

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 72 - L.D. 106

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

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

Sec. 1. 12 MRSA §6072, sub-§6, ¶A, as amended by PL 1987, c. 453, §1, is further amended to read:

A. Notwithstanding the provisions of Title 5, section 9052, subsection 1, paragraph A, personal notice of the hearing ~~shall be~~ is required to be given only to the lessee and the known riparian owners, the municipal ~~officials~~ officers of the municipality or municipalities in which or adjacent to which the lease is located and any interested parties that have provided a written request for notification.

Sec. 2. 12 MRSA §6072, sub-§6, ¶B, as enacted by PL 1977, c. 661, §5, is amended to read:

B. Under the provisions of Title 5, section 9052, the leasing procedure ~~shall~~ must require notice to the general public. The commissioner may require the applicant to reimburse the department for costs incurred by the department in providing public notice under this paragraph.

Sec. 3. 12 MRSA §6072, sub-§6, ¶C, as amended by PL 1997, c. 138, §5 and PL 2011, c. 657, Pt. W, §5, is further amended to read:

C. The Department of Environmental Protection, ~~the~~ must be notified of all lease applications that involve activities that have a discharge into the waters of the State. The Department of Agriculture, Conservation and Forestry and the Department of Inland Fisheries and Wildlife must be notified of all lease applications.

Sec. 4. 12 MRSA §6072, sub-§11, as amended by PL 2003, c. 247, §7, is further amended to read:

11. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms or public health, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease or any minimum lease maintenance standard adopted pursuant to subsection 13, paragraph A has been

violated, the commissioner may initiate revocation proceedings and revoke the lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. The department shall hold a hearing with public notice prior to revoking any lease.

Sec. 5. 12 MRSA §6072, sub-§12, as amended by PL 2011, c. 93, §3, is further amended to read:

12. Renewal. The commissioner shall renew a lease if:

- A. The commissioner receives, at least ~~90~~ 30 days prior to the expiration of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term;
- B. The lessee has complied with the lease agreement during the term of the lease;
- C. The commissioner determines that renewal of the lease is in the best interest of the State;
- D. Except as provided in subsection 13-A, the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 500 acres; and
- E. The lease is not being held for speculative purposes.

If a person who holds a lease pursuant to this section applies to renew the lease, the lease remains in effect until the commissioner makes a decision on the renewal application. If the renewal is denied, the lease expires 30 days after the date of the commissioner's decision.

When aquaculture has not been routinely or substantially conducted on a lease that is proposed for renewal, the commissioner may renew the lease, as long as the proposed renewal will continue to meet the criteria for approval in subsection 7-A.

A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4. Public notice must be given ~~as required under subsection 6 and a~~ to the entities required to receive notice under subsection 6. A person may provide to the commissioner comments on the proposed lease renewal within 30 days of receipt of notice or within 30 days of publication of the proposed renewal. A hearing must be held if it is requested in writing by 5 persons within the 30 days. The commissioner may review multiple leases concurrently during the lease renewal process.

A lease renewal application must include a nonrefundable application fee of no more than \$1,500, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease.

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

C. The commissioner shall establish by rule the fee for transferring a lease under this subsection, which may not exceed \$5,000, based on the type of aquaculture conducted and the size of the lease. The transferee must pay the fee ~~prior to the execution of the lease~~ at the time application for the transfer is made. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 12 MRSA §6072, sub-§12-C, as enacted by PL 2017, c. 159, §4, is amended to read:

12-C. Expansion of lease. A person who ~~holds~~ has held a lease under this section for at least 2 years from the date the lease was originally executed 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 known riparian owners and to the municipal officers of the municipality or municipalities in which or adjacent to which the lease expansion is proposed. ~~The commissioner applicant~~ 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. 8. 12 MRSA §6072, sub-§13, as amended by PL 2017, c. 159, §5, is further amended to read:

13. Regulations Rules. The commissioner may adopt or amend ~~regulations~~ rules:

- A. Establishing minimum standards for maintaining leases;
- B. For procedures to issue, transfer, review, assign, expand or revoke leases;
- C. For notices and hearings to the extent that those procedures are not established by this section or the Maine Administrative Procedure Act, Title 5, chapter 375;
- D. For regulating the harvest of wild organisms to be cultured on aquaculture leases;
- E. For establishing and revaluing fees and rents related to aquaculture;
- F. For defining application requirements, an application review process and decision criteria;
- G. For adding or deleting authorization for the holder of an aquaculture lease to grow specific species ~~and~~ or to use specific gear on the lease site and for a modification to operations as a result of a change in species or gear authorization. A change in authorization or a resultant modification to operations is not an adjudicatory proceeding. The commissioner shall establish by rule the fee for modifying a lease under this paragraph, which may not exceed \$200. The ~~regulations~~ rules must provide for notice of proposed changes in gear authorization to 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 species or gear must be consistent with the findings made under subsection 7-A when the lease was approved; ~~and~~
- H. For establishing following requirements and procedures;
- I. For establishing fees for services provided by the department to a lease holder if the lease holder requests testing or location-specific studies to ensure the lease holder's products are safe for human consumption. Fees collected pursuant to this paragraph must be deposited into the Shellfish Fund under section 6651; and
- J. For defining seed size or seed management and harvest seasons.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. 12 MRSA §6072, sub-§15, as enacted by PL 1987, c. 453, §1, is repealed.

Sec. 10. 12 MRSA §6072-A, sub-§5, as amended by PL 2003, c. 247, §10, is further amended to read:

5. Notice of application. Upon determining that an application is complete, the commissioner shall provide notice of a limited-purpose lease application to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The applicant shall provide the names and addresses of known riparian landowners within 1,000 feet of the proposed location of the lease. The names and addresses must be taken

from the current property tax roster on file at the local municipal office or with the Department of Administrative and Financial Services, Bureau of Revenue Services for an unorganized territory. The commissioner shall publish a summary of the application in a newspaper of general circulation in the area proposed for a limited-purpose lease. The commissioner may require the applicant to reimburse the department for costs incurred by the department in providing public notice under this subsection. A person may provide, within 30 days of receipt of notice or within 30 days of publication of a limited-purpose lease summary, to the commissioner comments on the proposed limited-purpose lease.

Sec. 11. 12 MRSA §6072-A, sub-§7, as amended by PL 2003, c. 247, §11, is further amended to read:

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing. The commissioner may require the applicant to reimburse the department for costs incurred by the department in providing public notice under this subsection.

Sec. 12. 12 MRSA §6072-A, sub-§8, as amended by PL 2013, c. 509, §4, 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 section 6072, 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 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 species or gear must be consistent with the findings made under subsection 13 when the lease was approved.~~

Sec. 13. 12 MRSA §6072-C, sub-§2, as amended by PL 2017, c. 159, §6, is further amended to read:

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 subsection 2-A and in rules adopted by the commissioner. The Except as provided in subsection 2-C, the license also authorizes unlicensed individuals to assist the license holder in the licensed activities with the written permission only with the direct supervision of the license holder.

Sec. 14. 12 MRSA §6072-C, sub-§2-B is enacted to read:

2-B. Exceptions. Upon request, the commissioner may grant the holder of a limited-purpose aquaculture license an exception to the requirement in subsection 2 that the license holder provide direct supervision of unlicensed individuals assisting the license holder in the licensed activities at the license holder's limited-purpose aquaculture license site. The commissioner may grant exceptions to:

A. A license holder who is also the holder of or has an ownership interest in an entity, including as a shareholder in a corporation, that holds a lease issued pursuant to section 6072, 6072-A or 6072-B;

B. A license holder using specific gear types as specified in rule; or

C. A license holder who has applied for a lease under section 6072 or 6072-A for an area that includes the area authorized by the license holder's existing limited-purpose aquaculture license.

The commissioner may adopt rules to implement this subsection, including, but not limited to, establishing requirements for an application for an exception and the reasons for which an exception may be granted.

Sec. 15. 12 MRSA §6072-C, sub-§2-C is enacted to read:

2-C. Primary assistant. The holder of a limited-purpose aquaculture license may designate one unlicensed individual as a primary assistant. Notwithstanding subsection 2, a primary assistant may conduct the licensed activities without the direct supervision of the license holder. If an individual is designated by the license holder as a primary assistant, the limited-purpose aquaculture license on which the individual is designated a primary assistant counts against the total number of licenses the primary assistant may hold under subsection 2-A, paragraph G. An individual may be the primary assistant on no more than 4 limited-purpose aquaculture licenses.

Sec. 16. 12 MRSA §6072-C, sub-§6, as amended by PL 2009, c. 229, §7, is further amended to read:

6. Fee. The application fee for a resident limited-purpose aquaculture license is \$50 \$100 and \$300 for a nonresident limited-purpose aquaculture license is \$400. The application fee is nonrefundable. All fees collected under this subsection must be deposited in the Aquaculture Research Fund established in section 6081.

Sec. 17. 12 MRSA §6072-C, sub-§8, as amended by PL 2017, c. 159, §6, is further amended to read:

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. The commissioner may adopt rules to limit the period of the year during which license applications may be submitted. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 18. 12 MRSA §6085, sub-§7 is enacted to read:

7. Rules. The commissioner may adopt rules establishing procedures to implement the issuance, renewal and amendment of licenses under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 19. 12 MRSA §6651, sub-§1-A is enacted to read:

1-A. Additional fees to be paid into fund. Any fees collected pursuant to section 6072, subsection 13, paragraph I must be deposited into the Shellfish Fund.

Sec. 20. Appropriations and allocations. The following appropriations and allocations are made.

MARINE RESOURCES, DEPARTMENT OF

Bureau of Policy and Management 0258

Initiative: Provides ongoing allocations for expenditure of funds to develop and manage effective and cost-efficient water quality licensing and monitoring criteria, analyze and evaluate monitoring data, process lease applications and make information about aquaculture available to the public.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
All Other	\$20,000	\$40,000
OTHER SPECIAL REVENUE FUNDS TOTAL	\$20,000	\$40,000

Sec. 21. Effective dates. That section of this Act that amends the Maine Revised Statutes, Title 12, section 6072-C, subsection 6 takes effect January 1, 2022. Those sections of this Act that amend Title 12, section 6072-C, subsection 2 and enact Title 12, section 6072-C, subsection 2-B take effect January 1, 2024.