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Date: (Filing No. H- )

**MARINE RESOURCES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
126TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1175, L.D. 1603, Bill, “An Act Regarding Wet Storage Sites for Cultured Marine Organisms”

Amend the bill by striking out the title and substituting the following:

**'An Act To Establish Winter Holding Aquaculture Leases'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 12 MRSA §6072-E** is enacted to read:

**§6072-E. Winter holding aquaculture lease**

**1. Authority.** The commissioner may issue a winter holding aquaculture lease for areas in, on and under the coastal waters, including the public lands beneath those waters, for the storage of shellstock from growing areas between November 1st and April 30th. 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 winter holding aquaculture lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

**2. Storage.** A person issued a winter holding aquaculture lease under this section may in accordance with the lease temporarily store shellstock from growing areas in containers or flats in the coastal waters within the lease area or in tanks containing natural or synthetic seawater within the lease area.

**3. Lease requirements.** The commissioner may not issue a lease under this section unless:

A. The applicant holds a lease or license pursuant to section 6072, section 6072-A, section 6072-B or section 6072-C; and

**COMMITTEE AMENDMENT**

1           B. The applicant demonstrates that the applicant cannot access lease areas under  
2           section 6072, section 6072-A, section 6072-B or section 6072-C during the winter  
3           months due to ice.

4           **4. Limit on duration.** A winter holding aquaculture lease may not be issued for a  
5           period greater than 5 years.

6           **5. Size limitation.** A winter holding aquaculture lease may not be issued for an area  
7           in excess of 4 acres.

8           **6. Fee.** The application fee for a winter holding aquaculture lease is \$500. The  
9           application fee is nonrefundable. All fees collected under this subsection must be  
10           deposited in the Aquaculture Research Fund established in section 6081.

11           **7. Notice of application; municipal intervention; comments.** Upon determining  
12           that an application is complete, the commissioner shall provide notice of a winter holding  
13           aquaculture lease application to owners of riparian land within 1,000 feet of the proposed  
14           location of the lease area and to the municipal officers of the municipality in which the  
15           winter holding storage activity is proposed. A municipality must be granted intervenor  
16           status upon written request. The commissioner shall publish a summary of the  
17           application in a newspaper of general circulation in the area proposed for storage under a  
18           winter holding aquaculture lease. A person may provide to the commissioner, within 30  
19           days of publication of a winter holding aquaculture lease application summary, comments  
20           on the proposed winter holding aquaculture lease.

21           **8. Public hearing.** The commissioner may hold a public hearing on the proposed  
22           winter holding aquaculture lease. The commissioner shall hold a public hearing if 5 or  
23           more persons request a public hearing within the 30-day comment period provided in  
24           subsection 7.

25           **9. Notice of public hearing.** The commissioner shall provide notice of a public  
26           hearing under subsection 8 to owners of riparian land within 1,000 feet of the proposed  
27           location of the winter holding aquaculture lease area and to municipal officers of the  
28           municipality in which the storage activity is proposed to take place. The commissioner  
29           shall publish notice of a public hearing in a newspaper of general circulation in the area  
30           proposed for a winter holding aquaculture lease at least 30 days before the hearing.

31           **10. Department site review.** Prior to the winter holding aquaculture lease hearing  
32           under subsection 8, the department shall conduct a site review and assessment of the  
33           proposed site and surrounding area to determine the possible effects of the storage  
34           activity on commercially and ecologically significant flora and fauna and conflicts with  
35           traditional fisheries and all other uses. This information must be provided to intervenors  
36           and made available to the public 30 days before the hearing. As part of the site review  
37           and assessment, the department shall request information from the municipal harbor  
38           master about designated or traditional storm anchorages in proximity to the proposed  
39           lease area.

40           **11. Preference.** If more than one person applies to lease a given area, preference  
41           must be given as follows:

42           A. First, to the department;

1           B. Second, to a person who fishes commercially and who has traditionally fished in  
2           or near the proposed lease area; and

3           C. Third, to an owner of riparian land within 100 feet of leased coastal waters.

4           **12. Decision.** The commissioner may grant a winter holding aquaculture lease under  
5           this section if the commissioner finds that:

6           A. The lease will not unreasonably interfere with the ingress and egress of owners of  
7           riparian land;

8           B. The lease will not unreasonably interfere with navigation;

9           C. The lease will not unreasonably interfere with fishing or other uses of the lease  
10           area taking into consideration the number and density of aquaculture leases in an  
11           area;

12           D. The lease will not unreasonably interfere with the ability of the lease area and  
13           surrounding areas to support ecologically significant flora and fauna;

14           E. The applicant has demonstrated that there is an available source of shellstock to  
15           be cultured for the lease area; and

16           F. The lease does not unreasonably interfere with public use or enjoyment within  
17           1,000 feet of municipally owned, state-owned or federally owned beaches and parks  
18           or municipally owned, state-owned or federally owned docking facilities.

19           **13. Statement of rights conveyed.** The commissioner shall include the following  
20           statement in a winter holding aquaculture lease issued under this section: "A winter  
21           holding aquaculture lease conveys only those rights specified in the lease."

22           **14. Notification of granted leases.** After the granting of a winter holding  
23           aquaculture lease:

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

28           B. The lessee shall mark the lease area in a manner prescribed by the commissioner.

29           **15. Winter holding aquaculture lease renewal.** A winter holding aquaculture lease  
30           may be renewed. A winter holding aquaculture lease renewal is an adjudicatory  
31           proceeding under Title 5, chapter 375, subchapter 4, but a public hearing is not  
32           mandatory unless it is requested in writing by 5 or more persons. The commissioner may  
33           review multiple leases concurrently during the lease renewal process. The commissioner  
34           shall renew a winter holding aquaculture lease unless the commissioner finds that the  
35           lease holder has not complied with the terms of the winter holding aquaculture lease.

36           **16. Monitoring and revocation of leases.** The department shall monitor a winter  
37           holding aquaculture lease under this section on an annual basis. If aquaculture has been  
38           conducted in a manner substantially injurious to marine organisms, if no storage activity  
39           has been conducted over the course of the lease or if any condition of the lease has been  
40           violated, the commissioner may initiate revocation proceedings and revoke the winter  
41           holding aquaculture lease. The department shall hold a hearing with public notice prior

1 to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5,  
2 chapter 375, subchapter 4.

3 **17. Restitution.** A person who cuts any lines or marker buoys or intentionally  
4 damages approved aquaculture gear including winter storage containers, flats or tanks  
5 commits a civil violation for which a fine of not less than \$100 for each violation may be  
6 adjudged. In addition, the court shall:

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 payments as  
11 ordered by the court, proof of payment.

12 **18. Rules.** The commissioner shall adopt rules to implement this section, including  
13 rules governing the application review process; rules governing the design, construction  
14 and operating requirements for storage; and rules governing the use of the leased area for  
15 storage activities. The rules must:

16 A. Require an applicant to, at a minimum, meet the requirements of section 6072,  
17 subsection 4, paragraphs A, B, E and G;

18 B. Require an applicant to identify the species being stored;

19 C. Require an applicant to provide proof of access to the lease area. The rules must  
20 require, if access will be across riparian land, the applicant to provide to the  
21 department the written permission of every owner of riparian land whose land will be  
22 used to access the lease area; and

23 D. Provide a method of establishing a baseline to monitor the environmental effects  
24 of a storage activity.

25 The rules may establish levels of assessment appropriate to the scale or potential  
26 environmental risk posed by a proposed storage activity and include the provisions  
27 necessary to implement this section. Rules adopted pursuant to this subsection are  
28 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

29 **Sec. 2. Site review methodology.** Within 180 days of the effective date of this  
30 Act, the Commissioner of Marine Resources shall in accordance with the Maine Revised  
31 Statutes, Title 12, section 6072-E, subsection 10 establish by rule a method for  
32 conducting a site review and assessment of a proposed winter holding aquaculture lease  
33 site and surrounding area. Rules adopted pursuant to this section are routine technical  
34 rules pursuant to Title 5, chapter 375, subchapter 2-A.'

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**SUMMARY**

This amendment, which is the minority report, replaces the bill and establishes a winter holding aquaculture lease to allow aquaculture lease and license holders to store shellstock from growing areas in order to access their product during winter months when rivers are frozen and lease sites are not accessible due to ice. The leasing process is similar to that established for standard and experimental aquaculture leases.

**FISCAL NOTE REQUIRED**

**(See attached)**