

**NOTICE OF AGENCY RULE-MAKING ADOPTION**

**AGENCY:** Department of Marine Resources

**CHAPTER NUMBER AND TITLE:** Chapter 2 Aquaculture Regulations

**CONCISE SUMMARY:**

This rule increases the application fee for experimental leases from \$100 to \$750 and clarifies that this fee would also apply to experimental leases eligible for renewal. The rule also specifies that an experimental application, like a standard, must be one contiguous tract unless it meets exceptions already specified in rule. It requires that Limited Purpose Aquaculture (LPA) renewal applications be received by November 30 each year and removes the provision allowing for mid-term LPA amendments. The rule also specifies that stock for LPA sites must come from the wild, hatchery, or same health zone. Any person who applies for an LPA for seed in an area classified by DMR as prohibited, restricted, or conditionally restricted needs to hold a lease or own a company that holds a lease. The rule removes existing requirements to mark proposed lease areas in advance of public hearings. The rule also provides for contaminant reduction or other special studies, including fees, that may be necessary to ensure the safety of product for human consumption. The rule also makes several updates to existing sections for improved clarity, consistent with statutory changes, and enforcement.

**ADOPTED RULE NUMBER:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**EFFECTIVE DATE:**

(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

**AGENCY CONTACT PERSON:**

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

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_

FUND    AGENCY    S-UNIT    APP    OBJT    AMOUNT

*Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta*

10            13A            1120            10            4946            regulations

## Chapter 2 - Aquaculture Lease Regulations

### 2.05 Definitions

1. The definitions set forth in 12 M.R.S.A. §6072 shall apply to the terms used in this chapter.

A. Aquaculture.

"Aquaculture" means the culture or husbandry of marine organisms by any person. In order to qualify as aquaculture, a project must involve affirmative action by the individual to improve the growth rate, survivability or quality of the marine organism. These activities do not include impounding lobsters, wet storage or activities conducted under the authority of municipal shellfish conservation programs in accordance with 12 M.R.S.A. §6671(3)(A)(3).

B. Culture or Husbandry.

"Culture or husbandry" means the production, development or improvement of a marine organism.

C. Riparian Owner.

For the purposes of 12 M.R.S.A. ~~Chapter 605 Subchapter 2 §§ 6072, 6072-A and 6072-B~~ "riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.

~~For the purposes of 12 M.R.S.A. §6072-C "riparian owner" means a shorefront property owner whose property boundaries are within 300 feet of a limited purpose aquaculture (LPA) license site.~~

D. Existing or Potential Uses.

"Existing or Potential Uses" means all water-related activities and resources including, but not limited to, commercial and recreation fisheries, marine transportation, aquaculture, and boating.

E. Adverse Effects.

"Adverse Effects" means impediments to water-related activities or unreasonable interference with natural processes supporting those activities. This includes, but is not limited to, floating or submerged obstruction, habitat destruction, natural flora and fauna displacement, current flow alteration, and lowered water quality.

F. Structure.

"Structure" means anything that is constructed or erected with a fixed location, or attached to anything with a fixed location, on intertidal or subtidal lands.

G. Discharge.

"Discharge" means, for the purpose of this Chapter only, any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant including, but not limited to, the addition of feed, therapeutants or pesticides to waters of the State.

H. Scientific research.

"Scientific research" is a study or investigation intended to lead to new discoveries or advances within its field or to impact on the progress in that field, as determined by the Department. In making its decision, the Department shall consider the nature, funding and

objective of the planned research, and the disposition of organisms used in research. The results of any scientific research shall be part of the public record.

I. Commercial research and development.

“Commercial research and development” means a study by any person or company designed to try new species, new growing or harvesting techniques, new sites or to determine the commercial viability of an operation. The results of such research will not be part of the public record.

J. LPA license Health Areas.

"Limited-purpose aquaculture (LPA) license Health Areas" means the territorial waters described as follows:

(1) Area 1: Downeast and Canada border

Eastern Line - Head of tide on the St. Croix River and International Boundary Line Canada and the U.S. (Maine).

Western Line from West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

(2) Area 2: West of Quoddy Head to Schoodic Point

Eastern Line - West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

Western Line – from Schoodic Point due South (True) to the boundary of Maine’s territorial waters.

(3) Area 3: Schoodic Point to the Maine - New Hampshire border

Eastern Line – from Schoodic Point due South (True) to the boundary of Maine’s territorial waters.

Western Line – the Maine and New Hampshire border.

(4) Area 4: Damariscotta River

Head of tide to a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(5) Area 5: Casco Bay

Eastern Line - Small Pt. due South Magnetic to the boundary of the territorial waters.

Western Line - A straight line from Active Lt. 2 Lt’s. Cape Elizabeth to C "1" East Hue & Cry (43° 31.9N)(70° 08.8W); then proceed WSW to the boundary of the territorial waters.

K. Fallow.

“Fallow” means a lease site without cultured organisms.

L. Mean Low-Water

“Mean low-water” means the average low tide. An approximation of mean low-water is made by observing the low-water mark when the tide height is at 0.0 feet as indicated on a tide table.

M. Operational Plan for Leases and Limited Purpose Aquaculture Licenses

“Operational plan” means a written document outlining how a lease or license operator will utilize the authorized aquaculture site his lease area and structures and handle product to, on and from the site. The completed lease or license application, final lease or license decision, executed lease agreement, and any Department authorized amendments thereto, may be used as an operational plan. If a lease operator elects to develop a written operational plan it must comply with the completed lease or license application, final lease, or license decision, executed lease agreement, and any Department authorized amendments.

N. Pending.

“Pending” means an application in process, from the date of ~~submission receipt of an draft application~~ until final agency action, or until the application has been terminated or withdrawn.

## **2.07 Pre-Application Requirements for Standard Leases**

Pre-Application meeting. The applicant shall attend a pre-application meeting with DMR staff and the harbormaster(s) and/or a municipal officer or other designee(s) of the municipality(ies) in which the proposed lease is located to discuss the proposal. The purpose of the meeting shall be:

1. For the applicant to introduce the proposal to the municipal officers and the Department;
2. For the applicant and the Department to gain local knowledge from the municipal officers; and
3. To define the environmental baseline or characterization requirements and other informational needs, including approximate location of the lease site, that the Department determines are necessary.

## **2.08 Application Procedures for Standard Leases**

1. Draft application submission. An applicant must file a draft lease application, and must make a reasonable effort to provide all required information as outlined in Chapter 2.10. The nonrefundable draft application fee is \$500.
  - A. If additional information is required, the Department will respond requesting further information within 30 days of receipt of the draft lease application.
  - B. If a draft application is not submitted within 4 months following the pre-application meeting, the applicant must complete the pre-application meeting requirement as outlined in Chapter 2.07 again prior to filing a draft application. The Commissioner may provide an exemption from this requirement for no more than 9 months following of the pre-application meeting for good cause shown.
2. Scoping session. Within 4 months of submission of the draft application, the applicant shall hold a scoping session in the municipality in which the proposed standard lease is predominantly located. The applicant is required to attend the scoping session. The purpose of a scoping session shall be to:
  - A. Familiarize the general public with the proposal;

- B. Allow the public an opportunity to provide the applicant with additional local information to inform development of the application; and
  - C. To allow the public an opportunity to ask questions of the applicant.
3. Notice. The Department shall provide written notice of the scoping session to riparian landowners within 1,000 feet of the proposed lease and to the municipality in which the proposed lease would be located. The applicant shall publish a notice in a newspaper of general circulation in the area of the proposed lease at least ten days prior to the scoping session.
  4. Location of Pending Application. During the 6 months following the scoping session, or until a completed application is received by the Department from the applicant for the location noticed in the scoping session, whichever is earlier, the Department cannot accept an application for a lease in the same location as a proposed lease discussed at the scoping session.
  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 2.10. 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.
  6. Completeness Determination. Within 30 days of receipt of a written final application, the Commissioner or his designee shall determine whether the application contains sufficient information in which a decision regarding the granting of the application may be made, and notify the applicant of his determination.
    - A. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required.
    - B. An application shall not be complete unless the non-refundable final application fee has been paid.
    - C. If an applicant has not submitted a complete application within 90 days of the date of the Department's notice under Chapter 2.08(6)(A) the application shall be void.
    - D. Termination without hearing. If the Commissioner or his designee determines before a hearing has been scheduled that either that the application could not be granted on its face or the applicant lacks the necessary financial or technical capacity the applicant shall be notified in writing of that determination and no further Department action on the application is required. If a hearing has been scheduled and the Department's site review or other information reveals that one or more of the criteria for a lease approval are unlikely to be met the Department, in its discretion, may ask the applicant to withdraw the application or waive

the hearing and, in the case of a hearing waiver, the Department will issue a written decision denying the application.

## 2.10 Application Requirements for Standard Leases

1. Required Elements. In addition to requirements specified in 12 M.R.S.A. §6072(4), the following information is required for an application to be determined complete:

A. A description of the location of the proposed lease by corner coordinates or boundaries with coordinates for one starting point.

(1) Siting Restrictions:

a) A lease may not be located within the 300:1 dilution zone around a wastewater treatment facility unless only marine algae or seaweed shall be cultured on the site for purposes other than human consumption and applicants have provided satisfactory evidence to the Department that the site is for remediation purposes only, or there is a plan for destruction or compost.

b) A lease must be one contiguous tract except where:

(i) A geographic feature, navigation corridor or existing uses of the area require that the lease area be divided into no more than two tracts and the distance between the tracts is no greater than one half mile; or

(ii) A two-tract lease is part of a site rotation or fallowing management scheme that is a component of a biosecurity plan approved by the Department, and the two tracts are proximate and of similar environmental characteristics as determined by the Department.

B. Environmental Characterization and Baseline.

(1) Non-discharge applications. Applications for leases with no discharge require the submission of an environmental characterization that shall include, but not be limited to, bottom characteristics, resident flora and fauna, tide levels, ice formation, and current speed and direction. Applicants may provide more than one site characterization, but one characterization must be conducted between April 1 and November 15, dates inclusive.

For non-discharge applications, the Department may waive the requirement for current speed and direction if the information is not necessary for applying the decision criteria or other requirements associated with the proposed lease. Examples of sites where this requirement may be waived include, but are not limited to, very shallow sites or areas of little or very limited current flow.

(2) Discharge applications. Applicants that have submitted applications that involve a discharge into State waters must also conduct a Department approved environmental baseline to serve as a benchmark for monitoring the physical and ecological effects of farms on sediments, marine organisms and water quality of the site as a result of the operation.

Applicants may do more than one baseline, but one baseline must be conducted between April 1 and November 15, dates inclusive.

(a) Sediment & benthic characterization. The baseline must include a clear and decipherable video or still photography showing bottom characteristics as well as the written description.

(i) A visual survey shall be conducted to document all representative bottom types within the proposed lease area (e.g. cobble, gravel, sand, mud, and submerged aquatic vegetation). The survey shall indicate generally whether the lease area is depositional or erosional. The survey shall be documented by video or still photography. If a site is too deep or deemed unsafe to be surveyed by SCUBA diver, then remote video or still photography documentation shall suffice. The results of the visual survey shall be summarized in writing and a copy of the documentation submitted with the application.

The applicant shall confirm the number and the extent of survey transects with the Department prior to conducting the visual survey, and the Department may reduce or increase the number of transects depending on site characteristics or other existing information. Under no circumstances shall the visual survey be waived.

In addition to the minimum diver survey and video or photographic documentation, the Department may require that the bottom substrate be characterized remotely through the use of seismic reflection surveys (side-scan) or a fish finder. A sufficient number of transects to characterize the entire area within the proposed lease must be taken.

(ii) Sediment cores must be taken to adequately sample representative bottom types. Each core's location shall be accurately described. Sediment analysis shall report core depth, depth of any unconsolidated organic material, total organic carbon (cg / g or centigrams per gram) in percent, and grain size distribution (%) from coarse gravel to clay size fractions. Sediment cores may be taken as a subsample of the benthic cores described below in subsection (iii).

(iii) Benthic samples shall be sieved through a 1.0 mm sieve and the infauna organisms enumerated and identified to the species or the lowest practical taxonomic level, whichever is higher. A general characterization of the community structure must be provided with the infauna data and sampling methods shall be described.

(b) Water quality characterization

Water column quality shall be characterized on two separate occasions, one of which shall be conducted between August 15 and September 15. Characterization of water temperature, dissolved oxygen concentrations, and salinity shall encompass two tidal cycles in order to provide a representative description of conditions at the site. At least one profile shall be taken no later than 2 hours after sunrise. Current velocity and direction shall be conducted over at least a 16-hour period. Readings shall be at intervals of no less than 3 readings per hour.

On sites where water depth is 30 feet or less at mean low water, samples shall be taken at near surface and near bottom. On sites where water depth is greater than 30 feet at mean low water, samples shall be taken at near surface, the depth corresponding to the bottom of the nets, and near bottom.

Data shall be included in both summarized, or graphical format, and unsummarized format in the application.

- C. Navigation Use. A description of the observed commercial and recreational navigation uses of the proposed lease site, including type, volume, time, duration, location and direction of traffic.
- D. Fishing Use. A description of observed current commercial and recreational fishing occurring in the proposed lease tract and the immediate vicinity of the proposed lease site. The description should include type, duration and amount of activity.
- E. Exclusive Use. A description of the degree of exclusive use required by the project. This shall include a description of the use intended for the site by the applicant.
- F. Riparian Use. A description of observed riparian owner's current use of lease site for purposes of access to riparian owned land.
- G. Financial Capacity. Each applicant shall submit detailed cost estimates of the planned aquaculture activities, and a letter from a financial institution confirming the applicant has an account in good standing.
- H. Technical Capability. The applicant shall submit a résumé or other documentation as evidence of technical expertise and capability to accomplish the proposed project.
- I. Equipment. The applicant shall submit detailed specifications on all gear, including nets, pens, and feeding equipment to be used on the site. Documentation shall include both plan and cross-sectional views of the generalized layout of the equipment. Vessels that service a site are not subject to this provision.
- J. Vessel Use. The application shall also include information on the anticipated typical number and type of vessels that will service the proposed site, including the frequency and duration of vessel traffic.
- K. Oil Spill Prevention and Control Plan. For applications where petroleum products are to be stored on the proposed site, a spill prevention and control plan shall be provided with the application. The plan should be specific to the site, but should include:
  - (i) procedures or control measures at the site to prevent oil spills; and
  - (ii) measures to contain, cleanup, and mitigate the effects of an oil spill that has impacted navigable waters or adjoining shorelines.
- L. Violation History. The applicant(s) shall identify if they have been convicted of or adjudicated to be responsible for any violation of marine resources or environmental protection law, whether state or federal.



M. Riparian Permission. The written permission of riparian owners for use of any intertidal lands that they own that will be used.

## **2.12 Multiple Ownership**

1. Corporate Applicants. Corporate applicants for aquaculture lease(s) shall include the following information in their application:
  - A. The date and state in which incorporated and a copy of the Articles of Incorporation;
  - B. The names, addresses, and titles of all officers;
  - C. The names and addresses of all directors;
  - D. Whether the corporation, or any stockholder, director or officer has applied for an aquaculture lease for Maine lands in the past, and the outcome or current status of that application or lease;
  - E. The names and addresses of all stockholders who own or control at least 5% of the outstanding stock and the percentage of outstanding stock currently owned or controlled by each such stockholder;
  - F. The names and addresses of stockholders, directors or officers owning an interest, either directly or beneficially, in any other Maine aquaculture leases, as well as the quantity of acreage from existing aquaculture leases attributed to each such person under paragraph 3 below; and
  - G. Whether the corporation or any officer, director, or shareholder listed pursuant to Chapter 2.12 (1)(E) has ever been convicted of or adjudicated to be responsible for any violation of any marine resources or environmental protection law, whether state or federal.
2. Partnership Applicant. Partnership applicants for aquaculture lease(s) shall include the following information in their application:
  - A. The date and state in which the partnership was formed and a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership,
  - B. The names, addresses, and ownership shares of all partners;
  - C. Whether the partnership or any partner has applied for an aquaculture lease for Maine lands in the past and the outcome or current status of that application or lease;
  - D. Whether the partnership or any partner owns an interest, either directly or beneficially, in any other Maine aquaculture leases as well as the quantity of acreage from existing aquaculture leases attributed to the partnership or partner under paragraph 3 below;
  - E. Whether the partnership or any partner has been convicted of or adjudicated to be responsible for any violation of marine resources or environmental protection law, whether state or federal.
3. Aquaculture Lease Acreage

No lease may be granted that results in a person being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. For the purposes of calculating ownership of aquaculture lease acreage, the amount of acreage leased by a corporation or partnership will be attributed to the partnership or corporation and collaterally to shareholders in the corporation or partnership as individuals at a rate equal to the shareholders' ownership in the corporation or partnership.

## **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 2.08(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 or email to the following persons:
  - A. By mail to known 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 when the application includes activities that have a discharge into the waters of the State, 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.~~

## **2.20 Intervention**

1. Forms

The Commissioner shall on request supply application forms for intervenor status and require the submission of the following information:

- A. The identity of intervenor applicant;
- B. A description of the manner in which the intervenor applicant may be substantially and directly affected by the granting of a proposed lease. This description shall include information describing the intervenor applicant's existing use of the proposed lease area.
- C. A description of intervenor applicant's objections, if any, to the proposed aquaculture lease.

## 2. Filing of Applications

Any application for intervenor status must be filed in writing and received by the Department at least 15 days prior to the hearing. The Commissioner may waive the 15-day deadline for good cause shown.

## 3. Participation Limited or Denied

At least 5 days prior to the hearing, the Commissioner shall decide whether to allow or refuse intervenor applications. The Commissioner shall provide written or oral notice of his decision to the intervenor applicant and all other parties to the proceeding.

- A. **Limited Participation.** The Commissioner may grant limited intervenor status to an intervenor applicant where the Commissioner determines that the applicant has a lesser interest than that necessary for full intervenor status but whose participation as a limited intervenor is warranted or would be helpful to the Commissioner in his decision making. The Commissioner may also grant limited intervenor status when the applicant has an interest in the proceeding and where the Commissioner determines that the applicant's interest or evidence to be offered would be repetitive or cumulative when viewed in the context of the interest represented or evidence to be offered by other intervenors. The Commissioner shall describe the manner in which a limited intervenor is permitted to participate in the adjudicatory process in his written notification of the granting of such status.
- B. **Consolidation.** The Commissioner may require the consolidation of two or more intervenors' testimony, evidence and questioning if he determines that it is necessary to avoid repetitive or cumulative evidence or questioning.
- C. **Correspondence of Parties.** Once admitted as an intervenor, whether full or limited, the intervenor applicant shall be considered a party to the proceeding. Each party shall provide copies of all correspondence with the Department to all other parties and will be notified of all communications between the Department and other parties to the aquaculture lease proceedings.

### **2.27 Department Site Review**

#### 1. On site Inspection

- A. An inspection of the proposed aquaculture site and the immediate surrounding area will be conducted by the Department. ~~The site must be marked as referenced in Chapter 2.15(4) by the applicant. To help facilitate the site inspection, the Department may require an applicant to place visible markers which delineate the area proposed to be leased.~~
- B. Information obtained on site will include but will not necessarily be limited to bottom composition, depth and features; typical flora and fauna; relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; and navigation channels and moorings.

#### 2. Documented Information

Site specific documented information which is available will be assembled and included in the Department report, including verification of the location of the proposed lease boundaries, distances to shore, navigational channels and moorings, tide, current, ~~and temperature data, patterns of ice formation and flows,~~ location of shellfish beds, observed fishing activity in and around the proposed site, and the location of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease. The description and location of existing or proposed aquaculture lease sites within 1,000 feet of the proposed site ~~the area~~ will be included. ~~For the purpose of this report the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.~~

The Department shall determine whether or not to verify the applicant's water quality information (~~tide, current, salinity, dissolved oxygen~~) through its own measurements. If the applicant's information is deemed to be adequate for review, then the water quality section of the report may be waived.

The Department shall conduct an adequate number of dives or remote video transects to substantiate benthic conditions and substrate characteristics as submitted by the applicant. The Department reserves the right to request additional information of the applicant in the event that the information in an application is found to be insufficient or inadequate for review.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

## **2.29 Prehearing Conference**

The Commissioner may hold ~~require parties to attend~~ a prehearing conference if the complexity of the issues or other factors ~~volume of evidence~~ indicates that a prehearing conference would aid in the determination of issues raised by the application. The Commissioner may issue a ~~prehearing~~ procedural order which sets forth the procedure to be followed by the parties with regard to such issues as the pre-filing of testimony, the conduct of the hearing and the closure of the record.

## **2.30 Aquaculture Lease Hearing Procedures**

### **1. General Conduct**

The hearing shall be conducted in accordance with the adjudicatory proceeding provisions of 5 M.R.S.A. Chapter 375. At any time prior to the hearing, the presiding officer may require that all or part of the testimony to be offered at the hearing be filed with the Department in written form at a prescribed time prior to the hearing. All persons offering testimony in written form must be present at the hearing and subject to cross-examination. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who is not a party.

## 2. Continuance

All hearings conducted pursuant to these regulations may be continued by the presiding officer for reasonable cause and reconvened from time to time and place to place by the presiding officer. The presiding officer shall provide reasonable notice to the parties and the public of the time and place of such reconvened hearing.

## 2.31 Evidence

### 1. Documentary and Real Evidence

- A. All documents, materials and objects offered and accepted as evidence shall be numbered or otherwise identified and included in the record. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require any person offering documents or photographs as exhibits to submit a specified number of copies unless the document or photograph is determined to be unsuitable for reproduction.
- B. All written testimony and documents, materials and objects submitted into evidence shall be made available during the course of the hearing for public examination.
- C. The agency record shall be submitted as documentary evidence in the hearing record.

### 2. Objections

All objections to rulings of the presiding officer concerning evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. During the course of the hearing or after the close of the hearing, the Commissioner may determine that the ruling of the presiding officer was in error and order the hearing reopened or take any other action ~~he deems~~ appropriate to correct the error.

### 3. Offer of Proof

An offer may be made in connection with an objection to a ruling of the presiding officer excluding any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence.

### 4. Public Participation

Any person may participate in a hearing by offering testimony, and may submit questions to the parties through the presiding officer, within such limits and upon such terms and conditions as may be fixed by the presiding officer.

### 5. Testimony at Hearings

- A. Order of Presentation. Unless varied by the presiding officer, hearing testimony shall be offered in the following order:

- (1) Direct evidence by applicant and applicant's witnesses in support of the application.

- (2) Testimony by Department staff and consultants.
  - (3) Testimony by members of federal, state and local agencies.
  - (4) Direct evidence by intervenors supporting the application.
  - (5) Direct evidence by intervenors opposing the application.
  - (6) Testimony by members of the public.
- B. Questions. At the conclusion of ~~their~~ ~~his/her~~ testimony each witness may be questioned in the order described below. The presiding officer may require that questioning of witnesses be conducted only after the conclusion of testimony by an entire category of witnesses for the purposes of efficiency or clarity of record.
- (1) The presiding officer, Department legal counsel and Department staff may question witnesses at any time.
  - (2) The applicant.
  - (3) Federal, state and local agency representatives.
  - (4) Intervenors.
  - (5) At the discretion of the hearing officer, all other members of the public may have the opportunity to question witnesses directly or by oral or written questions through the presiding officer.
6. Conclusion of Hearing
- A. At the conclusion of the hearing the record shall be closed and no other evidence or testimony will be allowed into the record, except by stipulation of the parties or as specified by the presiding officer.
  - B. The Commissioner may re-open the hearing record after it has been closed to take additional evidence on specific issues where the Commissioner is not satisfied that ~~he has all of the information before him necessary to make a decision.~~ they have all the information necessary to make a decision.

### **2.35 Hearing Officer Report**

- 1. In the event that an aquaculture lease hearing is conducted by a hearing officer other than the Commissioner, the hearing officer may prepare a report, including proposed findings of fact, conclusions of law and, at the Commissioner's request, a recommended decision. A copy of the hearing officer's report shall be provided to each party by regular or electronic mail and each party shall have 10 days to file responses or exceptions to the report, beginning 3 days after the date of postmark or the date the electronic mail was sent.

2. In submitting responses and exceptions, parties may submit a petition to the hearing officer to correct mis-statements of fact in the report. The hearing officer may correct any mis-statements of fact in ~~his~~the report prior to submission of the report to the Commissioner.
3. The report shall be submitted to the Commissioner with the parties' responses and exceptions.
4. Nothing in this section shall prevent the Commissioner from reaching~~his~~ a decision based solely on the record, after review of the hearing tape or transcript and after review of the hearing record.

## **2.37 Decision**

1. After review of the agency record, the Commissioner shall issue a written decision, complete with findings of fact and conclusions of law.

The Commissioner may grant an aquaculture lease if ~~he is~~ they are satisfied that the proposed project meets the conditions outlined by 12 M.R.S.A. §6072 (7-A).

- A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:
  - (1) Riparian Owners Ingress and Egress. The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. ~~He/she~~ The Commissioner shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.
  - (2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation. High tide "short cuts" shall not be considered navigational ways for the purposes of this section.
  - (3) Fishing. The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area.
  - (4) Other Aquaculture Uses. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area. The intensity and frequency of such uses as well as the degree of exclusivity required for each use shall be factors in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner.
  - (5) Existing System Support. The Commissioner shall consider the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support

ecologically significant flora and fauna. Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination.

- (6) Source of Organisms to be Cultured. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.
- (7) Interference with Public Facilities. The Commissioner shall consider the degree to which the lease interferes with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved lands owned by the Federal Government, the State Government or a municipal government. Conserved lands means land in which fee ownership has been acquired by the state, federal or municipal government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property. In determining interference with the public use or enjoyment of conserved lands, the Commissioner shall consider the purpose(s) for which the land has been acquired.
- (8) Lighting

Applicability. These rules apply to all exterior lighting used on buildings, equipment, and vessels permanently moored or routinely used at all aquaculture facilities, with the exception of lighting for navigation, emergencies, and construction of a temporary nature.

Exterior lighting. All exterior lighting shall be mounted in cutoff fixtures. A cutoff fixture is one that projects no more than 2.5% of light above the horizontal plane of the light fixture's lowest part. This does not include spotlights or floodlights, which are addressed below.

All exterior lighting shall be designed, located, installed, and directed in such a manner as to illuminate only the target area and to reduce glare.

Exterior lighting shall be no more than 250 watts per fixture, with the exception of required navigational lighting, spotlights and floodlights.

When harvest schedules, feed schedules, or other similar circumstances result in the need to work beyond daylight hours, spotlights or floodlights may be used to ensure safe working conditions and safe vessel operation. Such lighting shall be directed only at the work area to be illuminated, and must be the minimum needed for safe operations.

If used, all husbandry lighting shall be submersible and operated at all times below the water line, except during examination for maintenance and repair.

When necessary, security lighting may be used, but shall conform to the requirements for exterior lighting.



An applicant shall demonstrate that all reasonable measures will be taken to mitigate light impacts from the lease activities.

No provision in these rules is intended to restrict vessel lighting levels below what is necessary for safety or as is otherwise required by state or federal law.

#### (9) Noise

**Applicability.** These rules apply to the routine operation of all aquaculture facilities, including harvesting, feeding, and tending equipment at leases authorized by the Department of Marine Resources, with the following exemptions:

- Watercraft, harvest or transport barges, and maintenance equipment while underway;
- The unamplified human voice and other sounds of natural origin;
- Bells, whistles, or other navigational aids;
- Emergency maintenance and repair of aquaculture equipment;
- Warning signals and alarms; and
- Events not reasonably within the control of the leaseholder.

#### **Mitigation:**

All motorized equipment used during routine operation at an aquaculture facility must be designed or mitigated to reduce the sound level produced to the maximum extent practical.

Centralized feeding barges, or feeding distribution systems, shall be designed or mitigated to reduce noise by installing the most effective commercially available baffles at air intakes and outlets, mounting of all relevant equipment to minimize vibration between it and the hull, and using the most effective commercially available soundproofing insulation.

All fixed noise sources shall be directed away from any residences or areas of routine use on adjacent land.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.

#### (10) Visual Impact

**Applicability.** This rule applies to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored or routinely used at a lease location such as harvest or feed delivery vessels. Other equipment or vessels not moored within the boundaries of a lease, but routinely used or owned by the leaseholder are subject to these requirements.

**Building profiles.** The size, height, and mass of buildings and equipment used at aquaculture facilities shall be constructed so as to minimize the visual impact as viewed from the water.

Height limitations. All buildings, vessels, barges, and structures shall be no more than one story and no more than 20 feet in height from the water line. Height shall be measured from waterline to the top of the roof or highest fixed part of the structure or vessel. This height limitation excludes antennae, cranes, and other similar auxiliary equipment. Structures that exist as of April 1, 2018 are exempted from the height restriction for their useful lifetime.

Roof & siding materials. Roofing and siding materials shall not be reflective or glossy in appearance or composition.

Color. Equipment and structures shall be painted, or be of, a color that does not contrast with the surrounding area. Acceptable hues are grays, blacks, browns, blues, and greens that have a sufficiently low value, or darkness, so as to blend in with the surrounding area. Colors shall be flat, not reflective, in appearance.

The color of equipment, such as buoys, shall not compromise safe navigation or conflict with US Coast Guard Aids to Private Navigation standards.

## B. Conditions

The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities, including but not limited as follows:

- (1) A harbormaster and/or a municipal officer or other designee of the municipality in which the proposed lease is predominantly located may recommend that the Commissioner establish conditions on a proposed lease in writing to the Department during the comment period. The Department shall consider any conditions recommended by the municipality, and the Department shall provide a written explanation to the municipality at the time a proposed decision is written if any of the requested conditions will not be included in the lease.
- (2) The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.
- (3) The Commissioner may require that monitoring including testing ~~that environmental monitoring~~ be conducted on lease sites. Such monitoring shall: be conducted by the ~~applicant~~ lease holder or the ~~applicant's~~ lease holder's agent; be undertaken on a schedule to be determined by the Commissioner; and shall include the information designated by the Commissioner in the lease decision, which may include, but is not limited to, an analysis of water chemistry, phytoplankton, zooplankton, and fish larvae profiles. The results of such monitoring shall be summarized in a written report and submitted to the Department within 90 days of completion of each study.
- (4) The Commissioner may establish any reasonable requirements to mitigate interference, including but not limited to restrictions on:
  - (a) specific stocking limits, feeding requirements, husbandry techniques and harvesting methods;
  - (b) the size and shape of gear, nets, or enclosures;
  - (c) the deployment and placement of gear; and
  - (d) the timing of various project operations.

- (5) Within 120 days after the hearing on an application, the Commissioner shall render a final decision.
- (6) The Commissioner's denial or approval of a lease application shall be considered final agency action for purposes of judicial review.

**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. 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.
- 3. Lease Term and Validity

The term of the lease shall run from the date of the Commissioner's decision but no aquaculture rights shall accrue in the lease area until the lease is signed.

4. Other Licenses

The lease holder is responsible for obtaining any requisite licenses and special licenses from the Department prior to beginning operations.

#### **2.41 Competing Aquaculture Lease Applications**

1. To qualify as a competing application under subsections 2 and 3, an application must be accepted by the Department prior to the publication of the first public notice of hearing to consider a previously filed lease application for identical or overlapping lease areas.
2. In the event the Department receives competing aquaculture lease applications for a lease site, the Department shall give preference in granting a lease as follows:
  - A. first to the Department;
  - B. second, to the riparian owner of the intertidal zone within the leased site area;
  - C. third, to fishermen who have traditionally fished in or near the proposed lease area; and
  - D. fourth, to the riparian owner within 100 feet of the territorial waters proposed to be leased.
3. If the Department receives competing applications which are either in the same preference category as outlined in subsection 2, or which are not in any preference category, the applications shall be considered sequentially according to the date on which the final application was submitted pursuant to Chapter 2.09(5) of these regulations.
4. Except as described in Chapter 2.41(3) above, when the Department receives competing applications, it may schedule one hearing to consider the applications concurrently.

#### **2.43 Lease Rent**

Rent shall be payable hereunder as follows: one hundred dollars (\$100) per acre, per year for all leases. All rent is payable on or before October 1 of each year throughout the term of the lease.

#### **2.44 Lease Amendments**

1. The Commissioner shall not amend a lease in such a way that it materially alters the findings of the original decision, or would result in a change to the original lease conditions. Amendments may be requested only for leases issued under 12 MRSA §6072, or scientific leases issued under 12 MRSA §6072-A to add or remove species or gear type, or modify operations.
2. Requests for amending leases must be submitted on forms prescribed by the Commissioner. A fee of \$200 is due at the time of application for the lease amendment.
3. Procedure. A lease amendment is not an adjudicatory proceeding. The Department shall send a notice of the proposed amendment to the owners of riparian land within 1,000 feet of the lease site, and the municipal officers of the municipality in which the lease is located, and interested parties. The Department may also publish notice on the Department website. The notice shall state that the riparians and municipal officers may provide comments to the Department on the proposed amendment within 14 days of the date of the notice.
4. Decision. The Commissioner may grant the lease amendment if it is determined that

- A. the lease amendment 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 amendment does not violate any of the conditions set forth in the original lease;

## **2.45 Lease Renewal**

1. A lessee, on a form supplied by the Commissioner, may apply for Department approval of a lease renewal. A lessee must file with the Department an application to renew a lease at least 30 days prior to the lapse of the lease. The application shall include a nonrefundable application fee of \$1,500. ~~A lease issued for scientific research pursuant to 12 M.R.S.A. §6072-A is exempt from the renewal fee requirements in this section.~~
2. The Commissioner shall grant a lease renewal if it meets the conditions established in 12 M.R.S.A §6072 (12) and further defined below:
  - A. Consideration of speculative purposes includes whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term;
  - B. Consideration of the best interest of the state may include, but shall not be limited to, conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest; and
3. The Commissioner may not grant a lease renewal if the renewal will cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1000 acres.

## **2.60 Lease Transfer**

1. Application. A lessee, on a form supplied by the Commissioner, may apply for Department approval of the transfer of his aquaculture lease to another person for the remaining portion of the lease term. The lessee must pay the transfer fee of \$2,500 for non-discharge leases and \$5,000 for discharge leases at the time application for the transfer is made. The Commissioner may waive the application fee if the applicant demonstrates that the transfer is to the applicant's parent, spouse, sibling or child. Multiple transfers of one lease that have the effect of circumventing the application fee are not permitted.
2. Procedure. A lease transfer is not an adjudicatory proceeding. The Department shall send a notice of the proposed transfer to the owners of riparian land within 1,000 feet of the lease site, and the municipal officers of the municipality in which the lease is located. The Department shall also publish a notice in a newspaper of general circulation in the area of the lease. The notice shall state that the public, riparians, and municipal officers may provide comments to the Department on the proposed transfer within 30 days of the date of the notice.
3. Decision. The Commissioner may grant the lease transfer if it is determined that:
  - A. the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A);

- B. the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8);
- C. the lease transfer 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 transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

## **2.61 Lease Expansion**

1. Application. A lessee may apply for Department approval of a lease expansion on a form supplied by the Commissioner. A lessee is eligible to apply for an expansion 2 years from the date the lease was originally executed. If a lease contains multiple tracts, the expansion must be proportional to each tract. The dimensions of the proposed expansion must be reasonably based on the original lease dimensions.
2. Fee. An application for lease expansion shall not be considered until a nonrefundable application fee has been paid. The application fee for a lease expansion is \$500 for non-discharge leases and \$2000 for discharge leases.
3. Procedure. A lease expansion is not an adjudicatory proceeding.
  - A. After the Department has deemed the application complete, the applicant shall publish a notice of the proposed expansion in a newspaper of general circulation in the area of the lease.
  - B. The Department shall notify all riparian owners within 1,000 feet of the lease site, and the municipal officers of the municipality in which the lease is located or Bureau of Revenue Services, Unorganized Division for unorganized territory of the completed lease expansion application. The notice shall provide the riparians, and municipal officers with 30 days to provide written comments about the proposed expansion.
  - C. The Commissioner may require the applicant to conduct an environmental characterization of the proposed expansion. This characterization shall be done in accordance with Chapter 2.10(C) at the Department's direction. The applicant shall provide this characterization to the Department at the applicant's expense. The environmental characterization shall be conducted at a time of year that the Department determines appropriate to adequately evaluate the proposed location.
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 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. Form. Experimental aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.
2. Fee. An application shall not be considered complete until a nonrefundable application fee has been paid. The application fee for a limited-purpose lease application shall be ~~\$100.~~ \$750. A lease renewed for scientific research pursuant to 12 M.R.S.A. §6072-A is subject to the fee requirements in this section.
3. Completion. Upon receipt of a written application, the Department shall notify the applicant of its receipt. Within 30 days of receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information on which a decision regarding the granting of the application may be made. The Commissioner shall notify the applicant of ~~his/her~~ the determination. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be deemed complete.
4. Notice of Completed Application. At the time that an application is determined complete in accordance with Chapter 2.65 the Department shall make a copy of the completed application available to the known riparian owners within 1,000 feet of the proposed lease and to officers of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.
5. Restrictions on Pending Applications. An applicant may have no more than two pending experimental leases at any time. For purposes of this section, a pending limited-purpose lease includes any application for an aquaculture lease filed by an entity in which the applicant has a legal interest (such as a partner in a partnership, a shareholder in a corporation, or a member in a limited liability company).
- ~~6. Proposed Site Marking. During the time period when the application is pending, the applicant must place visible markers to delineate the area proposed to be leased.~~
7. Department Site Review. The Department shall inspect the proposed site and immediate areas to obtain or verify information such as: the location of proposed lease boundaries; the general characteristics of the area, including bottom composition, depth and features; typical flora and fauna; numbers or relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; navigation channels; moorings; locations of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease site; and the description and location of existing or proposed aquaculture lease sites within 1,000 feet of the proposed site. ~~and the amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or~~

~~some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.~~

8. Harbormaster Questionnaire. If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.
9. Public Scoping Session. The Department may conduct an informal public scoping session on the lease application prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant, and to provide the Department with information that can be used during field work or agency review of an application. The applicant is required to attend and participate in a public scoping session on their application when one is held.
10. Comment Period. Any person may provide the Commissioner with written comments on the experimental lease application. At least 30 days prior to the deadline for comments, the riparian landowners listed in the application and the municipality or municipalities in which the proposed lease would be located shall receive notice ~~a summary~~ of the complete application, a statement of the manner and time within which comments may be submitted to the Department and the process for requesting a public hearing. At least 30 days prior to the deadline for comments, the Department shall publish notice of the complete ~~a summary of the~~ application in a newspaper of general circulation in the area proposed for an experimental lease.
11. Decision. The Commissioner shall issue a written decision within 60 days ~~of~~ from the close of the comment period date the site report is issued ~~or the date 120 days from 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 they are~~ 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).
12. Actions required of lease holder. After being granted an experimental lease, a lessee shall:
  - ~~A. Annually submit to the Commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the Commissioner are confidential records for the purposes of 1 M.R.S.A. §402(3)(A). The submitter of commercial research and development may designate information as being only for the confidential use of the Department. The Department's public record must indicate that information so designated has been submitted to the Department, giving the~~



~~name of the submitter and the general nature of the information. Upon written request, a copy of the public records in the report must be provided by the Commissioner to the municipality or municipalities in which the lease is located.~~

- ~~B.~~ A. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. 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	None
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.

- ~~C.~~ B. Other Licenses. The lease holder is responsible for obtaining any requisite licenses from the Department prior to beginning operations.

13. Lease Rental Fee. Lessees shall pay a lease rental fee as established in Chapter 2.43 of these Regulations.
14. Lease Term and Validity. The term of the lease shall begin within 12 months of the Commissioner's decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease agreement is signed.

## **2.65 Experimental Aquaculture Lease Application Requirements**

1. The lease applicant's name, address, home and business phone number of the applicant, and, if applicable, the location and Department number of any emergency lease which may be held on the area for which the experimental lease is being applied.
2. A description of the research or development study to be conducted on the site. The description must include: the purpose and design of the study; the type, amount and proposed source of organisms to be grown; a drawing of any structures that will be used; a description of the culture and harvesting techniques that will be used; and the expected length of the study. The description shall also indicate whether the research is for commercial research and development or for scientific purposes.

3. A description of existing uses of the proposed lease area, including commercial and recreational fishing activity, moorings, navigation and navigational channels, and use of the area by riparian landowners for ingress and egress. The description shall include the type, volume, time, duration, location and amount of activity. A signed statement from a Harbormaster or Marine Patrol Officer may be submitted to verify this information.
4. A general description of the area including major physical and biological features, including the flora and fauna of the area (i.e., type of bottom, presence of eelgrass beds, shellfish beds, etc.) as well as the general shoreline and upland characteristics (i.e., sand beach, rocky headland, saltmarsh), and ice formation.
5. In lieu of a written description, applicants may submit a clear and decipherable video (or a Department approved alternative) of the bottom of the proposed lease site and the surrounding shoreland using a transect methodology approved by the Department. Applications that involve a discharge must be filmed between April 1 and November 15 unless otherwise specified by the Department. Applications that do not involve a discharge may be filmed at any time of year, unless otherwise specified by the Department.
6. Oil Spill Prevention and Control Plan. For applications where petroleum products are to be stored on the proposed site, a spill prevention and control plan shall be provided with the application. The plan should be specific to the site, but should include:
  - A. Procedures and control measures at the site to prevent oil spills; and
  - B. measures to contain, cleanup, and mitigate the effects of an oil spill that has impacted navigable waters or adjoining shorelines.
7. An experimental lease must be one contiguous tract except where:
  - (i) A geographic feature, navigation corridor or existing uses of the area require that the lease area be divided into no more than two tracts and the distance between the tracts is no greater than one half mile; or
  - (ii) A two-tract lease is part of a site rotation or fallowing management scheme that is a component of a biosecurity plan approved by the Department, and the two tracts are proximate and of similar environmental characteristics as determined by the Department.

~~7.8.~~ Submission of material used for an experimental lease application. An applicant who has an active emergency lease issued by the Department may use the relevant information in that application for satisfying the requirements of an experimental lease application, if the experimental lease is in the same location and of the same dimension as the emergency lease. If the Commissioner determines that the information is not sufficient for the purposes of granting an experimental lease, the applicant must submit additional information to fulfill the application requirements.

## **2.66 Emergency Aquaculture Lease for Shellfish**

1. The Commissioner may grant an emergency aquaculture lease for shellfish pursuant to 12 M.R.S.A. §6072-B when the health and safety of those shellfish or those of the consumer are threatened and the Commissioner determines that the relocation of those shellfish will not

threaten the water quality of the receiving waters or the health of marine organisms in those waters. The purpose of this section is to allow for the quick relocation of shellfish as the result of an unanticipated, natural phenomenon that is beyond the control of the lease holder. There are two types of emergency situations for which these provisions can be used: 1) a non-disease or an environmental emergency such as a major storm event or accident and 2) a pathogen or disease-related emergency. The applicant bears the burden of proof to demonstrate that the organisms to be relocated will not transmit pests, disease, pathogens or parasites to the new location and that the proposed lease meets all the standards set forth in these regulations.

## 2. Application Requirements

A. Form. Emergency aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.

B. Fee. No filing fee is required for an emergency lease application.

C. Emergency Relocation for Non-disease and Environmental Emergencies.

(1) Notification Requirements. For non-disease and environmental emergencies only, the lessee can apply for a Letter of Permission when circumstances require immediate relocation of ~~animals~~ shellfish to ensure their health and safety or that of the consumer. The lessee must notify the Department in writing prior to the relocation of any ~~animals~~ shellfish. The written notification must include the lessee's name, address, home and business phone number, the name and number of the lease site from which the ~~animals-shellfish~~ shellfish will be moved, a location map showing the area to which the ~~animals-shellfish~~ shellfish will be moved (U.S.G.S. topographic map, a nautical chart or other map of appropriate scale showing the area), and the number and ~~age~~ size of the ~~animals~~ shellfish to be relocated.

(2) Letter of Permission. Within 48 hours of receipt of the written notification of a request for emergency relocation, the Department will either issue a Letter of Permission allowing for the temporary relocation of ~~animals-shellfish~~ shellfish or issue a written denial of the request. ~~If the request is denied, the animals must be returned to a legal lease site within 3 days of the receipt of the denial.~~

(3) Submission of Emergency Lease Application. Within 10 days of the receipt of the Letter of Permission, the applicant must submit a written application for an emergency lease. Failure to submit a written application within this timeframe will result in the revocation of the Letter of Permission. If the Letter of Permission is revoked, the shellfish must be returned to a legal lease site within 3 days of the revocation.

(4) Terms for Temporary Approval. The Letter of Permission will remain in effect until the Department issues an emergency lease. If the Department denies the emergency lease request, the applicant must remove the ~~animals~~ shellfish within 3 days of the receipt of the decision.

D. Emergency Lease Application Requirements:

(1) The lessee's name, address, home and business phone number of applicant and the location of the existing lease from which organisms will be moved.

- (2) A description of the threat and need for the emergency relocation of the organisms.
  - (3) A description of the proposed lease metes and bounds or coordinates, total acreage, a map of the lease area and its adjoining waters and shorelines, with the names and addresses of known riparian owners indicated on the map as listed in the municipal tax records.
  - (4) A list of species and an estimate of the numbers of individuals to be relocated to the proposed lease site and their life cycle stage(s).
  - (5) The date of proposed relocation, the anticipated duration of the relocation, and a description of how the organisms will be managed for the duration of the lease. Indicate the size, shape and orientation of structures that will be used.
  - (6) A description of the degree or exclusive use required by the project.
  - (7) A general description of the site including type of bottom, the presence of eelgrass, natural shellfish beds, saltmarsh and the general shoreline and upland characteristics.
  - (8) A written statement from a local harbor master, or Marine Patrol Officer on the fishing activity, moorings and navigational channels in the area and the use of the area by riparian owners for ingress and egress.
  - (9) The written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity will occur.
  - (10) For pathogen or disease-related emergencies, the applicant may also be required to submit a statement of examination by a state, federal, or Department approved private laboratory indicating its findings and certifying that the marine organisms to be relocated are free of any infectious or contagious disease agents, pathogens, pests, or parasites based on standard methods of diagnosis.
- E. Completion. Upon receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information for making a decision on the application. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
- F. ~~Proposed site marking. The applicant must place visible markers to delineate the area proposed to be leased according to the procedures established in Chapter 2.80.~~
3. Department Site and Project Review. The Department may inspect the proposed site and immediate area to obtain information on but not limited to the general characteristics of the area, the commercial and recreational use of the area and evidence of fishing activity, moorings and navigational channels. The Department may seek advice with regards to shellfish diseases for consideration in the final decision.
  4. Decision. After reviewing the application and any information obtained by the Department, the Commissioner shall issue a written decision. The Commissioner may grant a lease if ~~he/she is~~ they are satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-B.

A. Standards: In making the decision, the Commissioner must consider the following:

- (1) The applicant's status as a leaseholder pursuant to 12 M.R.S.A. §6072.
  - (2) The threat to the water quality of the receiving waters and to the health of marine organisms in those waters.
  - (3) The reason and need for an emergency lease. The Commissioner shall consider the need for an emergency lease and whether the cause of the emergency was an unanticipated, natural phenomenon that was beyond the control of the leaseholder. Applicants are encouraged to secure a lease under 12 M.R.S.A. §6072 or §6072-A for non-emergency situations; and
  - (4) All applicable criteria as established in Chapter 2.37(A).
5. Limit on Duration. An emergency aquaculture lease may only be issued for 6 months or less.
  6. Extension of emergency aquaculture lease. A person wanting to extend an emergency lease beyond 6 months must submit an application for either a standard lease pursuant to 12 M.R.S.A. §6072 or a limited purpose lease pursuant to 12 M.R.S.A. §6072-A for that lease area within 60 days of being granted the emergency aquaculture lease. If the application for a new lease is accepted, the emergency aquaculture lease will remain in effect until the effective date of the new lease. If the Commissioner denies that person a lease under §6072 or §6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the Commissioner's decision.
  7. Public Notice. Upon granting an emergency aquaculture lease, the Commissioner must provide notice to the municipality in which the emergency aquaculture lease is located. Within at least 30 days from granting an emergency aquaculture lease, the Commissioner shall:
    - A. Publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restrictions in the leased area;
    - B. Mail a notice to any state agency the Department determines should be notified.
  8. Actions Required of lease holder. After being granted an emergency aquaculture lease, a lessee shall establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined according to the schedule contained in Chapter 2.40. The site must also be marked in accordance with Chapter 2.80.
  9. Revocation.

The Commissioner may revoke the lease if ~~he/she~~ they determines that the aquaculture project fails to meet the criteria contained in 12 M.R.S.A. §6072-B(1) and Chapter 2.66 of these regulations. The revocation of an emergency aquaculture lease is not an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

## **2.75 Minimum Lease Maintenance Standards**

1. The lessee shall mark the lease in a manner prescribed by section 2.80 or the Commissioner in the lease. ~~and ensure that all structures authorized by the lease remain within the boundaries of the lease.~~
2. The lessee shall ensure that all authorized structures must remain within the boundaries of the lease site.
3. ~~3.~~ The lessee shall maintain his aquaculture lease the site in such a manner as to avoid the creation of a public or private nuisance and to avoid substantial injury to marine organisms.
3. ~~4.~~ The lessee is obligated for the routine must collection and proper disposal collect and properly dispose of all errant gear, errant equipment, or errant solid waste from the lease site in a timely manner.
4. 5. In order to prevent adverse impact to public health, the lessee shall make lawful efforts to ensure animal excrement does not accumulate on or near structures.
5. ~~6.~~ The lessee is obligated to must properly contain and dispose of human waste generated during lease operations.
6. 7. The lessee must maintain and follow a copy of the lease's their operational plan as defined in 2.05(M). ~~executed lease and any amendments thereto on file and produce these.~~ These documents must be produced upon request by the Department.
7. 8. The lessee must maintain an escrow account or performance bond and pay rental fees in a timely manner.

## **2.80 Marking Procedures for Aquaculture Leases**

1. ~~When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.~~
2. ~~The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.~~

~~A. Effective January 1, 2023 the marking procedures for aquaculture leases are as follows:-~~

1. Except for a lease site that has received a Private Aid to Navigation permit from the United States Coast Guard, aquaculture leases shall be marked with yellow floating devices, such as buoys, which display the lease acronym assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The yellow floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. The yellow floating devices shall be readily distinguishable from interior buoys and aquaculture gear and shall host reflective material. In cases where the boundary line exceeds 200 yards, additional devices shall be displayed so as to clearly show the

boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

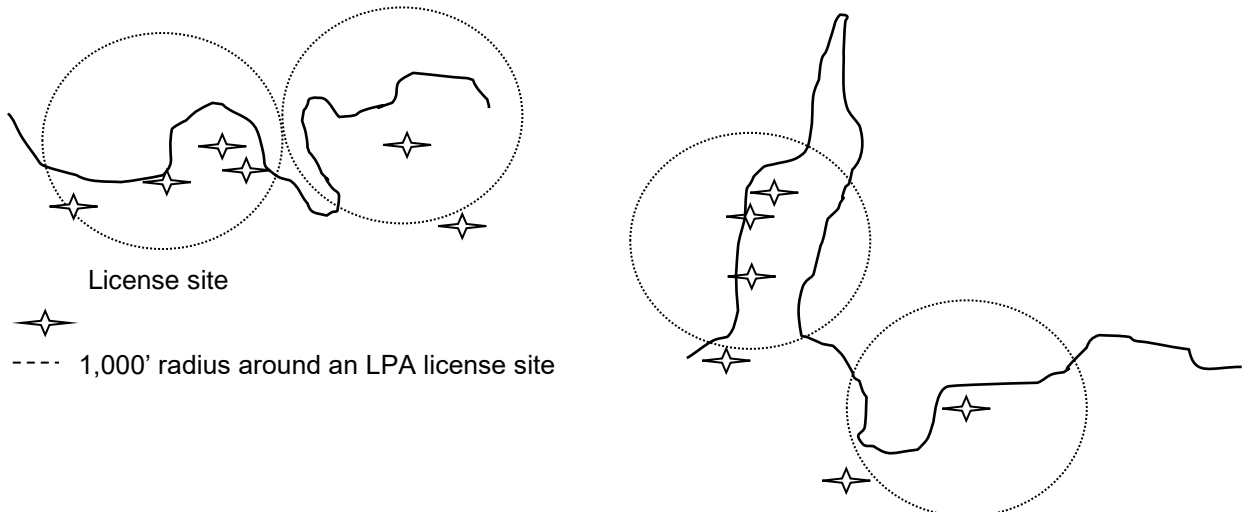
2. Sites that have received a Private Aid to Navigation permit from the United States Coast Guard must have the lease acronym assigned by the Department and the words SEA FARM clearly displayed on the site.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.

## 2.90 Limited-purpose aquaculture (LPA) license

### 1. LPA License

- A. No person may engage in the activities described in 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR) in accordance with these regulations. An LPA license may be issued only to an individual or to a municipal shellfish management ~~committee program~~ established pursuant to 12 MRSA §6671. The Department shall make application forms available. ~~A non-refundable application fee in the amount of \$100 per license application for Maine residents or \$400 for non-residents must be paid when the application is submitted.~~ LPA licenses expire at the end of each calendar year. No more than four (4) licenses may be held by any licensee at the same time. LPA licenses are non-transferable.
- B. Density standard. There can be no more than three (3) LPA licensed sites within a 1,000-foot radius of any other existing LPA licensed site. This standard does not require a minimum separation between individual licenses; rather it is a density of licenses within any area of a 1,000' radius. See Figure 1 below for four examples of this standard where a license site is encircled by a radius of 1,000 feet.

*Remove this image:*



Insert this image as if underlined:

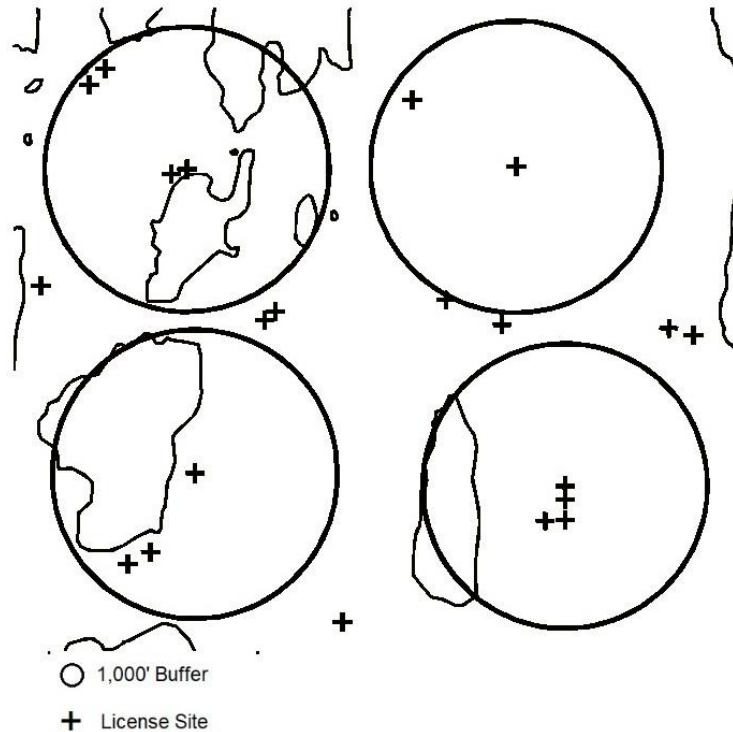


Figure 1. Density illustration for acceptable LPA license distribution

Exemption for riparian landowners. LPA licenses held by riparian property owners that are used to place authorized gear as listed in 2.90(2)(F)(2), within 150' of the riparian's property at mean low water and perpendicular to the property boundaries, are exempt from this density standard. Riparian landowners are responsible for demonstrating this requirement has been met. Requests for this exemption must be indicated on the application and are limited to one exemption per riparian property. The presence of a riparian landowner LPA does not count toward the density standard.

Exemption for certain sites. LPA licenses for gear installed within marina slips, lobster pounds, or similar enclosed or partially-enclosed sites in the coastal waters that are under the ownership or control of an entity which has the legal authority to restrict access to or use of the site and which has consented in writing to the placement of the gear on the site are exempt from this density standard.

- C. Up to three (3) assistants per license may be declared as helpers. An individual may be listed as an assistant on no more than eight (8) LPAs, other than their own, ~~except that individuals who were listed on more than eight (8) LPAs as of March 1, 2018 may remain on the same additional LPAs until December 31, 2020, at which point they will be limited to being an assistant on no more than eight (8) LPAs.~~ If the LPA license holder represents an educational institution, students are authorized to work under the direct supervision of the license holder who signed the application, as well as any listed helpers. If the holder of the LPA license is a



municipal shellfish management committee, there is no limit to the number of individuals that may be declared as helpers.

- D. When a proposed LPA license site falls within the bounds of a pending aquaculture lease application, the Department may, in its discretion, postpone the decision on that LPA license application until after the final decision on the pending application has been made.

## 2. Application requirements

### A. Species

Applications must indicate the common and scientific names of the species to be cultivated under the license in accordance with 2.90(4).

### B. Sources

Applications must identify the source of the stock or seed to be cultivated or grown for each species, and for hatcheries ~~or nurseries~~ list the current name, address and phone number of the hatchery ~~or nursery~~ source for each species listed under 2.90(2)(A).

A. Hatcheries ~~or nurseries~~ are the only permitted sources for Hard clam/quahog (*Mercenaria mercenaria*), Hen clam (*Spisula solidissima*), Arctic surf clam (*Mactromeris polynyma*), or Soft shelled clam (*Mya arenaria*), unless the Department issues a municipal shellfish transplant permit that authorizes the collection of undersized animals.

B. Marine algae (all seaweeds such as reds, greens, browns or kelps) and green sea urchins shall be obtained or cultured from stock originating in Maine coastal waters.

C. Any stock or seed obtained from wild sources must be taken in accordance with applicable season or size limits, or other limitations on take.

D. All sources of hatchery supplied seed or stock must be from hatcheries approved by DMR.

E. All shellfish stock or seed used for cultivation or grow-out that have been exposed to waters outside of an approved hatchery must originate from within the same Health Area defined under 2.05 (1) (J) as the LPA site, ~~unless permitted by DMR as provided in (F)~~.

~~F. Use of shellfish stock or seed exposed to waters outside of an approved hatchery and originating from outside the Health Area of the LPA site will require evidence that the seed or stock is consistent with the species authorized under 2.90(4) and may require evidence that the seed or stock is free from disease, and will require a permit from DMR.~~

### C. Site location

- (1) The application must provide geodetic coordinates, the coordinate source (nautical chart number, the edition and its date or software name) and the datum of the coordinate source, for the center of the longest axis of the license site, and identify the directional orientation of the longest axis. The license site must be accurately depicted on a portion of a US Geologic Survey Topographic map or nautical chart.

- (2) The application must provide a brief description of the license site, including growing area and classification, ~~the~~ bottom characteristics of the license area and whether there are eelgrass beds present in proximity to the site.
- (3) The application must include a description of current commercial and recreational fishing and other uses of the proposed license area and the immediate vicinity of the proposed license area. The description should include type, duration and amount of activity.
- (4) The application must include a ~~certified~~ copy of the municipal tax map for the area in the vicinity of the license site. On the map, the applicant must indicate the actual scale of the copy of the map, the location of the proposed site, and a circle drawn to scale depicting a 300-foot radius from the site. The application must also include a list of the names and current mailing addresses of the riparian owners of shorefront property within 300 feet of the site, certified by the municipal clerk or by the Bureau of Revenue Services, Unorganized Division, for unorganized territory. If the license site is located in a marina slip or lobster pound or similar site as described in 2.90 (1) (B), the owner or controlling entity of which has consented in writing to the placement of the gear, the map and list are not required.

#### D. Required Signatures

The application form shall require the following signatures:

- (1) Applicant. The individual applicant's signature, including printed name and date, which shall verify that the application does not contain false information and that the applicant will comply with all applicable laws and regulations is required. When the applicant is a municipal shellfish management ~~committee~~ program, the chairperson of the shellfish committee or a designated municipal officer shall sign the application on its behalf, and a primary point of contact shall be provided including name, address, email address and phone number. When the applicant represents an educational institution, an administrator shall sign the application on its behalf.
- (2) Municipality. Harbormaster's signature, which shall verify that it is the harbormaster's opinion that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

In municipalities not served by a harbormaster, a municipal officer or other elected municipal official may sign the application. For the unorganized territory where a harbormaster does not have jurisdiction, a marine patrol officer may sign.

The opinion of the harbormaster, municipal officer or official, or marine patrol officer that the license activities will not ~~will not~~ unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress, shall not be determinative, but may be considered by the Department as a factor in deciding whether the criteria for the issuance of an LPA license have been met.

- (3) Intertidal sites

- (a) Municipal Shellfish Management Committee. If the proposed location is above the extreme low water mark in a municipality with a municipal shellfish management committee program established pursuant to 12 MRSA §6671, the signature of the chairperson of the municipal shellfish management committee or a designated town officer, which shall verify that the proposed LPA will not unreasonably interfere with the activities of the municipal shellfish management program, is required. If the municipality does not have a shellfish management committee, then a municipal official shall sign to verify that the proposed LPA will not unreasonably interfere with the activities of the municipal shellfish management program.
- (b) Riparian landowner. For license sites located above the mean low-water mark, the signature of the riparian landowner, which shall verify that the landowner consents to the licensed activity being conducted on the intertidal land, is required.
- (4) Signature missing or withheld. The absence of any required signature will result in the denial of the application. At the request of the applicant the Department may review the basis for the a harbor master's or municipal officer's or official's denial of a required signature, except for signature required under 2.90(D)(3)(b). The Department may, following such review and upon a determination that the signature was withheld without basis, approve a license application. Such a determination must take into consideration a review by the local marine patrol officer of the application and a statement from the marine patrol officer that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

E. Notification of riparian property owners & municipalities

- (1) The applicant shall notify all riparian owners within 300 feet of the LPA site by sending, by certified mail, a copy of the LPA application, including information about how riparians can submit comments to the Department regarding issuance ~~or renewal~~ of the license, to the address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. Failure to include a copy of the receipt for certified mailing with the application will be grounds for denial of the application. If the license applicant is the only riparian, or if the license site is located in a marina slip or lobster pound or similar site as described in subsection 1(B) above, the owner or controlling entity of which has consented in writing to the placement of the gear, the notification requirement is waived.
- (2) The Department shall notify any town or plantation of the final status of an application. Failure to do so does not invalidate a license.

F. Site Plans

- (1) Plan view  
The application must include a plan view, which must be on 8.5" x 11" size paper and show the maximum layout of gear to be deployed drawn to scale, with the scale indicated to verify the 400 square foot limit. The site plan must include a north arrow with True or magnetic clearly indicated, arrows that indicate the tide's primary ebb and flood directions, mean high and low-water marks, and the distance from the license to these mean high and low-water marks. The site plan shall also include to a distance of 1,000 feet from the license in all directions, the locations of any federal or local channels, anchorages,

moorings, structures, existing lease boundaries, other LPA licenses (including whether or not they are exempt from the density requirement in 2.90 (1)(B)), DMR water quality ~~closure lines~~ classifications (including distances from Prohibited areas if applicable), and property lines for all riparian owners within 300 feet.

(2) Gear description:

If gear is to be used, it may be deployed on the surface, in the water column, on the sea bottom, or below the surface of the bottom. The applicant shall indicate which of the following authorized gear will be used, and include an overhead view and cross-sectional elevation view of the gear that includes specifications on all mooring equipment to be used. Aquaculture gear other than the equipment listed below, may not be used. All dimensional information on the mooring equipment contained inside and outside the boundaries must be included pursuant to 12 M.R.S.A. §6072-C (5)(E)(2).

Upweller or “FLUPSY”

Shellfish rafts, associated predator nets and spat collectors

Shellfish tray racks and over wintering cages

Soft bags, semi rigid bags and floating trays

Lantern nets and pearl nets

~~Fencing and brushing~~

Moorings

Scallop spat collector bags

Scallop ear hangers

Long lines (vertical or horizontal)/rope grids

Bottom anti-predator netting

G. Renewal of licenses

- (1) To be eligible to renew an LPA license, ~~in 2019 or in any subsequent year~~, the applicant must have completed any educational requirements established pursuant to 12 M.R.S.A. §6072-C(3)(A) and must submit an application for renewal to the Department online or postmarked no later than ~~December 31<sup>st</sup>~~ November 30. If a renewal application is not submitted to the Department by ~~December 31<sup>st</sup>~~ November 30, the license holder is required to remove all gear and equipment from the licensed site on or before the termination of the license on December 31<sup>st</sup>.

Exception: LPAs applied for or held by a municipal shellfish management program for conservation activities such as resource enhancement are not required to complete the education requirement.

- (2) Renewal applications shall be submitted on a form provided by the Department. ~~A The non-refundable application fee must be paid prior to renewal. in the amount of \$50 per renewal application for Maine residents and \$300 for nonresidents.~~
- (3) The Department shall send a notice of all proposed renewals to the municipality in which those licenses are located and request that the municipality post the notice. The notice shall state that anyone may provide comments to the Department on the proposed renewals within 14 days of the date of the notice.
- (4) An LPA license may be renewed if the license activities continue to meet the provisions of 2.90 and 12 M.R.S.A. §6072-C.

### 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.

#### 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 from approved or conditionally approved, 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 and the LPA holder has a lease or has an ownership stake in a company that holds a lease. 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 must comply with the maximum seed size limits as defined in 2.95(A)(4). ~~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 94. 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 94 to be moved to another aquaculture site. The area around the seed will be closed to shellfish harvesting for six months by DMR.~~

(b) Green sea urchins

The boundary line and prohibited, restricted and conditionally restricted area prohibitions in 2.90(3)(D)(1 and 2) above do not apply to the sole culture of green sea urchins.

(c) Marine algae

The boundary line and prohibited, restricted and conditionally restricted area prohibitions in 2.90(3)(CD)(1 and 2) above do not apply to the sole culture of marine algae, except that an LPA license site ~~may not~~ cannot be located within the 300:1 dilution zone around a wastewater treatment plant unless marine algae or seaweed cultured on the site is not for human consumption. ~~and applicants have provided satisfactory evidence to the Department that the site is for remediation purposes only, or there is a plan for destruction or compost.~~

E. Maine Department of Inland Fisheries and Wildlife (IF&W) Essential Habitats  
 LPA license sites ~~cannot~~ may not be located within any area designated as Essential Habitat by the Maine Department of Inland Fisheries and Wildlife, the areas regulated pursuant to 12 M.R.S.A. §§ 12803, 12804 and 12806 and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

F. United States Army Corps of Engineers (ACOE) Authorization

Upon receipt of an LPA license application, the Department shall forward a copy of the application to the ACOE for their review. ~~and approval. A permit from ACOE is required prior to the placement or use of any gear proposed in a LPA application. No structures may be located within the boundaries of a Federal Navigation Project.~~

4. Authorized Species

An LPA license may be issued only for the cultivation of the following species: blue mussel (*Mytilus edulis*), hard clam / quahog (*Mercenaria mercenaria*), hen clam (*Spisula solidissima*), Arctic surf clam (*Mactromeris polynyma*), American or eastern oyster (*Crassostrea virginica*), European oyster (*Ostrea edulis*), sea scallop (*Placopecten magellanicus*), soft-shelled clam (*Mya arenaria*), razor clam (*Ensis leei*), green sea urchin (*Strongylocentrotus droebachiensis*), bay scallops (*Argopecten irradians*), and for marine algae (all seaweeds, including kelp). Notwithstanding 12 M.R.S.A. §6001 (41), for purposes of 2.90, the terms “shellfish” and “seed” include sea scallops (*Placopecten magellanicus*) and bay scallops (*Argopecten irradians*).

5. Activity limitations & requirements

- A. The licensed activity must not generate a discharge into territorial waters pursuant to 12 M.R.S.A. §6072-C (2)(A), 38 M.R.S.A. §413 and DMR regulations 2.05(1-G).
- B. An LPA license applicant may declare assistants to be named on any LPA license. Declared assistant(s) named on any LPA license must be in possession of a copy of the LPA license whenever engaged in any activity at that licensed site. Individuals other than the license-holder's declared assistants may assist the license holder and, in that capacity, utilize, raise, lift, transfer or possess any approved aquaculture gear belonging to that license holder if a hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

C. Marine Biotoxins

- (1) Closed Area compliance

There shall be no provisions made for biotoxin monitoring or testing for LPA sites.

D. Record keeping

Complete, legible and accurate records of transport, transfer, harvest, and monitoring must be maintained by the license-holder and made available for inspection for at least two (2) years. The records must include the:

- (1) Department's LPA license number, site location and date.
- (2) Source of shellfish, including seed if the seed is from growing areas which are not in the approved classification status pursuant to 2.90 and/or Chapter 15;
- (3) Dates of transplanting and harvest;
- (4) Detailed records of sales; and
- (5) Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.

~~E. Amendments~~

~~No changes may be made to the LPA license during the licensing term without a written amendment of the license by the Department. Allowable mid-term amendments include the following:~~

- ~~1. Source of stock~~
- ~~2. Species~~
- ~~3. Mooring Type/Layout~~
- ~~4. Assistants~~
- ~~5. Contact information~~

6. Maintenance Standards

- A. All aquaculture gear must be maintained, remain within the boundaries of the site, and kept in a fully operational condition. The license holder is obligated to collect and or remove any loose or errant gear or equipment that is dislodged from the licensed site.

~~B. Each LPA site that has gear on it must be clearly marked at each corner, centerpoint, or at each end of the gear, as is appropriate to the gear type deployed, with a marked buoy. LPA Site ID and "Sea Farm" must be clearly displayed on every buoy. The marked buoys shall be readily distinguishable from aquaculture gear.~~

~~C. Effective January 1, 2023, the marking procedures for LPAs are as follows:~~

~~1.B. The LPA site ID and SEA FARM must be clearly marked on every buoy.~~

~~2.C. Except for a LPA site that has received a Private Aid to Navigation permit from the United States Coast Guard, each LPA site that has gear on it must be clearly marked at each corner, centerpoint, or at each end of the gear, as is appropriate to the gear type deployed, with a yellow buoy. The marked buoys shall be readily distinguishable from aquaculture gear and shall host reflective material.~~

~~D. The LPA holder must notify the Aquaculture Division of any changes to the contact information listed on the license in writing within 30 days of the change taking effect.~~

## **2.92 Aquaculture lease site workers operating under the authority of an aquaculture license holder (12 M.R.S.A. §6810-B).**

1. Unlicensed individuals may work on aquaculture lease sites and transport or sell the cultured product produced on those sites, provided they are authorized to do so by a license holder who holds the aquaculture lease for the site. The license holder must direct and oversee the work of the unlicensed individuals.

Such unlicensed individuals shall keep a copy of the lease holder's license with them while working with, transporting, or selling the cultured product and shall present it to DMR upon request.

2. Aquaculture leaseholders shall maintain records of any unlicensed individuals working pursuant to the lease holder's license, including:
  - A. The names and addresses of the individuals;
  - B. The dates on which they worked; and
  - C. The name(s) and license number(s) of the license holders under whose authority they worked.

The records shall be made available for inspection by DMR upon request.

## **2.95 Water Quality Classifications and Shellfish Aquaculture**

### **A. Compliance**

1. Applicability: This section applies to those persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072, §6072-A, or §6072-B, or a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C.



2. Water Quality: Water quality at any site used for aquaculture shall meet the criteria for the approved, conditionally approved, restricted or conditionally restricted classification, except for the culture of seed, as described in 2.90(3)(D) and 2.95(A)(4).

Any shellfish harvested pursuant to an aquaculture lease, or permitted site, shall be subjected to relaying or depuration prior to direct marketing if the culture area or facility is located in or using water which is in:

- (a) The closed status of the conditionally approved classification;
- (b) The restricted classification; or
- (c) The open status of the conditionally restricted classification.

Relaying and depuration of shellfish requires a permit pursuant to DMR Regulations Chapter 94.

3. Closed Area compliance: Direct market harvest of shellstock is prohibited in areas that are closed due to marine biotoxins pursuant to Chapter 96 and bacterial pollution pursuant to Chapter 95, and in those areas that may be closed by the Department. ~~For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at:~~  
<http://www.maine.gov/dmr/shellfish%20sanitation%20hot%20line.htm>  
<https://www.maine.gov/dmr/fisheries/shellfish/closures>.

4. Seed Shellstock

- (a) Seed from growing areas in the prohibited classification must be moved to approved, conditionally approved, restricted or conditionally restricted growing areas before exceeding the maximum seed size as defined below. The length is measured along the longest axis.
  - i. American oyster (*Crassostrea virginica*): 0.5 inch total length
  - ii. European oyster (*Ostrea edulis*): 0.5 inch total length
  - iii. sea scallop (*Placopectin magellanicus*): 1.5 inch total length
  - iv. bay scallop (*Argopectin irradians*): 1 inch total length
  - v. softshell clam (*Mya arenaria*): 0.75 inch total length
  - vi. hard clam (*Mercenaria mercenaria*): 0.75 inch total length
  - vii. blue mussel (*Mytilus edulis*): 0.5 inch total length
  - viii. razor clam (*Ensis directus*): 2 inches total length
  - ix. Atlantic surf clam (*Spisula solidissima*): 0.5 inch total length
  - x. Arctic surf clam (*Macromeris polynyma*): 0.5 inch total length

Seed shellstock for any species not listed in A(4)(a) may not be cultivated in prohibited areas without written approval from the Department.

Aquaculturists growing seed in areas in the prohibited classification must have a Department approved operations plan that includes corrective actions for addressing seed exceeding the maximum size. The approved corrective actions shall be implemented when maximum seed size is exceeded. Failure to implement the approved corrective actions will result in destruction of the seed.

- (b) Seed for LPAs must meet the requirements of the Health Areas in Chapter 2.90(3)(D) and 2.05(1)(J).

- (c) Inspection: The Commissioner and his/her agents may inspect the lease site, seed, operations, and business records of individuals cultivating seed in areas in the prohibited classification.

B. Regulatory testing

1. Contaminant Reduction Studies: for shellfish grown in waters classified as restricted, conditionally restricted and conditionally approved in the closed status, a contaminant reduction study is required in lieu of a mandatory 60-day closure of the receiving site. The contaminant reduction study must be designed by DMR and samples processed in a FDA evaluated shellfish laboratory. If DMR processes the samples for a contaminant reduction study a non-refundable fee of \$1000 must be paid upon request of the study.
2. Other Special Studies: it may be necessary to conduct other special studies for aquaculture activities to ensure the safety of the product for the consuming public. DMR may require testing for phytoplankton, biotoxins, Vibrio and other pathogens, parasites or contaminants. These studies must be designed by DMR and completed in a FDA evaluated shellfish laboratory. If DMR processes the samples for a special study a non-refundable fee of \$1000 must be paid upon request of the study and annually thereafter if the samples are required on an ongoing basis.

**Basis Statement**

This rule increases the application fee for experimental leases from \$100 to \$750 and clarifies that this fee would also apply to experimental leases eligible for renewal. The rule also specifies that an experimental application, like a standard, must be one contiguous tract unless it meets exceptions already specified in rule. It requires that Limited Purpose Aquaculture (LPA) renewal applications be received by November 30 each year and removes the provision allowing for mid-term LPA amendments. The rule also specifies that stock for LPA sites must come from the wild, hatchery, or same health zone. Any person who applies for an LPA for seed in an area classified by DMR as prohibited, restricted, or conditionally restricted needs to hold a lease or own a company that holds a lease. The rule removes existing requirements to mark proposed lease areas in advance of public hearings. The rule also provides for contaminant reduction or other special studies, including fees, that may be necessary to ensure the safety of product for human consumption. The rule also makes several updates to existing sections for improved clarity, consistent with statutory changes, and enforcement.

In consideration of one comment, the Department removed, as a matter of clarification, the term ‘nursery’ and ‘nurseries’ from section 2.90(2)(B).

**Summary of Comments**

On June 21, 2023, the rule was posted on DMR’s website. Notice was also published on June 21, 2023, in the five major daily newspapers by the Secretary of State; and electronic messages were sent to individuals who subscribe to DMR’s rulemaking and aquaculture notices. A public hearing was held both in-person and remotely at 4:30 p.m. on July 10, 2023. The in-person hearing was held at DMR’s Augusta office, and the remote component was held via Microsoft Teams. No members of the public attended in-person. The comment period closed July 20, 2023.

The hybrid hearing was attended by the following individuals:

Name	Affiliation
Deirdre Gilbert, Kohl Kanwit, Jeff Nichols, Melissa Smith, and Amanda Ellis	Maine Department of Marine Resources
Heather Kenyon, Ivy Frignoca, Emily Farr, and Damon Leibert.	Members of the Public

**Mark Dvorozniak, received via email, June 22, 2023**

I assume that the increase in the LPA application and renewal fee is a function of the increasing amount of LPA applications and inflation. As a recreational LPA holder, the 7.5 times increase seems excessive and unreasonable. I realize that the focus of the DMR should be on the commercial fishery. However, as a recreational oyster grower, I bring awareness to the ecological and economic benefits of shellfish cultivation to neighbors and visitors. I am extremely

careful to use best husbandry practices. My efforts help in a small way the health of the Poor House Cove estuary. I urge you to re-think the increase and make an exception for recreational LPA holders.

**Department Response:**

The fee increase is specific to experimental aquaculture lease applications, not Limited Purpose Aquaculture (LPA) licenses.

**Damon Leibert, July 10, 2023, Public Hearing**

I'm coming from the low and slow method of figuring our best growing practices, and the hike in fee is discouraging. I understand the need to bring the DMR's fees into whack with current times, but I wish there was a way to make the "experimental" part of my experimental lease less costly. For all I know the substrate won't support anything viable. I do plan on taking out a no-gear LPA for this, but the scale is small and I'm skeptical that I'd be able to produce anything on it of value...meaning at least a few more years before an aquaculture/harvester license which equals income in this experiment. I'm trying to avoid top gear for multiple reasons. I wonder if there might be a less costly experimental lease that has no gear, or commercial harvesting on it? Perhaps its renamed? Just some wishful thinking.

**Department Response:**

The fee increase is intended to be more reflective of the resources required to process experimental lease applications. Regardless of the culture techniques, purpose, or other application specific factors, each experimental application requires DMR review, publication and processing of the comment period, a site visit and report, and the possibility of a hearing. Creating separate fees by operation type would not address the time and costs associated with overall processing.

**Sebastian Belle, Maine Aquaculture Association, received via email, July 20, 2023**

Below please find the Maine Aquaculture Associations comments on the proposed routine technical revisions to Chapter 2. The comments are sequential with number references to the chapter sections.

2.05 1. (C). The association opposes the elimination of the second section of this clause in the definitions. Currently the riparian owners within 300 feet of an LPA are required to be notified. By eliminating this provision it appears the department is expecting all aquaculture applications, including LPAs, to notify all riparian landowners within 1000 feet. However, later in the proposed rule, 2.90 2. E. (1) The requirement to notify riparian landowners within 300 feet stands. MAA supports the 300 foot requirement and would respectfully suggest that second paragraph under 2.05 1.(C) should remain in the definitions section in order to be clear that LPAs are not required to notify riparian landowners within 1000 feet.

2.15 3 (A) The specification that notification to riparian landowners is executed "By mail" seems overly specific and inconsistent with the provisions under 2.15 3, where the ability to notify by e mail has been added. MAA suggests striking "By Mail" and keeping the additional added

language “to known” so that the Department has the ability to choose the method they think will be most effective.

2.37 1 B (3) The addition of the term “including testing” is vague and should be modified to clarify what the intent of the required testing is. Specifically, it appears that the Departments intent is to allow the Commissioner to require testing to protect public health. If that is the case MAA suggests adding “to protect public health” after “including testing” .

2.90 2 (B) MAA opposes striking the words “or nurseries” under this clause. This would prevent placing any of the covered species in FLUPSYs a critical growing method designed to get juvenile shellfish up above a size where they are susceptible to pathogens and predators. In addition nurseries are referred to in the paragraph above the stricken words.

2.90 2 (E, F) Maa opposes the elimination of the departments ability to consider and permit the movement of shellfish between Health Areas. MAA supports a requirement that growers apply to the department and the department review and consider the justification for moving shellfish between health zones. MAA acknowledges that the movement of shellfish between health zones may present a risk of moving pests, pathogens and/or parasites. Having said that, MAA is concerned that a blanket elimination of the ability of growers to move seed within all state waters will be a significant inhibition on the growth and development of the sector. If the department wants to require pathogen testing before movement between health areas the MAA would be interested in discussing how to do that effectively.

2.90 G (1) Maa opposes the elimination of the requirement for educational requirements for an LPA applied for by a municipal shellfish management program. In particular MAA believes that municipal program LPA present no less of a biosecurity risk than any other LPA. Municipal program participants who are applying for and using LPAs should be required to go through a basic level of biosecurity training in order to reduce the disease risks to all state waters.

### **Department Response:**

Chapter 2.05(1)(C): To comply with a law court decision, this section of regulation is clarifying that for the purposes of providing notice of lease applications, riparian landowners are shorefront owners whose property boundaries are within 1,000 feet of a lease proposal. The statute governing Limited Purpose Aquaculture (LPA) licenses (see 12 M.R.S.A. § 6072-C) specifies that the notice radius for riparian landowners is 300-feet. As the 300-foot notice radius for LPAs is specified in statute, it does not need to be included in rule.

Chapter 2.15(3)(A): Notice of proposed lease applications (including hearings) must be provided to riparian owners whose shorefront boundaries are within 1,000 feet of a proposed site. In accordance with statute, riparian contact information is based on municipal tax records which are mailing addresses. The Department is not provided with the email address for every riparian owner. To ensure that notices are processed efficiently and effectively, the rule is clarifying that riparian landowners must receive notice via mail. The Department does receive email addresses

from applicants and other state agencies. Therefore, the rule provides the Department with the option to email notice to other state agencies and the applicant.

Chapter 2.37(1)(B)(3): The proposed change is clarifying that monitoring may include testing and that section of rule provides examples of what type of monitoring/testing may be required (i.e. water chemistry, phytoplankton, etc.). This section of regulation is specific to lease conditions, so an applicant would have the opportunity to review and comment on any monitoring or testing requirements prior to a final decision being rendered.

Chapter 2.90(2)(B): Hatcheries are regulated in accordance with Chapter 24 and are the only permitted source for the species contemplated. Nursery or nurseries are terms that are not defined in either Chapter 2 or 24. To avoid any possible confusion regarding sourcing, the change is clarifying that hatcheries are the only permitted sources for the species contemplated. LPA holders may still source stock from upwellers provided the sourcing meets all other requirements. The change also doesn't preclude persons from placing hatchery sourced stock into an upweller. The Department removed the terms 'hatchery' and 'hacheries' from the section identified by the commenter.

Chapter 2.90(2)(E) and (F): This provision is specific to LPAs, so it does not preclude lease holders from moving seed in accordance with applicable laws. LPAs are annual licenses, and it is not an effective use of Department resources to have a pathologist review seed transfer requests between health zones for license sites. LPA holders may source stock from other aquaculture sites within the same health zone, approved hatcheries, or from the wild within the same health zone. Sourcing from the wild would require appropriate licensing for harvest.

Chapter 2.90(G)(1): Municipal shellfish management programs are utilizing LPAs as part of their conservation work in consultation with the Department. The LPAs are issued to the program, not individuals. In consideration of this work and the scope of activities, those programs are exempt from the education requirements. However, they are not exempted from other laws and rules governing LPAs including seed sourcing.

# Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021 Telephone: (207) 624-6553; web address: <http://www.maine.gov/dmr/rulemaking/>

CHAPTER NUMBER AND RULE: Chapter 2 Aquaculture

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

DATE AND PLACE OF PUBLIC HEARING(S): July 10, 2023 at 4:30 pm; in-person at DMR's Augusta office (Rm 118, 32 Blossom Lane) and remote via Microsoft Teams.

COMMENT DEADLINE: July 20, 2023

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

The purpose of this proposed rule is to help improve processing efficiencies for LPA and lease applications, provide greater clarity across regulation for stakeholders and enforcement, and ensure that the experimental lease application fee structure is consistent with other application fees across the Aquaculture Division. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health.

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 is expected to provide greater clarity to aquaculture applicants, site holders, and other stakeholders that engage with the Aquaculture Division. The increase to the experimental lease application fee also helps offset part of the work and resources associated with processing those proposals.

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]:

Consultation with Marine Patrol, staff in DMR's Bureau of Public Health, and feedback from the DMR Advisory and Aquaculture Councils.

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

Enforcement of the proposed rule will not require additional activity in this agency. This proposal would increase the fee to apply for an experimental lease. New applicants would be subject to the higher fee, but it would not impact persons or businesses that currently hold an experimental lease or previously submitted a proposal that is at any stage of review. It also establishes fees and protocols for contaminant reduction or other special studies to help protect public health. Holders of aquaculture sites in those areas or otherwise required to conduct such studies would incur a fee for sample processing. In certain cases, a 60-day closure could be implemented in lieu of study fees.

*Note: If necessary, additional pages may be used.*