

MAINE STATE LEGISLATURE

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**128th Maine State Legislature
Committee Activity**

Committee: Marine Resources

LD: 1438

Title: An Act To Improve the Aquaculture Leasing and Licensing Laws

Public Hearing(s): 05/01/17 10:00 AM

Work Session(s): 05/03/17 10:00 AM
05/10/17 2:00 PM

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Committee Report(s): OTP-AM

Committee History: 5/10/2017 10:14:54 AM Work Session Held
5/10/2017 10:15:05 AM Voted



128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1438

H.P. 993

House of Representatives, April 13, 2017

An Act To Improve the Aquaculture Leasing and Licensing Laws

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative DEVIN of Newcastle.

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

2 **Sec. 1. 12 MRSA §6052, sub-§3**, as amended by PL 2003, c. 660, Pt. A, §2, is
3 further amended to read:

4 **3. Marketing.** ~~Except for aquaculture, serve~~ Serve as the primary state agency
5 providing promotional and marketing assistance to the commercial fishing industries,
6 including assisting in marketing seafood, stimulating of consumer interest in and
7 consumption of seafood, increasing the sales of seafood domestically and abroad,
8 supporting and expanding existing markets and developing new markets for traditional
9 and underutilized species;

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

12 A. A lease ~~shall~~ may not exceed a term of ~~10~~ 20 years;

13 **Sec. 3. 12 MRSA §6072, sub-§8**, as amended by PL 2011, c. 93, §1, is further
14 amended to read:

15 **8. Preference.** If more than one person applies to lease an area, preference must be
16 given as follows:

17 A. First, to the person who holds a lease for the area or a portion of the area under
18 section 6072-A and who submitted an application for a lease under this section for
19 the area or a portion of the area before the lease under section 6072-A expired;

20 A-1. Second, to the person who holds a license for the area or a portion of the area
21 under section 6072-C and who submitted an application for a lease under this section
22 for the area or a portion of the area before the license under section 6072-C expired;

23 B. ~~Second~~ Third, to the department;

24 C. ~~Third~~ Fourth, to the riparian owner of the intertidal zone in which the leased area
25 is located;

26 D. ~~Fourth~~ Fifth, to a person who fishes commercially and who has traditionally
27 fished in or near the proposed lease area; and

28 E. ~~Fifth~~ Sixth, to the riparian owner within 100 feet of leased coastal waters.

29 **Sec. 4. 12 MRSA §6072, sub-§12-C** is enacted to read:

30 **12-C. Expansion of lease.** A person who holds a lease under this section may apply
31 to the commissioner to expand the contiguous area of the lease by up to 10% once during
32 the duration of the term of the lease pursuant to this subsection.

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

35 (1) Describing the location of the proposed lease expansion area by coordinates
36 or metes and bounds;

1 (2) Characterizing the physical and ecological impact of the lease expansion on
2 existing uses of the site and any adverse effects on existing uses of the area, as
3 defined by rules adopted by the commissioner;

4 (3) Including the written permission of every riparian owner whose land to the
5 low-water mark will be used;

6 (4) Including a map of the lease area and its proposed expansion, and its
7 adjoining waters and shorelands, with the names and addresses of the known
8 riparian owners as listed in the municipal tax records and a statement from each
9 of those riparian owners that the owner has no objection to the proposed lease
10 expansion;

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

15 (6) Including a nonrefundable application fee of at least \$100, but not more than
16 \$2,000, the amount to be set by the commissioner depending on the proposed
17 acreage, type of aquaculture proposed and complexity of the expansion
18 application.

19 B. The commissioner shall review the application. When the commissioner has
20 determined that the application for the lease expansion is complete, the commissioner
21 shall provide notice to the municipal officers of the municipality or municipalities in
22 which or adjacent to which the lease expansion is proposed. The commissioner shall
23 publish a summary of the application in a newspaper of general circulation in the
24 municipality in which the lease expansion is proposed. A person may provide, within
25 30 days of receipt of notice that the application is complete or within 30 days of
26 publication of a lease expansion summary, comments to the commissioner on the
27 proposed lease expansion.

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

31 D. If the commissioner receives any comments within 30 days of receipt of notice
32 that the application is complete or within 30 days of publication of the lease
33 expansion summary pursuant to paragraph B objecting to the lease expansion, the
34 commissioner shall deny the request for the lease expansion.

35 E. If the commissioner does not receive any comments within 30 days of receipt of
36 notice that the application is complete or within 30 days of publication of the lease
37 expansion summary pursuant to paragraph B objecting to the lease expansion, and if
38 the commissioner determines that the lease expansion will not unreasonably interfere
39 with significant wildlife habitat and marine habitat or with the ability of the lease site
40 and surrounding marine and upland areas to support existing ecologically significant
41 flora and fauna, the commissioner may approve the request for the lease expansion.

42 **Sec. 5. 12 MRSA §6072, sub-§13, ¶B,** as amended by PL 2009, c. 229, §3, is
43 further amended to read:

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

2 **Sec. 6. 12 MRSA §6072-C**, as amended by PL 2013, c. 509, §§6 to 8, is further
3 amended to read:

4 **§6072-C. Limited-purpose aquaculture license**

5 **1. License required.** A person may not engage in the activities authorized under
6 this section without a current limited-purpose aquaculture license or a lease issued under
7 this Part authorizing the activities.

8 **2. Licensed activities.** The holder of a limited-purpose aquaculture license may
9 place marine organisms on the ocean bottom without gear or utilize approved aquaculture
10 gear in a site in the coastal waters of the State to engage in certain aquaculture activities
11 that meet the criteria established in ~~this subsection 2-A~~ and in rules adopted by the
12 commissioner. The license also authorizes unlicensed individuals to assist the license
13 holder in the licensed activities with the written permission of the license holder. ~~The~~
14 ~~commissioner, or qualified professional department staff designated in writing by the~~
15 ~~commissioner, may issue a limited purpose aquaculture license for certain aquaculture~~
16 ~~activities if:~~

17 ~~A. The proposed activity generates no discharge into coastal waters;~~

18 ~~B. The applicant proposes to utilize aquaculture gear and markings approved by the~~
19 ~~commissioner in rules adopted pursuant to subsection 8;~~

20 ~~C. The gear, excluding mooring equipment, does not cover more than 400 square~~
21 ~~feet of area and the gear does not present an unreasonable impediment to safe~~
22 ~~navigation;~~

23 ~~D. The proposed activity does not unreasonably interfere with the ingress and egress~~
24 ~~of riparian owners;~~

25 ~~E. The proposed activity does not unreasonably interfere with fishing or other uses of~~
26 ~~the area, taking into consideration the number and density of aquaculture leases and~~
27 ~~licensed aquaculture activities in that area;~~

28 ~~F. The applicant holds no more than 3 other limited purpose aquaculture licenses~~
29 ~~issued under this section; and~~

30 ~~G. The consent of the riparian owner is obtained if the proposed activity is located~~
31 ~~above the mean low water mark.~~

32 **2-A. Criteria.** The commissioner, or qualified professional department staff
33 designated in writing by the commissioner, may issue a limited-purpose aquaculture
34 license for certain aquaculture activities if:

35 A. The proposed activity generates no discharge into coastal waters;

36 B. The applicant proposes to use aquaculture gear and markings approved by the
37 commissioner in rules adopted pursuant to subsection 8;

1 C. The gear, excluding mooring equipment, does not cover more than 400 square
2 feet of area and the gear does not present an unreasonable impediment to safe
3 navigation;

4 D. The proposed activity does not unreasonably interfere with the ingress and egress
5 of riparian owners;

6 E. The proposed activity does not unreasonably interfere with fishing or other uses of
7 the area, taking into consideration the number and density of aquaculture leases and
8 licensed aquaculture activities in that area;

9 F. The proposed location, species and activity do not present a risk to public health;

10 G. The applicant holds no more than 3 other limited-purpose aquaculture licenses
11 issued under this section; and

12 H. The consent of the riparian owner is obtained if the proposed activity is located
13 above the mean low-water mark.

14 **3. Eligibility.** A limited-purpose aquaculture license may be issued only to an
15 individual or to a municipal shellfish management committee established pursuant to
16 section 6671 that has met any requirements established under subsection 3-A.

17 **3-A. Educational courses.** Prior to the issuance or renewal of a limited-purpose
18 aquaculture license, the commissioner may require the applicant to complete any
19 educational courses the commissioner determines appropriate. Educational courses may
20 be provided by the department or by any public or private sector association or
21 organization authorized by the commissioner. For any course provided by the
22 department, the commissioner shall set an enrollment fee sufficient to recover all costs
23 incurred by the department in providing the course.

24 **4. License limitations.** The issuance of a limited-purpose aquaculture license does
25 not constitute the issuance of a lease of an area in, on or under the coastal waters.

26 **4-A. Preference.** If a person applies to lease an area that is the subject of a limited-
27 purpose aquaculture license, the department shall notify the holder of the limited-purpose
28 aquaculture license. If the holder of the limited-purpose aquaculture license documents
29 to the department that that holder wants to lease the area, preference must be given as
30 follows:

31 A. First, to the person who holds the limited-purpose aquaculture license in the area
32 and who submitted an application for a lease under section 6072 for the area; and

33 B. Second, to the person who applied to lease the area, but does not hold a limited-
34 purpose aquaculture license in the area.

35 **5. Application.** The application for a limited-purpose aquaculture license must:

36 A. Be written on forms supplied by the commissioner;

37 B. Identify the species to be cultivated;

38 B-1. Identify whether the applicant is growing the organisms for commercial or
39 personal use;

1 C. Describe the proposed source of organisms to be grown in the approved
2 aquaculture gear;

3 D. Describe the location of the approved aquaculture gear deployment by
4 coordinates or metes and bounds;

5 D-1. Identify the shellfish growing area that is subject to the proposed license and its
6 classification;

7 E. Include a clear set of plans that includes at a minimum:

8 (1) A location plan with an overhead plan view showing the aquaculture gear
9 deployed at the proposed location. The area occupied by the gear must be drawn
10 to scale on the plan. The location plan must include a north arrow, ebb and flood
11 directions, any federal or local channels and anchorages, any nearby structures
12 and property lines for all riparian owners within 300 feet; and

13 (2) Two gear drawings, one with an overhead plan view and one with a cross-
14 sectional elevation view of the approved aquaculture gear proposed to be used.
15 The gear drawings must be clearly dimensioned and include, at a minimum, mean
16 high-water and mean low-water marks and the dimensions, profiles and materials
17 used in the construction, deployment and securing of the approved aquaculture
18 gear;

19 F. Include documentation that riparian landowners within 300 feet of the proposed
20 activity have been notified of the license application and proposed activity; and

21 G. Include documentation that the municipal harbor master or appropriate municipal
22 officers have been notified of the license application and proposed activity.

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

27 **7. Prohibition; molesting gear.** A person other than a marine patrol officer, the
28 licensed owner of the gear or the licensed owner's assistant, with written permission from
29 the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest
30 any approved aquaculture gear that is deployed under a current limited-purpose
31 aquaculture license.

32 **7-A. Prohibition; taking product.** A person other than a marine patrol officer or
33 the license holder, or the license holder's assistant with written permission from the
34 license holder, may not take any marine organism grown by the license holder under the
35 license in the area designated on the license and marked in accordance with applicable
36 rules.

37 **8. Rules.** The commissioner shall adopt rules to implement this section, including,
38 but not limited to, rules establishing the type of gear that is approved aquaculture gear for
39 the purposes of a limited-purpose aquaculture license, minimum standards for
40 maintaining gear, methods of gear identification and license application and review

1 procedures. Rules adopted under this section are routine technical rules pursuant to Title
2 5, chapter 375, subchapter ~~H-A~~ 2-A.

3 **9. Violation; restitution.** A person who violates this section commits a civil
4 violation for which a fine of not less than \$100 for each violation may be adjudged. If a
5 person violates subsection 7 by cutting any lines or marker buoys or intentionally
6 damaging approved aquaculture gear, the court shall also:

7 A. Order that person to pay to the owner of the approved aquaculture gear that was
8 cut or damaged an amount equal to twice the replacement value of the gear that was
9 damaged or lost as a result of the cutting or damaging action; and

10 B. Direct that person to provide the commissioner, upon making full payment as
11 ordered by the court, proof of that payment.

12 **10. Reporting requirement; confidentiality.** A holder of a limited-purpose
13 aquaculture license shall annually submit to the department a seeding and harvesting
14 report for the past year and a seeding and harvesting plan for the coming year.
15 Information provided in seeding and harvesting reports submitted by a license holder
16 under this subsection is considered confidential information reported to the commissioner
17 pursuant to section 6173.

18 SUMMARY

19 This bill amends the aquaculture leasing and licensing laws. It removes the
20 prohibition on the provision by the Department of Marine Resources of promotional and
21 marketing assistance to the aquaculture industry. It extends the potential term of an
22 aquaculture lease from 10 to 20 years. It changes the order of preference for lease
23 applications to include in the 2nd position an individual who currently holds a limited-
24 purpose aquaculture license for the area. It provides a process by which a holder of a
25 standard lease could seek an expansion of the lease area by up to 10% once during the
26 duration of the lease without having to apply for a new lease. It places the licensed
27 activities and criteria for limited-purpose aquaculture licenses in separate statutory
28 provisions. It requires a limited-purpose aquaculture license holder to specify if the
29 license is for commercial or personal use and to identify the growing area and current
30 classification of the area. It adds consideration of any risk to public health to the criteria
31 used in determining whether to grant a limited-purpose aquaculture license. It adds to the
32 eligibility criteria for a limited-purpose aquaculture license the completion of any
33 educational courses that may be required by the Commissioner of Marine Resources.

STATE OF MAINE
128TH LEGISLATURE

LEGISLATIVE NOTICES

JOINT STANDING COMMITTEE ON MARINE RESOURCES

Sen. Joyce Maker, Senate Chair
Rep. Walter Kumiega, House Chair

PUBLIC HEARING: Monday, May 01, 2017, 10:00 AM, Cross Building, Room 206

- (L.D. 1438) Bill "An Act To Improve the Aquaculture Leasing and Licensing Laws" (HP0993) (Presented by Representative DEVIN of Newcastle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 1502) Bill "An Act To Transfer Responsibility for Licensing of Land-based Aquaculture from the Department of Marine Resources to the Department of Agriculture, Conservation and Forestry" (SP0527) (Presented by Senator LANGLEY of Hancock) (Cosponsored by Senator VITELLI of Sagadahoc)
- (L.D. 1520) Bill "An Act To Create an Aquaculture License" (HP1044) (Presented by Representative DEVIN of Newcastle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 1519) Bill "An Act To Define the Intertidal Zone for the Management and Enforcement of Shellfish Conservation Ordinances" (HP1043) (Presented by Representative DEVIN of Newcastle) (Cosponsored by Senator VITELLI of Sagadahoc, Speaker GIDEON of Freeport, Representative ALLEY of Beals, Representative KUMIEGA of Deer Isle, Representative BLUME of York, Representative SIMMONS of Waldoboro, Representative MCCREIGHT of Harpswell, Representative SPEAR of South Thomaston, Representative HUBBELL of Bar Harbor) Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

CONTACT PERSON:

Julia Brown

100 State House Station

Augusta, ME 04333-0100

287-1337

WORK SESSION AGENDA
MARINE RESOURCES
5/3/2017
10:00 AM
Cross Building, Room 206

- (L.D. 575) Bill "An Act To Improve the Enforcement of Maine's Lobster Laws" (SP0190) (Presented by Senator LANGLEY of Hancock) (Cosponsored by Representative TUELL of East Machias, Senator MAKER of Washington, Senator WHITTEMORE of Somerset, Senator COLLINS of York, Senator BRAKEY of Androscoggin)
- (L.D. 1379) Bill "An Act Regarding Enforcement of Marine Resources Laws and Suspensions of Marine Resources Licenses" (HP0958) (Presented by Representative KUMIEGA of Deer Isle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 922) Bill "An Act Directing the Commissioner of Marine Resources To Investigate the Conditions of Sheepscot Pond Related to a Management Plan for Anadromous Fish Species" (HP0650) (Presented by Representative PIERCE of Dresden) (Cosponsored by Senator VITELLI of Sagadahoc, Representative SIMMONS of Waldoboro, Representative HAWKE of Boothbay Harbor, Representative SUTTON of Warren, Representative TUELL of East Machias, Representative TUCKER of Brunswick, Representative DEVIN of Newcastle, Representative ALLEY of Beals, Representative KUMIEGA of Deer Isle)
- (L.D. 1438) Bill "An Act To Improve the Aquaculture Leasing and Licensing Laws" (HP0993) (Presented by Representative DEVIN of Newcastle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 1502) Bill "An Act To Transfer Responsibility for Licensing of Land-based Aquaculture from the Department of Marine Resources to the Department of Agriculture, Conservation and Forestry" (SP0527) (Presented by Senator LANGLEY of Hancock) (Cosponsored by Senator VITELLI of Sagadahoc)
- (L.D. 1520) Bill "An Act To Create an Aquaculture License" (HP1044) (Presented by Representative DEVIN of Newcastle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 1519) Bill "An Act To Define the Intertidal Zone for the Management and Enforcement of Shellfish Conservation Ordinances" (HP1043) (Presented by Representative DEVIN of Newcastle) (Cosponsored by Senator VITELLI of Sagadahoc, Speaker GIDEON of Freeport, Representative ALLEY of Beals, Representative KUMIEGA of Deer Isle, Representative BLUME of York, Representative SIMMONS of Waldoboro, Representative MCCREIGHT of Harpswell, Representative SPEAR of South Thomaston, Representative HUBBELL of Bar Harbor) Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.
- (L.D. 68) Bill "An Act To Implement an Owner-Operator Requirement in the Scallop and Sea Urchin Fisheries" (HP0055) (Presented by Representative BLUME of York) (Cosponsored by Senator LANGLEY of Hancock, Senator DOW of Lincoln, Representative HUBBELL of Bar Harbor, Representative TUELL of East Machias, Representative PERRY of Calais, Representative ALLEY of Beals, Representative DEVIN of Newcastle, Representative BATTLE of South Portland, Representative PARRY of Arundel)
- (L.D. 1454) Bill "An Act To Extend the Time for an Appeal of Limited Entry Fishing License Denial for Members of the Military" (HP1004) (Presented by Representative BATTLE of South Portland) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 1207) Bill "An Act To Make Technical Changes to Maine's Marine Resources Laws" (HP0843) (Presented by Representative TUELL of East Machias) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.

WORK SESSION AGENDA

MARINE RESOURCES

5/10/2017

2:00 PM

Cross Building, Room 206

- (L.D. 1316) Bill "An Act To Provide for an Elver Dealer's License for the Houlton Band of Maliseet Indians" (HP0913) (EMERGENCY) (Presented by Representative BEAR of Houlton Band of Maliseet Indians)
- (L.D. 703) Bill "An Act To Address Marine Debris Resulting from Commercial Activities" (HP0494) (Presented by Representative DEVIN of Newcastle) (Cosponsored by Senator VITELLI of Sagadahoc, Representative BLUME of York, Representative TUELL of East Machias, Representative ALLEY of Beals, Representative KUMIEGA of Deer Isle, Representative COREY of Windham, Representative GILLWAY of Searsport)
- (L.D. 1438) Bill "An Act To Improve the Aquaculture Leasing and Licensing Laws" (HP0993) (Presented by Representative DEVIN of Newcastle) Submitted by the Department of Marine Resources pursuant to Joint Rule 204.
- (L.D. 704) Bill "An Act To Give the Department of Marine Resources Flexibility with Licensing in the Atlantic Herring Fishery" (HP0495) (Presented by Representative PARRY of Arundel) (Cosponsored by Senator MAKER of Washington, Senator LANGLEY of Hancock)

CONTACT PERSON:

Julia Brown

100 State House Station

Augusta, ME 04333-0100

287-1337

Email: info@acadia-aquafarms.com



Theo and Fiona de Koning
10 Bunchberry Road
Bar Harbor, Maine 04619
Tel/Fax: 207-288-6924

May 1, 2017

The Honorable Joyce A. Maker, Senate Chair
The Honorable Walter A. Kumiega III, House Chair
Joint Standing Committee on Marine Resources
Cross Building, Room 206
Augusta, ME. 04333

Senator Maker, Representative Kumiega, Honorable Members of the Joint Standing Committee on Marine Resources:

My name is Fiona de Koning and with my husband Theo de Koning, we own and operate Acadia Aqua Farms, a mussel aquaculture business based in Trenton, ME. We have currently the largest acreage for shellfish lease holder in the State, now leasing 157 acres. We started the farm around 10 years ago and have grown the production and the number of people we employ year round, steadily over this time. We are a generational business with our son having chosen to stay in the State and work in the company after graduating from the University of Maine with an engineering degree. The younger son plans to join full time when he graduates.

I stand before you today to testify in strong support of LD 1438, "An Act to Improve the Aquaculture Leasing and Licensing Laws". Our background is as mussel farmers from The Netherlands which has a large mussel aquaculture industry and is highly regulated and profitable. The potential for the growth of aquaculture as a sustainable and year round sector in Maine cannot be overestimated. As the US market for seafood continues to grow and the demands for sustainable, responsibly raised and domestically produced food increases alongside that, there is an unique opportunity to develop a world class aquaculture sector on the coast of Maine where many coastal communities are seeing there working waterfront decline. The current lease application system at present does rather inhibit development of aquaculture businesses and from our perspective could be improved by a few steps as outlined by the testimony presented by Sebastian Belle on behalf of the Maine Aquaculture Association. Aquaculture always requires long term planning by its very nature and therefore long term financial arrangements. Banks need security in order to make loans and the State can help us grow as a sector by making these changes to the leasing system.

I strongly support the testimony presented to you by Sebastian Belle and urge you to vote "ought to pass as amended" on LD 1438.

Thank you for your consideration and for your service to those who live on the coast of Maine and earn a living from marine resource based operations.

Sincerely, Fiona de Koning, Acadia Aqua Farms LLC

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April 30, 2017

The Honorable Joyce A. Maker, Senate Chair
The Honorable Walter A. Kumiega III, House Chair
Joint Standing Committee on Marine Resources
Cross Building, Room 206
Augusta, ME. 04333

Senator Maker, Representative Kumiega, Honorable Members of the Joint Standing Committee on Marine Resources:

I am Paul Dobbins, CEO and co-owner of Ocean Approved, Inc. Ocean Approved is the nation's first commercial kelp (seaweed) farming operation, operating two farms in Casco Bay. In addition, we operate a seed nursery in South Portland, and a processing facility in Saco that produces fresh frozen ready to eat kelp products that are shipped all over the country.

Seaweed farming is the largest component of marine aquaculture globally. It is practiced in 35 countries and the weight of the annual farmed seaweed harvest is greater than 40% of the total weight of all marine species harvested from sea farms. According to the UNFAO, 2015's harvest was worth over \$7 Billion to farmers.

The US imports from Asia 99% of the seaweed purchased by institutions and consumers. The market is estimated to be greater than \$500 million and growing at 7-8% annually. American consumers and food service operations are seeking a domestic alternative to Asian farmed seaweed products due to their concern over Asian water quality.

Each year we run out of product in which to meet the growing demand for Maine seaweed products. An important aspect of our growth strategy is to purchase seaweed from other Maine farms. Unfortunately, the complexity and long duration of the lease permitting process experienced by other farmers is slowing our ability to grow.

Today we are in the middle of a third financing round to fund the expansion of our processing facility. One of the key questions from our current and prospective investors is if we will be able to purchase enough seaweed from other Maine farms. There are fisherman who want to farm for us, but our board and prospective investors are extremely concerned about the long duration of the leasing process.

I wish I could stand before you today and testify in person in strong support of **LD 1438** "An Act to Improve the Aquaculture Leasing and Licensing Laws". Kelp is a winter crop and we started harvesting our farms this week. As such I cannot get away from our operation.

With it taking from 1 to 2 years to process a lease application, I am very much in favor of the steps proposed in this legislation that will help reduce the load on the DMR, and enable them to reduce the time it takes to process lease applications. In addition to reducing the time it takes to process an application, doubling the length of a standard lease reduces the perceived risk in the eyes of investors. Our investors

P.O. Box 8129, Portland, ME 04104
oceanapproved.com

have over \$1,000,000 invested to date, and their key concerns about the future are focused on the leasing process.

I am also in favor of the concept of the second component of this legislation which would reduce the time and effort to expand an existing farm site. However, the current wording of the legislation makes it all but unworkable to an operation like ours. A 10% increase in size of our farms would not translate into a 10% increase in production due to the geometry and rig of how kelp farms are set up. Our kelp is grown on long lines, and experience has shown us that our farms should not be more 330 yards long. The lines run the length of the farm and are spaced 4 yards apart. On one of our farms, a 10% increase in size would result in our being able to add 1 line, for an 9% increase in yield. On our second farm a 10% increase would not provide enough room to put in an additional line. As written, this aspect of the law would not help us at all.

If the increase allowed were 25%, I would be able to add 3 more long lines for a 27% increase in yield, and on my second farm I could add 2 long lines. Investments we would make immediately.

The other aspects of the farm expansion component of this legislation make it all but unworkable from a farmer's standpoint. I respectfully suggest that a farm expansion be at the discretion of the Commissioner and be based on the area's environmental carrying capacity for such an expansion, and the history of good stewardship of the farmer. If there are no conflict of use, or environmental issues at the farm, and the farm is paid up on its yearly rent, this should be a quick and efficient paperwork exercise.

Maine has an opportunity to create significant economic development through aquaculture, and this legislation is an important step to realizing this potential. I urge you to consider the changes noted above to the legislation and vote to pass it.

Respectfully,



Paul Dobbins
207-409-6485
pdobbins@ocean

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HOUSE OF REPRESENTATIVES

2 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0002

(207) 287-1400

TTY: (207) 287-4469

Michael G. Devin

1 Hillcrest Road

Newcastle, ME 04553

Cell Phone: (207) 975-3132

Business: (207) 563-8350

Mick.Devin@legislature.maine.gov

Testimony of Representative Michael G. Devin

In Support of L.D. 1438

“An Act To Improve the Aquaculture Leasing and Licensing Laws”

Before the Joint Standing Committee on Marine Resources

Monday, May 1, 2017

Senator Maker, Representative Kumiega and fellow members of the Joint Standing Committee on Marine Resources, I am Representative Mick Devin, serving House District 90, which includes Bremen, Bristol, Damariscotta, Newcastle, parts of Nobleboro and South Bristol, Monhegan Island and Louds Island. LD 1438 is a Department bill and I am honored to present it.

This bill amends the aquaculture leasing and licensing laws. Although I am sure the Commissioner or his representative will go through the bill in detail, I do want to mention some highlights. This bill removes the prohibition on the provision by the Department of Marine Resources of promotional and marketing assistance to the aquaculture industry. I believe this prohibition severely handicapped our aquaculture industry and I glad to see the prohibition removed. Also, significant changes to the limited-purpose license are proposed, which should improve that type of license.

I am happy to take questions, but think the Department will be in a better position to answer.



Capital for Opportunity and Change
Testimony to the Committee on Marine Resources
In Support of LD 1438
May 1, 2017

Hugh Cowperthwaite, Fisheries Project Director, Brunswick, Maine
Hugh.Cowperthwaite@ceimaine.org

Senator Maker and Representative Walter, Distinguished Members of the Committee:

I am writing today in support of LD 1438 An Act to Improve the Aquaculture Leasing and Licensing Laws.

CEI (Coastal Enterprises, Inc.) is a private, nonprofit Community Development Corporation (CDC) and Community Development Financial Institution (CDFI) based in Brunswick, Maine. CEI was founded in 1977 to develop job-creating natural resources and small business ventures in rural regions of Maine.

Since our beginning in 1977, we have long been a supporter of Maine's marine sector businesses including commercial fishing and aquaculture. We support Maine businesses through provision of business services including business counseling and technical assistance, and by making loans and investments in start-ups, and business expansions.

As interest in farming the sea continues to grow, we will see more businesses applying to the Department of Marine Resources for lease sites.

The businesses need access to capital for their growth.

We are in support of doubling the length of time a lease is granted from 10 years to 20 years.

Start-up and existing businesses have had difficulty raising adequate capital (both debt and equity) due to the ten year time horizon on current leases. Shorter lease commitments can be seen as a vulnerability for a business and portray an unstable future. 10 year loan terms will often have higher interest rates, higher principal payments and put unnecessary stress on a business. Doubling the time a lease is granted will help ease the financial strain put on businesses.

Financiers and investors would find these businesses more stable knowing they are investing in a business with a 20 year plan as opposed to a 10 year plan.

I urge you to support LD 1438 An Act to Improve the Aquaculture Leasing and Licensing Laws and this this important change in the language to support economic growth into the future.

Thank you for your time

Hugh Cowperthwaite
Fisheries Project Director
CEI | Capital for Opportunity and Change

**TESTIMONY OF
Deirdre Gilbert, Director of State Marine Policy**

**The Department of Marine Resources (DMR) is testifying
in Support of**

LD 1438, An Act To Improve the Aquaculture Leasing and Licensing Laws

Before the Committee on Marine Resources

Sponsored by Representative Devin

Date of Hearing: May 1, 2017

Senator Maker, Representative Kumiega, and members of the Joint Standing Committee on Marine Resources, my name is Deirdre Gilbert, Director of State Marine Policy for the Department of Marine Resources, and I am testifying on behalf of the Department in support of LD 1687. This is a Department bill, and we thank Representative Devin for bringing it forward on our behalf.

This bill proposes a number of changes to the aquaculture leasing and licensing statutes, many of which are a result of two meetings the Commissioner held with members of the aquaculture industry last winter. These meetings were intended to solicit suggestions on how the Department could best support this growing industry by improving our leasing and licensing processes, while also balancing the public's interest in shared coastal waters. I will walk through the proposed changes section by section.

Section 1 proposes to amend the language that currently prohibits the Department from providing promotional or marketing assistance to the aquaculture sector. An example of how this has limited the Department's activities is a recent change in the status of Maine farmed salmon under the Monterey Bay Aquarium's Seafood Watch sustainability rating program. Maine farmed salmon was upgraded to a "good alternative" from the "avoid" rating. This change opened up significant market opportunities, and may benefit the state's salmon aquaculture industry significantly, but the State was unable to help support the opportunity through media channels due to this provision in law. While critics have suggested that promotion is a conflict of interest since we adjudicate lease decisions, DMR is authorized to promote wild caught fisheries and related products and we obviously regulate those fisheries as well. We do not see why these industries should be treated differently.

Section 2 would expand the approvable length of a standard aquaculture lease from ten years to twenty years. A lease is not always approved for the maximum amount of time, but this change was strongly supported by aquaculture businesses that identified this as needed for the stability and financing of their businesses. We are hopeful that representatives from the industry can share the challenges that they have encountered that caused them to request this extension in the allowable lease term.

Section 3 amends the order of preference given to lease applicants to give second priority to an individual who currently holds a limited-purpose aquaculture license in the area. This change will help to ensure that someone who has been testing a site for viability using the LPA license has increased standing to obtain a lease on that site. Previously these license holders were not given any priority in a situation where two applicants are seeking a lease in the same area. The current language only proposes this for standard leases, but similar language would be appropriate for experimental leases. There is also complementary language in Section 6 that amends the Limited Purpose Aquaculture license statute that may need further clarification. The Department would be happy to provide that language for the work session.

Sections 4 and 5 create a process to enable an existing lease holder to expand the contiguous area of the lease by up to ten percent during the duration of the existing lease without having to apply for a new lease altogether. This change was also requested by industry as a mechanism to grow their business at a reasonable scale without the delay that may come with application for another lease. The expansion application would put the burden on the applicant to provide an assessment of impacts on existing uses of the area, as well as physical and ecological impacts, and an environmental evaluation of the site. The Commissioner may conduct a site review as well. Additionally, the Department proposes that this expansion would only be allowable if all riparian owners are noticed and respond in writing that they do not object to the proposed lease expansion. As this is currently drafted, any riparian objections would lead to denial of the expansion application. Since this bill was printed, the Department has identified some additional improvements to this application process to ensure adequate notice is provided to the municipal officials and riparian owners, as well as to be more consistent with other sections of law. We would be glad to bring amended language for the work session.

Section 6 proposes a number of changes to the limited-purpose aquaculture license. First, it separates the licensed activities from the criteria for issuance of limited-purpose aquaculture licenses, a structural clarification. Second, it requires the applicant to specify whether the license is for commercial or personal use, and identify the growing area and classification proposed. These are already requested on the application but not enumerated in existing statute. Perhaps most importantly, this section provides for the consideration of public health risks in the criteria for approval of an LPA. Currently, there is no basis to deny an LPA application in an area where a species may pose an unreasonable risk to public health. This presents a risk to the industry broadly, and mitigating it has put a substantial burden on Department staff to work directly with an applicant to ensure they understand the potential risks, but also leaves us without any mechanism to prevent harm should the applicant ignore those risks. Finally, this section gives the Commissioner authority to require LPA applicants to complete an educational course prior to obtaining the license. The intent of this section, which was also proposed and supported by industry, is to ensure there is baseline knowledge for new entrants of both animal health and public health risks associated with aquaculture activities.

Thank you for your time, and I would be happy to try to answer any questions you may have.

From: valy steverlynck <vsteverlynck@hotmail.com>

To: sebastian belle <futureseas@aol.com>; sebastain belle <Maineaqua@aol.com>

Subject: Please forward to Marine Resources committee

Date: Sun, Apr 30, 2017 7:25 pm

April 30th, 2017

Honorable Members of the Joint Standing Committee on Marine Resources,

My name is Valy Steverlynck. My husband and I have been growing years in Freeport for almost two decades.

I write to express my full support for LD 1438. As a grower who has lived through wait-times of two years to get an aquaculture lease application processed and approved, I strongly support the Department of Marine Resources's proposal to double the length of a lease, thus reducing the amount of administrative work on their staff by half -and in turn expediting the lease processing time. In the spirit of reducing processing times, the idea of allowing for limited lease expansions makes good sense.

I am also very much in favor of requiring LPA applicants to take a course to learn about responsible shellfish aquaculture. Biosecurity is a major concern for established growers who fear that uneducated newcomers may unwittingly spread disease that could wipe out sectors of the industry.

There are a few amendments that I would like to see included in the bill:

1. Allow for lease expansions greater than 10% (25% is more reasonable) ;
2. Eliminate the need for applicants to get approval from all riparian owners supporting a lease expansion; and,
3. Give the Commissioner discretion in evaluating feedback from interested parties (instead of directing him/her to reject the request for a lease expansion if anyone objects).

I urge you to please vote "Ought to pass" to LD 1438, with the above amendments.

Sincerely,

Valy Steverlynck
Freeport



May 1, 2017

Committee on Marine Resources
100 State House Station
Augusta, ME 04333-0100

Senator Maker, Representative Kumiega, and Members of the Joint Standing Committee on Marine Resources,

The Island Institute supports LD 1438. In particular, we support provisions that improve the state's ability to market Maine grown aquaculture products, double the length of a standard lease period, and allow for a training program requirement in applying for a license.

The Island Institute is a 32-year-old community development organization that works to sustain Maine's island and remote coastal communities, and exchanges ideas and experiences to further the sustainability of communities here and elsewhere.

Currently, many of the communities we work with have a high economic reliance on the lobster fishery. While we are proud of our fishermen and regulatory agencies for managing this fishery to its current level of success, we also are aware that it is vulnerable to market and environmental changes, and that we have seen signs of both in the last ten years. Because of our abundant coastline, pristine waters, and tradition of both farming and fishing, we see aquaculture in Maine as a crucial opportunity to diversify our working waterfronts.

Our organization has been working for the last five years to support the growth of the aquaculture industry in Maine. We have done this through a three-pronged approach, including conducting scientific research, engaging primary students with aquaculture, and providing business training and education to adults that are interested in starting aquaculture businesses.

This last strategy has led to the formation of our Aquaculture Business Development program, a business-training program through which we help entrepreneurs, primarily fishermen, to start oyster, mussel, or sea vegetable farms. In this program, we combine classroom discussions with field-trips and individual business and financial education support to help the group navigate some of the trickier aspects of starting an aquaculture business, including applying for a lease, creating effective and positive community relationships, and matchmaking with buyers and distributors. In the first round of this program, we helped 11 entrepreneurs to start new farms, and have recently kicked off the second round with another 23 motivated and responsible individuals living in areas from Eastport to Portland.

As we conduct this work, we have been consistently impressed by the efforts of the Department of Marine Resources. They have had a difficult job with aquaculture, encouraging the rapid growth of the industry while managing the concerns and occasional conflict that comes with a shared resource. Despite this, they have been an effective force, working tirelessly to encourage the viability of new businesses, while at the same time easing the concerns of fishermen and coastal landowners about the industry.

We believe that LD 1438 will help the DMR and the state of Maine in its goal of promoting the sustainable growth of aquaculture, and as such, we are in support.

The DMR should have the same ability to promote and assist in the marketing of Maine grown aquaculture products in the same way that they already promote other forms of Maine seafood. Removing this prohibition will allow the Department to provide basic assistance for marketing and promoting this growing industry.

By doubling the term of a standard lease from 10 to 20 years, the legislation would cut down on the amount of administrative time that the DMR would have to spend on each farm, while retaining their authority to monitor the activities of a lease-holder and revoke their privilege at any time. It would also allow for farmers to make longer-term plans, and ease risk in the eyes of financing institutions.

Last, by granting the Commissioner the authority to require training prior to the receipt of an aquaculture license, the legislation will help to ensure that the founders of sea farms will be responsible neighbors to fishermen, boaters, and fellow aquaculturalists out on the water, as well as good representatives of Maine aquaculture as a whole. As an organization already conducting training for new aquaculturalists, the Island Institute has seen firsthand how important education can be, especially in guiding the transition from fishermen to farmer of the sea. In areas such as community relations and biosecurity, we stress that these trainings would be important not just for the success of new growers, but also the more established aquaculturalists already growing beside them. If this law was put into place, we would look forward to working with the DMR along with partner organizations to ensure that a required educational component would be productive and accessible for all.

In closing, we believe that LD 1438 will be a boon to the sustainable growth of aquaculture in Maine, helping to keep our economy strong and our working waterfronts vibrant. Thank you for your time, and if you have questions, please feel free to contact us.

Sincerely,



James Crimp
Marine Economic Development Associate
Island Institute



Nick Battista
Marine Programs Director
Island Institute



MAINE AQUACULTURE ASSOCIATION

P.O. Box 148, 103 Water Street, 4th Floor

Hallowell, ME 04347

Telephone (207) 622-0136 • Fax (207) 622-0576 • E-mail: maineaqua@aol.com

May 1, 2017

The Honorable Joyce A. Maker, Senate Chair
The Honorable Walter A. Kumiega III, House Chair
Joint Standing Committee on Marine Resources
Cross Building, Room 206
Augusta, ME. 04333

Senator Maker, Representative Kumiega, Honorable Members of the Joint Standing Committee on Marine Resources:

My name is Sebastian Belle and I am the Executive Director of the Maine Aquaculture Association (MAA). The MAA represents Maine's aquatic farmers and the many infrastructure companies that provide goods and services to our producers. In an average year, our members grow over 100 million dollars (farm gate value) of fresh, healthy Maine seafood and employ over 600 Maine citizens directly on the farms. Hundreds more are employed indirectly as a result of our member's operations. Our members purchase goods and services from over 450 Maine companies and sell to over 2,000 State, regional, national and international customers. Every year our members produce over 50 million healthy meals for America.

I stand before you today to testify in strong support of **LD 1438**, "An Act to Improve the Aquaculture Leasing and Licensing Laws". As some of you know aquaculture is fast becoming one of the most effective ways to diversify the economic base of Maine's coastal communities and ensure their working waterfronts remain viable. Three recent studies (Mckinsey, 2016., Hale Group, 2016., Cole et. al. 2017) recognized the significant economic development potential aquaculture has for the State. With most fisheries closed to new entrants and entire communities dependent on one fishery, aquaculture provides an opportunity for young Maine citizens to start and build small businesses that provide year-round employment, growth potential and a chance to remain in the coastal communities they were born in.

As Maine citizens seek to start aquaculture businesses one of the biggest challenges they have is going through the states aquaculture leasing system. No other marine resource user goes through as complicated and lengthy process to be given access to the states marine resources. It is not uncommon for it to take one to two years for a lease application to be reviewed and approved or denied. DMR currently has a backlog of over 30 applications in the review process with new applications coming in weekly. The department's ability to process new lease applications in a timely fashion is inhibited by the complexity of the leasing process and an increasing administrative work load as more leases are granted. LD 1438 has two key components that seek to reduce the departments administrative load and improve the leasing system.

1. LD 1438 gives the Commissioner authority to increase the length of a lease which reduces the frequency that the department has to process lease renewals. Currently leases must be renewed every ten years. While the renewal process is less complicated than the original application process it still requires significant staff time and administrative investment. LD 1438 gives the commissioner the authority to double the length of a lease period which essentially reduces staff administrative time over the life of the lease by one half. Increasing the length of a lease does

NOT reduce the commissioner's authority or ability to revoke a lease at any time for cause, it is just common sense and good management.

Increasing the length of a lease has an additional benefit, it makes it easier to raise financing for an aquaculture business. Banks are very reluctant to finance aquaculture businesses for periods longer than their leases because they know that a lease may or may not be renewed and without a lease an aquaculture business has no ability to do business and make loan payments. If financing is available for a period less than ten years' interest rates are often prohibitively high. This challenge is particularly acute for new start-ups and businesses being started by young working waterfront families who often have few assets and will have to wait 3-6 years before they see positive cash flow on a new farm. Lengthening the lease allows young families to spread their financing costs over longer loan terms, access lower interest rates and make lower payments during their start-up phase.

2. LD 1438 attempts to reduce the departments administrative load by establishing a process that allows an existing lease site to be expanded in a very limited way without having to go all the way back and start over with a new application. Currently if an existing leaseholder wants to reconfigure or expand an existing fully licensed farm they have to go through the entire original lease application and review process even though they have been operating on an existing site and are in compliance with all the requirements imposed on them as part of their lease contract. Allowing some limited expansion of an existing lease site without requiring a whole new application makes sense. It would allow established companies that have operated responsibly to modestly expand and would, theoretically reduce the departments administrative workload by not requiring a whole new lease application process. While the intent of the lease expansion section of LD 1438 is commendable it contains three provisions that make it unlikely to be used by many leaseholders.
 - a. It only allows for a 10% expansion over the term of the lease. For a twenty-year lease that represents less than one half a percent growth per year, significantly lower than the current rate of inflation and two thirds lower than Maines shore land zoning ordinances that allow up to 30% expansion in the reconstruction of existing nonconforming structures in the protected shore land zone. The proposed lease expansion process is rigorous, includes provisions that will protect the environment and gives the commissioner broad authority to NOT grant an expansion. **The percent of expansion allowed should be increased to 25%.**
 - b. LD 1438 establishes a much higher standard than an original application does in that it requires an expansion applicant to get signatures from all riparian land owners saying they do not object to the expansion.
 - c. LD 1438 goes further and establishes an even higher standard in that it states that the commissioner shall not grant an expansion if ANY objections of ANY nature from ANYONE are received during the comment period. This latter requirement means that even someone with no direct standing in the procedure who raises any kind of objection, whether it is substantive or relevant or not could block an expansion. That hardly seems fair and if nothing else that would seem to be a recipe for extortion.

Given the low percent expansion allowed and the combination of points b. and c. it seems likely that very few if any applicants will use the proposed expansion process instead of going back and filling a whole new application. In order to allow for modest expansion of responsibly operated existing lease sites and to help reduce the departments

administrative case load MAA respectfully suggests the following modifications to LD1438.

“12-C. Expansion of lease.....to expand the contiguous area of the lease by up to ~~10~~25% once during the duration of the term of the lease pursuant to this subsection.

A (4) Include a map of the lease area and its proposed expansion, and its adjoining waters and shore lands, with the names and addresses of the know riparian owners as listed in the municipal tax records and ~~a statement from each of those riparian owners that the owner has no objection to the proposed lease expansion~~ documentation from the expansion applicant showing that each of those riparian owners have been informed of the expansion application and the comment period;

D. If the commissioner receives any comments within 30 days of receipt of the notice that the application is complete or within 30 days of publication of the lease expansion summary pursuant to paragraph B objecting to the lease expansion, the commissioner ~~shall deny the request for the lease expansion~~ may deny the request for the lease expansion after considering the standing of the commenting entity and whether the submitted comments are germane to the criteria the commissioner considers during the review of the expansion application under Sec. 4. 12 MRSA §6072, sub §12-C, ¶E. “

MAA supports the provisions of LD 1438 that add the consideration of risks to public health to Sec. 6. 12 MRSA §6072-C sub-§2-A ¶F.

MAA also strongly supports the addition of a requirement that “LPA” applicants take an educational course the commissioner determines is appropriate. The process for acquiring an LPA is relatively simple and the number of “LPA” operators has increased dramatically in the last 5 years. Many of these operators are new to aquaculture and have little knowledge or experience in biosecurity, seafood safe handling or responsible community relations. All three of these areas of knowledge are important to a responsible, safe and community friendly aquaculture operation. MAA believes a well designed and implemented educational course that LPA operators have to take will go a long way towards protecting aquatic animal and plant health, reducing public health risks and increasing community acceptance to new aquaculture operations. MAA is willing to help in the development and implementation of a course that meets the departments goals.

Finally, MAA believes that in some cases the “LPA” system is being used to circumvent the existing leasing system. This is in large part due to the complex and lengthy nature of the existing leasing system. MAA supports the addition of two additional provisions to LD 1438 that would reduce the misuse of the LPA system.

- a. LD 1438 as proposed requires an LPA applicant to “identify whether the applicant is growing organisms for commercial or personal use”. MAA would like the bill to go further and establish an upper limit of 1 LPA per applicant and two per household for recreational or personal use LPAs. MAA would also like to see a no sale provision attached to all personal use LPAs. For biosecurity reasons MAA would also like to see the movement of organisms between recreational or personal use LPAs prohibited. Movement from recreational to commercial LPAs should also be prohibited.
- b. With the exception of certain gear types or functions (flupsys, relay, and wet storage) MAA would like to see a mandatory sunset provision on all commercial LPAs of 6 years. The

original intent of the LPA system was to lower the barriers to entry and allow growers to test specific sites by seeing how organisms performed on the site. The LPA system has proven very successful at both functions but in some cases, is now being used as an “end run” around the standard leasing system. Six years is plenty of time to test whether a site is a good one to establish a farm on or not. After that time period operators should apply for a standard lease that considers all the necessary criteria to assess a scaled-up farm.

MAA is prepared to submit draft language for the work session to help achieve these two goals.

LD 1438 is a beginning in a process the State must take if it is serious about preserving Maine's coastal communities and working waterfronts. The complexity of the leasing system and the long wait periods are discouraging applicants and investment. Over the last year DMR has worked hard to improve their internal processes but there are a number of statutory constraints that have inhibited their ability to effect change. LD 1438 is a good first step in addressing some of these constraints and giving the department some of the tools it needs to improve the aquaculture leasing and licensing systems. I thank you for your consideration and urge you to vote **Ought to Pass as amended** on LD 1438. I stand ready to answer any questions the committee may have and assist in any way I can during the work session.

Sincerely yours,



Sebastian M. Belle

SMB/rkc

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 3, 2017
To: Joint Standing Committee on Marine Resources
From: Craig Nale, Legislative Analyst

LD 1438, An Act To Improve the Aquaculture Leasing and Licensing Laws

SUMMARY

This bill:

- Removes the prohibition on the provision by the Department of Marine Resources of promotional and marketing assistance to the aquaculture industry
- Extends the potential term of an aquaculture lease from 10 to 20 years
- Changes the order of preference for lease applications to include in the 2nd position an individual who currently holds a limited-purpose aquaculture license for the area
- Provides a process by which a holder of a standard lease could seek an expansion of the lease area by up to 10% once during the duration of the lease without having to apply for a new lease
- Places the licensed activities and criteria for limited-purpose aquaculture licenses in separate statutory provisions
- Allows the Commissioner of Marine Resources to require an applicant for a limited-purpose aquaculture license to complete any educational courses the commissioner determines appropriate
- Requires a limited-purpose aquaculture license holder to specify if the license is for commercial or personal use and to identify the growing area and current classification of the area
- Adds consideration of any risk to public health to the criteria used in determining whether to grant a limited-purpose aquaculture license
- Adds to the eligibility criteria for a limited-purpose aquaculture license the completion of any educational courses that may be required by the Commissioner of Marine Resources.

TESTIMONY

For: *Rep. Devin (sponsor); DMR; Island Institute; Me. Aquaculture Assoc. "MAA"; CEI*

- 10-year length of aquaculture lease may prevent leaseholders from obtaining more favorable financing; longer lease would enable and show stability; commissioner retains authority to revoke lease for cause
- Extension of lease to 20 years is the maximum length; it may be approved for a shorter period
- Preference order could be amended to apply to experimental leases in addition to standard leases (DMR offered language)

- MAA suggested that: expansion of lease area could be up to 25%; comments of people with no connection to the lease area are not sufficient to require a denial and that the commissioner should consider the standing of those commenters and whether the comment is germane to the criteria for reviewing the expansion application; statements of no objection from riparian owners should be replaced with documentation showing that those owners have been informed of the lease expansion application; LPAs should be limited to 1 per applicant and 2 per household for recreational or personal use; most LPAs should terminate after 6 years
- Important to provide for consideration of public health risks in the criteria for approval of a limited-purpose aquaculture lease

Against: None.

Neither for nor against: None.

FISCAL IMPACT: Not yet determined.

DMR amendment for LD 1438

New section for bill:

12 MRSA §6072-A:

12. Preference. If a person applies to lease an area within which limited-purpose lease is located, the department shall notify the holder of the limited-purpose lease. If the holder of the limited-purpose lease documents to the department that they want to lease the area, preference must be given in accordance with §6072 (8). If more than one person applies to lease an area, preference must be given as follows:

- A. First, to the department;
- B. Second, to the riparian owner of the intertidal zone in which the leased area is located;
- C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and
- D. Fourth, to the riparian owner within 100 feet of leased coastal waters.

Proposed change to Section 6 of current bill:

Sec. 6.

12 MRSA §6072-C, as amended by PL 2013, c. 509, §§6 to 8, is further amended to read:

§6072-C. Limited-purpose aquaculture license

4-A. Preference.

If a person applies to lease an area that is the subject of a limited-purpose aquaculture license, the department shall notify the holder of the limited-purpose aquaculture license. If the holder of the limited-purpose aquaculture license documents to the department that that holder wants to lease the area, preference must be given in accordance with §6072 (8), as follows:

~~A. First, to the person who holds the limited-purpose aquaculture license in the area and who submitted an application for a lease under section 6072 for the area; and~~

~~B. Second, to the person who applied to lease the area, but does not hold a limited-purpose aquaculture license in the area;~~

Comment [MM1]: Strike this language

JOINT STANDING COMMITTEE ON MARINE RESOURCES
May 10, 2017
Work Session
LD 1438 – Draft Language Including All Proposed Amendments by Parties

An Act To Improve the Aquaculture Leasing and Licensing Laws

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

Sec. 1. 12 MRSA §6052, sub-§3, as amended by PL 2003, c. 660, Pt. A, §2, is further amended to read:

3. Marketing. ~~Except for aquaculture, serve~~ Serve as the primary state agency providing promotional and marketing assistance to the commercial fishing industries, including assisting in marketing seafood, stimulating of consumer interest in and consumption of seafood, increasing the sales of seafood domestically and abroad, supporting and expanding existing markets and developing new markets for traditional and underutilized species;

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

A. A lease ~~shall~~may not exceed a term of ~~10-20~~ years;

Sec. 3. 12 MRSA §6072, sub-§8, as amended by PL 2011, c. 93, §1, is further amended to read:

8. Preference. If more than one person applies to lease an area, preference must be given as follows:

A. First, to the 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;

A-1. Second, to the person who holds a license for the area or a portion of the area under section 6072-C and who submitted an application for a lease under this section for the area or a portion of the area before the license under section 6072-C expired;

B. ~~Second~~Third, to the department;

C. ~~Third~~Fourth, to the riparian owner of the intertidal zone in which the leased area is located;

D. ~~Fourth~~Fifth, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and

E. ~~Fifth~~Sixth, to the riparian owner within 100 feet of leased coastal waters.

Sec. 4. 12 MRSA §6072, sub-§12-C is enacted to read:

12-C. Expansion of lease. A person who holds a lease under this section may apply to the commissioner to expand the contiguous area of the lease by up to 10% once during the duration of the term of the lease pursuant to this subsection. [CONSIDER MAXIMUM ACREAGE?]

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 a statement from each of those riparian owners that the owner has no objection to the proposed lease expansion, documentation showing that the applicant has informed each of those riparian owners of the applicant and the opportunity for comment;

(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 municipal officers of the municipality or municipalities in which or adjacent to which the lease expansion is proposed. The commissioner shall publish a summary of the application and notice of opportunity to submit comments to the department in a newspaper of general circulation in the municipality in which the lease expansion is proposed. A person may provide, within 30 days of receipt of notice that the application is complete or within 30 days of publication, of a lease expansion summary, comments to the commissioner on the proposed lease expansion.

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. If the commissioner receives any shall consider comments received within 30 days of receipt of notice that the application is complete or within 30 days of publication of the lease expansion

~~summary pursuant to paragraph B objecting to the lease expansion, the commissioner shall deny the request for the lease expansion.~~

~~E. If the commissioner does not receive any comments within 30 days of receipt of notice that the application is complete or within 30 days of publication of the lease expansion summary pursuant to paragraph B objecting to the lease expansion, and if the commissioner determines that, based upon the application and comments received, the lease expansion meets the requirements of subsection 7-A, will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna, the commissioner may shall approve the request for the lease expansion.~~

Sec. 5. 12 MRSA §6072, sub-§13, ¶B, as amended by PL 2009, c. 229, §3, is further amended to read:

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

Sec. 6. 12 MRSA §6072-C, as amended by PL 2013, c. 509, §§6 to 8, is further amended to read:

§ 6072-C.Limited-purpose aquaculture license

1. License required. A person may not engage in the activities authorized under this section without a current limited-purpose aquaculture license or a lease issued under this Part authorizing the activities.

2. Licensed activities; expiration. 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 2-A~~ 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. ~~A limited-purpose aquaculture license expires 6 years after the date of its issuance. 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 owner is obtained if the proposed activity is located above the mean low-water mark.~~

2-A. Criteria. 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 use 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 proposed location, species and activity do not present a risk to public health;

G. The applicant holds no more than 3 other limited-purpose aquaculture licenses issued under this section; and

H. The consent of the riparian owner is obtained if the proposed activity is located above the mean low-water mark.

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 that has met any requirements established under subsection 3-A. Only 1 limited-purpose aquaculture license may be issued to an individual growing organisms for personal use. Up to 2 limited-purpose aquaculture licenses may be issued to a household when 2 or more members of that household are growing organisms for personal use.

3-A. Educational courses. Prior to the issuance or renewal of a limited-purpose aquaculture license, the commissioner may require the applicant to complete any educational courses the commissioner determines appropriate. Educational courses may be provided by the department or by any

public or private sector association or organization authorized by the commissioner. For any course provided by the department, the commissioner shall set an enrollment fee sufficient to recover all costs incurred by the department in providing the course.

4. License limitations. The issuance of a limited-purpose aquaculture license does not constitute the issuance of a lease of an area in, on or under the coastal waters.

4-A. Preference. If a person applies to lease an area that is the subject of a limited-purpose aquaculture license, the department shall notify the holder of the limited-purpose aquaculture license. If the holder of the limited-purpose aquaculture license documents to the department that that holder wants to lease the area, preference must be given as follows:

A. First, to the person who holds the limited-purpose aquaculture license in the area and who submitted an application for a lease under section 6072 for the area; and

B. Second, to the person who applied to lease the area, but does not hold a limited-purpose aquaculture license in the area.

5. Application. The application for a limited-purpose aquaculture license must:

A. Be written on forms supplied by the commissioner;

B. Identify the species to be cultivated;

B-1. Identify whether the applicant is growing the organisms for commercial or personal use;

C. Describe the proposed source of organisms to be grown in the approved aquaculture gear;

D. Describe the location of the approved aquaculture gear deployment by coordinates or metes and bounds;

D-1. Identify the shellfish growing area that is subject to the proposed license and its classification;

E. Include a clear set of plans that includes at a minimum:

(1) A location plan with an overhead plan view showing the aquaculture gear deployed at the proposed location. The area occupied by the gear must be drawn to scale on the plan. The location plan must include a north arrow, ebb and flood directions, any federal or local channels and anchorages, any nearby structures and property lines for all riparian owners within 300 feet; and

(2) Two gear drawings, one with an overhead plan view and one with a cross-sectional elevation view of the approved aquaculture gear proposed to be used. The gear drawings must be clearly dimensioned and include, at a minimum, mean high-water and mean low-water

marks and the dimensions, profiles and materials used in the construction, deployment and securing of the approved aquaculture gear;

F. Include documentation that riparian landowners within 300 feet of the proposed activity have been notified of the license application and proposed activity; and

G. Include documentation that the municipal harbor master or appropriate municipal officers have been notified of the license application and proposed activity.

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.

7. Prohibition; molesting gear. A person other than a marine patrol officer, the licensed owner of the gear or the licensed owner's assistant, with written permission from the licensed owner, may not utilize, raise, lift, transfer, possess or in any manner molest any approved aquaculture gear that is deployed under a current limited-purpose aquaculture license.

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.

7-B. Prohibition; transporting organisms. The holder of a limited-purpose aquaculture license who has indicated that the person is growing organisms for personal use may not transport organisms grown under that license between the location identified on that person's license and the location identified on any other limited-purpose aquaculture license.

7-C. Prohibition; sale of organisms grown for personal use. The holder of a limited-purpose aquaculture license who has indicated that the person is growing organisms for personal use may not sell or offer for sale organisms grown under that license.

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. Rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~H~~A2-A.

9. Violation; restitution. A person who violates this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. If a person violates subsection 7 by cutting any lines or marker buoys or intentionally damaging approved aquaculture gear, the court shall also:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of

the cutting or damaging action; and

B. Direct that person to provide the commissioner, upon making full payment as ordered by the court, proof of that payment.

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.

SUMMARY

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Date: (Filing No. H-)

MARINE RESOURCES

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " " to H.P. 993, L.D. 1438, Bill, "An Act To Improve the Aquaculture Leasing and Licensing Laws"

Amend the bill in section 4 in subsection 12-C in the 2nd line (page 1, line 31 in L.D.) by striking out the following: "10%" and inserting the following: "25%, but may not expand by more than 4 acres."

Amend the bill in section 4 in subsection 12-C in paragraph A by striking out all of subparagraph (4) (page 2, lines 6 to 10 in L.D.) and inserting the following:

'(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.'

Amend the bill in section 4 in subsection 12-C by striking out all of paragraph B (page 2, lines 19 to 27 in L.D.) and inserting the following:

'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 municipal officers of the municipality or municipalities in which or adjacent to which the lease expansion is proposed. The commissioner 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.'

Amend the bill in section 4 in subsection 12-C by striking out all of paragraphs D and E (page 2, lines 31 to 41 in L.D.) and inserting the following:

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

1 E. If the commissioner determines that, based upon the application and comments
2 received, the lease expansion meets the requirements of subsection 7-A, the
3 commissioner may approve the request for the lease expansion.'

4 Amend the bill in section 6 in §6072-C by inserting after subsection 7-A the
5 following:

6 '7-B. Prohibition; transporting organisms. A person may not transport organisms
7 grown under a limited-purpose aquaculture license that is designated for personal use to
8 an area that is the subject of a limited-purpose aquaculture license that is designated for
9 commercial use.'

10 **SUMMARY**

11 This amendment increases the amount by which the contiguous area of a research or
12 aquaculture lease may expand during the duration of the lease term from 10%, as
13 provided in the bill, to 25%, except that the expansion may not be greater than 4 acres.
14 The amendment clarifies that a person may submit comments to the Commissioner of
15 Marine Resources regarding an application to expand a research or aquaculture lease for
16 at least 30 days following the publication by the commissioner of the application
17 summary. The amendment removes the provisions of the bill that require the
18 commissioner to deny a lease expansion if comments are received opposing the
19 expansion and instead requires the commissioner to consider all comments but to make
20 the decision of whether to approve the expansion based upon the same criteria as would
21 apply to a new lease application. The amendment prohibits the transport of organisms
22 grown under a limited-purpose aquaculture license that is designated for personal use to
23 an area that is the subject of a limited-purpose aquaculture license that is designated for
24 commercial use.

COPY

Date:

(Filing No. H-)

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MARINE RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

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COMMITTEE AMENDMENT " " to H.P. 993, L.D. 1438, Bill, "An Act To Improve the Aquaculture Leasing and Licensing Laws"

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Amend the bill in section 4 in subsection 12-C in the 2nd line (page 1, line 31 in L.D.) by striking out the following: "10%" and inserting the following: '25%, but may not expand by more than 4 acres.'

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Amend the bill in section 4 in subsection 12-C in paragraph A by striking out all of subparagraph (4) (page 2, lines 6 to 10 in L.D.) and inserting the following:

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'(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.'

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'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 municipal officers of the municipality or municipalities in which or adjacent to which the lease expansion is proposed. The commissioner 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.'

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Amend the bill in section 4 in subsection 12-C by striking out all of paragraphs D and E (page 2, lines 31 to 41 in L.D.) and inserting the following:

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

COMMITTEE AMENDMENT

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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.'

Amend the bill in section 6 in §6072-C by inserting after subsection 7-A the following:

'7-B. Prohibition; transporting organisms. A person may not transport organisms grown under a limited-purpose aquaculture license that is designated for personal use to an area that is the subject of a limited-purpose aquaculture license that is designated for commercial use.'

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SUMMARY

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This amendment increases the amount by which the contiguous area of a research or aquaculture lease may expand during the duration of the lease term from 10%, as provided in the bill, to 25%, except that the expansion may not be greater than 4 acres. The amendment clarifies that a person may submit comments to the Commissioner of Marine Resources regarding an application to expand a research or aquaculture lease for at least 30 days following the publication by the commissioner of the application summary. The amendment removes the provisions of the bill that require the commissioner to deny a lease expansion if comments are received opposing the expansion and instead requires the commissioner to consider all comments but to make the decision of whether to approve the expansion based upon the same criteria as would apply to a new lease application. The amendment prohibits the transport of organisms grown under a limited-purpose aquaculture license that is designated for personal use to an area that is the subject of a limited-purpose aquaculture license that is designated for commercial use.

**FISCAL NOTE REQUIRED
(See attached)**



128th MAINE LEGISLATURE

LD 1438

LR 749(02)

An Act To Improve the Aquaculture Leasing and Licensing Laws

Fiscal Note for Bill as Amended by Committee Amendment " "

Committee: Marine Resources

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Marine Resources as a result of adjustments to the aquaculture leasing and licensing regulations are anticipated to be minor and can be absorbed within budgeted resources.

COMMITTEE VOTING TALLY SHEET

LD #: 1430

Committee: Marine Resources

Date: 5/31/17

Motion: TABLE

Motion by: Devin

Seconded by: Battle

Those Voting in Favor of the Motion	Minority Report(s)					Absent	Abstain
	ONTP	OTP	OTP-AM	New Draft	Re-Refer		

Rep. Battle							
Rep. Blume							
Rep. Sutton							
Rep. Tuell							
Rep. Alley							
Rep. Devin							
Rep. Kumiega, Chair							
Sen. Maker, Chair							
Sen. Brakey							
Rep. Hawke							
Sen. Vitelli							
Rep. Simmons							
Rep. Haggan							
TOTALS							

5/12

COMMITTEE VOTING TALLY SHEET

LD #: 1438

Committee: Marine Resources

Date: 5/10/17

Motion: OTR-AM

Motion by: Devin

Seconded by: Blume

Those Voting in Favor of the Motion	Minority Report(s)					Absent	Abstain
	ONTP	OTP	OTP-AM	New Draft	Re-Refer		

Rep. Battle	✓						
Rep. Blume	✓						
Rep. Sutton	✓						
Rep. Tuell	✓						
Rep. Alley	✓						
Rep. Devin	✓						
Rep. Kumiega, Chair	✓						
Sen. Maker, Chair	✓						
Sen. Brakey	✓						
Rep. Hawke	✓						
Sen. Vitelli	✓						
Rep. Simmons	✓						
Rep. Haggan	✓						
TOTALS							

