

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

Chapters 1-542

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

CHAPTER 453

H.P. 1346 — L.D. 1840

AN ACT to Amend the Aquaculture Leasing Statutes.

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

Sec. 1. 12 MRSA §6072, as amended by PL 1983, c. 301, §§1 to 4, is further amended to read:

§6072. Research and aquaculture leases

1. Authority. The commissioner may lease areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for scientific research or for aquaculture of marine organisms. The commissioner may grant a lease to any person. Except as provided in this Part, the commissioner's power to lease lands under this section shall be exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner.

2. Limitations of lease. The commissioner shall determine the provisions of each lease, provided:

- A. A lease shall not exceed a term of 10 years;
- B. A lease may be granted for tracts not to exceed 5 acres in area. The commissioner may grant contiguous lease tracts to a single applicant; ~~and~~
- ~~C. No applicant shall be permitted to lease more than 200 acres.~~
- E. The lease does not result in a person being a tenant of any kind in leases covering an aggregate of more than 150 acres; and
- F. No single lease may exceed 100 acres in size.

3. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not lease more than 2 acres of the intertidal zone within the municipality without the consent of the municipal officers.

4. Applications. The application shall:

- A. Be written on forms supplied by the commissioner;
- B. Describe the location of the proposed lease tract by coordinates or metes and bounds;
- C. Identify the species to be cultivated;
- ~~D. Describe the impact of the project on existing or potential uses of the area;~~

D-1. Characterize the physical and ecological impact

of the project on existing uses of the site and any adverse effects on the existing uses of the area, as defined by regulation promulgated by the Commissioner of Marine Resources;

D-2. Characterize the physical and ecological impact of the project on potential uses of the site and any adverse effects on the potential uses of the area, as defined by regulation promulgated by the Commissioner of Marine Resources;

E. Describe the degree of exclusive use required by the project;

F. Include written permission of every riparian owner whose land to the low water mark will be actually used; ~~and~~

G. Include a map of the lease area and its adjoining waters and shorelands, with the names and addresses of the known riparian owners; as listed in the municipal tax records;

H. Include an environmental evaluation of the site upon which the decision to seek a lease was made. The evaluation shall include, but not be limited to, bottom characteristics, resident flora, fauna and hydrography of the site if appropriate for the proposed lease;

I. Describe the proposed source of organisms to be grown at the site; and

J. Include a nonrefundable application fee of at least \$100, but not more than \$1,000, the amount to be set by the commissioner depending on the proposed acreage, type of aquaculture proposed and complexity of the application.

5. Application review. The commissioner shall review the application and set a hearing date if he is satisfied that the written application is complete ~~and~~, the application indicates that the lease could be granted ~~and~~ the applicant has the financial and technical capability to carry out the proposed activities. A copy of the completed application and notice of hearing shall be forwarded to the municipality or municipalities in which or adjacent to which the lease is proposed. A municipality shall be granted intervenor status upon written request.

5-A. Department site review. Prior to the lease hearing, the department shall conduct an assessment of the proposed site and surrounding area to determine the possible effects of the lease on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. This review shall take place between May and September inclusive. This information shall be provided to the intervenors and made available to the public 30 days before the hearing. As part of the site review, the department shall request information from the municipal harbor master about designated or traditional storm anchorages in proximity to the proposed lease.

6. Hearing procedure. Prior to granting a lease, the commissioner shall hold a hearing. The hearing shall be an adjudicatory proceeding and shall be held in the manner provided under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV and the specific procedures of this section.

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

B. Under the provisions of Title 5, section 9052, the leasing procedure shall require notice to the general public.

C. The Department of Environmental Protection and Department of Conservation shall be notified of all lease applications.

~~7. Decision. The commissioner may grant the lease, if he is satisfied that the proposed project will not unreasonably interfere with the ingress and egress of riparian owners, navigation, fishing or other uses of the area and is not in conflict with applicable coastal zoning statutes or ordinances. The commissioner may establish conditions that govern the use of the leased area and the limitations on the aquaculture activities. These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.~~

7-A. Decision. The commissioner may grant the lease if the proposed project meets the following conditions as defined by regulation:

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

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area;

D. Will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna;

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

F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, state owned or federally owned beaches and

parks or municipally owned, state owned or federally owned docking facilities.

7-B. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification, Title 38, section 465-B.

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

A. First, to the department;

B. Second, to the riparian owner of the intertidal zone within the leased area;

C. Third, to fishermen who have traditionally fished in or near the proposed lease area; and

D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

9. Rents. After consulting with the Director of the Bureau of Public Lands, the commissioner shall determine the rent which shall be paid under each lease. The rent shall represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than \$50 an acre. The commissioner shall have the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease. This discounted rate shall not be less than \$50 an acre.

10. Lessee's actions. After being granted a lease, each lessee shall:

A. Record the lease in the registry of deeds of each county in which the leased area is located;

B. Publish a notice in the newspaper in which the commissioner published notice or would have published notice of any public hearing. The notice shall describe the area leased and enumerate any restriction in the leased area; and

C. Mark the leased area in a manner prescribed by the commissioner; and

D. Annually submit to the department a seeding and harvesting report for the past year and plan for the coming year. Upon written request, a copy of the report shall be provided by the department to the municipality or municipalities in which or adjacent to which the lease is located.

11. Revocation. The lease shall be monitored by the department on an annual basis. If substantially no research or aquaculture has been conducted within the preceding year, or if it has been conducted in a manner substantially injurious to marine organisms, or if any other condition of the lease has been violated, the commissioner shall initiate revocation proceedings and may revoke the lease. A lease revocation shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. A hearing with public notice shall be held prior to revoking any lease.

12. Renewal. The commissioner shall grant a lease renewal unless the prior lessee has not complied with the lease agreement during its term, substantially no research or aquaculture has been conducted, or the commissioner finds that it is not in the best interest of the State to renew the lease or the renewal will cause the lessee to continue being a tenant of any kind in leases covering an aggregate of more than 150 acres. Renewals may be granted if applied for no later than 30 days after the lapse of the prior lease. A lease renewal shall be an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Public notice shall be given as required under subsection 6 of this section and a hearing shall be held if it is requested by an interested person in writing by 5 persons.

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

A. Lease transfers shall be subject to the same procedural requirements as initial applications, except that a public hearing is not mandatory unless requested by an interested person in writing by 5 persons.

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

- (1) The change in lessee does not violate any of the standards in subsection 7;
- (2) The transfer is not intended to circumvent the intent of subsection 8; and
- (3) The transfer is not for speculative purposes; and
- (4) The transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 150 acres.

13. Regulations. The commissioner may adopt or amend regulations:

A. Establishing minimum standards for maintaining leases;

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

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

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

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

F. For defining application requirements and decision criteria.

14. Conflicts. Whenever a project described in a pending aquaculture lease conflicts or could conflict with a project described in a pending submerged lands act lease, the commissioner and the Commissioner of Conservation shall determine which project is in the best interests of the State.

15. Rules. The commissioner shall promulgate rules by January 1, 1988, to define a mussel seed size or seed management and harvest season.

Sec. 2. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	1987-88	1988-89
<u>MARINE RESOURCES, DEPARTMENT OF</u>		
Bureau of Development		
Positions	(1)	(1)
Personal Services	\$28,264	\$37,685
All Other	6,000	8,000
Capital Expenditures	9,000	
These funds are for a full-time employee to implement aquaculture management initiatives within the department.		
TOTAL	\$43,264	\$45,685

Effective September 29, 1987.

CHAPTER 454

H.P. 229 — L.D. 297

AN ACT to Improve the Informal Conference Process for Workers' Compensation Claims.