

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2003

June 1, 1987 must be determined by the actual use of the facility at the time of the most recent license application prior to June 1, 1987 or the actual use of the facility during the 12 months prior to June 1, 1987, whichever is greater. If the overboard discharge facility was the primary residence of an owner at the time of the most recent license application prior to June 1, 1987 or during the 12 months prior to June 1, 1987, then the facility is considered a year-round residence. "Year-round residence" means a facility that is continuously used for more than 8 months of the year. For purposes of licensing, the department shall treat an increase in the licensed volume or quantity of an existing discharge or an expansion in the months during which the discharge will take takes place as a new discharge of domestic pollutants;

See title page for effective date.

CHAPTER 247

H.P. 1040 - L.D. 1417

An Act To Make Changes to the Laws Governing Aquaculture Leasing

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

Sec. 1. 5 MRSA §12004-I, sub-§57-C, as reallocated by RR 1995, c. 2, §9, is amended to read:

57-C.	Maine Marine Resources	Not Authorized	12 MRSA §6080
	Aquacul- ture Advisory Council		

Sec. 2. 12 MRSA §6072, sub-§1, as amended by PL 1983, c. 301, §1, is further amended to read:

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~~ is exclusive. For the purposes of this section, the deputy commissioner may serve in the place of the commissioner. For the purposes of this section, the commissioner or the deputy commissioner serving in the place of the commissioner may

authorize in writing qualified professional department staff to sign lease documents.

Sec. 3. 12 MRSA §6072, sub-§6, ¶D, as enacted by PL 1999, c. 591, §2, is repealed.

Sec. 4. 12 MRSA §6072, sub-§7-A, as amended by PL 1999, c. 267, §2, is further amended to read:

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

- 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. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;
- D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland 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~~ state-owned or federally owned beaches and parks or municipally owned, ~~state-owned~~ state-owned or federally owned docking facilities;;
- G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and
- H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

The commissioner shall adopt rules to quantify permissible impact under paragraph G and to establish

visual impact criteria under paragraph H, which are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 12 MRSA §6072, sub-§7-B, as enacted by PL 1987, c. 453, §1, is amended to read:

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~~ must encourage the greatest multiple, compatible uses of the leased area, but ~~shall~~ 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, Title 38, section 465-B.~~

Sec. 6. 12 MRSA §6072, sub-§10, as amended by PL 1987, c. 453, §1, is repealed and the following enacted in its place:

10. Notification of granted leases. After the granting of a lease:

A. The lessee shall record the lease in the registry of deeds of each county in which the leased area is located;

B. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

C. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

D. The lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon written request, the department shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph are considered confidential business record information for the purposes of section 6077.

Sec. 7. 12 MRSA §6072, sub-§11, as amended by PL 1987, c. 453, §1, is further amended to read:

11. Monitoring and revocation of leases. ~~The lease department shall be monitored by the department monitor a lease under this section on an annual basis. If substantially no research or aquaculture has been conducted within the preceding year, or if it aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any other condition of the lease has been violated, the commissioner shall may initiate revocation proceedings and may revoke the lease. A lease revocation shall be is an adjudicatory proceeding under the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4. A The department shall hold a hearing with public notice shall be held prior to revoking any lease.~~

Sec. 8. 12 MRSA §6072, sub-§12, as amended by PL 1997, c. 609, §2, is repealed and the following enacted in its place:

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

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

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

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

D. The renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 250 acres; and

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

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

A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given as required under subsection 6 and a hearing must be held if it is requested in writing by 5 persons.

Sec. 9. 12 MRSA §6072-A, sub-§1, as enacted by PL 1997, c. 231, §6, is amended to read:

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. The commissioner or the deputy commissioner acting on the commissioner's behalf may authorize in writing qualified professional department staff to issue a final decision and sign a lease document on an application for a limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

Sec. 10. 12 MRSA §6072-A, sub-§5, as amended by PL 2001, c. 122, §1, is further amended to read:

5. Notice of application. ~~The applicant~~ Upon determining that an application is complete, the commissioner shall provide notice of a limited-purpose lease application to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The applicant shall provide the names and addresses of known riparian landowners within 1,000 feet of the proposed location of the lease. The names and addresses must be taken from the current property tax roster on file at the local municipal office or with the Department of Administrative and Financial Services, Bureau of Revenue Services for an unorganized territory. 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, ~~to~~ the commissioner comments on the proposed limited-purpose lease.

Sec. 11. 12 MRSA §6072-A, sub-§7, as amended by PL 2001, c. 122, §1, is further amended to read:

7. Notice of public hearing. ~~The applicant~~ commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of 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.

Sec. 12. 12 MRSA §6072-A, sub-§17, as enacted by PL 1997, c. 231, §6, is repealed.

Sec. 13. 12 MRSA §6072-A, sub-§17-A is enacted to read:

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained;

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; and

C. The lessee shall 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, the commissioner shall provide a copy of the public records in the report to the municipality or municipalities in which or adjacent to which the lease is located.

Sec. 14. 12 MRSA §6072-A, sub-§21, as enacted by PL 1997, c. 231, §6, is repealed.

Sec. 15. 12 MRSA §6072-A, sub-§22 is enacted to read:

22. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. The department shall hold a hearing with public notice prior to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.

Sec. 16. 12 MRSA §6072-C, sub-§2, as enacted by PL 1999, c. 567, §2, is amended to read:

2. Licensed activities; criteria. The holder of a limited-purpose aquaculture license may utilize approved aquaculture gear in a site in the coastal waters of the State below the mean low-water mark to engage in certain aquaculture activities that meet the criteria established in this subsection and in rules adopted by the commissioner. The license also authorizes unlicensed individuals to assist the license holder in the licensed activities with the written permission of the license holder. The commissioner, or qualified professional department staff designated in writing by the commissioner, may issue a limited-purpose aquaculture license for certain aquaculture activities if the following criteria are met:

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

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

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

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

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

F. The applicant holds no more than 3 other limited-purpose aquaculture licenses issued under this section.

Sec. 17. 12 MRSA §6077, sub-§4, ¶A, as enacted by PL 1991, c. 381, §6, is amended to read:

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 Service, the United States Department of Agriculture, 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 municipality, the municipality shall submit that request to the commissioner to be processed by the department as provided in this paragraph.

Sec. 18. 12 MRSA §6078, as amended by PL 1999, c. 156, §4, is repealed.

Sec. 19. 12 MRSA §6078-A is enacted to read:

§6078-A. Aquaculture Monitoring, Research and Development Fund

1. Fund established. The Aquaculture Monitoring, Research and Development Fund, referred to in this section as "the fund," is established. All income received by the commissioner under this section must be deposited with the Treasurer of State, tracked according to its source and credited to the fund. Any balance remaining in the fund at the end of a fiscal year does not lapse but must be carried forward to the next fiscal year. Any interest earned on assets of the fund is credited to the fund. All records related to harvests submitted by aquaculture lease holders are considered confidential business record information for the purposes of section 6077.

2. Fees. The following fees must be assessed and credited to the fund.

A. A person producing finfish in an aquacultural facility 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 a lease granted under section 6072 for the production of finfish in net-pen aquacultural facilities. The commissioner may assess a late payment charge on an overdue payment 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. A person who does not pay the fee commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

The commissioner may develop by rule an alternative production fee schedule based on the amount of feed that is used at finfish facilities. Any alternative production fee must be designed to return an equivalent and sufficient revenue stream to the production fee in this paragraph in order to support the purposes of subsection 3.

B. In accordance with the authority of the commissioner to levy lease rents pursuant to section 6072, subsection 9 and section 6072-A, subsection 14 and application fees pursuant to section 6072, subsection 4, the commissioner shall adopt rules to implement a fee structure for lease rents and application fees that are in addition to the minimum lease rents and application fees that are in effect on the effective date of this paragraph. Any rent or fee assessed in addition to the fees that are in effect on the effective date of this paragraph must be credited to the fund. A person who does not pay the rent or fee commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

C. The commissioner may develop by rule a fee schedule for the production of shellfish reared on an aquaculture lease. A person who does not pay a fee under this paragraph commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

A fee received pursuant to this section must be accounted for separately within the fund according to whether it is from a finfish or shellfish source so that at any point the commissioner or the Marine Resources Advisory Council may determine the total fund balance and proportional expenditures attributable to each revenue source.

3. Expenditures; purpose. The commissioner may make expenditures from the fund to develop effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data and process lease applications. The commissioner shall expend the fund amounts in proportion to the amounts of revenue from finfish sources and shellfish sources. In developing a program of expenditures, the commissioner shall consult with the Aquaculture Advisory Council established under Title 5, section 12004-I, subsection 57-C. The commissioner may contract for services privately or under memoranda of agreement with other state agencies.

4. Additional revenues. The commissioner may expend annual revenues that are in excess of the operating expenses of a program under subsection 3 to

address matters that the commissioner determines are of an emergency nature to the State's aquaculture industry, to address matters that the commissioner determines are of long-term interest to the State's aquaculture industry and to rebate revenues to all those persons who paid fees under subsection 2. 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. The commissioner shall consult with the Aquaculture Advisory Council established under Title 5, section 12004-I, subsection 57-C when determining expenditures under this subsection.

5. Reports. On or before February 1st of each year, the commissioner shall report to the joint standing committee of the Legislature having jurisdiction over marine resources matters on all expenditures made from the fund in the previous fiscal year and on all work accomplished and planned. The joint standing committee may introduce and report out legislation it determines necessary to modify the provisions of this section.

6. Rules. The commissioner may adopt rules pursuant to this section only after consultation with the aquaculture industry that clearly establish the recommended framework for lease rents, application fees and production fees as well as the related personnel or contracting costs funded by the recommended fee increases. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 20. 12 MRSA §6080, as amended by PL 1999, c. 156, §5, is further amended to read:

§6080. Aquaculture Advisory Council

1. Appointment; composition. The ~~Maine~~ ~~Salmon~~ Aquaculture Advisory Council, referred to in this section as the "council" and established by Title 5, section 12004-I, subsection 57-C, consists of ~~4~~⁵ members. The commissioner or the commissioner's designee is a nonvoting, ex officio member of the council. The commissioner shall appoint ~~3~~⁴ members from the State's ~~salmon~~ aquaculture industry. No more than 2 of the appointed members may represent similar segments of the State's ~~salmon~~ aquaculture industry.

2. Term. Council members serve for 3 years and continue serving until a successor is duly appointed and qualified. In the case of a vacancy, the commissioner shall promptly fill the vacancy.

3. Purpose. The council shall make recommendations to the commissioner concerning expenditures from the ~~Salmon~~ Aquaculture Monitoring, Research and Development Fund for the purposes described

under section ~~6078~~, ~~subsections 4 and 7~~ 6078-A, ~~subsections 3 and 4~~.

4. Chair and officers. The council annually shall choose one of its members to serve as chair for a one-year term. The council may select other officers and designate their duties.

5. Meetings. The council shall meet at least once each year. It may also meet at other times at the call of the chair or the chair's designee or the commissioner or the commissioner's designee. The council may conduct a meeting by means of a conference call linking 2 or more members of the council.

Sec. 21. Transfers from existing accounts. The Department of Marine Resources may transfer the existing balance and encumbrances from the Salmon Aquaculture Monitoring, Research and Development Fund at any time prior to its lapsing to the Aquaculture Monitoring, Research and Development Fund in order to fund any of the activities outlined in the Maine Revised Statutes, Title 12, section 6080.

Sec. 22. Transition clause. The operation, purpose, duties and obligations of the Maine Salmon Aquaculture Advisory Council are transferred to the Aquaculture Advisory Council. Members serving on the Maine Salmon Aquaculture Advisory Council on the effective date of this Act may continue to serve out their terms as members of the Aquaculture Advisory Council.

See title page for effective date.

CHAPTER 248

H.P. 1076 - L.D. 1471

An Act To Correct Certain Errors and Inconsistencies in Laws Relating to Marine Resources

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

Sec. 1. 12 MRSA §6001, sub-§8, as enacted by PL 1977, c. 661, §5, is amended to read:

8. Common carrier. "Common carrier" means a vehicle engaged in carrying goods for profit in interstate commerce, ~~which that~~ that is licensed by the ~~Interstate Commerce Commission~~ Federal Highway Administration.

Sec. 2. 12 MRSA §6171-B, sub-§1, ¶A, as enacted by PL 1999, c. 297, §1, is amended to read:

A. "Emerging fishery" means the commercial fishing for any marine organism, except ~~shrimp~~,

herring and groundfish species, that requires a commercial fishing license issued under section 6501.

Sec. 3. 12 MRSA §6174, as enacted by PL 1977, c. 661, §5, is amended to read:

§6174. Rules as law; proof of rules; penalty

1. Rules as law. All ~~regulations of rules adopted by~~ regulations ~~shall~~ are the force of law.

2. Proof of rules. A certified copy of a ~~regulation shall be~~ rule is admissible in court to prove the ~~regulation rule~~ and ~~shall be~~ is prima facie evidence that the ~~regulation rule~~ rule was properly adopted. A ~~regulation shall~~ rule must be personally certified by the commissioner, deputy commissioner or Chief of the Bureau of Marine Patrol and ~~shall must~~ must be accompanied by ~~his~~ his a signed statement that it was in force on the date of the alleged violation. The certified copy ~~shall be~~ is admissible in evidence on the testimony of a marine patrol officer that ~~he the~~ the ~~patrol officer~~ patrol officer received the certified ~~regulation rule~~ rule after requesting it by telephone or otherwise from the department. No further foundation ~~shall be~~ is necessary for the admission of the certified copy.

3. Penalty. Whoever violates a ~~regulation shall be punished by the penalties under section 6204, unless a specific penalty is otherwise authorized and provided rule commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.~~ rule shall be punished by the penalties under section 6204, unless a specific penalty is otherwise authorized and provided rule commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.

Sec. 4. 12 MRSA §6191, as enacted by PL 1977, c. 661, §5, is amended to read:

§6191. Rulemaking

1. Procedures. In adopting or amending any ~~regulation rule~~ rule, the commissioner shall use the procedures required for rulemaking under the Maine Administrative Procedure Act, Title 5, chapter 375, and the additional requirements of this subchapter.

2. Other requirements.

A. A public hearing may be held but is not required unless it is requested by an interested person.

B. The person conducting the hearing shall record and retain all relevant evidence provided at the hearing.

C. ~~No regulation~~ A rule, except a ~~regulation rule~~ rule authorized under section 6172, ~~shall may not~~ may not be adopted or amended without the advice and consent of the advisory council, except as provided in section 6192, subsection 2.