

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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No. 1398

H.P. 977

House of Representatives, April 2, 2009

An Act To Amend the Aquaculture Laws

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 EATON of Sullivan.

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

2 **Sec. 1. 12 MRSA §6072, sub-§11-A** is enacted to read:

3 **11-A. Lease assignment.** The commissioner shall assign leases in accordance with
4 this subsection.

5 A. When a lease under this section has been terminated by the lessee or has been
6 revoked by the commissioner and all appeals have been exhausted, the commissioner
7 may lease the same site on the same terms and conditions to a new lessee for the
8 amount of time remaining in the term of the previous lease, subject to the
9 requirements of this section. A lease that has been terminated or revoked may be
10 assigned pursuant to this subsection at any time before its term expires. A lease
11 assignment pursuant to this subsection is not an adjudicatory proceeding.

12 B. Before assigning a lease pursuant to this subsection, the commissioner shall give
13 notice to the public of the opportunity to submit proposals to assume and operate the
14 lease. The commissioner shall determine that a proposal is eligible for consideration
15 if:

16 (1) The application is complete, using forms provided by the commissioner;

17 (2) The change in lessee would not violate any of the standards in subsection
18 7-A;

19 (3) The assignment is not intended to circumvent the intent of subsection 8;

20 (4) The assignment is not for speculative purposes; and

21 (5) Except as provided in subsection 13-A, the assignment will not cause the
22 assignee to be a tenant of any kind in leases covering an aggregate of more than
23 500 acres.

24 C. The commissioner shall consider the eligible proposals under paragraph B and
25 shall either:

26 (1) Select for assignment the proposal that is best suited to the lease site and in
27 the best interests of the State;

28 (2) Declare all proposals unsuitable and solicit new proposals; or

29 (3) Suspend the assignment process for the lease site in question.

30 D. After a proposal is selected pursuant to paragraph C, but before the lease is
31 assigned, the commissioner shall give notice of the pending assignment to the public,
32 the owners of riparian land within 1,000 feet of the lease site and the municipal
33 officers of the municipality within which the lease is located. The notice must
34 provide an opportunity to submit written comments on the proposed lease assignment
35 within 14 days. The commissioner may decline to assign the lease and may select
36 another proposal for assignment or proceed as described in paragraph C,
37 subparagraph (2) or (3).

38 E. A decision by the commissioner to assign a lease or to decline to assign a lease to
39 an applicant whose proposal was selected pursuant to paragraph C must be rendered

1 in writing and must include findings of fact and conclusions of law. The decision by
2 the commissioner to assign or not to assign a lease is a final decision.

3 F. The commissioner shall establish by rule the fee for assigning a lease under this
4 subsection, which may not exceed \$5,000, based on the type of aquaculture
5 conducted and the size of the lease. The assignee must pay the fee prior to the
6 execution of the lease. Rules adopted pursuant to this paragraph are routine technical
7 rules as defined in Title 5, chapter 375, subchapter 2-A.

8 **Sec. 2. 12 MRSA §6072, sub-§12-A**, as amended by PL 2005, c. 535, §3, is
9 further amended to read:

10 **12-A. Transferability.** A lease under this section may be transferred to another
11 person for the remaining portion of its term subject to the following conditions in this
12 subsection. A lease transfer is not an adjudicatory proceeding.

13 ~~A. Lease transfers shall be subject to the same procedural requirements as initial~~
14 ~~applications, except that a public hearing is not mandatory unless requested in writing~~
15 ~~by 5 persons. An application to transfer a lease pursuant to this subsection must be~~
16 ~~made on forms provided by the commissioner. When the commissioner determines~~
17 ~~that the application is complete, the commissioner shall give notice of the proposed~~
18 ~~transfer to the public, the owners of riparian land within 1,000 feet of the lease site~~
19 ~~and the municipal officers of the municipality within which the lease is located. The~~
20 ~~notice must provide an opportunity to submit written comments on the proposed lease~~
21 ~~transfer within 14 days.~~

22 B. The commissioner may grant lease transfers pursuant to this subsection if the
23 commissioner determines that:

- 24 (1) The change in lessee does not violate any of the standards in subsection 7;
25 (2) The transfer is not intended to circumvent the intent of subsection 8;
26 (3) The transfer is not for speculative purposes; and
27 (4) Except as provided in subsection 13-A, the transfer will not cause the
28 transferee to be a tenant of any kind in leases covering an aggregate of more than
29 500 acres.

30 A decision by the commissioner on an application to transfer a lease must be
31 rendered in writing and must include findings of fact and conclusions of law. The
32 decision by the commissioner on the transfer application is a final decision.

33 ~~C. A lease transfer application must include a nonrefundable application fee of not~~
34 ~~more than \$5,000, the amount to be set by the commissioner depending on the type of~~
35 ~~aquaculture permitted by the lease. The commissioner shall establish by rule the fee~~
36 ~~for transferring a lease under this subsection, which may not exceed \$5,000, based on~~
37 ~~the type of aquaculture conducted and the size of the lease. The transferee must pay~~
38 ~~the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph~~
39 ~~are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.~~

40 **Sec. 3. 12 MRSA §6072, sub-§13, ¶B**, as amended by PL 1987, c. 453, §1, is
41 further amended to read:

1 B. For procedures to issue, transfer, review, assign or revoke leases;

2 **Sec. 4. 12 MRSA §6072-A, sub-§4**, as enacted by PL 1997, c. 231, §6, is
3 amended to read:

4 **4. Size limitation.** A limited-purpose lease may not be issued for an area in excess
5 of 2 4 acres.

6 **Sec. 5. 12 MRSA §6072-C, sub-§2**, as amended by PL 2003, c. 247, §16, is
7 further amended to read:

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

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

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

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

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

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

27 F. The applicant holds no more than 3 other limited-purpose aquaculture licenses
28 issued under this section; and

29 G. The consent of the riparian landowner is obtained if the proposed activity is
30 located above the mean low-water mark.

31 **Sec. 6. 12 MRSA §6072-C, sub-§3**, as amended by PL 2007, c. 212, §2, is
32 further amended to read:

33 **3. Eligibility.** A limited-purpose aquaculture license may be issued only to an
34 individual or to a municipal shellfish management committee established pursuant to
35 section 6671 ~~and is a resident license.~~

36 **Sec. 7. 12 MRSA §6072-C, sub-§6**, as enacted by PL 1999, c. 567, §2, is
37 amended to read:

1 **6. Fee.** The application fee for a resident limited-purpose aquaculture license is \$50
2 and \$300 for a nonresident limited-purpose aquaculture license. The application fee is
3 nonrefundable. All fees collected under this subsection must be deposited in the
4 Aquaculture Research Fund established in section 6081.

5 **Sec. 8. 12 MRSA §6073-D** is enacted to read:

6 **§6073-D. Season and size exemption**

7 A person who is in possession of a marine organism raised by means of aquaculture
8 and lawfully obtained under the laws of the State is exempt from any requirement
9 regarding the time of taking or possessing, minimum or maximum length or other
10 minimum or maximum size requirement, except that this section does not apply to the
11 requirements for lobsters, sturgeon and striped bass. This exemption applies to
12 aquaculture products that do not meet the legal size or season requirements for wild-
13 caught marine organisms of the same species.

14 The person possessing the marine organism must maintain sufficient documentation
15 to prove the aquacultural origin of the marine organism, including, but not limited to,
16 documents indicating the point of origin, quantity and dates of production or purchase of
17 all cultured marine organisms exempted by this section, and the holder must present the
18 documentation for inspection to department personnel upon request. A consumer in
19 possession of such a marine organism may present a valid sales receipt to satisfy this
20 requirement. It is prima facie evidence of possession of a marine organism in violation of
21 the law if the person possessing the marine organism cannot present sufficient evidence
22 to prove its aquacultural origin.

23 This section does not exempt the possessor of the marine organism from any
24 requirement to hold a lease or license pursuant to section 6072, 6072-A, 6072-B, 6072-C
25 or 6085 to engage in the culture of marine organisms.

26 **Sec. 9. 12 MRSA §6079**, as amended by PL 1997, c. 231, §7, is repealed.

27 **Sec. 10. 12 MRSA §6083** is enacted to read:

28 **§6083. Lease option**

29 **1. Lease option.** A person may apply for a lease option that conveys the right to file
30 an application for an aquaculture lease under section 6072, 6072-A or 6072-B for a
31 particular area of the submerged lands of the State and for a defined period of time. The
32 department may not accept an application for an aquaculture lease pursuant to section
33 6072, 6072-A or 6072-B or an application for a limited-purpose aquaculture license
34 pursuant to section 6072-C in an area that is under a lease option, except as described in
35 subsection 2.

36 **2. Other claims of preference.** A lease option under this section does not supersede
37 the provisions for application preference in section 6072, subsection 8 and section
38 6072-A, subsection 12. Competing aquaculture lease applications from persons claiming
39 preference under section 6072, subsection 8 or section 6072-A, subsection 12 must be

1 evaluated by the department to determine if the claim of preference is valid and, if it is
2 found to be valid, the holder of the lease option may cancel the lease option and receive a
3 fee refund prorated for the remainder of the term of the lease option.

4 **3. Issuance criteria.** The applicant for a lease option under this section must
5 demonstrate that the site is being assessed in good faith for its suitability for aquaculture
6 and that there is a reasonable likelihood that an application for an aquaculture lease will
7 be filed during the term of the lease option. The area proposed for lease option may not
8 contain an existing aquaculture lease or license or include an area that is part of an
9 aquaculture lease or license application under consideration by the department.

10 **4. Fee.** The fee for issuance of a lease option under this section may be up to \$500
11 for the first acre plus up to \$50 for each additional acre, the amount to be established in
12 rules adopted by the commissioner. Rules adopted pursuant to this subsection are routine
13 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

14 **Sec. 11. 12 MRSA §6084** is enacted to read:

15 **§6084. Nonpayment of aquaculture lease fees**

16 If a holder of an aquaculture lease or license under this subchapter fails to pay any
17 related fees or charges, the commissioner may refuse to renew or issue any marine
18 resources license or permit to the holder of the aquaculture lease or license.

19 **Sec. 12. 12 MRSA §6085** is enacted to read:

20 **§6085. Marine organism aquaculture license**

21 **1. License required.** The commissioner may require a license for aquaculture of
22 marine organisms in facilities that are not located in the coastal waters of the State but are
23 located in the State.

24 **2. Licensed activities.** The holder of a license under this section may possess
25 marine organisms the holder has raised by means of aquaculture. The holder of such a
26 license is exempt from any requirement regarding the time of taking or possessing,
27 minimum or maximum length or other minimum or maximum size requirement for any
28 marine organism the holder has raised by means of aquaculture.

29 **3. Permit denial.** The commissioner may refuse to issue a license under this section
30 if the commissioner finds that the aquaculture activity presents an unreasonable risk to
31 indigenous marine life or its environment. In determining whether or not to refuse to
32 issue a license, the commissioner shall consider factors, including, but not limited to:

33 A. Risk of accidental or intentional introduction of marine organisms or marine
34 organism products into the coastal waters of the State;

35 B. Risk of the introduction or spread of disease within the State; and

36 C. Interference with the enforcement of possession, size or season limits for wild
37 marine organisms.

1 **4. Monitoring and revocation.** The commissioner shall monitor licensed facilities
2 under this section on an annual basis. If the commissioner determines following an
3 annual review or at any other time that the licensed aquaculture activity presents an
4 unreasonable risk to indigenous marine life or its environment, the commissioner may
5 revoke the license after the licensee has been given an opportunity for a hearing before
6 the department.

7 **5. Reporting.** The commissioner may require the holder of a license under this
8 section to file periodic reports regarding the aquaculture practices and production of the
9 facility. Information obtained pursuant to this provision is considered fisheries statistics
10 for the purposes of section 6173, except that information about marine organism health
11 reported pursuant to section 6071 may not be considered fisheries statistics.

12 **6. Fee.** The commissioner may charge a fee for a license under this section not to
13 exceed \$1,000, the amount to be established in rules adopted by the commissioner
14 depending on the type and amount of aquaculture. Rules adopted pursuant to this
15 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

16 **Sec. 13. 12 MRSA §6086** is enacted to read:

17 **§6086. Abandoned aquaculture equipment and stock**

18 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
19 following terms have the following meanings.

20 A. "Abandoned aquaculture equipment" or "equipment" means any equipment
21 associated with the operation of an aquaculture lease or license pursuant to section
22 6072, 6072-A, 6072-B or 6072-C that has been left by the aquaculture lease or
23 license holder in coastal waters without intention of removal. "Abandoned
24 aquaculture equipment" includes, but is not limited to, rafts, pens, barges, skiffs, nets,
25 lines, mooring systems, cages, trays, racks, upwellers and other equipment used in the
26 operation of an aquaculture site.

27 B. "Abandoned aquaculture stock" or "stock" means cultured marine organisms,
28 including, but not limited to, fish, shellfish, sea urchins and algae, that have been left
29 by the owner in coastal waters without intention of removal.

30 **2. Eligibility.** Abandoned aquaculture equipment or abandoned aquaculture stock is
31 subject to removal under this section only if:

32 A. The aquaculture lease or license holder has indicated in writing to the department
33 that the holder wishes to terminate the aquaculture lease or license with which the
34 abandoned equipment or stock is associated; the department has revoked the lease
35 pursuant to section 6072, subsection 11 or section 6072-A, subsection 22; or the term
36 of the lease or license has expired;

37 B. The equipment or stock remains in the area of the lease or license site and the
38 equipment or stock is not legally permitted to remain by another authority, such as a
39 municipal mooring permit; and

1 C. The aquaculture lease or license holder has not entered into an agreement with the
2 department to accomplish timely removal of the equipment or stock.

3 **3. Responsibility of the department.** The department's duties with respect to
4 abandoned aquaculture equipment and abandoned aquaculture stock are as set out in this
5 subsection.

6 A. The department shall investigate reports of abandoned aquaculture equipment or
7 abandoned aquaculture stock and review terminated, expired or revoked aquaculture
8 leases and licenses to determine if there is abandoned aquaculture equipment or
9 abandoned aquaculture stock and give notice to the aquaculture lease or license
10 holder. The department shall also give notice to any person who has declared to the
11 department, in writing, a property interest in the equipment or stock and to any
12 person the lease or license holder has, in writing, identified as having a property
13 interest in the equipment or stock. The notice must require the lease or license holder
14 and anyone with a property interest to respond within 15 days and to remove the
15 equipment or stock from the coastal waters within 60 days of notification by the
16 department or, if the equipment or stock is icebound, within 60 days of ice-out in the
17 body of water where the equipment or stock is located. If the persons to whom the
18 department has given notice cannot be contacted or do not respond to the notice and
19 remove the equipment or stock within the time period specified, the department may
20 initiate removal of the equipment or stock.

21 B. The department may authorize a 3rd party to remove abandoned aquaculture
22 equipment or abandoned aquaculture stock if the department is satisfied that the work
23 will be completed.

24 C. Notwithstanding the time periods for removal by a lease or license holder or
25 person with a property interest specified in paragraph A, if the department determines
26 at any time that abandoned aquaculture equipment or abandoned aquaculture stock is
27 a human health or safety hazard or is an immediate threat to the marine environment,
28 the department may immediately remove the equipment or stock from the coastal
29 waters.

30 D. If the department removes abandoned aquaculture equipment or abandoned
31 aquaculture stock from coastal waters under this subsection, the department may sell
32 the equipment or stock. Any proceeds from the sale must first be applied to the costs
33 to the State directly related to the expense of removal of the equipment or stock. Any
34 money that remains may be applied to any liens against the equipment or stock.
35 Money that finally remains must accrue to the Aquaculture Management Fund
36 established under section 6072-D.

37 E. Abandoned aquaculture equipment or abandoned aquaculture stock located on
38 intertidal land may not be removed by the department without the permission of the
39 landowner unless the department determines that the equipment or stock is a human
40 health or safety hazard or is an immediate threat to the marine environment.

41 F. The department may adopt rules governing abandoned aquaculture equipment and
42 abandoned aquaculture stock, including, but not limited to, rules requiring the
43 disclosure of property interests in abandoned aquaculture equipment and abandoned

1 aquaculture stock. Rules adopted under this paragraph are routine technical rules as
2 defined in Title 5, chapter 375, subchapter 2-A.

3 **4. Civil action.** If the State is not compensated for removal costs under the
4 provisions of subsection 3, the State shall first attempt to recover the removal costs by
5 claiming these expenses against any bond the aquaculture lease or license holder held
6 during the term of the aquaculture lease or license. If the department is unsuccessful in
7 recovering the removal costs in that manner, the State may bring a civil action against the
8 owner of the equipment or stock to cover any cost of removal of the equipment or stock
9 from coastal waters. The court in its discretion may award an additional 50% of the cost
10 of removal. The penalty is payable to the Aquaculture Management Fund established
11 under section 6072-D.

12 **Sec. 14. 12 MRSA §6306**, as amended by PL 1989, c. 348, §4, is further amended
13 to read:

14 **§6306. Consent to inspection; violation**

15 **1. Consent to inspection.** Any person who signs an application for a license or
16 aquaculture lease or receives a license or aquaculture lease under this Part has a duty to
17 submit to inspection and search for violations related to the licensed activities by a marine
18 patrol officer under the following conditions.

19 A. Watercraft or vehicles and the equipment located on watercraft or vehicles ~~which~~
20 are used primarily in a trade or business requiring a license or aquaculture lease under
21 this Part may be searched or inspected at any time.

22 B. Any other location where activities subject to this Part are conducted may be
23 inspected or searched during the hours when those activities occur.

24 C. A location specified in paragraph B may be inspected at any time if a marine
25 patrol officer has a reasonable suspicion of a violation of this Part.

26 D. No residential dwelling may be searched without a search warrant unless
27 otherwise allowed by law.

28 **2. Seizure of evidence.** Any person who signs an application for a license or
29 aquaculture lease or receives a license or aquaculture lease under this Part has a duty to
30 permit seizure of evidence of a violation of marine resources laws found during an
31 inspection or search.

32 **3. Refusal.** Refusal to permit inspection or seizure ~~shall be~~ is a basis for suspension
33 of any or all licenses under this chapter or revocation of aquaculture leases.

34 **Sec. 15. 12 MRSA §6673, sub-§1-A**, as enacted by PL 2003, c. 660, Pt. A, §21,
35 is amended to read:

36 **1-A. Application.** A municipality shall review an application for a municipal
37 shellfish aquaculture permit on a form supplied by the municipality. The municipality
38 may charge an application fee that reflects the costs of processing an application. The
39 municipality shall publish a summary of the application in a newspaper of general

1 circulation in the area that would be affected by the permit. A person may provide
2 comments to the municipality on the proposed permit within 30 days of publication of the
3 summary.

4 Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a
5 public hearing if requested in writing by 5 or more persons. The public hearing must be
6 held in accordance with procedures established in ordinances adopted in subsection 3.

7 **Sec. 16. 12 MRSA §6673, sub-§2-A, ¶B**, as enacted by PL 2003, c. 660, Pt. A,
8 §21, is amended to read:

9 B. The permit will not cause the total area under ~~the permit~~ all municipal shellfish
10 aquaculture permits in the municipality to exceed 1/4 of the entire municipal
11 intertidal zone that is open to the taking of shellfish.

12 **Sec. 17. 12 MRSA §6673, sub-§3**, as enacted by PL 2003, c. 660, Pt. A, §21, is
13 amended to read:

14 **3. Municipal shellfish aquaculture permit.** Prior to issuing a municipal shellfish
15 aquaculture permit pursuant to this section, a municipality shall adopt ordinances that
16 establish procedures for consideration of permit applications under the decision criteria in
17 subsection 2-A, including but not limited to provisions for a public hearing process.
18 Additionally, the municipality shall adopt ordinances designed to prevent speculative
19 holding of permits. An ordinance proposed by a municipality under this subsection must
20 be approved in writing by the commissioner prior to its adoption.

21 When approved, a municipal shellfish aquaculture permit must be forwarded to the
22 commissioner. The municipality may charge a municipal shellfish aquaculture permit fee
23 not to exceed ~~\$50~~ \$100 per acre annually. The municipality may establish conditions and
24 limits on the permit. A municipal shellfish aquaculture permit may be granted for a
25 period of up to 10 years and is renewable upon application by the permittee. The
26 municipality shall monitor and enforce the terms and conditions of a permit on an annual
27 basis and submit an annual report on permit activities to the department. Such
28 information is considered landings data.

29 **Sec. 18. 12 MRSA §6674**, amended by PL 2003, c. 660, Pt. A, §22, is further
30 amended to read:

31 **§6674. Interference with municipal shellfish aquaculture permit**

32 A person may not knowingly interfere with the ability of a person who holds a
33 municipal shellfish aquaculture permit from carrying out the privileges granted to the
34 permittee under that permit. Except for the permittee, a person may not take shellfish ~~in~~
35 ~~the intertidal zone~~ in an area that is included in a municipal shellfish aquaculture permit.
36 A person who violates this section commits a civil violation for which a fine of not less
37 than \$100 nor more than \$500 may be adjudged.

38 **Sec. 19. 12 MRSA §6808, sub-§4**, as enacted by PL 2001, c. 186, §1, is amended
39 to read:

1 The bill authorizes the commissioner to refuse to issue or renew a marine resources
2 license, such as a fishing or wholesale license, to the holder of an aquaculture lease or
3 license who has not paid legally required fees.

4 The bill authorizes the commissioner to require a license for the land-based culture of
5 marine organisms. The bill authorizes possession of the cultured organisms, requires the
6 department to monitor license holders and establish criteria for denial and revocation of
7 licenses, specifies maximum fees and establishes reporting requirements.

8 The bill authorizes the department to remove and sell abandoned aquaculture gear or
9 stock after the lease or license holder and anyone who has previously claimed ownership
10 of the gear or stock has been notified and has failed to remove the gear or stock. Civil
11 action against the lease or license holder to recover costs is authorized under certain
12 circumstances.

13 The bill authorizes marine patrol officers to inspect aquaculture leases and associated
14 vehicles, watercraft and buildings, except for residences.

15 The bill allows municipalities that choose to issue aquaculture permits to charge an
16 application fee that reflects their costs. The bill clarifies the total acreage allowed under
17 all permits in a municipality, requires municipalities to adopt ordinances to prevent
18 speculative holding of permits, updates the maximum rental fee to match the Department
19 of Marine Resources lease fee and clarifies that it is an annual rental fee and requires
20 municipalities to submit an annual report to the department.

21 The bill adds aquaculture lease and license holders to the group of persons that the
22 department may authorize to take green crabs without a commercial license.