

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

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

Sec. 1. 23 MRSA §3360-A, sub-§6-A, as enacted by PL 1991, c. 437, §8 and affected by §12, is amended to read:

6-A. Forfeitures. The forfeitures for failure to comply with this section are as follows.

A. An excavator who does not give notice of an excavation as required under subsection 3 ~~and who damages an underground facility in the course of that excavation or who undertakes the excavation in a reckless or negligent manner that poses a threat to an underground facility~~ commits a civil violation and is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages.

B. An underground facility operator who does not mark the location of the operator's underground facilities as required under subsection 4 commits a civil violation and is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages resulting from the operator's failure to mark those facilities.

Sec. 2. 23 MRSA §3360-A, sub-§§11 and 12 are enacted to read:

11. Enforcement. The system may contract with county sheriffs or appropriate municipal law enforcement entities to issue civil summonses to excavators who violate subsection 6-A, paragraph A.

12. Injunctions; costs. The owner or operator of an underground facility may commence an action in a court of competent jurisdiction seeking a temporary restraining order or injunction to prevent a person from undertaking an excavation that may result in damage to the underground facility. The court may issue a temporary restraining order or injunction if the court determines that the excavation or proposed excavation:

A. Is being conducted or is likely to be conducted in a negligent or unsafe manner; and

B. Is causing or is likely to cause damage to the underground facility.

If the owner or operator prevails in an action brought pursuant to this subsection, the owner or operator is entitled to an award of the costs of bringing the action, including reasonable attorney's fees.

See title page for effective date.

CHAPTER 230

H.P. 1088 - L.D. 1531

**An Act Requiring Progress Reports
for Mapping Significant Wildlife
Habitat**

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

Sec. 1. 38 MRSA §480-I, sub-§3 is enacted to read:

3. Progress report. The commissioner and the Commissioner of Inland Fisheries and Wildlife shall jointly report by January 1, 1998 and on or before January 1st of every odd-numbered year thereafter to the joint standing committees of the Legislature having jurisdiction over natural resource matters and inland fisheries and wildlife matters on the progress of the mapping of significant wildlife habitats.

See title page for effective date.

CHAPTER 231

H.P. 584 - L.D. 775

**An Act Concerning Applied
Aquaculture Research in the Coastal
Waters of the State**

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

Whereas, commercial aquaculture research is needed to determine the survival of particular species already under cultivation; and

Whereas, it is vital for the Commissioner of Marine Resources to have the authority to issue emergency aquaculture leases for the relocation of shellfish to protect existing aquaculture shellfish from unanticipated threats; 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, as enacted by PL 1991, c. 381, §1, is amended 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, 6072-A or 6072-B. 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 §6072, sub-§1-A, as amended by PL 1993, c. 409, §1, is further amended to read:

1-A. Lease requirement; finfish and suspension culture. Except as provided in paragraphs A, B and B-1 and sections 6072-A and 6072-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 any other marine organism.

~~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 marine organisms 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.

B-1. A person operating a facility in the coastal waters of the State for the suspended culture of a marine organism other than shellfish that is not leased under this section must register the facility with the commissioner on or before January 1, 1994 on a form specified by the commissioner. A person registering under this paragraph must submit a completed lease application on or before July 1, 1994. 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 or B-1 from a person other than the registrant prior to rendering a final decision on any application submitted by a registrant under paragraph B or B-1.

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. 3. 12 MRSA §6072, sub-§4-A is enacted to read:

4-A. Application information. A person who applies for a lease in an area for which that person has been issued a limited-purpose lease under section 6072-A or an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for a limited-purpose lease or an emergency lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

Sec. 4. 12 MRSA §6072, sub-§8, as enacted by PL 1977, c. 661, §5, is amended to read:

8. Preference. ~~If~~ Except as provided in subsection 8-A, if more than one person applies to lease an area, preference shall ~~must~~ 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~~ a person who fishes commercially and who have ~~has~~ traditionally fished in or near the proposed lease area; and
- D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

Sec. 5. 12 MRSA §6072, sub-§8-A is enacted to read:

8-A. Preference for limited-purpose lease areas. If more than one person applies to lease an area for which a person has been granted a limited-purpose lease under section 6072-A and the person who holds that limited-purpose lease is an applicant to lease that area under this section and that application was submitted before the expiration of that limited-purpose lease, preference must be given as follows:

- A. First, to the person who holds a limited-purpose lease for the area;

B. Second, to the department;

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

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

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

Sec. 6. 12 MRSA §§6072-A and 6072-B are enacted to read:

§6072-A. Limited-purpose lease for commercial or scientific research

1. Authority. The commissioner may issue a limited-purpose lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for commercial aquaculture research and development or for scientific research.

2. Suspended culture. A person issued a limited-purpose lease under this section may 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 any other marine organism.

3. Limit on duration. A limited-purpose lease may not be issued for a period greater than 3 years.

4. Size limitation. A limited-purpose lease may not be issued for an area in excess of 2 acres.

5. Notice of application. The commissioner shall provide notice of a limited-purpose lease application to owners of riparian land upon which the limited-purpose lease activity would take place and to the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish a summary of the application in a newspaper of general circulation in the area proposed for a limited-purpose lease. A person may provide, within 30 days of receipt of notice or within 30 days of publication of a limited-purpose lease summary, the commissioner comments on the proposed limited purpose lease.

6. Public hearing. The commissioner may hold a public hearing on the proposed limited-purpose lease. The commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment periods provided in subsection 5.

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land upon which limited-purpose lease activity would take place and to the municipality in

which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing.

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J.

9. Application information. A person who applies for a lease in an area for which that person has been issued an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for an emergency aquaculture lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

10. Assessment of proposed activities. Within 180 days of the effective date of this section, the commissioner shall by rule establish a method for conducting an assessment of the proposed limited-purpose lease site and surrounding area to determine the possible effects of the proposed limited-purpose lease activity on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. The rules must establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed limited-purpose lease activity. The rules must provide a method for establishing a baseline to monitor the environmental effects of a limited-purpose lease activity.

11. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not issue a limited-purpose lease under this section for the intertidal zone within the municipality without the consent of the municipal officers.

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

A. First, to the department;

B. Second, to the riparian owner of the intertidal zone in which the leased area is located;

C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and

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

13. Decision. The commissioner may grant a lease if a proposed project:

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.

The commissioner may by rule develop criteria for an applicant to meet the terms of this subsection.

14. Fee. The commissioner shall by rule determine the rental fee for a limited-purpose lease.

15. Conditions. The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must 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 in Title 38, section 465-B.

16. Statement of rights conveyed. The commissioner shall include the following statement in a lease issued under this section: "A limited-purpose lease for scientific research or commercial aquaculture

research and development conveys only those rights specified in the lease."

17. Actions required of lease holder. After being granted a limited-purpose lease, a 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 must describe the area leased and list any restriction in the leased area;

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

D. Annually submit to the commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the commissioner are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A. Upon written request, a copy of the public records in the report must be provided by the commissioner to the municipality or municipalities in which or adjacent to which the lease is located.

18. Scientific lease renewal. A limited-purpose lease for scientific research may be renewed. The commissioner must hold a public hearing before deciding upon the request for renewal. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease;

B. Research has not been conducted during the term of the lease; or

C. It is not in the best interest of the State to renew the limited-purpose lease.

19. Commercial lease not renewable. A limited-purpose lease for commercial aquaculture research and development may not be renewed.

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits a completed application under section 6072 for that lease area before the expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072, that person's limited-purpose lease remains in effect until

the effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect until 30 days after the commissioner's decision.

21. Monitoring lease. The commissioner shall monitor annually the limited-purpose lease. If no substantial research has been conducted within the preceding year, or if research has been conducted in a manner injurious to marine organisms, or if any other condition of the limited-purpose lease has been violated, the commissioner shall initiate revocation proceedings and may revoke the lease.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

§6072-B. Emergency aquaculture lease for shellfish

1. Authority. The commissioner may issue an emergency aquaculture lease for areas in, on and under the coastal waters including the public lands beneath those waters and portions of the intertidal zone for the emergency aquaculture relocation of shellfish from an area for which a lease has been issued pursuant to section 6072 or section 6072-A when the health and safety of those shellfish are threatened.

2. Limitation. The commissioner may not issue a lease under this section unless:

A. The applicant holds a lease pursuant to section 6072 or 6072-A;

B. The applicant demonstrates to the commissioner that the health and safety of shellfish at the leased area are threatened; and

C. The commissioner determines the relocation of those shellfish to an emergency aquaculture lease area would not threaten the water quality of the receiving waters or the health of marine organisms in those waters.

3. Permission of intertidal land owners. The commissioner may not grant an emergency aquaculture lease unless the applicant obtains the written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity occurs.

4. No fee. The commissioner may not charge a fee for an emergency aquaculture lease.

5. Suspended culture. A person issued an emergency aquaculture lease under this section may construct or operate in the coastal waters of the State a facility for the suspended culture of shellfish.

6. Limit on duration. An emergency aquaculture lease may not be issued for a period greater than 6 months.

7. Extension of emergency aquaculture lease. If a person who holds an emergency aquaculture lease submits an application under section 6072 or 6072-A for that lease area within 60 days of being granted the emergency aquaculture lease, and if the commissioner's decision under section 6072 or 6072-A occurs after the expiration of that emergency aquaculture lease, the emergency aquaculture lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the commissioner denies that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the commissioner's decision.

8. Public notice. Upon granting an emergency aquaculture lease, the commissioner shall provide notice to the municipality in which the emergency aquaculture lease area is located. Within at least 30 days from granting an emergency aquaculture lease, the commissioner shall publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restriction in the leased area.

9. Actions required of lease holder. After being granted an emergency aquaculture lease, a lessee shall:

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

B. Mark the leased area in a manner prescribed by the commissioner.

10. Conditions. The commissioner may establish conditions that govern the use of the emergency aquaculture lease area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must 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 in Title 38, section 465-B.

11. Rules. The commissioner may adopt rules to establish application requirements, a process for application review and a process for deciding upon lease applications and otherwise implement the provisions of this section.

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 7. 12 MRSA §6079, sub-§1, as enacted by PL 1991, c. 381, §7, is amended to read:

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 6072-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.

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

Effective May 20, 1997.

CHAPTER 232

H.P. 928 - L.D. 1275

An Act to Allow a Separate, Nonsmoking Area for a Beano or Bingo Game

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

Sec. 1. 17 MRSA §327 is enacted to read:

§327. Nonsmoking area

The Chief of State Police shall adopt rules that allow a licensee to establish a nonsmoking area within

the room or outdoor area where the operator calls the numbers. Visibility and access between the smoking and nonsmoking areas may not be impeded except that a doorway may be installed. Both the smoking and nonsmoking areas must have a public address system and a master board, electric flashboard or chalkboard visible to all players. A member of the licensee must be present during the game in both the smoking and the nonsmoking areas. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 233

H.P. 737 - L.D. 1001

An Act to Encourage Organ Donation by Making Information Available through the Secretary of State

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

Sec. 1. 29-A MRSA §1402-A, sub-§3 is enacted to read:

3. Information on organ and tissue donation. The Secretary of State shall make available information on organ and tissue donation to license applicants and holders. The Secretary of State shall also make information on organ and tissue donation available in offices of the Bureau of Motor Vehicles.

See title page for effective date.

CHAPTER 234

S.P. 287 - L.D. 938

An Act to Include Incorporated Fire Departments Recognized by Any Authority Created by Statute within the Protection of the Maine Tort Claims Act

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

Sec. 1. 14 MRSA §8102, sub-§3, as amended by PL 1989, c. 104, Pt. C, §§8 and 10, is further amended to read:

3. Political subdivision. "Political subdivision" means any city, town, plantation, county, administrative entity or instrumentality created pursuant to Title 30-A, chapters 115 and 119, incorporated fire fighting