

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 106

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H.P. 72

House of Representatives, January 13, 2021

### **An Act To Amend Maine's Aquaculture Leasing and Licensing Statutes**

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.  
Received by the Clerk of the House on January 11, 2021. Referred to the Committee on Marine Resources pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT  
Clerk

Presented by Representative McCREIGHT of Harpswell.

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

2 **Sec. 1. 12 MRSA §6072, sub-§6, ¶A**, as amended by PL 1987, c. 453, §1, is further  
3 amended to read:

4 A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A,  
5 personal notice of the hearing ~~shall be~~ is required to be given only to the lessee and the  
6 known riparian owners, the municipal ~~officials~~ officers of the municipality or  
7 municipalities in which or adjacent to which the lease is located and any interested  
8 parties that have provided a written request for notification.

9 **Sec. 2. 12 MRSA §6072, sub-§6, ¶B**, as enacted by PL 1977, c. 661, §5, is  
10 amended to read:

11 B. Under the provisions of Title 5, section 9052, the leasing procedure ~~shall~~ must  
12 require notice to the general public. The commissioner may require the applicant to  
13 reimburse the department for costs incurred by the department in providing public  
14 notice under this paragraph.

15 **Sec. 3. 12 MRSA §6072, sub-§6, ¶C**, as amended by PL 1997, c. 138, §5 and PL  
16 2011, c. 657, Pt. W, §5, is further amended to read:

17 C. The Department of Environmental Protection, ~~the~~ must be notified of all lease  
18 applications that involve activities that have a discharge. The Department of  
19 Agriculture, Conservation and Forestry and the Department of Inland Fisheries and  
20 Wildlife must be notified of all lease applications.

21 **Sec. 4. 12 MRSA §6072, sub-§11**, as amended by PL 2003, c. 247, §7, is further  
22 amended to read:

23 **11. Monitoring and revocation of leases.** The department shall monitor a lease under  
24 this section on an annual basis. If aquaculture has been conducted in a manner substantially  
25 injurious to marine organisms or public health, if no substantial aquaculture or research has  
26 been conducted over the course of the lease or if any condition of the lease or any minimum  
27 lease maintenance standard adopted pursuant to subsection 13, paragraph A has been  
28 violated, the commissioner may initiate revocation proceedings and revoke the lease. A  
29 lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.  
30 The department shall hold a hearing with public notice prior to revoking any lease.

31 **Sec. 5. 12 MRSA §6072, sub-§12**, as amended by PL 2011, c. 93, §3, is further  
32 amended to read:

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

34 A. The commissioner receives, at least ~~90~~ 30 days prior to the expiration of a lease, an  
35 application for renewal that includes information on the type and amount of  
36 aquaculture to be conducted during the new lease term;

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

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

1 D. Except as provided in subsection 13-A, the renewal will not cause the lessee to  
2 become a tenant of any kind in leases covering an aggregate of more than 500 acres;  
3 and

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

5 If a person who holds a lease pursuant to this section applies to renew the lease, the lease  
6 remains in effect until the commissioner makes a decision on the renewal application. If  
7 the renewal is denied, the lease expires 30 days after the date of the commissioner's  
8 decision.

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

12 A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.  
13 Public notice must be given ~~as required under subsection 6 and a~~ to the known riparian  
14 owners, the municipal officers of the municipality or municipalities in which or adjacent  
15 to which the lease is located and any interested parties that have provided a written request  
16 for notification; under the provisions of Title 5, section 9052, to the general public; and,  
17 for leases involving activities that have a discharge, to the Department of Environmental  
18 Protection. The Department of Agriculture, Conservation and Forestry and the Department  
19 of Inland Fisheries and Wildlife must be notified of all lease renewal applications. A person  
20 may provide to the commissioner comments on the proposed lease renewal within 30 days  
21 of receipt of notice or within 30 days of publication of the proposed renewal. A hearing  
22 must be held if it is requested in writing by 5 persons within the 30 days. The commissioner  
23 may review multiple leases concurrently during the lease renewal process.

24 A lease renewal application must include a nonrefundable application fee of no more than  
25 \$1,500, the amount to be set by the commissioner depending on the type of aquaculture  
26 permitted by the lease.

27 **Sec. 6. 12 MRSA §6072, sub-§12-A, ¶C**, as amended by PL 2009, c. 229, §2, is  
28 further amended to read:

29 C. The commissioner shall establish by rule the fee for transferring a lease under this  
30 subsection, which may not exceed \$5,000, based on the type of aquaculture conducted  
31 and the size of the lease. The transferee must pay the fee ~~prior to the execution of the~~  
32 ~~lease at the time application for the transfer is made.~~ Rules adopted pursuant to this  
33 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

34 **Sec. 7. 12 MRSA §6072, sub-§12-C**, as enacted by PL 2017, c. 159, §4, is amended  
35 to read:

36 **12-C. Expansion of lease.** A person who ~~holds~~ has held a lease under this section for  
37 at least 2 years from the date the lease was originally executed may apply to the  
38 commissioner to expand the contiguous area of the lease by up to 25%, but may not expand  
39 by more than 4 acres, once during the duration of the term of the lease pursuant to this  
40 subsection.

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

- 1 (1) Describing the location of the proposed lease expansion area by coordinates or  
2 metes and bounds;
- 3 (2) Characterizing the physical and ecological impact of the lease expansion on  
4 existing uses of the site and any adverse effects on existing uses of the area, as  
5 defined by rules adopted by the commissioner;
- 6 (3) Including the written permission of every riparian owner whose land to the  
7 low-water mark will be used;
- 8 (4) Including a map of the lease area and its proposed expansion, and its adjoining  
9 waters and shorelands, with the names and addresses of the known riparian owners  
10 as listed in the municipal tax records ~~and documentation showing that the lease~~  
11 ~~holder has informed each of those riparian owners of the application and the~~  
12 ~~opportunity for comment as provided in paragraph B;~~
- 13 (5) Including an environmental evaluation of the site upon which the decision to  
14 seek an expansion of the lease was made. The evaluation must include, but is not  
15 limited to, bottom characteristics, resident flora and fauna and hydrography of the  
16 site if appropriate for the proposed lease; and
- 17 (6) Including a nonrefundable application fee of at least \$100, but not more than  
18 \$2,000, the amount to be set by the commissioner depending on the proposed  
19 acreage, type of aquaculture proposed and complexity of the expansion  
20 application.

21 B. The commissioner shall review the application. When the commissioner has  
22 determined that the application for the lease expansion is complete, the commissioner  
23 shall provide notice to the known riparian owners and to the municipal officers of the  
24 municipality or municipalities in which or adjacent to which the lease expansion is  
25 proposed. The ~~commissioner~~ applicant shall publish in a newspaper of general  
26 circulation in the municipality or municipalities in which the lease expansion is  
27 proposed a summary of the application and notice of the opportunity to submit  
28 comments regarding the proposed lease expansion to the commissioner during a period  
29 of at least 30 days following the date of publication of the lease expansion summary.

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

33 D. The commissioner shall consider comments received during the period for  
34 comments set pursuant to paragraph B.

35 E. If the commissioner determines that, based upon the application and comments  
36 received, the lease expansion meets the requirements of subsection 7-A, the  
37 commissioner may approve the request for the lease expansion.

38 **Sec. 8. 12 MRSA §6072, sub-§13**, as amended by PL 2017, c. 159, §5, is further  
39 amended to read:

40 **13. Regulations Rules.** The commissioner may adopt or amend ~~regulations~~ rules:

41 A. Establishing minimum standards for maintaining leases;

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

1 C. For notices and hearings to the extent that those procedures are not established by  
2 this section or the Maine Administrative Procedure Act, Title 5, chapter 375;

3 D. For regulating the harvest of wild organisms to be cultured on aquaculture leases;

4 E. For establishing and revaluing fees and rents related to aquaculture;

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

7 G. For adding or deleting authorization for the holder of an aquaculture lease to grow  
8 specific species ~~and~~ or to use specific gear on the lease site and for a modification to  
9 operations as a result of a change in species or gear authorization. A change in  
10 authorization or a resultant modification to operations is not an adjudicatory  
11 proceeding. The commissioner shall establish by rule the fee for modifying a lease  
12 under this paragraph, which may not exceed \$200. ~~The regulations~~ rules must provide  
13 for notice of proposed changes in gear authorization to the public, riparian landowners  
14 and the municipality in which the lease is located and an opportunity to submit written  
15 comments on the proposal. Authorization to add species or gear must be consistent  
16 with the findings made under subsection 7-A when the lease was approved; ~~and~~

17 H. For establishing following requirements and procedures-;

18 I. For establishing fees for services provided by the department to a lease holder if the  
19 lease holder requests testing or location-specific studies to ensure the lease holder's  
20 products are safe for human consumption. Fees collected pursuant to this paragraph  
21 must be deposited into the Shellfish Fund under section 6651; and

22 J. For defining seed size or seed management and harvest seasons.

23 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,  
24 chapter 375, subchapter 2-A.

25 **Sec. 9. 12 MRSA §6072, sub-§15**, as enacted by PL 1987, c. 453, §1, is repealed.

26 **Sec. 10. 12 MRSA §6072-A, sub-§5**, as amended by PL 2003, c. 247, §10, is  
27 further amended to read:

28 **5. Notice of application.** Upon determining that an application is complete, the  
29 commissioner shall provide notice of a limited-purpose lease application to owners of  
30 riparian land within 1,000 feet of the proposed location of the lease and to the municipal  
31 officers of the municipality in which the limited-purpose lease activity would take place.  
32 The applicant shall provide the names and addresses of known riparian landowners within  
33 1,000 feet of the proposed location of the lease. The names and addresses must be taken  
34 from the current property tax roster on file at the local municipal office or with the  
35 Department of Administrative and Financial Services, Bureau of Revenue Services for an  
36 unorganized territory. The commissioner shall publish a summary of the application in a  
37 newspaper of general circulation in the area proposed for a limited-purpose lease. The  
38 commissioner may require the applicant to reimburse the department for costs incurred by  
39 the department in providing public notice under this subsection. A person may provide,  
40 within 30 days of receipt of notice or within 30 days of publication of a limited-purpose  
41 lease summary, to the commissioner comments on the proposed limited-purpose lease.

42 **Sec. 11. 12 MRSA §6072-A, sub-§7**, as amended by PL 2003, c. 247, §11, is  
43 further amended to read:

1           **7. Notice of public hearing.** The commissioner shall provide notice of a public  
2 hearing to owners of riparian land within 1,000 feet of the proposed location of the lease  
3 and to the municipal officers of the municipality in which the limited-purpose lease activity  
4 would take place. The commissioner shall publish notice of a public hearing in a newspaper  
5 of general circulation in the area proposed for a limited-purpose lease at least 30 days  
6 before the hearing. The commissioner may require the applicant to reimburse the  
7 department for costs incurred by the department in providing public notice under this  
8 subsection.

9           **Sec. 12. 12 MRSA §6072-A, sub-§8,** as amended by PL 2013, c. 509, §4, is further  
10 amended to read:

11           **8. Rules; general and lease application.** The commissioner may adopt rules to  
12 implement the provisions of this section. Within 180 days of the effective date of this  
13 section, the commissioner shall adopt rules regarding a limited-purpose lease application.  
14 The rules must require an applicant to, at a minimum, meet the requirements of section  
15 6072, subsection 2, paragraph E and section 6072, subsection 4, paragraphs A, B, C, E, F,  
16 G and J. The rules must also require an applicant to provide to the department proof of  
17 access to the lease area. If access will be across riparian land, the applicant shall provide  
18 to the department the written permission of every riparian owner whose land will be used  
19 to access the lease area. ~~The commissioner may adopt rules to add or delete authorization~~  
20 ~~for the holder of an aquaculture lease to grow specific species and to use specific gear on~~  
21 ~~the lease site. A change in authorization is not an adjudicatory proceeding. The rules must~~  
22 ~~provide for notice of proposed changes in gear authorization to the public, riparian~~  
23 ~~landowners and the municipality in which the lease is located and an opportunity to submit~~  
24 ~~written comments on the proposal. Authorization to add species or gear must be consistent~~  
25 ~~with the findings made under subsection 13 when the lease was approved.~~

26           **Sec. 13. 12 MRSA §6072-C, sub-§2,** as amended by PL 2017, c. 159, §6, is further  
27 amended to read:

28           **2. Licensed activities.** The holder of a limited-purpose aquaculture license may place  
29 marine organisms on the ocean bottom without gear or utilize approved aquaculture gear  
30 in a site in the coastal waters of the State to engage in certain aquaculture activities that  
31 meet the criteria established in subsection 2-A and in rules adopted by the commissioner.  
32 The license also authorizes unlicensed individuals to assist the license holder in the licensed  
33 activities ~~with the written permission~~ under the direct supervision of the license holder.

34           **Sec. 14. 12 MRSA §6072-C, sub-§2-B** is enacted to read:

35           **2-B. Exceptions.** Upon request, the commissioner may grant the holder of a limited-  
36 purpose aquaculture license an exception to the requirement in subsection 2 that the license  
37 holder provide direct supervision of unlicensed individuals assisting the license holder in  
38 the licensed activities at the license holder's limited-purpose aquaculture license site. The  
39 commissioner may grant exceptions to:

40           A. A license holder who is also the holder of or a majority shareholder in a corporation  
41 that holds a lease issued pursuant to section 6072, 6072-A or 6072-B;

42           B. A license holder using specific gear types as specified in rule; or

1 C. A license holder who has applied for a lease under section 6072 or 6072-A for an  
2 area that includes the area authorized by the license holder's existing limited-purpose  
3 aquaculture license.

4 The commissioner may adopt rules to implement this subsection, including, but not limited  
5 to, establishing requirements for an application for an exception and the reasons for which  
6 an exception may be granted.

7 **Sec. 15. 12 MRSA §6072-C, sub-§6**, as amended by PL 2009, c. 229, §7, is further  
8 amended to read:

9 **6. Fee.** The application fee for a resident limited-purpose aquaculture license is ~~\$50~~  
10 ~~\$100~~ and ~~\$300~~ for a nonresident limited-purpose aquaculture license is \$400. The  
11 application fee is nonrefundable. All fees collected under this subsection must be deposited  
12 in the Aquaculture Research Fund established in section 6081.

13 **Sec. 16. 12 MRSA §6072-C, sub-§8**, as amended by PL 2017, c. 159, §6, is further  
14 amended to read:

15 **8. Rules.** The commissioner shall adopt rules to implement this section, including,  
16 but not limited to, rules establishing the type of gear that is approved aquaculture gear for  
17 the purposes of a limited-purpose aquaculture license, minimum standards for maintaining  
18 gear, methods of gear identification and license application and review procedures. The  
19 commissioner may adopt rules to limit the period of the year during which license  
20 applications may be submitted. Rules adopted under this section are routine technical rules  
21 pursuant to Title 5, chapter 375, subchapter 2-A.

22 **Sec. 17. 12 MRSA §6085, sub-§7** is enacted to read:

23 **7. Rules.** The commissioner may adopt rules establishing procedures to implement  
24 the issuance, renewal and amendment of licenses under this section. Rules adopted  
25 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,  
26 subchapter 2-A.

27 **Sec. 18. 12 MRSA §6651, sub-§1-A** is enacted to read:

28 **1-A. Additional fees to be paid into fund.** Any fees collected pursuant to section  
29 6072, subsection 13, paragraph I must be deposited into the Shellfish Fund.

30 **Sec. 19. Effective dates.** That section of this Act that amends the Maine Revised  
31 Statutes, Title 12, section 6072-C, subsection 6 takes effect January 1, 2022. Those  
32 sections of this Act that amend Title 12, section 6072-C, subsection 2 and enact Title 12,  
33 section 6072-C, subsection 2-B take effect January 1, 2024.

## 34 SUMMARY

35 This bill amends the aquaculture leasing and licensing statutes to:

36 1. Authorize the Commissioner of Marine Resources to require an applicant for a lease  
37 issued under the Maine Revised Statutes, Title 12, section 6072 or 6072-A to reimburse the  
38 Department of Marine Resources for costs incurred in providing general notice of the  
39 applicant's lease application and public hearing on the lease application;

40 2. Provide that the Department of Environmental Protection receives notices only of  
41 those lease applications that involve activities that have a discharge;



- 1           3. Expand the reasons under which the Commissioner of Marine Resources may  
2 initiate lease revocation proceedings to include operating in a manner substantially  
3 injurious to public health or violating minimum lease maintenance standards that have been  
4 adopted by rule pursuant to the Maine Revised Statutes, Title 12, section 6072, subsection  
5 13, paragraph A;
- 6           4. Reduce the number of days in advance of which an individual must apply for the  
7 renewal of a lease from 90 days prior to the expiration to 30 days prior to the expiration;
- 8           5. Clarify notice requirements when a standard lease is proposed for renewal;
- 9           6. Require the fee for a lease transfer to be paid upon application for the transfer instead  
10 of at the execution of the lease;
- 11          7. Specify that a person may not apply for an expansion of a lease until the person has  
12 held that lease for a minimum of 2 years from the date the lease was originally executed;
- 13          8. Move the responsibility for notifying riparian landowners of an application for a  
14 lease expansion from the applicant to the Department of Marine Resources and move the  
15 responsibility for providing public notice in the newspaper from the department to the  
16 applicant;
- 17          9. Establish the rule-making authority for the commissioner to establish fees for  
18 services provided by the department to lease holders if they request testing or studies to  
19 ensure their products are safe for human consumption. The bill also specifies that the fees  
20 collected must be deposited in the Shellfish Fund;
- 21          10. Broaden the language allowing changes to leases, including to allow modifications  
22 in operations as a result of changes in species and gear authorizations. The bill also requires  
23 the commissioner to establish a fee for making changes to a lease;
- 24          11. Remove the commissioner's rule-making authority regarding changes to limited-  
25 purpose leases;
- 26          12. Effective January 1, 2024, require the holder of a limited-purpose aquaculture  
27 license to directly supervise any unlicensed individuals participating in the licensed  
28 activities, except that the bill provides that the commissioner may grant an exception to this  
29 requirement to a limited-purpose aquaculture license holder who is the holder of an  
30 aquaculture lease or is a majority shareholder in a corporation that holds such a lease, who  
31 uses specific gear types specified in rules adopted by the commissioner or who has applied  
32 for an aquaculture lease for an area that includes the area covered by the license;
- 33          13. Raise the fee for a limited-purpose aquaculture license from \$50 to \$100 for a  
34 resident and from \$300 to \$400 for a nonresident, effective January 1, 2022;
- 35          14. Authorize the commissioner to adopt rules to limit the period of the year during  
36 which an applicant may submit an application for a limited-purpose aquaculture license;  
37 and
- 38          15. Authorize the commissioner to adopt and amend rules to implement the issuance,  
39 renewal and amendment of marine organism aquaculture licenses.