

**LD 106 An Act To Amend Maine's Aquaculture Leasing and Licensing Statutes**

To: Members, Joint Standing Committee on Marine Resources

From: Lynne Caswell, Esq., Legislative Analyst

Date: February 18, 2021

**BILL SUMMARY****RESEARCH AND AQUACULTURE LEASES**

§6072

**A. LEASE REVOCATION**

Expands reasons DMR may revoke a lease to include:

- operating in a manner substantially injurious to public health; (see Sec. 4, p. 1, line 25)
- violating any minimum lease maintenance standards lease (see Sec. 4, p. 1, lines 26 – 27)

**B. LEASE RENEWAL**

- application must be filed 30 days (down from 90) prior to expiration (see Sec. 5, p. 1, line 34)
- adds requirement that hearing request by received w/i 30 days (see Sec. 5, p. 2, line 22)

**C. LEASE EXPANSION**

Lease may not be expanded until lease held for 2 years (see Sec. 7, p. 2, line 37)

**LIMITED-PURPOSE COMMERCIAL / RESEARCH LEASE**

§6072-A

Repeals the commissioner's rulemaking authority to modify limited purpose commercial / research leases

**LIMITED-PURPOSE AQUACULTURE LICENSE**

§6072-C

**A. LICENSE REQUIREMENTS**

1. Requires direct supervision of unlicensed individuals (see sec. 13, p. 33)
2. Exceptions to direct supervision requirement (see sec. 14, p. 5 – 6)
  - a. License holder is holder or majority shareholder in corporate lease holder (research and aquaculture; emergency aquaculture; or limited-purpose aquaculture) (see sec. 14, p. 5, lines 40-41) **DMR amendment**
  - b. Uses specific gear types specified in rule (see sec. 14, p. 5, line 42)
  - c. License holder applied for lease (research and aquaculture, or limited purpose aquaculture) for same licensed area (see sec. 14, p. 6, lines 1 – 3)

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**NOTICES****A. Research and Aquaculture Lease (§6072)**

1. Provides DEP with notice only if lease involves activities with a discharge; (see sec. 3, p. 1, line 17-18 and p. 2, line 17)
2. Clarifies notice requirements for lease renewal (see sec. 5, p. 2, lines 13 – 21)
3. Moves responsibility for notifying riparian landowners of lease expansion from the applicant to DMR (see sec. 7, p. 3, lines 10-12 moved to p. 3, line 23)

**B. Moves responsibility of newspaper public notice from DMR to applicant (see sec. 7, p. 3, line 25)**

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**FEES AND COSTS****A. Research and Aquaculture Lease (§6072)**

1. Allows DMR to seek reimbursement from lease applicant for costs incurred in providing notice of application and public hearing (see sec. 2, p. 1, lines 12 – 14)
2. Requires fee for lease transfer be paid upon application (see sec. 6, p. 2, line 32)

**B. Limited-purpose Commercial / Research Lease (§6072-A)**

1. Allows DMR seek reimbursement for cost of public notice for application (see sec. 10, p. 4, lines 37-39)
2. Allows DMR seek reimbursement for cost of public notice for public hearing (see sec. 11, p. 5, lines 6-7)

**C. Limited-purpose Aquaculture License (§6072-C)**

1. Commissioner may establish a fee for lease modifications
  2. Fee: increases fee for limited-purpose aquaculture license from \$50 to \$100 (resident) and from \$300 to \$400 (nonresident) (see sec. 15, p. 6, lines 9 – 10)
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**RULEMAKING AUTHORITY****A. Research / Aquaculture Lease (§6702)**

1. replaces inaccurate use of word “regulation” with accurate word “rule” (see sec. 8, p. 3, line 40)
  2. expands commissioner’s rulemaking authority to:
    - a. set fees for testing or studies requested by leaseholders and requires fees be deposited in the Shellfish Fund (see sec. 8, p. 4, lines 18-21)  
define seed size or seed management and harvest seasons (see sec. 8, p. 4, line 22)
  3. clarifies that rules are routine technical (see sec. 8, p. 4, lines 23 – 24)
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4. repeals section that required the commissioner to promulgate rules by 1988, to define a mussel seed size or seed management and harvest season (see sec. 9, p. 4, line 25)

B. Limited-purpose Commercial/Research Lease (§6072-A)

Removes authority to adopt rules to modify species or gear

C. Limited-purpose Aquaculture License §6072-C)

1. Commission may adopt rules for process and reasons for exceptions to direct supervision requirement (See sec. 14, p. 6, lines 4-6)
2. Permits commissioner to adopt rules to limit times during the year a license application may be filed (see sec. 16, p. 6, lines 18 – 20)

D. MARINE ORGANISM AQUACULTURE LICENSE

Authorize commissioner to adopt and amend rules (routine technical) to implement the issuance, renewal and amendment of marine organism aquaculture licenses (see sec. 17, p. 6, lines 23 – 26)

### TESTIMONY

**Sponsor** (Rep. McCreight)

**Proponents** (DMR, Deirdre Gilbert; Sebastian Belle, Maine Aquaculture Association; written only – Sam Belknap, Island Institute; )

**Opponents** (Marty Odlin, Running Tide; Gregory Foote, Dirigo Marine Resources)

**NFNA** (Crystal Canner, ED Protect Maine’s Fishing Heritage; written only, Diane Cowan, Ph.D., the Lobster Conservancy; Keith Butterfield)

### PRIOR SESSION

LD 1930, 129<sup>th</sup> Prior Session – 129<sup>th</sup> differences highlighted on Attachment A

Voted OTP-AM on March 3, 2020; Carried Over; Reported out July 28, 2020

### POTENTIAL ISSUES / TECHNICAL PROBLEMS

1. Change of word “regulations” to “rules”

State agencies do not promulgate “regulations”. Under Maine’s Administrative Procedures Act (Title 5, ch. 375), state agencies adopt “rules”

2. Intended type of “discharge” – see p. 1, line 18.

“The Department of Environmental Protection, must be notified of all lease applications that involve activities that have a discharge.” **DMR response - “into the waters of the State”**

- “discharge into coastal waters (§6072-C, sub-§2-A, ¶A)
- “into the water or ambient air” (Title 38)

- “water of the State.” (Title 38)
- 3. p. 2, lines 13 – 19 appear identical to the provisions of subsection 6 (except that lessee is not given notice). If they are identical, with that minor exception, perhaps rewording would be better. If there is a difference, or the intent of a difference, perhaps, rewording would make the difference more obvious.

**FISCAL IMPACT - Preliminary (OFPR)**

None provided as of this date