the purposes of this Part, the commissioner shall
21 initiate and implement programs necessary to facilitate the
22 effective, profitable marketing of Maine agricultural products.
23 For the purposes of this subchapter, the terms "agricultural
24 products" and "farm products" include products of aquaculture as
25 defined in Title 12, section 6001, subsection 1. These programs
26 shall include, but are not be limited to, the following.

27
28 **Sec. 3. 12 MRSA §6072, sub-§2, ¶E**, as amended by PL 1997, c.
29 609, §1, is further amended to read:

30
31 E. The lease does not result in a person being a tenant of
32 any kind in leases covering an aggregate of more than 250
33 500 acres; and

34
35 **Sec. 4. 12 MRSA §6072, sub-§5-A**, as amended by PL 1997, c.
36 138, §4, is further amended to read:

37
38 **5-A. Department site review.** Prior to the lease hearing,
39 the department shall conduct an assessment of the proposed site
40 and surrounding area to determine the possible effects of the
41 lease on commercially and ecologically significant flora and
42 fauna and conflicts with traditional fisheries. ~~This review must~~
43 ~~take place any time between April 1st and November 15th.~~ This
44 information must be provided to the intervenors and made
45 available to the public 30 days before the hearing. As part of
46 the site review, the department shall request information from
47 the municipal harbor master about designated or traditional storm
48 anchorages in proximity to the proposed lease. The commissioner
49 may by rule establish levels of assessment appropriate to the
50

2 scale or potential environmental risk posed by a proposed lease
3 activity. The rules must provide a method of establishing a
4 baseline to monitor the environmental effects of a lease
5 activity. Rules adopted pursuant ~~to~~ under this subsection are
6 major substantive rules ~~pursuant--to~~ as defined by Title 5,
chapter 375, subchapter II-A 2-A.

8 **Sec. 5. 12 MRSA §6072, sub-§7-A**, as amended by PL 2003, c.
9 247, §4, is further amended to read:

10 **7-A. Decision.** The In evaluating the proposed lease, the
11 commissioner shall take into consideration the number and density
12 of aquaculture leases in an area and may grant the lease if the
13 proposed project meets the following conditions as defined by
14 rule:

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

17 B. Will not unreasonably interfere with navigation;

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

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

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

37 F. The lease does not unreasonably interfere with public
38 use or enjoyment within 1,000 feet of ~~municipally-owned,~~
39 ~~state-owned--or--federally-owned--beaches--and--parks--or~~
40 ~~municipally-owned,--state-owned--or--federally-owned--docking~~
41 facilities beaches, parks, docking facilities owned by
42 federal, state or municipal governmental agencies or certain

2 conserved lands. For purposes of this paragraph, "conserved
3 lands" means:

4 (1) Land in which fee ownership has been acquired by
5 the municipal government, State Government or Federal
6 Government in order to protect the important
7 ecological, recreational, scenic, cultural or historic
8 attributes of that property; or

10 (2) Land that has been protected through fee ownership
11 or conservation easement with funding from the Land for
12 Maine's Future Fund.

14 The Executive Department, State Planning Office shall
15 maintain a list of conserved lands. The commissioner shall
16 request this information from the State Planning Office
17 prior to any preapplication scoping session held;

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

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

26 ~~The commissioner shall adopt rules to quantify-permissible-impact~~
27 ~~under-paragraph-G-and-to~~ establish noise, light and visual impact
28 criteria under ~~paragraph~~ paragraphs G and H, which are major
29 substantive rules as defined in Title 5, chapter 375, subchapter
30 2-A.

32 **Sec. 6. 12 MRSA §6072, sub-§12**, as repealed and replaced by PL
33 2003, c. 247, §8, is amended to read:

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

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

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

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

48 D. The renewal will not cause the lessee to become a tenant
49 of any kind in leases covering an aggregate of more than 250
50 500 acres; and

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

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

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

14 The commissioner shall provide notice of a proposed lease renewal
in the same manner as required under subsection 6. A person may
16 provide to the commissioner comments on the proposed lease
renewal within 30 days of receipt of notice or within 30 days of
18 publication of notice. A public scoping session, as defined in
rule, must be held if it is requested in writing by 5 or more
20 persons.

22 The commissioner may hold a public hearing on a proposed lease
renewal. If a hearing is held, it is an adjudicatory proceeding
24 held in accordance with Title 5, chapter 375, subchapter 4.

26 **Sec. 7. 12 MRSA §6072, sub-§12-A**, as amended by PL 1997, c.
609, §3, is further amended to read:

28 **12-A. Transferability.** A lease may be transferred to
30 another person for the remaining portion of its term subject to
the following conditions.

32 A. Lease transfers ~~shall be~~ are subject to the same
34 procedural requirements as initial applications, except that
a public hearing is not mandatory ~~unless requested in~~
36 writing by 5 persons. The commissioner shall provide notice
of a proposed lease transfer in the same manner as required
38 under subsection 6. A person may provide to the
commissioner comments on the proposed lease transfer within
40 30 days of receipt of notice, or within 30 days of
publication of notice. A public scoping session, as defined
42 in rule, must be held if it is requested in writing by 5 or
more persons.

44 The commissioner may hold a public hearing on the proposed
46 lease transfer. If a hearing is held, it is an adjudicatory
proceeding held in accordance with Title 5, chapter 375,
48 subchapter 4.

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

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

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

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

12 (4) The transfer will not cause the transferee to be a
14 tenant of any kind in leases covering an aggregate of
more than 250 500 acres.

16 **Sec. 8. 12 MRSA §6072-A, sub-§6**, as enacted by PL 1997, c.
231, §6, is amended to read:

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

32 **Sec. 9. 12 MRSA §6072-A, sub-§7**, as amended by PL 2003, c.
247, §11, is repealed.

34 **Sec. 10. 12 MRSA §6072-A, sub-§7-A** is enacted to read:

36 **7-A. Public scoping session.** The commissioner shall hold a
38 public scoping session, as defined in rule, if 5 or more persons
40 request a public scoping session within the 30-day comment
periods provided in subsection 5.

42 **Sec. 11. 12 MRSA §6673**, as amended by PL 1999, c. 267, §3, is
44 further amended to read:

46 **§6673. Municipal leasing of flats**

48 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,
50 within the municipality for the purpose of shellfish

2 aquaculture. A municipality may grant a lease to any person.
3 Municipal authority to grant a lease under this section does not
4 limit in any way the authority of the commissioner to issue
5 leases in the intertidal zone in accordance with sections 6072,
6 6072-A and 6072-B.

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

15 1-A. Application. The municipality shall review an
16 application for a municipal lease on a form supplied by the
17 municipality. The municipality shall publish a summary of the
18 application in a newspaper of general circulation in the area of
19 the proposed lease. A person may provide comments to the
20 municipality on the proposed municipal lease within 30 days of
21 publication of the lease summary.

22 ~~2. Department procedure for review and approval. The~~
23 ~~commissioner shall use the same procedure and the same grounds~~
24 ~~for approval as required for aquaculture leases under section~~
25 ~~6072, except:~~

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

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

29 ~~C. The municipality may establish the conditions and limits~~
30 ~~on the lease; and~~

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

33 2-A. Decision. A lease may be approved by the municipal
34 officers if:

35 A. The lease conforms to the shellfish conservation program;

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

39 C. Granting the lease is in the best interests of the
40 municipality;

2 D. The lease will not unreasonably interfere with ingress
4 and egress of riparian landowners within 1,000 feet of the
 lease site;

6 E. The lease will not unreasonably interfere with
 navigation;

8 F. The lease will not unreasonably interfere with fishing
10 or other uses of the area;

12 G. The lease will not unreasonably interfere with
14 significant wildlife habitat and marine habitat or with the
 ability of the lease site and surrounding marine and upland
16 areas to support existing ecologically significant flora and
 fauna;

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

22 I. The lease does not unreasonably interfere with public
24 use or enjoyment, within 1,000 feet of the location of the
 lease site, of municipally owned, state-owned or federally
26 owned beaches and parks or municipally owned, state-owned or
 federally owned docking facilities.

28 3. Municipal leases. When approved, a municipal lease must
30 be forwarded to the commissioner. The municipality may charge a
 lease rental fee not to exceed \$50 per acre. The municipality
32 may establish the conditions and limits on the lease. A lease
 may be granted for a period of up to 10 years and is renewable
34 upon application by the leaseholder. Renewals may be granted if
 the lease continues to meet the criteria of subsection 2-A. The
36 terms and conditions of a municipal lease must be monitored and
 enforced by the municipality.

38 Sec. 12. 38 MRS §3, as amended by PL 1991, c. 685, §1 and c.
40 838, §16, is further amended to read:

42 **§3. Mooring sites**

44 In all harbors wherein channel lines have been established
46 by the municipal officers, as provided in section 2, and in all
48 other coastal and tidal waters, harbors and great ponds where
50 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

2 time to time when the crowded condition of that harbor or great
3 pond, the need to conform to section 7-A or other conditions
4 render the change desirable.

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

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

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

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

38 Municipalities do not have jurisdiction over the siting or
39 specifications of structural moorings used to secure aquaculture
40 equipment within the boundaries of a lease site when that site's
41 lease is issued pursuant to Title 12, section 6072, 6072-A or
42 6072-B.

43 Municipalities do not have jurisdiction over boat or vessel
44 moorings within the boundaries of a lease site when that site's

2 lease is issued pursuant to Title 12, section 6072, 6072-A or
3 6072-B.

4
5 **SUMMARY**

6
7 This bill implements the recommendations of the Task Force
8 on the Planning and Development of Marine Aquaculture in Maine.

9 The bill does the following.

10
11 1. It clarifies that the Commissioner of Marine Resources
12 shall provide notice of a proposed lease renewal or transfer in
13 the same manner as required for the original lease.

14
15 2. It gives the commissioner authority to hold a public
16 hearing on the proposed lease renewal or transfer.

17
18 3. It requires the commissioner to hold a public scoping
19 session if 5 or more persons request a hearing.

20
21 4. It expands a municipality's authority to grant a lease.

22
23 5. It lists guidelines by which a municipality may approve
24 a lease.

25
26