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Legislative Document

No. 337

H.P. 270

House of Representatives, February 7, 2011

An Act To Make Technical Changes to Aquaculture Laws

Submitted by the Department of Marine Resources pursuant to Joint Rule 204. Reference to the Committee on Marine Resources suggested and ordered printed.

Heath & Fuit

HEATHER J.R. PRIEST Clerk

Presented by Representative MacDONALD of Boothbay. Cosponsored by Representatives: KRUGER of Thomaston, MAZUREK of Rockland.

1	Be it enacted by the People of the State of Maine as follows:
2 3	Sec. 1. 12 MRSA §6072, sub-§8, as amended by PL 1997, c. 231, §4, is further amended to read:
4 5	8. Preference. Except as provided in subsection 8 A, if <u>If</u> more than one person applies to lease an area, preference must be given as follows:
6 7 8 9	A. First, to the department <u>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;</u>
10 11	B. Second, to the riparian owner of the intertidal zone within the leased area <u>department;</u>
12 13 14	C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area the riparian owner of the intertidal zone in which the leased area is located; and
15 16 17	D. Fourth, to the riparian owner within 100 feet of leased coastal waters. a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and
18	E. Fifth, to the riparian owner within 100 feet of leased coastal waters.
19 20	Sec. 2. 12 MRSA §6072, sub-§8-A, as enacted by PL 1997, c. 231, §5, is repealed.
21 22	Sec. 3. 12 MRSA §6072, sub-§12, as amended by PL 2005, c. 535, §2, is further amended to read:
23	12. Renewal. The commissioner shall renew a lease if:
24 25 26	A. The commissioner receives, at least 90 days prior to the termination 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;
27	B. The lessee has complied with the lease agreement during the term of the lease;
28 29	C. The commissioner determines that renewal of the lease is in the best interest of the State;
30 31 32	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
33	E. The lease is not being held for speculative purposes.
34 35 36 37	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.

1 When aquaculture has not been routinely or substantially conducted on a lease that is 2 proposed for renewal, the commissioner may renew the lease, as long as the proposed 3 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 hearing must be held if it is requested in writing by 5 persons. The commissioner may review multiple leases concurrently during the lease renewal process.

8 A lease renewal application must include a nonrefundable application fee of no more than 9 \$1,500, the amount to be set by the commissioner depending on the type of aquaculture 10 permitted by the lease.

- 11 Sec. 4. 12 MRSA §6072, sub-§12-B, as enacted by PL 2005, c. 92, §2, is 12 repealed.
- 13 Sec. 5. 12 MRSA §6072-A, sub-§18, as enacted by PL 1997, c. 231, §6, is 14 amended to read:

15 18. Scientific lease renewal. A limited-purpose lease for scientific research may be 16 renewed. The commissioner must hold a public hearing before deciding upon the request 17 for renewal. A scientific research lease renewal is an adjudicatory proceeding under Title 18 5, chapter 375, subchapter 4, but a public hearing is not mandatory unless it is requested 19 in writing by 5 or more persons. The commissioner may review multiple leases 20 concurrently during the lease renewal process. The commissioner shall renew a 21 limited-purpose lease for scientific research unless the commissioner finds that:

- A. The lease holder has not complied with the terms of the limited-purpose lease;
- 23 B. Research has not been conducted during the term of the lease; or
- 24 C. It is not in the best interest of the State to renew the limited-purpose lease.

25 Sec. 6. 12 MRSA §6072-A, sub-§20, as enacted by PL 1997, c. 231, §6, is 26 amended to read:

27 **20.** Extension of commercial lease. If a person who holds a limited-purpose lease 28 for commercial aquaculture research and development submits a completed an application under section 6072 for that lease area or a portion of that area before the 29 30 expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect 31 until the commissioner makes a decision. If the commissioner grants that person a lease 32 under section 6072, that person's limited-purpose lease remains in effect until the 33 34 effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect 35 36 until 30 days after the commissioner's decision.

37 Sec. 7. 12 MRSA §6072-B, sub-§7, as enacted by PL 1997, c. 231, §6, is
38 amended to read:

1 7. Extension of emergency aquaculture lease. If a person who holds an emergency 2 aquaculture lease submits an application under section 6072 or 6072-A for all or a portion 3 of that lease area within 60 days of being granted before the emergency aquaculture lease expires, and if the commissioner's decision under section 6072 or 6072-A occurs after the 4 expiration of that emergency aquaculture lease, the emergency aquaculture lease remains 5 6 in effect until the commissioner makes a decision. If the commissioner grants that person 7 a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the 8 9 commissioner denies that person a lease under section 6072 or 6072-A, that person's 10 emergency aquaculture lease remains in effect until 30 days after the commissioner's 11 decision.

SUMMARY

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This bill makes the following changes to the aquaculture statutes.

14 1. It repeals the Maine Revised Statutes, Title 12, section 6072, subsection 8-A, 15 regarding preference for limited-purpose lease areas, and integrates the preference for 16 limited-purpose leaseholders into the list of preferences in Title 12, section 6072, 17 subsection 8. It also makes clear that the standard lease can be for the same area or a 18 portion of the same area covered by the experimental lease.

It removes the requirement that the Commissioner of Marine Resources hold a
public hearing before deciding whether to renew a limited-purpose lease for scientific
research and instead provides for a hearing at the commissioner's option or at the request
of 5 or more people.

3. It combines the research and aquaculture lease renewal provisions in a single subsection and makes the renewal requirements consistent among the various types of aquaculture leases. It provides that submitting a renewal application to the Department of Marine Resources is sufficient to extend the existing lease until a decision is reached on the renewal. It eliminates the confusion in the existing language about whether the application first has to be reviewed by the department and found to be complete in order to trigger this lease extension.

30 4. It makes it clear that simply submitting an application for a standard lease under 31 Title 12, section 6072 for an area or a portion of an area already covered by a limited-purpose lease before the limited-purpose lease expires is sufficient to extend the 32 limited-purpose lease pending a decision on the new application. It eliminates the 33 confusion in the existing language about whether the application has to be reviewed by 34 35 the department and found to be complete in order to trigger this lease extension. The bill also makes it clear that the standard lease can be for the same area or for a portion of the 36 37 same area already covered by the limited-purpose lease.