

Notice of Agency Rule-making Proposal

AGENCY: 13-188-Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 2 Aquaculture Regulations

TYPE OF RULE (*check one*): Routine Technical Major Substantive

PROPOSED RULE NUMBER (*leave blank; to be assigned by Secretary of State*):

BRIEF SUMMARY: This proposed rule-making corrects references to other chapters or sections of the regulation. It also strikes a provision requiring that the applicant secure a performance bond or escrow account and pay rent on their lease within 30 days of the Commissioner's final decision. These requirements must still be completed before aquaculture activities can occur, but they are no longer tied to the date a decision is signed. This proposed change reflects administrative processing of new leases and provides for some additional flexibility, particularly for experimental lease holders who have the option to select the start date of their lease term.

Date, time and location of PUBLIC HEARING (*if any*): None scheduled

COMMENT DEADLINE: July 3, 2020

CONTACT PERSON FOR THIS FILING (*include name, mailing address, telephone, fax, TTY, e-mail*):

NAME: Amanda Ellis

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TELEPHONE: 207-624-6573

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TTY: 207-624-6500 (Deaf/Hard of Hearing)

Hearing facilities: If you require accommodations due to disability, please contact Meredith Mendelson at 207-624-6553.

CONTACT PERSON FOR SMALL BUSINESS IMPACT STATEMENT (*if different*): Same

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES (*if any*): None

STATUTORY AUTHORITY FOR THIS RULE: §§6072, 6072-A, 6072-B

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (*if different*): Same

AGENCY WEBSITE: <http://www.maine.gov/dmr/rulemaking/>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: dmr.rulemaking@maine.gov

* Check one of the following two boxes.

X The summary provided above is for publication in both the newspaper and website notices.

The summary provided above is for the newspaper notice only. Title 5 §8053, sub-§5 & sub-§7, ¶D. A more detailed summary is attached for inclusion in the rule-making notice posted on the Secretary of State's website. Title 5 §8053, sub-§3, ¶D & sub-§6.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

DEPARTMENT OF MARINE RESOURCES

Chapter 2 - Aquaculture Lease Regulations

2.08 Application Procedures for Standard Leases

5. Final Application. An applicant must submit a final lease application to the Department and must make a reasonable effort to provide all required information as outlined in Chapter ~~2-09~~ 2.10. The final application fee is due at the time of submission.

A. The non-refundable application fees for discharge and no discharge leases are:

- i. Discharge Leases: \$1,500
- ii. Non-Discharge Leases: \$1,000

B. If the location of the proposed lease identified in the final lease application materially differs from the location described in the notices for the scoping session the application may, at the Department's discretion, be required to hold another scoping session addressing the revised location before the application is accepted.

2.15 Notice of Lease Application and Hearing

1. Notice of Completed Application. At the time that a final application is determined to be complete in accordance with Chapter ~~2-09(6)~~, 2.08(6) the Department shall make a copy of the completed application available to riparian owners within 1,000 feet of the proposed lease and to the municipality or municipalities, including the harbormaster if applicable, in which the proposed lease would be located.
2. Timing of Public Hearing. Hearings on applications will not be held until the Department has completed the required site review(s). Site review(s) shall be conducted at a time of year that the Department determines appropriate to adequately evaluate the proposed location.
3. Notice of Public Hearing. At least 30 days prior to the date of the public hearing, the Department shall provide notice of the hearing as required by 5 M.R.S.A. §9052 and by mail to the following persons:
 - A. Riparian owners as listed in the application;
 - B. The applicant; and
 - C. Any state agency the Department determines should be notified, including the Department of Environmental Protection, Department of Inland Fisheries and Wildlife, and the Department of Agriculture, Conservation and Forestry.
4. Proposed Site Marking. At least 30 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased.

2.40 Lease Issuance

1. Prior to issuing a lease, the Department shall send a draft lease for review to the applicant. The lease holder shall be same as the applicant.

2. Applicant Responsibilities. ~~Within 30 days of the Commissioner's decision and~~ Prior to issuance of the lease, the applicant must complete the following requirements:

A. establish an escrow account or secure a performance bond in the amount required by the Department in the draft lease. The bond shall be in the name of the executed lease holder. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

Category of Aquaculture Lease:

No structure, no discharge	\$ 500.00
No structure, discharge	\$ 500.00
Structure, no discharge	Total combined area of all structures on lease:
≤400 square feet	\$1,500
>400 square feet	\$5,000
Structure, discharge	\$25,000

A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

B. pay the rental fee due for the first year of the lease term.

2.61 Lease Expansion

4. Decision. The Commissioner may grant the lease expansion if it is determined that:

- A. the lease expansion does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A) and is consistent with the Commissioner's findings on the underlying lease application in accordance with Chapter 2.37(A);
- B. the lease expansion does not violate any of the conditions set forth in the original lease;
- C. the lease expansion is not for speculative purposes. Consideration of speculative purposes includes whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term; and
- D. the expansion will not cause the ~~transfer applicant~~ to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

2.64 Experimental Aquaculture Lease Application Procedures

1. Decision. The Commissioner shall issue a written decision within 60 days of the close of the comment period or the date of the public hearing, unless the applicant agrees to a longer time. The Commissioner may grant an experimental lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-A.

- A. Standards. In making the decision, the Commissioner must consider all applicable criteria as established in Chapter 2.37(1)(A)(1-7), except that the Commissioner may not consider the degree to which an experimental lease interferes with the use or enjoyment of conserved lands.
- B. Conditions. The Commissioner may establish conditions in accordance with 12 M.R.S.A. 6072-A(15) and may establish any reasonable requirement to mitigate interference, including but not limited to those restrictions outlined in Chapter 2.37(1)(B). The Commissioner may require environmental monitoring of a lease site in accordance with Chapter 2.40(7).

2.90 Limited-purpose aquaculture (LPA) license

3. Site Limitations

- A. Maximum size
Gear, on any one LPA, excluding mooring equipment, may not occupy an area larger than 400 square feet. An LPA may be contiguous to another LPA.
- ~~A.~~ B. Dimensions
The site must include four 90-degree angled corners, and may be no less than 1' or greater than 400' on any one side. Dimensions must be provided in whole feet.
- C. Territorial waters
LPA license sites must be located within Maine's territorial waters as defined in 12 M.R.S.A. §6001(48-B) and pursuant to 12 M.R.S.A. §6072-C(2).
- D. DMR Water Quality Program Closure Areas
 - (1) LPA license sites may not be located within 300 feet of any area classified as prohibited.
 - (2) Except as provided in subsection (3) below, LPA license sites may only be located in areas that are classified as approved or conditionally approved pursuant to DMR regulations Chapters 95 and 96. Should an area be downgraded, an LPA located within the area may be renewed for one additional year at the next date of renewal.
 - (3) Exemptions
 - (a) Shellfish seed. An LPA license site may be located within an area classified by DMR as prohibited, restricted, or conditionally restricted under Chapters 95 and 96, provided that only shellfish seed is cultured on the site. An LPA license site for shellfish seed may not be located within the 300:1 dilution zone around a wastewater treatment plant outfall. Shellfish seed from an LPA site in a prohibited, restricted, or conditionally restricted area can be moved only to another aquaculture lease or license site and only as provided in this subsection. The seed must be segregated from other shellfish on the destination site as required by the DMR Public Health Bureau.
 - i. Seed that is 25 mm or less in size can be moved to another aquaculture site without a relay permit under Chapter 9424. The lessee or licensee of the destination site must notify the DMR Public Health Bureau at least eight days in advance that the seed will be moved. If there is harvestable product on the destination site, the area around the seed will be closed to shellfish harvesting for six months by DMR.
 - ii. Seed that is mixed in size, both over and under 25 mm or that is greater than 25 mm, requires a relay permit under Chapter 9424 to be moved to another aquaculture

site. The area around the seed will be closed to shellfish harvesting for six months by DMR.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Amanda Ellis, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6573; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 2 Aquaculture Regulations

STATUTORY AUTHORITY: §§6072, 6072-A, 6072-B

DATE AND PLACE OF PUBLIC HEARING(S): None scheduled

COMMENT DEADLINE: July 3, 2020

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]

The purpose of this proposed rule is to make minor corrections and clarifications to the aquaculture regulations.

IS MATERIAL INCORPORATED BY REFERENCE IN THE RULE? ___ YES ___ X NO [§8056(1)(B)]

ANALYSIS AND EXPECTED OPERATION OF THE RULE: [*see* §8057-A(1)(B)&(D)]

This proposed rule-making corrects references to other chapters or sections of the regulation. It also strikes a provision requiring that the applicant secure a performance bond or escrow account and pay rent on their lease within 30 days of the Commissioner's final decision. These requirements must still be completed before aquaculture activities can occur, but they are no longer tied to the date a decision is signed. This proposed change reflects administrative processing of new leases and provides for some additional flexibility, particularly for experimental lease holders who have the option to select the start date of their lease term.

BRIEF SUMMARY OF RELEVANT INFORMATION CONSIDERED DURING DEVELOPMENT OF THE RULE (including up to 3 primary sources relied upon) [*see* §§8057-A(1)(E) & 8063-B]:

These proposed changes were developed in consultation with Aquaculture Division staff.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]

Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

FOR EXISTING RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

[*see* §8057-A(2)(A)]

INDIVIDUALS, MAJOR INTEREST GROUPS AND TYPES OF BUSINESSES AFFECTED AND HOW THEY WILL BE AFFECTED: [*see* §8057-A(2)(B)]

BENEFITS OF THE RULE: [*see* §8057-A(2)(C)]

Note: If necessary, additional pages may be used.