

MAINE STATE LEGISLATURE

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Date: 3/31/14

L.D. 1603

(Filing No. H-768)

Minority

MARINE RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1175, L.D. 1603, Bill, "An Act Regarding Wet Storage Sites for Cultured Marine Organisms"

Amend the bill by striking out the title and substituting the following:

'An Act To Establish Winter Holding Aquaculture Leases'

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

'Sec. 1. 12 MRSA §6072-E is enacted to read:

§6072-E. Winter holding aquaculture lease

1. Authority. The commissioner may issue a winter holding aquaculture lease for areas in, on and under the coastal waters, including the public lands beneath those waters, for the storage of shellstock from growing areas between November 1st and April 30th. 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 winter holding aquaculture lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

2. Storage. A person issued a winter holding aquaculture lease under this section may in accordance with the lease temporarily store shellstock from growing areas in containers or flats in the coastal waters within the lease area or in tanks containing natural or synthetic seawater within the lease area.

3. Lease requirements. The commissioner may not issue a lease under this section unless:

A. The applicant holds a lease or license pursuant to section 6072, section 6072-A, section 6072-B or section 6072-C; and

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1 B. The applicant demonstrates that the applicant cannot access lease areas under
2 section 6072, section 6072-A, section 6072-B or section 6072-C during the winter
3 months due to ice.

4 4. Limit on duration. A winter holding aquaculture lease may not be issued for a
5 period greater than 5 years.

6 5. Size limitation. A winter holding aquaculture lease may not be issued for an area
7 in excess of 4 acres.

8 6. Fee. The application fee for a winter holding aquaculture lease is \$500. The
9 application fee is nonrefundable. All fees collected under this subsection must be
10 deposited in the Aquaculture Research Fund established in section 6081.

11 7. Notice of application; municipal intervention; comments. Upon determining
12 that an application is complete, the commissioner shall provide notice of a winter holding
13 aquaculture lease application to owners of riparian land within 1,000 feet of the proposed
14 location of the lease area and to the municipal officers of the municipality in which the
15 winter holding storage activity is proposed. A municipality must be granted intervenor
16 status upon written request. The commissioner shall publish a summary of the
17 application in a newspaper of general circulation in the area proposed for storage under a
18 winter holding aquaculture lease. A person may provide to the commissioner, within 30
19 days of publication of a winter holding aquaculture lease application summary, comments
20 on the proposed winter holding aquaculture lease.

21 8. Public hearing. The commissioner may hold a public hearing on the proposed
22 winter holding aquaculture lease. The commissioner shall hold a public hearing if 5 or
23 more persons request a public hearing within the 30-day comment period provided in
24 subsection 7.

25 9. Notice of public hearing. The commissioner shall provide notice of a public
26 hearing under subsection 8 to owners of riparian land within 1,000 feet of the proposed
27 location of the winter holding aquaculture lease area and to municipal officers of the
28 municipality in which the storage activity is proposed to take place. The commissioner
29 shall publish notice of a public hearing in a newspaper of general circulation in the area
30 proposed for a winter holding aquaculture lease at least 30 days before the hearing.

31 10. Department site review. Prior to the winter holding aquaculture lease hearing
32 under subsection 8, the department shall conduct a site review and assessment of the
33 proposed site and surrounding area to determine the possible effects of the storage
34 activity on commercially and ecologically significant flora and fauna and conflicts with
35 traditional fisheries and all other uses. This information must be provided to intervenors
36 and made available to the public 30 days before the hearing. As part of the site review
37 and assessment, the department shall request information from the municipal harbor
38 master about designated or traditional storm anchorages in proximity to the proposed
39 lease area.

40 11. Preference. If more than one person applies to lease a given area, preference
41 must be given as follows:

42 A. First, to the department;

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1 B. Second, to a person who fishes commercially and who has traditionally fished in
2 or near the proposed lease area; and

3 C. Third, to an owner of riparian land within 100 feet of leased coastal waters.

4 **12. Decision.** The commissioner may grant a winter holding aquaculture lease under
5 this section if the commissioner finds that:

6 A. The lease will not unreasonably interfere with the ingress and egress of owners of
7 riparian land;

8 B. The lease will not unreasonably interfere with navigation;

9 C. The lease will not unreasonably interfere with fishing or other uses of the lease
10 area taking into consideration the number and density of aquaculture leases in an
11 area;

12 D. The lease will not unreasonably interfere with the ability of the lease area and
13 surrounding areas to support ecologically significant flora and fauna;

14 E. The applicant has demonstrated that there is an available source of shellstock to
15 be cultured for the lease area; and

16 F. The lease does not unreasonably interfere with public use or enjoyment within
17 1,000 feet of municipally owned, state-owned or federally owned beaches and parks
18 or municipally owned, state-owned or federally owned docking facilities.

19 **13. Statement of rights conveyed.** The commissioner shall include the following
20 statement in a winter holding aquaculture lease issued under this section: "A winter
21 holding aquaculture lease conveys only those rights specified in the lease."

22 **14. Notification of granted leases.** After the granting of a winter holding
23 aquaculture lease:

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

28 B. The lessee shall mark the lease area in a manner prescribed by the commissioner.

29 **15. Winter holding aquaculture lease renewal.** A winter holding aquaculture lease
30 may be renewed. A winter holding aquaculture lease renewal is an adjudicatory
31 proceeding under Title 5, chapter 375, subchapter 4, but a public hearing is not
32 mandatory unless it is requested in writing by 5 or more persons. The commissioner may
33 review multiple leases concurrently during the lease renewal process. The commissioner
34 shall renew a winter holding aquaculture lease unless the commissioner finds that the
35 lease holder has not complied with the terms of the winter holding aquaculture lease.

36 **16. Monitoring and revocation of leases.** The department shall monitor a winter
37 holding aquaculture lease under this section on an annual basis. If aquaculture has been
38 conducted in a manner substantially injurious to marine organisms, if no storage activity
39 has been conducted over the course of the lease or if any condition of the lease has been
40 violated, the commissioner may initiate revocation proceedings and revoke the winter
41 holding aquaculture lease. The department shall hold a hearing with public notice prior

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1 to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5,
2 chapter 375, subchapter 4.

3 17. Restitution. A person who cuts any lines or marker buoys or intentionally
4 damages approved aquaculture gear including winter storage containers, flats or tanks
5 commits a civil violation for which a fine of not less than \$100 for each violation may be
6 adjudged. In addition, the court shall:

7 A. Order that person to pay to the owner of the approved aquaculture gear that was
8 cut or damaged an amount equal to twice the replacement value of the gear that was
9 damaged or lost as a result of the cutting or damaging action; and

10 B. Direct that person to provide the commissioner, upon making full payments as
11 ordered by the court, proof of payment.

12 18. Rules. The commissioner shall adopt rules to implement this section, including
13 rules governing the application review process; rules governing the design, construction
14 and operating requirements for storage; and rules governing the use of the leased area for
15 storage activities. The rules must:

16 A. Require an applicant to, at a minimum, meet the requirements of section 6072,
17 subsection 4, paragraphs A, B, E and G;

18 B. Require an applicant to identify the species being stored;

19 C. Require an applicant to provide proof of access to the lease area. The rules must
20 require, if access will be across riparian land, the applicant to provide to the
21 department the written permission of every owner of riparian land whose land will be
22 used to access the lease area; and

23 D. Provide a method of establishing a baseline to monitor the environmental effects
24 of a storage activity.

25 The rules may establish levels of assessment appropriate to the scale or potential
26 environmental risk posed by a proposed storage activity and include the provisions
27 necessary to implement this section. Rules adopted pursuant to this subsection are
28 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

29 **Sec. 2. Site review methodology.** Within 180 days of the effective date of this
30 Act, the Commissioner of Marine Resources shall in accordance with the Maine Revised
31 Statutes, Title 12, section 6072-E, subsection 10 establish by rule a method for
32 conducting a site review and assessment of a proposed winter holding aquaculture lease
33 site and surrounding area. Rules adopted pursuant to this section are routine technical
34 rules pursuant to Title 5, chapter 375, subchapter 2-A.'

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SUMMARY

This amendment, which is the minority report, replaces the bill and establishes a winter holding aquaculture lease to allow aquaculture lease and license holders to store shellstock from growing areas in order to access their product during winter months when rivers are frozen and lease sites are not accessible due to ice. The leasing process is similar to that established for standard and experimental aquaculture leases.

FISCAL NOTE REQUIRED

(See attached)



126th MAINE LEGISLATURE

LD 1603

LR 2587(02)

An Act Regarding Wet Storage Sites for Cultured Marine Organisms

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Marine Resources

Fiscal Note Required: Yes

A (H-768)

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - Other Special Revenue Funds

Fiscal Detail and Notes

The bill establishes a new winter holding aquaculture lease allowing temporary wet storage of cultured organisms. The Department of Marine Resources (DMR) must adopt certain rules to implement this new lease, provide notice to certain riparian landowners and conduct site reviews. Any additional costs to DMR to undertake these activities are expected to be minor and can be absorbed within existing budgeted resources. The application fee for this new lease is \$500 with all fees credited to the Aquaculture Research Fund within DMR. Only those holding certain leases and licenses are eligible for the new lease. DMR estimates that few of these leases would be issued and that only a minor amount of revenue would be raised by the introduction of this new lease.