

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1438

H.P. 993

House of Representatives, April 13, 2017

An Act To Improve the Aquaculture Leasing and Licensing Laws

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative DEVIN of Newcastle.

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

2 **Sec. 1. 12 MRSA §6052, sub-§3**, as amended by PL 2003, c. 660, Pt. A, §2, is
3 further amended to read:

4 **3. Marketing.** ~~Except for aquaculture, serve~~ Serve as the primary state agency
5 providing promotional and marketing assistance to the commercial fishing industries,
6 including assisting in marketing seafood, stimulating of consumer interest in and
7 consumption of seafood, increasing the sales of seafood domestically and abroad,
8 supporting and expanding existing markets and developing new markets for traditional
9 and underutilized species;

10 **Sec. 2. 12 MRSA §6072, sub-§2, ¶A**, as enacted by PL 1977, c. 661, §5, is
11 amended to read:

12 A. A lease ~~shall~~ may not exceed a term of ~~40~~ 20 years;

13 **Sec. 3. 12 MRSA §6072, sub-§8**, as amended by PL 2011, c. 93, §1, is further
14 amended to read:

15 **8. Preference.** If more than one person applies to lease an area, preference must be
16 given as follows:

17 A. First, to the person who holds a lease for the area or a portion of the area under
18 section 6072-A and who submitted an application for a lease under this section for
19 the area or a portion of the area before the lease under section 6072-A expired;

20 A-1. Second, to the person who holds a license for the area or a portion of the area
21 under section 6072-C and who submitted an application for a lease under this section
22 for the area or a portion of the area before the license under section 6072-C expired;

23 B. ~~Second~~ Third, to the department;

24 C. ~~Third~~ Fourth, to the riparian owner of the intertidal zone in which the leased area
25 is located;

26 D. ~~Fourth~~ Fifth, to a person who fishes commercially and who has traditionally
27 fished in or near the proposed lease area; and

28 E. ~~Fifth~~ Sixth, to the riparian owner within 100 feet of leased coastal waters.

29 **Sec. 4. 12 MRSA §6072, sub-§12-C** is enacted to read:

30 **12-C. Expansion of lease.** A person who holds a lease under this section may apply
31 to the commissioner to expand the contiguous area of the lease by up to 10% once during
32 the duration of the term of the lease pursuant to this subsection.

33 A. The lease holder shall submit an application written on forms supplied by the
34 commissioner:

35 (1) Describing the location of the proposed lease expansion area by coordinates
36 or metes and bounds;

1 (2) Characterizing the physical and ecological impact of the lease expansion on
2 existing uses of the site and any adverse effects on existing uses of the area, as
3 defined by rules adopted by the commissioner;

4 (3) Including the written permission of every riparian owner whose land to the
5 low-water mark will be used;

6 (4) Including a map of the lease area and its proposed expansion, and its
7 adjoining waters and shorelands, with the names and addresses of the known
8 riparian owners as listed in the municipal tax records and a statement from each
9 of those riparian owners that the owner has no objection to the proposed lease
10 expansion;

11 (5) Including an environmental evaluation of the site upon which the decision to
12 seek an expansion of the lease was made. The evaluation must include, but is not
13 limited to, bottom characteristics, resident flora and fauna and hydrography of the
14 site if appropriate for the proposed lease; and

15 (6) Including a nonrefundable application fee of at least \$100, but not more than
16 \$2,000, the amount to be set by the commissioner depending on the proposed
17 acreage, type of aquaculture proposed and complexity of the expansion
18 application.

19 B. The commissioner shall review the application. When the commissioner has
20 determined that the application for the lease expansion is complete, the commissioner
21 shall provide notice to the municipal officers of the municipality or municipalities in
22 which or adjacent to which the lease expansion is proposed. The commissioner shall
23 publish a summary of the application in a newspaper of general circulation in the
24 municipality in which the lease expansion is proposed. A person may provide, within
25 30 days of receipt of notice that the application is complete or within 30 days of
26 publication of a lease expansion summary, comments to the commissioner on the
27 proposed lease expansion.

28 C. The commissioner may conduct an assessment of the proposed lease expansion
29 area to determine possible effects of the lease on commercially and ecologically
30 significant flora and fauna.

31 D. If the commissioner receives any comments within 30 days of receipt of notice
32 that the application is complete or within 30 days of publication of the lease
33 expansion summary pursuant to paragraph B objecting to the lease expansion, the
34 commissioner shall deny the request for the lease expansion.

35 E. If the commissioner does not receive any comments within 30 days of receipt of
36 notice that the application is complete or within 30 days of publication of the lease
37 expansion summary pursuant to paragraph B objecting to the lease expansion, and if
38 the commissioner determines that the lease expansion will not unreasonably interfere
39 with significant wildlife habitat and marine habitat or with the ability of the lease site
40 and surrounding marine and upland areas to support existing ecologically significant
41 flora and fauna, the commissioner may approve the request for the lease expansion.

42 **Sec. 5. 12 MRSA §6072, sub-§13, ¶B**, as amended by PL 2009, c. 229, §3, is
43 further amended to read:

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

2 **Sec. 6. 12 MRSA §6072-C**, as amended by PL 2013, c. 509, §§6 to 8, is further
3 amended to read:

4 **§6072-C. Limited-purpose aquaculture license**

5 **1. License required.** A person may not engage in the activities authorized under
6 this section without a current limited-purpose aquaculture license or a lease issued under
7 this Part authorizing the activities.

8 **2. Licensed activities.** The holder of a limited-purpose aquaculture license may
9 place marine organisms on the ocean bottom without gear or utilize approved aquaculture
10 gear in a site in the coastal waters of the State to engage in certain aquaculture activities
11 that meet the criteria established in ~~this subsection 2-A~~ and in rules adopted by the
12 commissioner. The license also authorizes unlicensed individuals to assist the license
13 holder in the licensed activities with the written permission of the license holder. ~~The~~
14 ~~commissioner, or qualified professional department staff designated in writing by the~~
15 ~~commissioner, may issue a limited purpose aquaculture license for certain aquaculture~~
16 ~~activities if:~~

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

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

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

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

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

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

30 ~~G. The consent of the riparian owner is obtained if the proposed activity is located~~
31 ~~above the mean low water mark.~~

32 **2-A. Criteria.** The commissioner, or qualified professional department staff
33 designated in writing by the commissioner, may issue a limited-purpose aquaculture
34 license for certain aquaculture activities if:

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

36 B. The applicant proposes to use aquaculture gear and markings approved by the
37 commissioner in rules adopted pursuant to subsection 8;

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

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

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

9 F. The proposed location, species and activity do not present a risk to public health;

10 G. The applicant holds no more than 3 other limited-purpose aquaculture licenses
11 issued under this section; and

12 H. The consent of the riparian owner is obtained if the proposed activity is located
13 above the mean low-water mark.

14 **3. Eligibility.** A limited-purpose aquaculture license may be issued only to an
15 individual or to a municipal shellfish management committee established pursuant to
16 section 6671 that has met any requirements established under subsection 3-A.

17 **3-A. Educational courses.** Prior to the issuance or renewal of a limited-purpose
18 aquaculture license, the commissioner may require the applicant to complete any
19 educational courses the commissioner determines appropriate. Educational courses may
20 be provided by the department or by any public or private sector association or
21 organization authorized by the commissioner. For any course provided by the
22 department, the commissioner shall set an enrollment fee sufficient to recover all costs
23 incurred by the department in providing the course.

24 **4. License limitations.** The issuance of a limited-purpose aquaculture license does
25 not constitute the issuance of a lease of an area in, on or under the coastal waters.

26 **4-A. Preference.** If a person applies to lease an area that is the subject of a limited-
27 purpose aquaculture license, the department shall notify the holder of the limited-purpose
28 aquaculture license. If the holder of the limited-purpose aquaculture license documents
29 to the department that that holder wants to lease the area, preference must be given as
30 follows:

31 A. First, to the person who holds the limited-purpose aquaculture license in the area
32 and who submitted an application for a lease under section 6072 for the area; and

33 B. Second, to the person who applied to lease the area, but does not hold a limited-
34 purpose aquaculture license in the area.

35 **5. Application.** The application for a limited-purpose aquaculture license must:

36 A. Be written on forms supplied by the commissioner;

37 B. Identify the species to be cultivated;

38 B-1. Identify whether the applicant is growing the organisms for commercial or
39 personal use;

1 C. Describe the proposed source of organisms to be grown in the approved
2 aquaculture gear;

3 D. Describe the location of the approved aquaculture gear deployment by
4 coordinates or metes and bounds;

5 D-1. Identify the shellfish growing area that is subject to the proposed license and its
6 classification;

7 E. Include a clear set of plans that includes at a minimum:

8 (1) A location plan with an overhead plan view showing the aquaculture gear
9 deployed at the proposed location. The area occupied by the gear must be drawn
10 to scale on the plan. The location plan must include a north arrow, ebb and flood
11 directions, any federal or local channels and anchorages, any nearby structures
12 and property lines for all riparian owners within 300 feet; and

13 (2) Two gear drawings, one with an overhead plan view and one with a cross-
14 sectional elevation view of the approved aquaculture gear proposed to be used.
15 The gear drawings must be clearly dimensioned and include, at a minimum, mean
16 high-water and mean low-water marks and the dimensions, profiles and materials
17 used in the construction, deployment and securing of the approved aquaculture
18 gear;

19 F. Include documentation that riparian landowners within 300 feet of the proposed
20 activity have been notified of the license application and proposed activity; and

21 G. Include documentation that the municipal harbor master or appropriate municipal
22 officers have been notified of the license application and proposed activity.

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

27 **7. Prohibition; molesting gear.** A person other than a marine patrol officer, the
28 licensed owner of the gear or the licensed owner's assistant, with written permission from
29 the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest
30 any approved aquaculture gear that is deployed under a current limited-purpose
31 aquaculture license.

32 **7-A. Prohibition; taking product.** A person other than a marine patrol officer or
33 the license holder, or the license holder's assistant with written permission from the
34 license holder, may not take any marine organism grown by the license holder under the
35 license in the area designated on the license and marked in accordance with applicable
36 rules.

37 **8. Rules.** The commissioner shall adopt rules to implement this section, including,
38 but not limited to, rules establishing the type of gear that is approved aquaculture gear for
39 the purposes of a limited-purpose aquaculture license, minimum standards for
40 maintaining gear, methods of gear identification and license application and review

1 procedures. Rules adopted under this section are routine technical rules pursuant to Title
2 5, chapter 375, subchapter ~~H-A~~ 2-A.

3 **9. Violation; restitution.** A person who violates this section commits a civil
4 violation for which a fine of not less than \$100 for each violation may be adjudged. If a
5 person violates subsection 7 by cutting any lines or marker buoys or intentionally
6 damaging approved aquaculture gear, the court shall also:

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 payment as
11 ordered by the court, proof of that payment.

12 **10. Reporting requirement; confidentiality.** A holder of a limited-purpose
13 aquaculture license shall annually submit to the department a seeding and harvesting
14 report for the past year and a seeding and harvesting plan for the coming year.
15 Information provided in seeding and harvesting reports submitted by a license holder
16 under this subsection is considered confidential information reported to the commissioner
17 pursuant to section 6173.

18 SUMMARY

19 This bill amends the aquaculture leasing and licensing laws. It removes the
20 prohibition on the provision by the Department of Marine Resources of promotional and
21 marketing assistance to the aquaculture industry. It extends the potential term of an
22 aquaculture lease from 10 to 20 years. It changes the order of preference for lease
23 applications to include in the 2nd position an individual who currently holds a limited-
24 purpose aquaculture license for the area. It provides a process by which a holder of a
25 standard lease could seek an expansion of the lease area by up to 10% once during the
26 duration of the lease without having to apply for a new lease. It places the licensed
27 activities and criteria for limited-purpose aquaculture licenses in separate statutory
28 provisions. It requires a limited-purpose aquaculture license holder to specify if the
29 license is for commercial or personal use and to identify the growing area and current
30 classification of the area. It adds consideration of any risk to public health to the criteria
31 used in determining whether to grant a limited-purpose aquaculture license. It adds to the
32 eligibility criteria for a limited-purpose aquaculture license the completion of any
33 educational courses that may be required by the Commissioner of Marine Resources.