

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1355 - L.D. 2025

**An Act to Create a Limited-purpose License for Aquaculture Nursery and
Husbandry Activities and to Clarify the Aquaculture Lease Amendment
Process**

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

Sec. 1. 12 MRSA §6072, sub-§10, as amended by PL 2021, c. 581, §1, is further amended to read:

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

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; and

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 statistics for the purposes of section 6173. A copy of a report provided to a municipality pursuant to this paragraph is confidential.~~

Sec. 2. 12 MRSA §6072, sub-§13, ¶G, as amended by PL 2021, c. 52, §8, is repealed.

Sec. 3. 12 MRSA §6072, sub-§19 is enacted to read:

19. Reports retained by department. Seeding and harvesting reports that were submitted to the department under former subsection 10, paragraph D and former section 6072-C, subsection 10 and were confidential at the time the reports were submitted to the department remain confidential until those reports are no longer retained by the department pursuant to any records retention schedule adopted pursuant to Title 5, section 95-C, subsection 2.

Sec. 4. 12 MRSA §6072-A, sub-§20, as amended by PL 2011, c. 93, §6, is further amended to read:

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits an application under section 6072 for that lease area or a portion of that area before the expiration of that limited-purpose lease, or within 30 days after the expiration of that limited-purpose lease and accompanied by a nonrefundable late fee of \$500, 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. The late fee may be waived by the commissioner if a substantial illness or a medical condition prevents the leaseholder from submitting the application within 30 days after the date of expiration of the limited-purpose lease. The applicant shall provide the commissioner with documentation from a physician describing the substantial illness or medical condition. 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. The commissioner may not process applications under section 6072, subsection 12-D received more than 30 days after the expiration of a limited-purpose lease, and the leaseholder is responsible for removing all gear and equipment from the lease site within 120 days.

Sec. 5. 12 MRSA §6072-C, sub-§10, as enacted by PL 2013, c. 509, §8, is repealed.

Sec. 6. 12 MRSA §6072-C, sub-§11 is enacted to read:

11. Inspection. The department shall inspect a limited-purpose aquaculture license issued under this section and the activities conducted under that license on an annual basis.

Sec. 7. 12 MRSA §6072-D, sub-§4, as enacted by PL 2003, c. 660, Pt. A, §16, is amended to read:

4. Uses of fund. The commissioner may make expenditures from the fund to develop and manage effective and cost-efficient ~~water quality licensing and monitoring criteria, analyze and evaluate monitoring data, process lease applications~~ aquaculture lease and licensing application processing and make information about aquaculture available to the public. Expenditures may also be used to improve agency management of existing aquaculture sites, including conducting education and outreach about compliance and inspection.

Sec. 8. 12 MRSA §6072-E is enacted to read:

§6072-E. Limited-purpose license for aquaculture nursery and husbandry activities

1. License required. A person may not engage in the activities authorized under this section without a current limited-purpose license for aquaculture nursery and husbandry activities or a lease issued under this Part authorizing the activities. For the purposes of this section, "husbandry" means specific activities designed to care for, manage and improve marine organisms. "Husbandry" is distinct from culture, which includes the production and development of marine organisms.

2. Licensed activities. The holder of a limited-purpose license for aquaculture nursery and husbandry activities may:

A. Place marine organisms in early life stages, before sale to another person or before further deployment to an aquaculture site pursuant to section 6072, 6072-A, 6072-B or 6072-C, in aquaculture gear or equipment at a site below the mean low-water mark in the coastal waters of the State to engage in certain aquaculture activities that meet the criteria established in subsection 3 and in rules adopted by the commissioner;

B. Conduct husbandry activities specific in nature and short in duration, before further deployment to an aquaculture site pursuant to section 6072, 6072-A or 6072-B or a license pursuant to 6072-C, using aquaculture gear or equipment at a site below the mean low-water mark in the coastal waters of the State to engage in certain aquaculture activities that meet the criteria established in subsection 3 and in rules adopted by the commissioner; and

C. Deploy marine organisms in early life stages to a site other than the aquaculture site identified in the lease pursuant to section 6072, 6072-A, 6072-B or 6072-C if the lease holder is a municipal shellfish management committee established pursuant to section 6671 or a municipal officer for a municipal project.

3. Criteria. The commissioner, or staff designated in writing by the commissioner, may issue a limited-purpose license for aquaculture nursery and husbandry activities if:

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

B. The applicant has an existing aquaculture lease pursuant to section 6072, 6072-A or 6072-B or a license pursuant to 6072-C, unless the applicant is a municipal shellfish management committee established pursuant to section 6671 or a municipal officer for a municipal project;

C. The applicant is using a source of stock approved by the commissioner;

D. The applicant proposes to use aquaculture gear or equipment approved by the commissioner under the rules adopted pursuant to subsection 11;

E. The gear or equipment, excluding mooring equipment, does not cover more than 1,600 square feet of area and does not present an unreasonable impediment to safe navigation;

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

G. 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.

4. License limitations. The issuance of a limited-purpose license for aquaculture nursery and husbandry activities does not constitute the issuance of:

A. A lease of an area in, on or under the coastal waters of the State; or

B. Any other necessary permit or license from a state, federal or municipal authority required for a specified activity.

5. Preference. If a person applies to lease an area that is the subject of a limited-purpose license for aquaculture nursery and husbandry activities, the department shall

notify the holder of the limited-purpose license for aquaculture nursery and husbandry activities. If the holder of the limited-purpose license for aquaculture nursery and husbandry activities documents to the department that that holder wants to lease the area, preference must be given as follows:

A. First, to the person that holds the limited-purpose license for aquaculture nursery and husbandry activities in the area and that submitted an application for a lease under section 6072 for the area; and

B. Second, to the person that applied to lease the area but does not hold a limited-purpose license for aquaculture nursery and husbandry activities in the area.

6. Application. The application for a limited-purpose license for aquaculture nursery and husbandry activities must:

A. Be written on forms supplied by the commissioner;

B. Identify the species to be cultivated;

C. Describe the proposed source of organisms to be grown using the approved aquaculture gear or equipment;

D. Describe the location of the approved aquaculture gear or equipment deployment by coordinates or metes and bounds;

E. Include a clear set of plans that includes at a minimum:

(1) A location plan with an overhead plan view showing the aquaculture gear and equipment deployed at the proposed location. The area occupied by the gear and equipment must be drawn to scale on the plan. The location plan must include a north arrow, ebb and flood directions, any federal or local channels and anchorages, any nearby structures and property lines for all riparian owners within 300 feet; and

(2) Two gear and equipment drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear and equipment proposed to be used. The gear and equipment drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear and equipment;

F. Include documentation that riparian owners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and

G. Include documentation that the municipality has been notified of the license application.

License sites that are used for nursery and husbandry activities must also include in the application a detailed description of specific activities to be conducted on the site and the duration a marine organism will be located at the site for specific nursery and husbandry activities. The maximum duration may not exceed 6 months.

7. Fee. Except as provided in subsection 8, the application fee for a limited-purpose license for aquaculture nursery and husbandry activities is \$400. The application fee is nonrefundable. All fees collected under this subsection must be deposited in the Aquaculture Research Fund established in section 6081.

8. Fee exemptions. The commissioner may not assess an application fee for a limited-purpose license for aquaculture nursery and husbandry activities that is issued to:

A. A municipal shellfish management committee established pursuant to section 6671, if the organisms cultured on the license site are not used for commercial purposes; or

B. A municipal officer for a municipal project, if the organisms cultured on the license site are not used for commercial purposes.

9. Prohibition; molesting gear. A person other than a marine patrol officer, an aquaculture inspector authorized by the commissioner or the licensee may not utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear or equipment that is deployed under a current limited-purpose license for aquaculture nursery and husbandry activities.

10. Prohibition; taking product. A person other than a marine patrol officer, an aquaculture inspector authorized by the commissioner or the licensee may not take any marine organism grown on the license site in accordance with applicable rules.

11. Rules. The commissioner shall adopt rules to implement this section, including, but not limited to, rules establishing the type of gear and equipment that is approved aquaculture gear and equipment for the purposes of a limited-purpose license for aquaculture nursery and husbandry activities, minimum standards for maintaining gear and equipment, methods of gear and equipment identification and license application and review procedures. The commissioner may adopt rules to limit the period of the year during which license applications may be submitted. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

12. Violation; restitution. A person who violates this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. If a person violates subsection 9 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear and equipment, the court shall also:

A. Order that person to pay to the owner of the approved aquaculture gear and equipment that was cut or damaged an amount equal to twice the replacement value of the gear and equipment that was lost or damaged as a result of the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

13. Reporting requirement; confidentiality. A holder of a limited-purpose license for aquaculture nursery and husbandry activities shall annually submit to the department a cultivation report for the past year. Information provided in cultivation reports submitted by a license holder under this subsection is considered confidential information reported to the commissioner pursuant to section 6173.

Sec. 9. 12 MRSA §6072-F is enacted to read:

§6072-F. Lease amendments

1. Lease amendment; prohibition. For the purposes of this section, "lease amendment" means the authorized addition of species, gear, equipment and structure and resultant modifications to operations to an existing lease issued under section 6072 or 6072-A. A lease amendment is not an adjudicatory proceeding. A lease issued under

section 6072-A for commercial research and development may not be amended. An existing lease that does not allow discharge may not be amended to include operational modifications that would result in the reclassification that allows discharge by the commissioner pursuant to the lease. All fees collected under this section must be deposited in the Aquaculture Management Fund established in section 6072-D.

2. Species. The holder of a lease under this subchapter must apply to the commissioner to add a specific species and make resultant operational modifications to the holder's lease site. The decision by the commissioner to authorize the addition of a species must be based on factors, including, but not limited to, the source of stock. The commissioner may not authorize the addition of a species that would cause the holder of the lease to violate any existing condition of the lease. The commissioner shall establish by rule the process for adding species to a lease. The commissioner shall establish by rule a nonrefundable fee for applying to add species to a lease that may not exceed \$200.

3. Gear. The holder of a lease under this subchapter must apply to the commissioner to add different gear categories and make resultant operational modifications to the lease site if the holder has held the lease for at least one year and the lease included authorization for the bottom gear category only. The commissioner may not authorize the addition of gear categories that would cause the holder of the lease to violate any existing condition of the lease. Leases that were originally authorized without gear are not eligible to apply to add gear under this subsection. The commissioner shall establish by rule the process for adding different gear categories to a lease. The commissioner shall establish by rule a nonrefundable fee for applying to add different gear categories to a lease that may not exceed \$500. The rules must provide for notice of proposed additions of different gear categories to the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. The replacement of previously authorized gear does not require a lease amendment as long as the replacement gear is substantially similar to the previously authorized gear. The commissioner may not grant a lease amendment under this subsection that unreasonably interferes with the conditions under section 6072, subsection 7-A.

4. Equipment; structure. The holder of a lease under this subchapter must apply to the commissioner to add equipment or structure and make resultant operational modifications to the holder's lease site if the holder has held the lease for at least one year and the lease did not authorize equipment or structure. The commissioner may not authorize the addition of equipment or structure that would cause the holder of the lease to violate any existing condition of the lease. The commissioner shall establish by rule the process for adding equipment or structure to a lease. The commissioner shall also establish by rule a nonrefundable fee for applying to add equipment or structure to a lease that may not exceed \$500. The rules must provide for notice of proposed additions of equipment or structure to the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. The replacement of previously authorized equipment or structure does not require a lease amendment as long as the replacement is substantially similar to the previously authorized equipment or structure. The commissioner may not grant a lease amendment under this subsection that unreasonably interferes with the conditions under section 6072, subsection 7-A.

5. Temporary change in operation. The commissioner may authorize the holder of a lease under this subchapter to temporarily modify the operational plans approved under

the lease when the modifications are intended to preemptively address environmental conditions that may impact public health or the health of the cultured species on a lease site. An authorization may be granted to ensure compliance with department-initiated action. The department shall provide written notice of the temporary operational modifications to the impacted lease holder. The commissioner shall establish by a rule a process by which temporary operational modifications may be authorized.

6. Rules. The commissioner shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 10. 12 MRSA §6085-B is enacted to read:

§6085-B. Right to inspect and sample

The commissioner or the commissioner's agent shall have access to the leased or licensed area or licensed facility for a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C or 6085 for the purpose of the inspection or the collection of samples. A sample may be collected only if the commissioner or the commissioner's agent has identified a possible risk to public health, animal health or the health of other marine organisms. The commissioner or the commissioner's agent shall notify the leaseholder or license holder at least 24 hours in advance of sample collection, and the notice must identify the basis of the sample collection. The sample size must be as small as reasonably possible. The commissioner or the commissioner's agent shall provide the results of the testing on any samples to the leaseholder or license holder immediately after the results become available. The leaseholder or license holder shall make applicable marine resources licenses or permits available for inspection upon the request of the commissioner or the commissioner's agent. Denial of access to the leased or licensed area or licensed facility, including for the purposes of sample collection, is grounds for revocation of any lease or license issued pursuant to section 6072, 6072-A, 6072-B, 6072-C or 6085. Sample testing records are confidential pursuant to section 6085-C.

Sec. 11. 12 MRSA §6085-C is enacted to read:

§6085-C. Results of testing; confidentiality

1. Results of testing confidential. Except as provided in subsection 2, the results of testing of a sample collected pursuant to section 6085-B are confidential.

2. Exceptions; disclosure permitted. The department may disclose the results of testing of a sample collected pursuant to section 6085-B:

A. When the department determines that the release of the results of testing of a sample is necessary to protect public health;

B. To the Bureau of Marine Patrol when the results of testing of a sample is necessary for enforcement purposes; and

C. When the department relies on the results of testing of a sample to consider a renewal application of a lease or license issued under this subchapter or initiate revocation of a lease or license issued under this subchapter.

Sec. 12. Issuance of license or lease amendment. Until rules are adopted pursuant to this Act, the Department of Marine Resources may not issue a limited-purpose

license or authorize a lease amendment under the Maine Revised Statutes, Title 12, chapter 605, subchapter 2.