

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
OCTOBER 9, 1991

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

J.S. McCarthy Company
Augusta, Maine
1991

PUBLIC LAWS
OF THE
STATE OF MAINE

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1991

plan for oil spill response, prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

5-A. National contingency plan. “National contingency plan” means the national contingency plan for oil spill response prepared and published by the President of the United States under the Federal Water Pollution Control Act, 33 United States Code, Section 1321, as amended.

9-A. Responder. “Responder” means any person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of oil prohibited by section 543, or in preventing, containing, cleaning up, removing or disposing of, or in attempting to prevent, contain, clean up, remove or dispose of, any discharge of oil prohibited by section 543, except for any person who caused or is otherwise responsible for the actual or threatened discharge in the first instance.

9-B. State Marine Oil Spill Contingency Plan. “State Marine Oil Spill Contingency Plan” means a contingency plan for oil spill response prepared by the commissioner in accordance with this subchapter.

Sec. 2. 38 MRSA §552, sub-§§3 and 4 are enacted to read:

3. Right of recovery by licensee. Any licensee that is held liable for the acts or omissions of any carrier destined for the licensee’s facilities pursuant to subsection 1 may recover in a civil action from the carrier, or any person responsible for the acts or omissions of the carrier, all loss, expense, damage or other liability incurred by the licensee for the acts and omissions of the carrier.

4. Limited liability for responders. Notwithstanding any other provision of law, the liability of a responder to a discharge or a substantial threat of a discharge of oil into or upon any coastal waters, estuaries, tidal flats, tidal waters, beaches and lands adjoining the seacoast of the State is governed by this section.

A. A responder is not liable for removal costs, damages, civil liabilities or penalties that result from actions taken or omitted in the course of rendering care, assistance or advice consistent with the National Contingency Plan, a federal contingency plan, the State Marine Oil Spill Contingency Plan or as otherwise directed by the federal on-scene coordinator or the commissioner.

B. Paragraph A does not apply:

(1) To personal injury or wrongful death;

(2) If the responder is grossly negligent or engages in willful misconduct; or

(3) To a responsible party. For the purposes of this subsection, “responsible party” means any person who caused or is otherwise responsible for the discharge or threatened discharge with respect to which the responder’s actions are taken or omissions occur.

C. A responsible party is liable for any removal costs, damages, civil liabilities and penalties that a responder is relieved of under paragraph A.

See title page for effective date.

CHAPTER 381

H.P. 55 - L.D. 76

An Act Regarding Aquaculture

Emergency preamble. **Whereas,** Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, key research is required to allow efficient environmental monitoring; and

Whereas, current staffing levels limit the ability of the State to process aquaculture lease applications; and

Whereas, the primary aquaculture field season will end prior to the regular effective date; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 12 MRSA §558-A, sub-§10 is enacted to read:

10. Aquaculture exemption. A lease for the use of submerged lands under this section is not required for the development and operation of any aquaculture facility if the owner or operator of the facility has obtained a lease from the Commissioner of Marine Resources under section 6072. Ancillary equipment and facilities permanently occupying submerged lands on the lease site and not explicitly included in the lease granted by the Commissioner of Marine Resources are not exempt from the requirements of this section.

Sec. 2. 12 MRSA §6071, sub-§4 is enacted to read:

4. Salmon imports prohibited. It is unlawful to import for introduction into any waters of the State any Atlantic salmon, live or as eggs, that originate in any Icelandic or European territorial waters or any other species of salmon, exclusive of rainbow trout, originating west of the North America continental divide. After January 1, 1995, it is unlawful to introduce into any waters of the State any Atlantic salmon that originate in any Icelandic or European territorial waters or any other species of salmon, exclusive of rainbow trout, originating west of the North American continental divide including any fish raised within the State from eggs or broodstock that are subject to the import prohibition under this subsection. The commissioner may grant an exemption from the provisions of this subsection for a term not to exceed 2 years, renewable upon application, for legitimate research. Legitimate research does not include pilot, demonstration or full-scale aquaculture production of salmon in the coastal waters of the State.

Sec. 3. 12 MRSA §6072, sub-§1-A is enacted to read:

1-A. Lease requirement; finfish and suspension shellfish culture. Except as provided in paragraphs A and B, it is unlawful for a person who does not have a lease issued by the commissioner under this section to construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish.

A. The commissioner may grant an exemption from this subsection for legitimate research for a term not to exceed 2 years, renewable upon application. Legitimate research does not include commercial aquaculture production of finfish or shellfish in the coastal waters of the State.

B. A person operating a facility in the coastal waters of the State, on or before the effective date of this subsection, for the culture of finfish in nets, pens or other enclosures or for the suspended culture of shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1992 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1992. A registrant whose application under this paragraph is denied shall immediately cease operations at the facility and remove all related structures from the coastal waters of the State.

C. The commissioner may not consider an application for a lease under this section on an area registered under paragraph B from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B.

A person who violates this subsection is subject to a civil penalty, payable to the State, of no more than \$1,000 for each day of the violation.

Sec. 4. 12 MRSA §6072, sub-§16 is enacted to read:

16. Lease-by-rule; small-scale finfish and suspended shellfish operations. The commissioner shall adopt by rule a leasing procedure for the aquaculture of finfish and suspended aquaculture of shellfish that waives the provisions of subsections 5, 5-A and 6.

A. The commissioner shall limit eligibility for this procedure to applicants proposing aquaculture operations with a whole fish production level no higher than 20,000 pounds per year of finfish or seeding level of no more than 50,000 seed per year for shellfish.

B. An applicant for a lease under this subsection must submit an application consistent with subsection 4. The commissioner shall approve, deny or approve with conditions any completed application under this subsection within 45 days of receipt. Any application not acted on within this period is deemed approved.

C. Upon receipt of an application under this subsection, the commissioner shall notify the municipal officers of the municipality or municipalities in which or adjacent to which the lease is proposed.

D. In making a decision on an application under this subsection, the commissioner shall consider all comments submitted in writing within 30 days of receipt of the application.

E. The commissioner may 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 and navigation, including storm anchorages.

F. The commissioner shall develop a set of standard conditions that incorporate the siting criteria of subsection 7-A and other provisions of this section as applicable. The commissioner shall attach these standard conditions to any lease granted under this subsection.

G. Expansion of whole fish production levels beyond 20,000 pounds per year of finfish or seeding level beyond 50,000 seed per year for shellfish at any site leased under this subsection is contingent upon issuance of a new lease subject to this section.

H. A person may not hold, directly or indirectly, more than one lease granted under this subsection at any given time.

I. The term of a lease granted under this subsection is 10 years.

Sec. 5. 12 MRSA §6073-A is enacted to read:

§6073-A Minimum size exemption; aquaculture

The holder of a lease issued under section 6072 is exempt from any requirement regarding the minimum or maximum length or other minimum or maximum size requirement for finfish cultivated on the leased area. The exemption applies only to those organisms actually cultivated on the leased area. The commissioner shall require a system of identification of organisms exempted under this section.

Sec. 6. 12 MRSA §6077 is enacted to read:

§6077. Aquaculture monitoring program

The department is responsible for establishing and maintaining a comprehensive information base pertaining to all aspects of the siting, development and operation of finfish aquaculture facilities within the State.

1. Coordination. The commissioner shall coordinate the data collection efforts of the department with those of other state agencies that regulate or assist the finfish aquaculture industry. All agencies of the State shall cooperate with the department in the establishment of the information system and shall provide all available information requested by the commissioner.

2. Data requirements. The commissioner shall ensure that, at a minimum, information in the following site-specific categories is collected and organized in such a manner as to allow effective enforcement of all laws pertaining to finfish aquaculture at individual facilities:

A. Geophysical site characteristics, including currents and bathymetry;

B. Benthic habitat characteristics and effects, including changes in community structure and function;

C. Water column effects, including water chemistry and plankton;

D. Feeding and production data sufficient to estimate effluent loading;

E. Smolt and broodstock introduction and transfer data;

F. Disease incidence and use of chemical therapeutics; and

G. Other ancillary information as the commissioner may find necessary.

3. Data collection; authority. The commissioner may require persons holding licenses related to finfish aquaculture under this Title to report information in the categories listed in subsection 2.

4. Confidentiality. Notwithstanding section 6173 and except as provided in paragraphs A and B, information obtained by the department under this section is a public record as provided by Title 1, chapter 13, subchapter I.

In addition to remedies provided under Title 1, chapter 13, subchapter I, the Superior Court may assess against the department reasonable attorney's fees and other litigation costs reasonably incurred by an aggrieved person who prevails in the appeal of the department's denial for a request for information.

A. Information submitted to the department under this section may be designated by the submitter as being only for the confidential use of the department, its agents and employees, other agencies of State Government, as authorized by the Governor, employees of the United States Environmental Protection Agency, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Services, the Attorney General and employees of the municipality in which the aquaculture facility is located. The designation must be clearly indicated on each page or other portion of information. The commissioner shall establish procedures to ensure that information so designated is segregated from public records of the department. The department's public records must include the indication that information so designated has been submitted to the department, giving the name of the submitter and the general nature of the information. Upon a request for information, the scope of which includes information so designated, the commissioner shall notify the submitter. Within 15 days after receipt of the notice, the submitter shall demonstrate to the satisfaction of the department that the designated information should not be disclosed because the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available. Unless such a demonstration is made, the information must be disclosed and becomes a public record. The department may grant or deny disclosure for the whole or any part of the designated information requested and within 15 days shall give written notice of the decision to the submitter and the person requesting the designated information. A person aggrieved by a decision of the department may appeal to the Superior Court. All information provided by the department to the municipality under this paragraph is confidential and not a public record under Title 1, chapter 13. If a request for the information is submitted to the municipi-

pality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph.

B. The commissioner may not release the designated information prior to the expiration of the time allowed for the filing of an appeal or to the rendering of the decision on any appeal.

C. Any information that is collected by any other state or federal agency or information required by the department for the purpose of obtaining a permit, license, certification or other approval may not be designated or treated as designated information under paragraph A.

D. The commissioner may adopt rules to carry out the purposes of this section. The rules must be consistent with the provisions of Title 1, chapter 13, subchapter I.

E. It is unlawful to disclose designated information to any person not authorized by this section.

(1) Any person who solicits, accepts or agrees to accept, or who promises, offers or gives any pecuniary benefit in return for the disclosure of designated information is guilty of a Class D crime.

(2) A person who knowingly discloses designated information, knowing that the disclosure is not authorized, commits a civil violation for which a penalty of not more than \$5,000 may be assessed.

(3) In any action under this paragraph, the court shall first declare that the information is a trade secret or production, commercial or financial information, the disclosure of which would impair the competitive position of the submitter and would make available information not otherwise publicly available.

Sec. 7. 12 MRSA §§6078 and 6079 are enacted to read:

§6078. Salmon aquaculture monitoring and research fund

1. Fund established. All income received by the commissioner under this section must be deposited with the Treasurer of State, to be credited to the Salmon Aquaculture Monitoring and Research Fund, established as a nonlapsing fund. Any interest earned on this money must also be credited to the fund.

2. Allocations from the fund. Expenditures from the fund are subject to legislative approval in the same manner as appropriations from the General Fund. The joint standing committee of the Legislature having jurisdiction over appropriations must approve the allocations.

3. Production fee assessed. A person producing salmon in aquacultural facilities subject to section 6072 shall pay to the commissioner a fee of 1¢ per pound of whole fish harvested. The person shall pay the fee within 30 days of harvest. Timely payment of the fee is a condition of any lease granted under section 6072 for the production of salmon in net-pen aquacultural facilities. The commissioner may assess a late payment charge on any overdue payments computed at the annual interest rate established by the State Tax Assessor under Title 36, section 186. The commissioner may establish by rule any procedural requirements for collection of the fee including without limitation monthly reporting of harvest amounts and reporting forms. Failure to pay the fee is a civil violation punishable by a civil penalty not to exceed \$1,000.

4. Expenditures; purpose. The commissioner may make expenditures from the fund only for the purposes of developing effective and cost-efficient water quality licensing and monitoring criteria, analyzing and evaluating monitoring data and processing lease applications. In developing a program of expenditures, the commissioner shall consult with members of the salmon aquaculture industry. The commissioner may contract for services privately or under memoranda of agreement with other state agencies.

5. Revenues; rebates; reports. The commissioner shall rebate to those persons who have paid fees under subsection 3 in the preceding 3 fiscal years all revenues that have exceeded allocations from the fund in those years. A rebate must be in the same proportion to the total of all rebates as the recipient's fees for that period are to the total of all fees levied for that period.

A. On or before February 1, 1993, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resource matters. The commissioner shall report on revenues received under this section in fiscal year 1991-92 and up to the date of the report in fiscal year 1992-93 along with estimated revenues for the remainder of that fiscal year. The commissioner shall include in this report the department's budget submission for the following biennium. The commissioner shall report on all expenditures from the fund up to the date of the report. The committee may introduce and report legislation it determines necessary to modify the provisions of this section.

B. On or before February 1, 1994, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resource matters on all expenditures made from the fund and on all work accomplished and planned. The commissioner shall also report on the department's experience in coordinating the aquaculture lease application and monitoring requirements of the State with those of the Federal Government. The committee may introduce and report legislation it determines necessary to modify the provisions of this section.

6. Repeal. This section is repealed on July 1, 1994.

§6079. Aquacultural use of antibiotics; notice

1. Notice required. When introducing an antibiotic into the waters of the State at a research site under section 6072, subsection 1-A, paragraph A or an aquaculture leasehold site, a person shall post written public notice in the municipality nearest the leasehold site in the same location as that generally used to post notice of town meetings or city elections. The notice must include the following information:

- A. The name and address of the aquaculture leaseholder and an in-state telephone number for the leaseholder that can be called to get further information on the antibiotic application;
- B. The name of the person or persons responsible for applying the antibiotic;
- C. The name of the antibiotic to be applied;
- D. The dosage to be applied;
- E. The time and duration of treatment; and
- F. The date of posting.

Sec. 8. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1991-92	1992-93
MARINE RESOURCES, DEPARTMENT OF		
Salmon Aquaculture Monitoring and Research Fund		
Positions	(1)	(1)
Personal Services	\$25,500	\$34,000
All Other	71,625	67,500
Capital Expenditures	10,000	
Provides funds for a Marine Scientist I position, contractual services as specified in this Act and general operating expenses to process lease applications, analyze existing monitoring data, develop and analyze water quality licensing and monitoring criteria.		
DEPARTMENT OF MARINE RESOURCES		
TOTAL	<u>\$107,125</u>	<u>\$101,500</u>

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective June 20, 1991.

CHAPTER 382

S.P. 424 - L.D. 1136

An Act to Assist in the Management of Biomedical and Associated Wastes

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

38 MRSA §1310-X, sub-§4 is enacted to read:

4. Exemption. A commercial biomedical waste disposal facility is exempt from the prohibitions of this section if at least 51% of the facility is owned by a hospital or hospitals as defined in Title 22, section 382, subsection 7 or an affiliated interest or interests as defined in Title 22, section 396-L, subsection 1, paragraph A.

See title page for effective date.

CHAPTER 383

H.P. 822 - L.D. 1176

An Act Regarding Vanity Plates for Automobile Dealers

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

Sec. 1. 29 MRSA §194, as amended by PL 1987, c. 64, §1, is repealed and the following enacted in its place:

§194. Manufacturers, dealers and transporters

1. Special plates. The Secretary of State may select and issue special distinguishing letters, marks or designs for number plates issued to manufacturers, dealers and holders of transporter registration certificates.

2. Special initial plates. Upon application, a new car dealer may apply for initial registration plates that may bear letters or combinations of letters and numbers that are approved by the Secretary of State or a designee. A combination may not be duplicated by other licensed vehicle dealers. These special initial plates may not be used to supplement existing registration numbers assigned.

The Secretary of State shall charge an additional \$30 fee per plate issued pursuant to this subsection.

Sec. 2. Effective date. This Act takes effect January 1, 1992.

Effective January 1, 1992.