

STATE OF MAINE

—
 IN THE YEAR OF OUR LORD
 TWO THOUSAND AND FOURTEEN

—
 H.P. 1177 - L.D. 1605

An Act To Amend Maine's Aquaculture Laws

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

Sec. 1. 12 MRSA §6072, sub-§13, ¶G, as corrected by RR 2013, c. 1, §22, is amended to read:

G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species and use specific gear on the lease site. A change in authorization is not an adjudicatory proceeding. The regulations must provide for notice of proposed changes in gear authorization to ~~the lessee~~, the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. Authorization to add ~~or delete~~ species or gear must be consistent with the findings made under subsection 7-A when the lease was approved; and

Sec. 2. 12 MRSA §6072, sub-§18 is enacted to read:

18. Violation. A person who violates a condition of a lease under this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.

Sec. 3. 12 MRSA §6072-A, sub-§1, as amended by PL 2013, c. 301, §2, is further amended to read:

1. Authority. The commissioner may issue a limited-purpose lease for areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for commercial aquaculture research and development or for scientific research. 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 limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application. ~~The commissioner may adopt regulations for adding or deleting authorization for the holder of an aquaculture lease to grow specific~~

~~species and use specific gear on the lease site. The commissioner may grant authorization for species or gear amendments under this subsection only:~~

~~A. After giving notice of the proposed amendment to the public, the owners of riparian land within 1,000 feet of the lease site and the municipal officers of the municipality within which the lease is located. The notice must provide an opportunity to submit written comments on the proposed amendment within 14 days; and~~

~~B. Upon a determination by the commissioner that the amendment is consistent with the findings made under subsection 13 when the lease was approved.~~

Sec. 4. 12 MRSA §6072-A, sub-§8, as amended by PL 2013, c. 301, §3, is further amended to read:

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J. The rules must also require an applicant to provide to the department proof of access to the lease area. If access will be across riparian land, the applicant shall provide to the department the written permission of every riparian owner whose land will be used to access the lease area. The commissioner may adopt rules to add or delete authorization for the holder of an aquaculture lease to grow specific species and to use specific gear on the lease site. A change in authorization is not an adjudicatory proceeding. The rules must provide for notice of proposed changes in gear authorization to ~~the lessee~~, the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. Authorization to add ~~or delete~~ species or gear must be consistent with the findings made under subsection 13 when the lease was approved.

Sec. 5. 12 MRSA §6072-A, sub-§24 is enacted to read:

24. Violation. A person who violates a condition of a lease under this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.

Sec. 6. 12 MRSA §6072-C, sub-§2, as amended by PL 2009, c. 229, §5, is further amended to read:

2. Licensed activities; criteria. 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 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 ~~landowner~~ owner is obtained if the proposed activity is located above the mean low-water mark.

Sec. 7. 12 MRSA §6072-C, sub-§7-A is enacted to read:

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.

Sec. 8. 12 MRSA §6072-C, sub-§10 is enacted to read:

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.

Sec. 9. 12 MRSA §6601, sub-§2-A, as enacted by PL 2007, c. 522, §3, is amended to read:

2-A. Licensed activities; aquaculture. The holder of a commercial shellfish license who is also the holder or authorized representative of a holder of a lease issued under section 6072, 6072-A or 6072-B or a license issued under section 6072-C and personnel who are operating under the authority of such a holder of a commercial shellfish license may remove, possess, transport within the state limits or sell cultured shellfish the holder has removed from the leased area or the licensed gear to a wholesale seafood license holder certified under section 6856. Such a holder of a commercial shellfish license may also sell such shellstock from that license holder's home in the retail trade. A holder of a commercial shellfish license who is also the holder of a lease issued under section 6072 or 6072-A or that holder's authorized representative may sell such shellstock from the

holder's lease site in the retail trade. The department shall establish by rule a means to identify personnel and authorized representatives operating under the authority of such a license holder. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 10. 12 MRSA §6863, first ¶, as enacted by PL 1991, c. 876, §2, is amended to read:

A person may not grow cultchless American oysters in the State unless licensed under this section, except that a person who is the holder of a lease issued under section 6072, 6072-A or 6072-B that authorizes the culture of American oysters or a license issued under section 6072-C that authorizes the culture of American oysters is not required to obtain a cultchless American oyster growers license.