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Legislative Document

No. 1930

H.P. 1374

House of Representatives, January 8, 2020

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

Submitted by the Department of Marine Resources pursuant to Joint Rule 203.
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 McCREIGHT of Harpswell.

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

2 **Sec. 1. 12 MRSA §6072, sub-§6, ¶C**, as amended by PL 1997, c. 138, §5 and PL
3 2011, c. 657, Pt. W, §5, is further amended to read:

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

8 **Sec. 2. 12 MRSA §6072, sub-§11**, as amended by PL 2003, c. 247, §7, is further
9 amended to read:

10 **11. Monitoring and revocation of leases.** The department shall monitor a lease
11 under this section on an annual basis. If aquaculture has been conducted in a manner
12 substantially injurious to marine organisms or public health, if no substantial aquaculture
13 or research has been conducted over the course of the lease or if any condition of the
14 lease or any minimum lease standard has been violated, the commissioner may initiate
15 revocation proceedings and revoke the lease. A lease revocation is an adjudicatory
16 proceeding under Title 5, chapter 375, subchapter 4. The department shall hold a hearing
17 with public notice prior to revoking any lease.

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

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

21 A. The commissioner receives, at least ~~90~~ 30 days prior to the expiration of a lease,
22 an application for renewal that includes information on the type and amount of
23 aquaculture to be conducted during the new lease term;

24 B. The lessee has complied with the lease agreement during the term of the lease;

25 C. The commissioner determines that renewal of the lease is in the best interest of
26 the State;

27 D. Except as provided in subsection 13-A, the renewal will not cause the lessee to
28 become a tenant of any kind in leases covering an aggregate of more than 500 acres;
29 and

30 E. The lease is not being held for speculative purposes.

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

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

1 A lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.
2 Public notice must be given ~~as required under subsection 6 and a~~ to the known riparian
3 owners, the municipal officials of the municipality or municipalities in which or adjacent
4 to which the lease is located and any interested parties that have provided a written
5 request for notification; under the provisions of Title 5, section 9052, to the general
6 public; and, for leases involving activities that have a discharge, to the Department of
7 Environmental Protection. The Department of Agriculture, Conservation and Forestry
8 and the Department of Inland Fisheries and Wildlife must be notified of all lease renewal
9 applications. A person may provide to the commissioner comments on the proposed
10 lease renewal within 30 days of receipt of notice or within 30 days of publication of the
11 proposed renewal. A hearing must be held if it is requested in writing by 5 persons
12 within the 30 days. The commissioner may review multiple leases concurrently during
13 the lease renewal process.

14 A lease renewal application must include a nonrefundable application fee of no more than
15 \$1,500, the amount to be set by the commissioner depending on the type of aquaculture
16 permitted by the lease.

17 **Sec. 4. 12 MRSA §6072, sub-§12-A, ¶C**, as amended by PL 2009, c. 229, §2, is
18 further amended to read:

19 C. The commissioner shall establish by rule the fee for transferring a lease under this
20 subsection, which may not exceed \$5,000, based on the type of aquaculture
21 conducted and the size of the lease. The transferee must pay the fee ~~prior to the~~
22 ~~execution of the lease at the time application for the transfer is made.~~ Rules adopted
23 pursuant to this paragraph are routine technical rules as defined in Title 5, chapter
24 375, subchapter 2-A.

25 **Sec. 5. 12 MRSA §6072, sub-§12-C**, as enacted by PL 2017, c. 159, §4, is
26 amended to read:

27 **12-C. Expansion of lease.** A person who ~~holds~~ has held a lease under this section
28 for at least 2 years from the date the lease was executed may apply to the commissioner
29 to expand the contiguous area of the lease by up to 25%, but may not expand by more
30 than 4 acres, once during the duration of the term of the lease pursuant to this subsection.

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

- 33 (1) Describing the location of the proposed lease expansion area by coordinates
34 or metes and bounds;
- 35 (2) Characterizing the physical and ecological impact of the lease expansion on
36 existing uses of the site and any adverse effects on existing uses of the area, as
37 defined by rules adopted by the commissioner;
- 38 (3) Including the written permission of every riparian owner whose land to the
39 low-water mark will be used;
- 40 (4) Including a map of the lease area and its proposed expansion, and its
41 adjoining waters and shorelands, with the names and addresses of the known
42 riparian owners as listed in the municipal tax records ~~and documentation showing~~

1 that the lease holder has informed each of those riparian owners of the
2 application and the opportunity for comment as provided in paragraph B;

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

7 (6) Including a nonrefundable application fee of at least \$100, but not more than
8 \$2,000, the amount to be set by the commissioner depending on the proposed
9 acreage, type of aquaculture proposed and complexity of the expansion
10 application.

11 B. The commissioner shall review the application. When the commissioner has
12 determined that the application for the lease expansion is complete, the commissioner
13 shall provide notice to the known riparian owners and to the municipal officers of the
14 municipality or municipalities in which or adjacent to which the lease expansion is
15 proposed. The ~~commissioner~~ applicant shall publish in a newspaper of general
16 circulation in the municipality or municipalities in which the lease expansion is
17 proposed a summary of the application and notice of the opportunity to submit
18 comments regarding the proposed lease expansion to the commissioner during a
19 period of at least 30 days following the date of publication of the lease expansion
20 summary.

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

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

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

29 **Sec. 6. 12 MRSA §6072, sub-§13**, as amended by PL 2017, c. 159, §5, is further
30 amended to read:

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

32 A. Establishing minimum standards for maintaining leases;

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

34 C. For notices and hearings to the extent that those procedures are not established by
35 this section or the Maine Administrative Procedure Act, Title 5, chapter 375;

36 D. For regulating the harvest of wild organisms to be cultured on aquaculture leases;

37 E. For establishing and revaluing fees and rents related to aquaculture. In addition to
38 fees authorized under this section, the commissioner may establish fees for services
39 provided by the department to lease holders if they request testing or location-specific
40 studies to ensure their products are safe for human consumption;

1 F. For defining application requirements, an application review process and decision
2 criteria;

3 G. For modifying operations or adding or deleting authorization for the holder of an
4 aquaculture lease to grow specific species and or to use specific gear on the lease site.
5 ~~A change in authorization is~~ These changes are not an adjudicatory ~~proceeding~~
6 ~~proceedings.~~ The commissioner shall establish by rule the fee for modifying a lease
7 under this paragraph, which may not exceed \$200. The ~~regulations~~ rules must
8 provide for notice of proposed changes in gear authorization to the public, riparian
9 landowners and the municipality in which the lease is located and an opportunity to
10 submit written comments on the proposal. Authorization to add species or gear must
11 be consistent with the findings made under subsection 7-A when the lease was
12 approved; and

13 H. For establishing following requirements and procedures.

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

16 **Sec. 7. 12 MRSA §6072-A, sub-§8**, as amended by PL 2013, c. 509, §4, is
17 further amended to read:

18 **8. Rules; general and lease application.** The commissioner may adopt rules to
19 implement the provisions of this section. Within 180 days of the effective date of this
20 section, the commissioner shall adopt rules regarding a limited-purpose lease application.
21 The rules must require an applicant to, at a minimum, meet the requirements of section
22 6072, subsection 2, paragraph E and subsection 4, paragraphs A, B, C, E, F, G and J. The
23 rules must also require an applicant to provide to the department proof of access to the
24 lease area. If access will be across riparian land, the applicant shall provide to the
25 department the written permission of every riparian owner whose land will be used to
26 access the lease area. ~~The commissioner may adopt rules to add or delete authorization~~
27 ~~for the holder of an aquaculture lease to grow specific species and to use specific gear on~~
28 ~~the lease site. A change in authorization is not an adjudicatory proceeding. The rules~~
29 ~~must provide for notice of proposed changes in gear authorization to the public, riparian~~
30 ~~landowners and the municipality in which the lease is located and an opportunity to~~
31 ~~submit written comments on the proposal. Authorization to add species or gear must be~~
32 ~~consistent with the findings made under subsection 13 when the lease was approved.~~

33 **Sec. 8. 12 MRSA §6072-C, sub-§2**, as amended by PL 2017, c. 159, §6, is
34 further amended to read:

35 **2. Licensed activities.** The holder of a limited-purpose aquaculture license may
36 place marine organisms on the ocean bottom without gear or utilize approved aquaculture
37 gear in a site in the coastal waters of the State to engage in certain aquaculture activities
38 that meet the criteria established in subsection 2-A and in rules adopted by the
39 commissioner. The license also authorizes unlicensed individuals to assist the license
40 holder in the licensed activities ~~with the written permission~~ under the direct supervision
41 of the license holder.

- 1 12. Raise the fee for a limited-purpose aquaculture license from \$50 to \$100 for a
- 2 resident and from \$300 to \$400 for a nonresident.