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Public Law
124th Legislature
First Regular Session

Chapter 229
H.P. 977 - L.D. 1398

An Act To Amend the Aquaculture Laws

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

Sec. 1. 12 MRSA §6072, sub-§11-A is enacted to read:

11-A. Lease assignment. The commissioner shall assign leases in accordance with this subsection.

A. When a lease under this section has been terminated by the lessee or has been revoked by the commissioner and all appeals have been exhausted, the commissioner may lease the same site on the same terms and conditions to a new lessee for the amount of time remaining in the term of the previous lease, subject to the requirements of this section. A lease that has been terminated or revoked may be assigned pursuant to this subsection at any time before its term expires. A lease assignment pursuant to this subsection is not an adjudicatory proceeding.

B. Before assigning a lease pursuant to this subsection, the commissioner shall give notice to the public of the opportunity to submit proposals to assume and operate the lease. The commissioner shall determine that a proposal is eligible for consideration if:

(1) The application is complete, using forms provided by the commissioner;

(2) The change in lessee would not violate any of the standards in subsection 7-A;

(3) The assignment is not intended to circumvent the intent of subsection 8;

(4) The assignment is not for speculative purposes; and

(5) Except as provided in subsection 13-A, the assignment will not cause the assignee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.

C. The commissioner shall consider the eligible proposals under paragraph B and shall either:

(1) Select for assignment the proposal that is best suited to the lease site and in the best interests of the State;

(2) Declare all proposals unsuitable and solicit new proposals; or

(3) Suspend the assignment process for the lease site in question.

D. After a proposal is selected pursuant to paragraph C, but before the lease is assigned, the commissioner shall give notice of the pending assignment 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 lease assignment within 14 days. The commissioner may decline to assign the lease and may select another proposal for assignment or proceed as described in paragraph C, subparagraph (2) or (3).

E. A decision by the commissioner to assign a lease or to decline to assign a lease to an applicant whose proposal was selected pursuant to paragraph C must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner to assign or not to assign a lease is a final decision.

F. The commissioner shall establish by rule the fee for assigning 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 assignee must pay the fee prior to the execution of the lease. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 2. 12 MRS §6072, sub-§12-A, as amended by PL 2005, c. 535, §3, is further amended to read:

12-A. Transferability. A lease under this section may be transferred to another person for the remaining portion of its term subject to the following conditions in this subsection. A lease transfer is not an adjudicatory proceeding.

A. Lease transfers shall be subject to the same procedural requirements as initial applications, except that a public hearing is not mandatory unless requested in writing by 5 persons. An application to transfer a lease pursuant to this subsection must be made on forms provided by the commissioner. When the commissioner determines that the application is complete, the commissioner shall give notice of the proposed transfer 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 lease transfer within 14 days.

B. The commissioner may grant lease transfers pursuant to this subsection if the commissioner determines that:

(1) The change in lessee does not violate any of the standards in subsection 7;

(2) The transfer is not intended to circumvent the intent of subsection 8;

(3) The transfer is not for speculative purposes; and

(4) Except as provided in subsection 13-A, the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 500 acres.

A decision by the commissioner on an application to transfer a lease must be rendered in writing and must include findings of fact and conclusions of law. The decision by the commissioner on the transfer application is a final decision.

C. A lease transfer application must include a nonrefundable application fee of not more than \$5,000, the amount to be set by the commissioner depending on the type of aquaculture permitted by the lease. 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. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 3. 12 MRSA §6072, sub-§13, ¶B, as amended by PL 1987, c. 453, §1, is further amended to read:

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

Sec. 4. 12 MRSA §6072-A, sub-§4, as enacted by PL 1997, c. 231, §6, is amended to read:

4. Size limitation. A limited-purpose lease may not be issued for an area in excess of 2 4 acres.

Sec. 5. 12 MRSA §6072-C, sub-§2, as amended by PL 2003, c. 247, §16, is further amended to read:

2. Licensed activities; criteria. The holder of a limited-purpose aquaculture license may utilize approved aquaculture gear in a site in the coastal waters of the State ~~below the mean low-water mark~~ 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 ~~the following criteria are met:~~

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; and

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 is obtained if the proposed activity is located above the mean low-water mark.

Sec. 6. 12 MRSA §6072-C, sub-§3, as amended by PL 2007, c. 212, §2, is further amended to read:

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 ~~and is a resident license.~~

Sec. 7. 12 MRSA §6072-C, sub-§6, as enacted by PL 1999, c. 567, §2, is amended to read:

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.

Sec. 8. 12 MRSA §6073-D is enacted to read:

§ 6073-D. Season and size exemption

A person who is in possession of a marine organism raised by means of aquaculture and lawfully obtained under the laws of the State is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement, except that this section does not apply to the requirements for lobsters, sturgeon and striped bass. This exemption applies to aquaculture products that do not meet the legal size or season requirements for wild-caught marine organisms of the same species.

The person possessing the marine organism must maintain sufficient documentation to prove the aquacultural origin of the marine organism, including, but not limited to, documents indicating the point of origin, quantity and dates of production or purchase of all cultured marine organisms exempted by this section, and the holder must present the documentation for inspection to department personnel upon request. A consumer in possession of such a marine organism may present a valid sales receipt to satisfy this requirement. It is prima facie evidence of possession of a marine organism in violation of the law if the person possessing the marine organism cannot present sufficient evidence to prove its aquacultural origin.

This section does not exempt the possessor of the marine organism from any requirement to hold a lease or license pursuant to section 6072, 6072-A, 6072-B, 6072-C or 6085 to engage in the culture of marine organisms.

Sec. 9. 12 MRSA §6079, as amended by PL 1997, c. 231, §7, is repealed.

Sec. 10. 12 MRSA §6083 is enacted to read:

§ 6083. Lease option

1. Lease option. A person may apply for a lease option that conveys the right to file an application for an aquaculture lease under section 6072, 6072-A or 6072-B for a particular area of the submerged lands of the State and for a defined period of time. The department may not accept an application for an aquaculture lease pursuant to section 6072, 6072-A or 6072-B or an application for a limited-purpose aquaculture license pursuant to section 6072-C in an area that is under a lease option, except as described in subsection 2.

2. Other claims of preference. A lease option under this section does not supersede the provisions for application preference in section 6072, subsection 8 and section 6072-A, subsection 12. Competing aquaculture lease applications from persons claiming preference under section 6072, subsection 8 or section 6072-A, subsection 12 must be evaluated by the department to determine if the claim of preference is valid and, if it is found to be valid, the holder of the lease option may cancel the lease option and receive a fee refund prorated for the remainder of the term of the lease option.

3. Issuance criteria. The applicant for a lease option under this section must demonstrate that the site is being assessed in good faith for its suitability for aquaculture and that there is a reasonable likelihood that an application for an aquaculture lease will be filed during the term of the lease option. The area proposed for lease option may not contain an existing aquaculture lease or license or include an area that is part of an aquaculture lease or license application under consideration by the department.

4. Fee. The fee for issuance of a lease option under this section may be up to \$500 for the first acre plus up to \$50 for each additional acre, the amount to be established in rules adopted by the commissioner. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 12 MRSA §6084 is enacted to read:

§ 6084. Nonpayment of aquaculture lease fees

If a holder of an aquaculture lease or license under this subchapter fails to pay any related fees or charges, the commissioner may refuse to renew or issue any marine resources license or permit to the holder of the aquaculture lease or license.

Sec. 12. 12 MRSA §6085 is enacted to read:

§ 6085. Marine organism aquaculture license

1. License required. The commissioner may require a license for aquaculture of marine organisms in facilities that are not located in the coastal waters of the State but are located in the State.

2. Licensed activities. The holder of a license under this section may possess marine organisms the holder has raised by means of aquaculture. The holder of such a license is exempt from any requirement regarding the time of taking or possessing, minimum or maximum length or other minimum or maximum size requirement for any marine organism the holder has raised by means of aquaculture.

3. Permit denial. The commissioner may refuse to issue a license under this section if the commissioner finds that the aquaculture activity presents an unreasonable risk to indigenous marine life or its environment. In determining whether or not to refuse to issue a license, the commissioner shall consider factors, including, but not limited to:

- A. Risk of accidental or intentional introduction of marine organisms or marine organism products into the coastal waters of the State;
- B. Risk of the introduction or spread of disease within the State; and
- C. Interference with the enforcement of possession, size or season limits for wild marine organisms.

4. Monitoring and revocation. The commissioner shall monitor licensed facilities under this section on an annual basis. If the commissioner determines following an annual review or at any other time that the licensed aquaculture activity presents an unreasonable risk to indigenous marine life or its environment, the commissioner may revoke the license after the licensee has been given an opportunity for a hearing before the department.

5. Reporting. The commissioner may require the holder of a license under this section to file periodic reports regarding the aquaculture practices and production of the facility. Information obtained pursuant to this provision is considered fisheries statistics for the purposes of section 6173, except that information about marine organism health reported pursuant to section 6071 may not be considered fisheries statistics.

6. Fee. The commissioner may charge a fee for a license under this section not to exceed \$1,000, the amount to be established in rules adopted by the commissioner depending on the type and amount of aquaculture. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 13. 12 MRSA §6086 is enacted to read:

§ 6086. Abandoned aquaculture equipment and stock

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abandoned aquaculture equipment" or "equipment" means any equipment associated with the operation of an aquaculture lease or license pursuant to section 6072, 6072-A, 6072-B or 6072-C that has been left by the aquaculture lease or license holder in coastal waters without intention of removal. "Abandoned aquaculture equipment" includes, but is not limited to, rafts, pens, barges, skiffs, nets, lines, mooring systems, cages, trays, racks, upwellers and other equipment used in the operation of an aquaculture site.

B. "Abandoned aquaculture stock" or "stock" means cultured marine organisms, including, but not limited to, fish, shellfish, sea urchins and algae, that have been left by the owner in coastal waters without intention of removal.

2. Eligibility. Abandoned aquaculture equipment or abandoned aquaculture stock is subject to removal under this section only if:

A. The aquaculture lease or license holder has indicated in writing to the department that the holder wishes to terminate the aquaculture lease or license with which the abandoned equipment or stock is associated; the department has revoked the lease pursuant to section 6072, subsection 11 or section 6072-A, subsection 22; or the term of the lease or license has expired;

B. The equipment or stock remains in the area of the lease or license site and the equipment or stock is not legally permitted to remain by another authority, such as a municipal mooring permit; and

C. The aquaculture lease or license holder has not entered into an agreement with the department to accomplish timely removal of the equipment or stock.

3. Responsibility of the department. The department's duties with respect to abandoned aquaculture equipment and abandoned aquaculture stock are as set out in this subsection.

A. The department shall investigate reports of abandoned aquaculture equipment or abandoned aquaculture stock and review terminated, expired or revoked aquaculture leases and licenses to determine if there is abandoned aquaculture equipment or abandoned aquaculture stock and give notice to the aquaculture lease or license holder. The department shall also give notice to any person who has declared to the department, in writing, a property interest in the equipment or stock and to any person the lease or license holder has, in writing, identified as having a property interest in the equipment or stock. The notice must require the lease or license holder and anyone with a property interest to respond within 15 days and to remove the equipment or stock from the coastal waters within 60 days of notification by the department or, if the equipment or stock is icebound, within 60 days of ice-out in the body of water where the equipment or stock is located. If the persons to whom the department has given notice cannot be contacted or do not respond to the notice and remove the equipment or stock within the time period specified, the department may initiate removal of the equipment or stock.

B. The department may authorize a 3rd party to remove abandoned aquaculture equipment or abandoned aquaculture stock if the department is satisfied that the work will be completed.

C. Notwithstanding the time periods for removal by a lease or license holder or person with a property interest specified in paragraph A, if the department determines at any time that abandoned aquaculture equipment or abandoned aquaculture stock is a human health or safety hazard or is an immediate threat to the marine environment, the department may immediately remove the equipment or stock from the coastal waters.

D. If the department removes abandoned aquaculture equipment or abandoned aquaculture stock from coastal waters under this subsection, the department may sell the equipment or stock. Any proceeds from the sale must first be applied to the costs to the State directly related to the expense of removal of the equipment or stock. Any money that remains may be applied to any liens against the equipment or stock. Money that finally remains must accrue to the Aquaculture Management Fund established under section 6072-D.

E. Abandoned aquaculture equipment or abandoned aquaculture stock located on intertidal land may not be removed by the department without the permission of the landowner unless the department determines that the equipment or stock is a human health or safety hazard or is an immediate threat to the marine environment.

F. The department may adopt rules governing abandoned aquaculture equipment and abandoned aquaculture stock, including, but not limited to, rules requiring the disclosure of property interests in abandoned aquaculture equipment and abandoned aquaculture stock. Rules adopted under this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Civil action. If the State is not compensated for removal costs under the provisions of subsection 3, the State shall first attempt to recover the removal costs by claiming these expenses against any bond the aquaculture lease or license holder held during the term of the aquaculture lease or license. If the department is unsuccessful in recovering the removal costs in that manner, the State may bring a civil action against the owner of the equipment or stock to cover any cost of removal of the equipment or stock from coastal waters. The court in its discretion may award an additional 50% of the cost of removal. The penalty is payable to the Aquaculture Management Fund established under section 6072-D.

Sec. 14. 12 MRSA §6306, as amended by PL 1989, c. 348, §4, is further amended to read:

§ 6306. Consent to inspection; violation

1. Consent to inspection. Any person who signs an application for a license or aquaculture lease or receives a license or aquaculture lease under this Part has a duty to submit to inspection and search for violations related to the licensed activities by a marine patrol officer under the following conditions.

A. Watercraft or vehicles and the equipment located on watercraft or vehicles ~~which are~~ used primarily in a trade or business requiring a license or aquaculture lease under this Part may be searched or inspected at any time.

B. Any other location where activities subject to this Part are conducted may be inspected or searched during the hours when those activities occur.

C. A location specified in paragraph B may be inspected at any time if a marine patrol officer has a reasonable suspicion of a violation of this Part.

D. No residential dwelling may be searched without a search warrant unless otherwise allowed by law.

2. Seizure of evidence. Any person who signs an application for a license or aquaculture lease or receives a license or aquaculture lease under this Part has a duty to permit seizure of evidence of a violation of marine resources laws found during an inspection or search.

3. Refusal. Refusal to permit inspection or seizure ~~shall be~~ is a basis for suspension of any or all licenses under this chapter or revocation of aquaculture leases.

Sec. 15. 12 MRSA §6673, sub-§1-A, as enacted by PL 2003, c. 660, Pt. A, §21, is amended to read:

1-A. Application. A municipality shall review an application for a municipal shellfish aquaculture permit on a form supplied by the municipality. The municipality may charge an application fee that reflects the costs of processing an application. The municipality shall publish a summary of the application in a newspaper of general circulation in the area that would be affected by the permit. A person may provide comments to the municipality on the proposed permit within 30 days of publication of the summary.

Prior to issuing a municipal shellfish aquaculture permit, a municipality shall hold a public hearing if requested in writing by 5 or more persons. The public hearing must be held in accordance with procedures established in ordinances adopted in subsection 3.

Sec. 16. 12 MRSA §6673, sub-§2-A, ¶B, as enacted by PL 2003, c. 660, Pt. A, §21, is amended to read:

B. The permit will not cause the total area under ~~the permit~~ all municipal shellfish aquaculture permits in the municipality to exceed 1/4 of the entire municipal intertidal zone that is open to the taking of shellfish.

Sec. 17. 12 MRSA §6673, sub-§3, as enacted by PL 2003, c. 660, Pt. A, §21, is amended to read:

3. Municipal shellfish aquaculture permit. Prior to issuing a municipal shellfish aquaculture permit pursuant to this section, a municipality shall adopt ordinances that establish procedures for consideration of permit applications under the decision criteria in subsection 2-A, including but not limited to provisions for a public hearing process. Additionally, the municipality shall adopt ordinances designed to prevent speculative holding of permits. An ordinance proposed by a municipality under this subsection must be approved in writing by the commissioner prior to its adoption.

When approved, a municipal shellfish aquaculture permit must be forwarded to the commissioner. The municipality may charge a municipal shellfish aquaculture permit fee not to exceed \$50 \$100 per acre annually. The municipality may establish conditions and limits on the permit. A municipal shellfish aquaculture permit may be granted for a period of up to 10 years and is renewable upon application by the permittee. The municipality shall monitor and enforce the terms and conditions of a permit on an annual basis and submit an annual report on permit activities to the department. Such information is considered landings data.

Sec. 18. 12 MRSA §6674, amended by PL 2003, c. 660, Pt. A, §22, is further amended to read:

§ 6674. Interference with municipal shellfish aquaculture permit

A person may not knowingly interfere with the ability of a person who holds a municipal shellfish aquaculture permit from carrying out the privileges granted to the permittee under that permit. Except for the permittee, a person may not take shellfish ~~in the intertidal zone~~ in an area that is included in a municipal shellfish aquaculture permit. A person who violates this section commits a civil violation for which a fine of not less than \$100 nor more than \$500 may be adjudged.

Sec. 19. 12 MRSA §6808, sub-§4, as enacted by PL 2001, c. 186, §1, is amended to read:

4. Exemption. Notwithstanding subsection 1, a license is not required to fish for, take, possess or transport green crabs for personal use. A municipality or the holder of an aquaculture lease or license that harvests green crabs under authorization from the department is not required to have a commercial green crab license as long as the harvesting of green crabs occurs under supervision of the municipality or the holder of an aquaculture lease or license.

Effective September 12, 2009