

## STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SEVENTEEN

## H.P. 993 - L.D. 1438

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**12-C. Expansion of lease.** A person who holds a lease under this section may apply to the commissioner to expand the contiguous area of the lease by up to 25%, but may not expand by more than 4 acres, once during the duration of the term of the lease pursuant to this subsection.

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

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

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

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

(4) Including a map of the lease area and its proposed expansion, and its adjoining waters and shorelands, with the names and addresses of the known riparian owners as listed in the municipal tax records and documentation showing that the lease holder has informed each of those riparian owners of the application and the opportunity for comment as provided in paragraph B;

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

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

B. The commissioner shall review the application. When the commissioner has determined that the application for the lease expansion is complete, the commissioner shall provide notice to the municipal officers of the municipality or municipalities in which or adjacent to which the lease expansion is proposed. The commissioner shall publish in a newspaper of general circulation in the municipality or municipalities in which the lease expansion is proposed a summary of the application and notice of the opportunity to submit comments regarding the proposed lease expansion to the commissioner during a period of at least 30 days following the date of publication of the lease expansion summary.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~E. 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;~~

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

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

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

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

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

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

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

E. 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;

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

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

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

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

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

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

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

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

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

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

A. Be written on forms supplied by the commissioner;

B. Identify the species to be cultivated;

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

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

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

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

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 deployed at the proposed location. The area occupied by the gear 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 drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear 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;

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

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

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

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

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

**7-B. Prohibition; transporting organisms.** A person may not transport organisms grown under a limited-purpose aquaculture license that is designated for personal use to an area that is the subject of a limited-purpose aquaculture license that is designated for commercial use.

**8. Rules.** The commissioner shall adopt rules to implement this section, including, but not limited to, rules establishing the type of gear that is approved aquaculture gear for the purposes of a limited-purpose aquaculture license, minimum standards for maintaining gear, methods of gear identification and license application and review procedures. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H-A~~ 2-A.

**9. 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 7 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall also:

- A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost 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.

**10. Reporting requirement; confidentiality.** A holder of a limited-purpose aquaculture license 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. Information provided in seeding and harvesting reports submitted by a license holder under this subsection is considered confidential information reported to the commissioner pursuant to section 6173.