



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1438

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H.P. 993

House of Representatives, April 13, 2017

### An Act To Improve the Aquaculture Leasing and Licensing Laws

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Submitted by the Department of Marine Resources pursuant to Joint Rule 204.  
Reference to the Committee on Marine Resources suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative DEVIN of Newcastle.

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

2 **Sec. 1. 12 MRSA §6052, sub-§3**, as amended by PL 2003, c. 660, Pt. A, §2, is  
3 further amended to read:

4 **3. Marketing.** ~~Except for aquaculture, serve~~ Serve as the primary state agency  
5 providing promotional and marketing assistance to the commercial fishing industries,  
6 including assisting in marketing seafood, stimulating of consumer interest in and  
7 consumption of seafood, increasing the sales of seafood domestically and abroad,  
8 supporting and expanding existing markets and developing new markets for traditional  
9 and underutilized species;

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

12 A. A lease ~~shall~~ may not exceed a term of ~~40~~ 20 years;

13 **Sec. 3. 12 MRSA §6072, sub-§8**, as amended by PL 2011, c. 93, §1, is further  
14 amended to read:

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

17 A. First, to the person who holds a lease for the area or a portion of the area under  
18 section 6072-A and who submitted an application for a lease under this section for  
19 the area or a portion of the area before the lease under section 6072-A expired;

20 A-1. Second, to the person who holds a license for the area or a portion of the area  
21 under section 6072-C and who submitted an application for a lease under this section  
22 for the area or a portion of the area before the license under section 6072-C expired;

23 B. ~~Second~~ Third, to the department;

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

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

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

29 **Sec. 4. 12 MRSA §6072, sub-§12-C** is enacted to read:

30 **12-C. Expansion of lease.** A person who holds a lease under this section may apply  
31 to the commissioner to expand the contiguous area of the lease by up to 10% once during  
32 the duration of the term of the lease pursuant to this subsection.

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

35 (1) Describing the location of the proposed lease expansion area by coordinates  
36 or metes and bounds;

1                   (2) Characterizing the physical and ecological impact of the lease expansion on  
2                   existing uses of the site and any adverse effects on existing uses of the area, as  
3                   defined by rules adopted by the commissioner;

4                   (3) Including the written permission of every riparian owner whose land to the  
5                   low-water mark will be used;

6                   (4) Including a map of the lease area and its proposed expansion, and its  
7                   adjoining waters and shorelands, with the names and addresses of the known  
8                   riparian owners as listed in the municipal tax records and a statement from each  
9                   of those riparian owners that the owner has no objection to the proposed lease  
10                  expansion;

11                  (5) Including an environmental evaluation of the site upon which the decision to  
12                  seek an expansion of the lease was made. The evaluation must include, but is not  
13                  limited to, bottom characteristics, resident flora and fauna and hydrography of the  
14                  site if appropriate for the proposed lease; and

15                  (6) Including a nonrefundable application fee of at least \$100, but not more than  
16                  \$2,000, the amount to be set by the commissioner depending on the proposed  
17                  acreage, type of aquaculture proposed and complexity of the expansion  
18                  application.

19                  B. The commissioner shall review the application. When the commissioner has  
20                  determined that the application for the lease expansion is complete, the commissioner  
21                  shall provide notice to the municipal officers of the municipality or municipalities in  
22                  which or adjacent to which the lease expansion is proposed. The commissioner shall  
23                  publish a summary of the application in a newspaper of general circulation in the  
24                  municipality in which the lease expansion is proposed. A person may provide, within  
25                  30 days of receipt of notice that the application is complete or within 30 days of  
26                  publication of a lease expansion summary, comments to the commissioner on the  
27                  proposed lease expansion.

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

31                  D. If the commissioner receives any comments within 30 days of receipt of notice  
32                  that the application is complete or within 30 days of publication of the lease  
33                  expansion summary pursuant to paragraph B objecting to the lease expansion, the  
34                  commissioner shall deny the request for the lease expansion.

35                  E. If the commissioner does not receive any comments within 30 days of receipt of  
36                  notice that the application is complete or within 30 days of publication of the lease  
37                  expansion summary pursuant to paragraph B objecting to the lease expansion, and if  
38                  the commissioner determines that the lease expansion will not unreasonably interfere  
39                  with significant wildlife habitat and marine habitat or with the ability of the lease site  
40                  and surrounding marine and upland areas to support existing ecologically significant  
41                  flora and fauna, the commissioner may approve the request for the lease expansion.

42                  **Sec. 5. 12 MRSA §6072, sub-§13, ¶B**, as amended by PL 2009, c. 229, §3, is  
43                  further amended to read:

1 B. For procedures to issue, transfer, review, assign, expand or revoke leases;

2 **Sec. 6. 12 MRSA §6072-C**, as amended by PL 2013, c. 509, §§6 to 8, is further  
3 amended to read:

4 **§6072-C. Limited-purpose aquaculture license**

5 **1. License required.** A person may not engage in the activities authorized under  
6 this section without a current limited-purpose aquaculture license or a lease issued under  
7 this Part authorizing the activities.

8 **2. Licensed activities.** The holder of a limited-purpose aquaculture license may  
9 place marine organisms on the ocean bottom without gear or utilize approved aquaculture  
10 gear in a site in the coastal waters of the State to engage in certain aquaculture activities  
11 that meet the criteria established in ~~this subsection 2-A~~ and in rules adopted by the  
12 commissioner. The license also authorizes unlicensed individuals to assist the license  
13 holder in the licensed activities with the written permission of the license holder. ~~The~~  
14 ~~commissioner, or qualified professional department staff designated in writing by the~~  
15 ~~commissioner, may issue a limited purpose aquaculture license for certain aquaculture~~  
16 ~~activities if:~~

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

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

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

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

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

28 ~~F. The applicant holds no more than 3 other limited purpose aquaculture licenses~~  
29 ~~issued under this section; and~~

30 ~~G. The consent of the riparian owner is obtained if the proposed activity is located~~  
31 ~~above the mean low water mark.~~

32 **2-A. Criteria.** The commissioner, or qualified professional department staff  
33 designated in writing by the commissioner, may issue a limited-purpose aquaculture  
34 license for certain aquaculture activities if:

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

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

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

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

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

9           F. The proposed location, species and activity do not present a risk to public health;

10          G. The applicant holds no more than 3 other limited-purpose aquaculture licenses  
11          issued under this section; and

12          H. The consent of the riparian owner is obtained if the proposed activity is located  
13          above the mean low-water mark.

14          **3. Eligibility.** A limited-purpose aquaculture license may be issued only to an  
15 individual or to a municipal shellfish management committee established pursuant to  
16 section 6671 that has met any requirements established under subsection 3-A.

17          **3-A. Educational courses.** Prior to the issuance or renewal of a limited-purpose  
18 aquaculture license, the commissioner may require the applicant to complete any  
19 educational courses the commissioner determines appropriate. Educational courses may  
20 be provided by the department or by any public or private sector association or  
21 organization authorized by the commissioner. For any course provided by the  
22 department, the commissioner shall set an enrollment fee sufficient to recover all costs  
23 incurred by the department in providing the course.

24          **4. License limitations.** The issuance of a limited-purpose aquaculture license does  
25 not constitute the issuance of a lease of an area in, on or under the coastal waters.

26          **4-A. Preference.** If a person applies to lease an area that is the subject of a limited-  
27 purpose aquaculture license, the department shall notify the holder of the limited-purpose  
28 aquaculture license. If the holder of the limited-purpose aquaculture license documents  
29 to the department that that holder wants to lease the area, preference must be given as  
30 follows:

31           A. First, to the person who holds the limited-purpose aquaculture license in the area  
32           and who submitted an application for a lease under section 6072 for the area; and

33           B. Second, to the person who applied to lease the area, but does not hold a limited-  
34           purpose aquaculture license in the area.

35          **5. Application.** The application for a limited-purpose aquaculture license must:

36           A. Be written on forms supplied by the commissioner;

37           B. Identify the species to be cultivated;

38           B-1. Identify whether the applicant is growing the organisms for commercial or  
39           personal use;

1 C. Describe the proposed source of organisms to be grown in the approved  
2 aquaculture gear;

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

5 D-1. Identify the shellfish growing area that is subject to the proposed license and its  
6 classification;

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

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

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

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

21 G. Include documentation that the municipal harbor master or appropriate municipal  
22 officers have been notified of the license application and proposed activity.

23 **6. Fee.** The application fee for a resident limited-purpose aquaculture license is \$50  
24 and \$300 for a nonresident limited-purpose aquaculture license. The application fee is  
25 nonrefundable. All fees collected under this subsection must be deposited in the  
26 Aquaculture Research Fund established in section 6081.

27 **7. Prohibition; molesting gear.** A person other than a marine patrol officer, the  
28 licensed owner of the gear or the licensed owner's assistant, with written permission from  
29 the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest  
30 any approved aquaculture gear that is deployed under a current limited-purpose  
31 aquaculture license.

32 **7-A. Prohibition; taking product.** A person other than a marine patrol officer or  
33 the license holder, or the license holder's assistant with written permission from the  
34 license holder, may not take any marine organism grown by the license holder under the  
35 license in the area designated on the license and marked in accordance with applicable  
36 rules.

37 **8. Rules.** The commissioner shall adopt rules to implement this section, including,  
38 but not limited to, rules establishing the type of gear that is approved aquaculture gear for  
39 the purposes of a limited-purpose aquaculture license, minimum standards for  
40 maintaining gear, methods of gear identification and license application and review

1 procedures. Rules adopted under this section are routine technical rules pursuant to Title  
2 5, chapter 375, subchapter ~~H-A~~ 2-A.

3 **9. Violation; restitution.** A person who violates this section commits a civil  
4 violation for which a fine of not less than \$100 for each violation may be adjudged. If a  
5 person violates subsection 7 by cutting any lines or marker buoys or intentionally  
6 damaging approved aquaculture gear, the court shall also:

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

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

12 **10. Reporting requirement; confidentiality.** A holder of a limited-purpose  
13 aquaculture license shall annually submit to the department a seeding and harvesting  
14 report for the past year and a seeding and harvesting plan for the coming year.  
15 Information provided in seeding and harvesting reports submitted by a license holder  
16 under this subsection is considered confidential information reported to the commissioner  
17 pursuant to section 6173.

## 18 SUMMARY

19 This bill amends the aquaculture leasing and licensing laws. It removes the  
20 prohibition on the provision by the Department of Marine Resources of promotional and  
21 marketing assistance to the aquaculture industry. It extends the potential term of an  
22 aquaculture lease from 10 to 20 years. It changes the order of preference for lease  
23 applications to include in the 2nd position an individual who currently holds a limited-  
24 purpose aquaculture license for the area. It provides a process by which a holder of a  
25 standard lease could seek an expansion of the lease area by up to 10% once during the  
26 duration of the lease without having to apply for a new lease. It places the licensed  
27 activities and criteria for limited-purpose aquaculture licenses in separate statutory  
28 provisions. It requires a limited-purpose aquaculture license holder to specify if the  
29 license is for commercial or personal use and to identify the growing area and current  
30 classification of the area. It adds consideration of any risk to public health to the criteria  
31 used in determining whether to grant a limited-purpose aquaculture license. It adds to the  
32 eligibility criteria for a limited-purpose aquaculture license the completion of any  
33 educational courses that may be required by the Commissioner of Marine Resources.