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H.P. 72

House of Representatives, January 13, 2021

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

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

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

ROBERT B. HUNT
Clerk

Presented by Representative McCREIGHT of Harpswell.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 41 A. Establishing minimum standards for maintaining leases;
- 42 B. For procedures to issue, transfer, review, assign, expand or revoke leases;

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

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

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

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

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

17 H. For establishing following requirements and procedures-;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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