STATE OF MAINE
DEPARTMENT OF THE SECRETARY OF STATE

# Notice of Agency Rulemaking Adoption

**AGENCY:** 13-188-Department of Marine Resources
**CHAPTER NUMBER AND RULE TITLE:** Chapter 2 Aquaculture Regulations
**ADOPTION FILING NUMBER:** [Leave Blank - Assigned by the Department of the Secretary of State]

**CONCISE SUMMARY:**

This rulemaking requires a pre-application meeting for an experimental lease application prior to an experimental application being submitted to the Department. The rule also updates the sourcing requirements for Limited Purpose Aquaculture (LPA) licenses to provide consistency with existing regulations, ensure that reliable sources of stock are available for each allowable species, and streamline the LPA sourcing framework. For LPAs, an approved hatchery or facility would be the only authorized source of stock for hard clams, hen clams, Arctic surf clams, soft-shelled clams, razor clams, European oysters, and bay scallops. The rulemaking also clarifies that American oysters, green sea urchins, sea scallops, marine algae, and blue mussels may be sourced either from an approved hatchery or facility or within the same Health Area as the LPA site. The rule also provides a process for the Department to seek clarification from people who provide comments for experimental leases under certain circumstances. It also makes changes for clarity and consistency with existing law.

**EFFECTIVE DATE**: [Leave Blank -- To Be Filled in by the Department of the Secretary of State]

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**DEPARTMENT OF MARINE RESOURCES**

**CHAPTER 2: AQUACULTURE REGULATIONS**

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**TITLE INDEX**

## 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 complying with any notice requirements under 12 M.R.S.A. §§ 6072, 6072-A, 6072-B, to the extent a notice radius is not provided in statute, "riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.

   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 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 receipt until final agency action, or until the application has been terminated or withdrawn.

O. Ownership Interest

For the purposes of 12 M.R.S.A. §6072-C (2-B)(A), "ownership interest" means that the license holder has a 50% or greater ownership interest in the entity, including as a shareholder in a corporation, that holds or has applied for a lease pursuant to section 6072, 6072-A, or 6072-B. In cases where multiple license holders have an ownership interest in the entity, including as a shareholder in a corporation, such that no license holder has a 50% or greater ownership in the entity including as shareholder then only one license holder shall claim an "ownership interest" exception.

## 2.07 Pre-Application Requirements for Standard and Experimental Leases

Pre-Application meeting. Prior to submitting a standard or experimental lease application to DMR, ~~The~~ the applicant ~~shall~~ must attend a pre-application meeting with DMR staff and DMR shall invite ~~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 participate in the meeting. ~~to discuss the proposal~~. ~~The purpose of the meeting shall be:~~

A. The applicant must contact DMR to request a pre-application meeting. After a request is received, DMR will send the applicant a form to complete that requests information about the proposed site including but not limited to the location of the proposed site, acreage, species, and culture techniques. If a completed form is not returned to DMR within 30 days of the form being sent to the applicant, then the request for a pre-application meeting is considered withdrawn.

B. The purpose of the meeting shall be for the applicant to explain their proposal to the municipality and for the municipality to provide feedback on the proposal as it relates to the lease decision criteria. DMR staff may provide information and answer questions about the leasing process as necessary.

~~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~~ their 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~~ the 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~~ their 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.

## 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~~ their 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~~ their 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~~ they determine~~s~~ 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. 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, 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 will be included.

The Department shall determine whether or not to verify the applicant's water quality information 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 a prehearing conference if the complexity of the issues or other factors indicates that a prehearing conference would aid in the determination of issues raised by the application. The Commissioner may issue a 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 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 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 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 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 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 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~~ a 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. 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 unreasonably 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 ~~that~~ 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 be conducted on lease sites. Such monitoring shall: be conducted by the lease holder or the 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 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.

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~~ their 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 $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 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. [REPEALED]

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.

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 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 application in a newspaper of general circulation in the area proposed for an experimental lease. If no public hearing is to be held and the Commissioner requires clarification on a submitted comment from the person who submitted that comment, the Commissioner may in their discretion request that clarification from that person, and must provide the commenter with 30 days to

submit the requested clarification. Information provided by the commenter at the request of the Commissioner within the deadline provided is part of the record.

11. Decision. The Commissioner shall issue a written decision within 60 days from the date the site report is issued or 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 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~~ shall 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. 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.

    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 maybe 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:

   A. 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

   B. 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.

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 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 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 shellfish will be moved, a location map showing the area to which the 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 size of the 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 shellfish or issue a written denial of the request.

(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 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.

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 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 or §6072-A.

(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, whether the health and safety of shellfish at the leased area are threatened, whether the emergency may be managed effectively without relocating the shellfish, 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).~~

B. The Commissioner may consider the applicable criteria 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.~~6. 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.~~7. 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.~~8. Revocation.

The Commissioner may revoke the lease if they determine that the aquaculture project fails to meet the criteria contained in 12 M.R.S.A. §6072-B(1), 12 M.R.S.A §6072-B(2), 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.

2. The lessee shall ensure that all authorized structures must remain within the boundaries of the lease site.

3. The lessee shall maintain 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.

4. The lessee must collect and properly dispose of all errant gear, errant equipment, or errant solid waste from the lease site in a timely manner.

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.

6. The lessee must properly contain and dispose of human waste generated during lease operations.

7. The lessee must maintain and follow their operational plan as defined in 2.05(M). These documents must be produced upon request by the Department.

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. 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 ~~program~~ committee established pursuant to 12 MRSA §6671. An LPA issued to a municipal shellfish management committee may not authorize the committee to conduct activities that are outside the scope of that committee's shellfish ordinance. The Department shall make application forms available. 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.

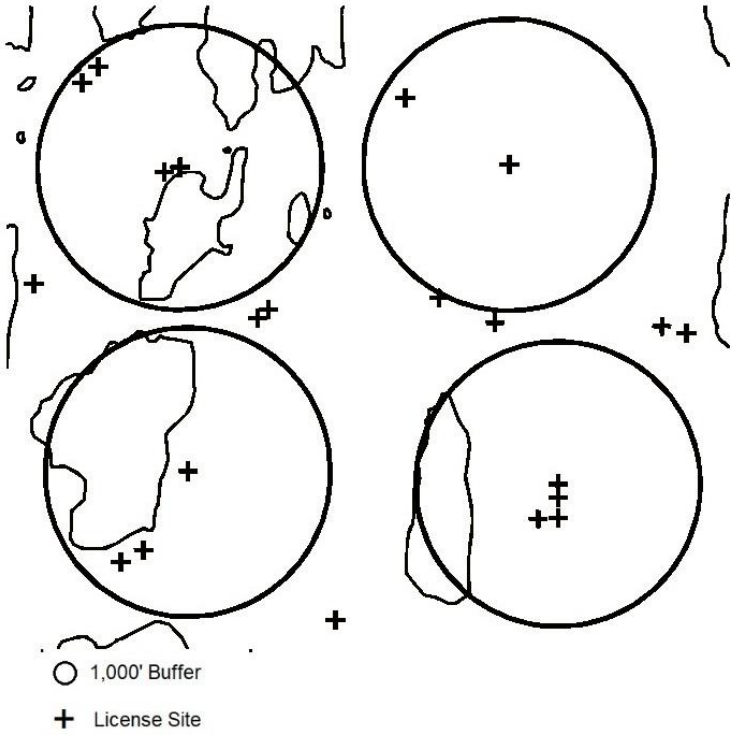


Figure 1. Density illustration for acceptable LPA license distribution

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. 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 DMR approved hatcheries or facilities list the current name, address and phone number of the ~~hatchery~~ source for each species listed under 2.90(2)(A).

~~(1)~~ DMR approved ~~H~~hatcheries or facilities are the only permitted sources for ~~Hard~~ hard clam/quahog (*Mercenaria mercenaria*), Atlantic surf clam ~~Hen clam~~ (*Spisula solidissima*), Arctic surf clam (*Mactromeris polynyma*), ~~or Soft~~ soft shelled clam (*Mya arenaria*), razor clam (*Ensis directus)*, European oyster *(Ostrea edulis),* and bay scallops (*Argopecten irradians*) ~~unless the Department issues a municipal shellfish transplant permit that authorizes the collection of undersized animals.~~ An LPA applied for by a municipal shellfish program established pursuant to 12 M.R.S.A. §6671 is exempt from these provisions provided the species proposed is in the municipal shellfish ordinance and transplant permits are obtained pursuant to Chapter 7.

~~(2)~~ (2) Green sea urchin (*Strongylocentrotus droebachiensis*), blue mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus)*, American or eastern oyster (*Crassostrea virginica*), and marine algae (all seaweed such as reds, greens, browns or kelps) must be sourced from either a DMR approved hatchery or facility or from within the same Health Area as the LPA site. In accordance with Chapter 24, American or eastern oyster (*Crassostrea virginica*) shall not be sourced from a restricted area.

~~(3) 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.~~

~~(4)~~ (3) Any stock or seed obtained from wild sources must be taken in accordance with applicable season or size limits, or other limitations on take. The application must identify by full name (first, last, and

middle initial) and license number, the individual authorized to collect the respective species from the wild.

~~(5)~~ (4) All sources of hatchery supplied seed or stock must be from hatcheries or facilities approved by DMR.

~~(6)~~ (5) 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.

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, 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 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 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 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 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 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 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 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).

Upwellers including "FLUPSYs." Sites with upwellers renewed after January 1, 2025 are exempt from the direct supervision requirements in 12 M.R.S.A. §6072-C(2). New sites permitted after January 1, 2025 are exempt from the direct supervision requirements in 12 M.R.S.A. §6072-C(2) provided upwellers are the only gear type utilized on the site.

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

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, 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 November 30. If a renewal application is not submitted to the Department by 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 31st.

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.

(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. 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).

(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 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.

E. Maine Department of Inland Fisheries and Wildlife Essential Habitats
LPA license sites cannot be located within any area designated as Essential Habitat by the Maine Department of Inland Fisheries and Wildlife.

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.

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)*, Atlantic surf clam ~~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 directus* ~~*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;

(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.

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. To prevent adverse impacts to public health, the LPA holder shall make lawful efforts to ensure animal excrement does not accumulate on or near structures.

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

~~C.~~ D. 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.~~ E. 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.

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.

CHAPTER 2

AQUACULTURE LEASE REGULATIONS

INDEX

EFFECTIVE DATE:
July 11, 1983

AMENDED:
October 28, 1986- Section 80
September 1, 1987- Section 90
December 27, 1988
February 25, 1998
May 28, 1998
June 24, 2002 – Section 01 repealed; sections 10(1), 12(3), 60(3)(1), 64(2)(3)(G), 75(1)&(2) and 80(2)&(3)
July 22, 2002 – Section 5 amended, Section 90 added
August 26, 2002 – Section 10(3), 31(4), 37(1)(1,2)
February 17, 2003 – Sections 10, 15, 37, 40, 64, 75
February 17, 2003 – Sections 10(3)(3), 27(2); Provisional adoption (major substantive rulemaking)
June 24, 2003 – Sections 10(3)(3), 27(2)
January 1, 2005 – Sections 10, 43, 45, and 60
January 1, 2005 – Section 90
April 25, 2005 – Section 90(2)(G)(2)
May 1, 2005
July 15, 2005 – Section 37(1)(A)(8)
July 15, 2005 – Section 37(1)(A)(9-10)
January 1, 2006 – Sections 37, 80, and 90
January 24, 2007 – Sections 2.12(3), 45(3)(D), 60(3)(D)
January 24, 2007 – Sections 5(1)(K&L), 46, 60(1), 64(7)(A) and punctuation
May 26, 2008 – Sections 90(3)(C)(3), 95 (absorbs Ch. 22)
May 26, 2008 – Sections 2.05 and 2.90(1)&(2)
April 20, 2009
February 22, 2010 – Sections 2.10(6) and 2.64(7)(C)
August 22, 2011 – Section 2.90 (2)(B), (F)(2)(j), (3)(C)(4) and (4)
November 14, 2012 –Section 2.90 (1),(2),(3),(4),5)
October 17, 2013-Sections 2.60(1)&(2) and 2.64(1)
March 19, 2018-Sections 2.90(1)(B)(C)&(D); 2.90(2)(B); 2.90(C)(1)(2)&(4); 2.90(D)(1)&(2); 2.90(E)(1); 2.90(F)(1)(2); 2.90(G)(1)&(3); 2.90(3)(A)-(F); 2.90(4); 2.90(5)(A)(C)&(D); 2.90(6)(B); 2.95(A)(2)&(4)
April 1, 2019-Sections 2.05, 2.07, 2.08, 2.10, 2.12, 2.15, 2.20, 2.25, 2.30, 2.31, 2.35, 2.37, 2.40, 2.41, 2.43, 2.44, 2.45, 2.60, 2.61, 2.64, 2.65, 2.66, 2.75, 2.92, and 2.95
August 29, 2020-Sections 2.08(5), 2.15(1), 2.40(2), 2.61(4)(D), 2.64(11)(A), 2.90(3)
March 13, 2021-Section 2.95
March 13, 2022-Sections 2.15(C), 2.40, 2.44, 2.45, 2.60, 2.61, 2.64, 2.75, 2.80, 2.90, and 2.95.
August 13, 2023-Sections 2.05(1)(C), (M), (N); 2.10 (1)(B)(1); 2.15 (3)(A),(4); 2.27 (1)(A), (2); 2.29; 2.31(2), (5)(B), (6)(B); 2.35 (2), (4); 2.37 (1), (1)(A)(1), (B)(3); 2.40 (4); 2.45 (1); 2.64 (2), (3), (6), (7), (10), (11), (12)(A)(B), (14); 2.65 (4), (7); 2.66 (1), (2)(C)(1)(2)(3)(4), (F)(4)(8)(9); 2.75 (1), (2), (3), (4), (6), (7); 2.80 (1), (2)(A); 2.90; 2.95(A)(3), (B)(1)(2)
November 12, 2024 – Sections 2.05 (C) and (O); Section 2.90 (2) (F)(2)

**Basis Statement**

This rulemaking requires a pre-application meeting for an experimental lease application prior to an experimental application being submitted to the Department. The proposed rule also updates the sourcing requirements for Limited Purpose Aquaculture (LPA) licenses to provide consistency with existing regulations, ensure that reliable sources of stock are available for each allowable species, and streamline the LPA sourcing framework. For LPAs, an approved hatchery, or facility would be the only authorized source of stock for hard clams, hen clams, Arctic surf clams, soft-shelled clams, razor clams, European oysters, and bay scallops. The rulemaking also clarifies that American oysters, green sea urchins, sea scallops, marine algae, and blue mussels may be sourced either from an approved hatchery or facility or within the same Health Area as the LPA site. The rule also provides a process for the Department to seek clarification from people who provide comments for experimental leases under certain circumstances. It also makes changes for clarity and consistency with existing law.

DMR is proposing these rule changes to provide for greater opportunity for municipal input prior to an experimental lease application being submitted. The opportunity for municipal input, prior to the submission of experimental lease application, may help create a more informed application that reduces the potential for conflict with existing uses in an area. The LPA sourcing framework needs to be streamlined to ensure that applicants have a viable source of stock that complies with existing legal frameworks and is more reflective of agency resources. DMR needs the ability to seek clarification from commenters, in limited circumstances, to ensure the Commissioner has necessary information to render a final decision on an experimental lease application. All other changes are necessary to provide clarity and consistency with existing law.

Based on the public comments received, DMR modified the rule proposal as follows:

- Modified the source of stock of requirements for Limited Purpose Aquaculture (LPA) applications, so that American oysters (*Crassostrea virginica*) must either be sourced from an approved hatchery, facility, or within the same health zone as the proposed LPA application except for restricted areas defined in Chapter 24.

- Clarified that municipal shellfish programs who apply for an LPA are exempted from certain sourcing requirements, consistent with the species listed in the municipal shellfish ordinance, with the appropriate permit issued by DMR in accordance with Chapter 7.

- Clarified the pre-application request process, so it is clearer what is expected of applicants and DMR.

- In the text of the rule, European oysters were added to the list of species that must be sourced from an approved hatchery. Previously, European oysters had been listed in the brief summary as a species proposed to be added to that list. The brief summary appeared in all public notices concerning this rulemaking, so people were aware that DMR was proposing this change. DMR also announced that European oysters were proposed to be added to the list of species that must be sourced from an approved hatchery during the public hearing. However, European oysters were accidentally omitted from the draft rule language. European oysters have since been added to final rule language.

**Summary of Comments**

Notice of this proposed rulemaking was published on January 21, 2026, in the five major daily newspapers and posted on the Secretary of State's website. On January 21, 2026, the proposed rule was posted on DMR's website and email notice provided to aquaculture lease and Limited Purpose Aquaculture (LPA) license holders, who provided DMR with an email address. Email notice was also provided to people who subscribe to receive notice of DMR rulemaking and members of the 132nd Legislature Marine Resources Committee. On February 6, 2026, DMR also sent a reminder of the rulemaking to aquaculture lease and LPA holders, people who subscribe to receive notice of DMR rulemaking, and members of the 132nd Legislature Marine Resources Committee. A public hearing was held at 5:00 p.m. on February 9, 2026, at DMR's Augusta office and remotely via Microsoft Teams. The comment period closed on February 23, 2026.

**Public Hearing**

The public hearing was held at 5:00 p.m. on February 9, 2026. The hearing was held in-person at DMR's Augusta office and remotely via Microsoft Teams. Attendance at the public hearing is recorded below. DMR did not ask people to sign-in, so this list is reflective of people who identified themselves during the proceeding through remote participation or providing comment.

| Name | Affiliation |
|---|---|
| Deirdre Gilbert, Kohl Kanwit, Amanda Ellis, and Hannah Brazier | DMR staff |
| Valerie Wright | Assistant Attorney General |
| Representative Allison Hepler | House District 49; House Chair, Marine Resources Committee |
| Thomas Henninger, Luke Saindon, Nick Branchina, Todd Molloy, Jay McCreight, Mike Gaffney, Hadlee Yescott, Alicia Gaiero, Cheryl Cook, Jacqueline Clarke, Jesse Roche, Eric Oransky, Willy Leathers, Dan Devereaux, Max Burtis, Ken Sparta, Andrew Buchner, Katherine Lipp, Greg Foote, and Sebastian Belle | Members of the public |

**Comments Received**

The comments below are organized by the date they were received. As indicated, some individuals provided oral comments at the February 9, 2026, public hearing and later submitted written comments as well. In those cases, after the oral comments were transcribed, they were compared to the corresponding written submissions. When substantive differences were identified between the oral and written comments (i.e., statements made at the public hearing that were not included in the written submission), those remarks are presented as separate entries.

**Comment Received by Email February 5, 2026 from Michael Pinkam, Gouldsboro**

I am writing this comment in regards to Chapter 2 -Rule Title Aquaculture Regulations. I have a concern that by enacting this regulation as proposed it would have a negative effect on a Municipality to conduct seed stock enhancement activities. One example would be, If a municipality engages in using beal boxes to collect spat from a particular area to determine if seed is actually falling on that flat they wouldn't be able to use that seed on a LPA for overwintering. I believe the regulation

needs to be amended to allow Municipalities to engage in the use of wild seed collected as part of their LPAs.

Thank you for your consideration in this matter

Michael A. Pinkham
Gouldsboro Shellfish Warden

**Comment Provided at the February 9, 2026, Public Hearing from Dan Devereaux**
I am the coastal resource manager for the Town of Brunswick, and my family is also a co-owner of Mere Point Oyster Company. One thing that scares me about this language is that right now there is a lot of research and a lot of effort into knowing how municipal shellfish programs work with local farmers to increase their wild shellfish stock. [clarifying question from Deirdre Gilbert regarding what proposed language Mr. Devereaux is referring to. Mr. Devereaux clarifies that he is referring to the sourcing language for LPAs.] We worked so hard to figure out a process where we can work with farmers and worked on that social licensing with clammers and things like that, that it feels like the way that it is written, and you can see from the questions that were asked, we're not doing this to be a pain in the butt, we're doing this because it impacts the bottom line and it impacts the aquaculture industry, but it also impacts the wild industry. If this has any way of prohibiting that, then it would definitely have an impact to the municipal shellfish program. Also, it has an impact to farmers and researchers who have been working to grow seed of their farms and transfer it over to municipalities.

**Comment Provided at the February 9, 2026, Public Hearing from Max Burtis**
I am a Brunswick shellfish harvester and also an oyster farmer. And just the way the wild shellfish seed sets have been going, it hasn't been looking good. Theres some ups and some downs, but I think it's generally down. I am also on the vice chair of the shellfish committee in the Town of Brunswick, and one thing that I think we might have to turn to in the future is using aquaculture and LPAs as a tool to really protect the wild seed sets that we get. I do worry that if hatcheries in the future determine that it's not economical for them in the future to produce soft-shell clams or hard-shell clams, where does that put us from a town perspective if we are using aquaculture as a management strategy and a way to preserve the seed that we see coming in from the wild. That's one of my concerns with this language and I am not positive about all the specifics, but it would be great if we could plan for using the LPAs to protect wild seed in the future, regardless of if there is an approved hatchery that year or not.

**Comment Provided at the February 9, 2026, Public Hearing from Ken Sparta**
Ken Sparta from Freeport where [inaudible] and I am also a town counselor. My biggest concern is that you've given us a new way to apply for a new LPA that we're not intending to put new seed on by stating that the seed is coming from X and getting the LPA. It just seems like a mistake to me to be asking for information that isn't actually real, just so that we can get our LPAs. I appreciate that you have given us that work around, but it doesn't make sense to me if what we are looking for is good, solid information for your Department to make decisions. Knowing how we are going to be using the lease or license site is the real information that you want.

**Comment Provided at the February 9, 2026 Public Hearing from Katherine Lipp**
Katherine Lipp, Mere Point Oyster Company. I would just implore; I do think that the language behind the seed sourcing could be looked into further. I would also implore you to expand the definition to standard leases. They are held to similar standards as facilities and land-based facilities, so perhaps we could

expand the definition to hatcheries and/or standard leases. And just piggybacking that the language for the emergency leases is too vague. I would like to have some more clarification on how DMR defines [inaudible] or whatever the particular wording is.

**Comment Provided at the February 9, 2026 Public Hearing from Luke Saindon**

I work for the World is Your Oyster and I have a few LPAs. I don't have as much experience as some of the other folks in the room, but I am concerned that the general changes to the language make things less specific and less clear and will lead the confusion and more problems. For examples, the sources for LPAs would lead to, you know, the Department and the industry of having a less idea of what is happening, which seems dangerous. Same with the emergency leases. I feel that the old rules are clearer and more specific, and I don't understand the need to make things less laid out. If does seem a little bit of going in the wrong direction from a clarity point of view.

**Comment Provided at the February 9, 2026 Public Hearing from Greg Foote**

Greg Foot here from Freeport. My comments are on two different parts of this bill. 1st is the seed sourcing rules. As we heard here tonight, there's some pretty far-reaching ramifications for this rule that even in asking questions we weren't able to get a clear and concise answer as to exactly how they would apply to different situations. For that reason, I'm not in support of the seed source rules. As they're as they're currently stated. Secondly, the emergency leasing is a is a real concern for me. I think Willie laid it out fairly nicely that the leases are not something emergency leases rather are not something that we take lightly and the ability to have that as a tool to protect public safely is of the utmost importance.

**Comment Provided at the February 9, 2026, Public Hearing from Todd Molloy**

I think I would echo some of Mike's [Gaffney] comments around the ability to move oysters of various generations between both lease sites and LPAS. I don't know that I would see any exclusivity between them. And I think we all recognize the interest in having the original seed source come from these nurseries. So, I think that some clarity in that language is important. At lease in which to clear up some of the confusion that we witnessed here tonight and in the interest of leaving some of the business process that everybody is currently using the LPAs for, undisturbed. I wasn't aware of the emergency lease provisions and I'm glad that it was brought to the attention tonight. My comments would echo the fact that if you're going to have an emergency provision to protect public health and business growth and sort of business viability, then those emergency statutes should be able to be executed when the needs with which they present require them. So, I think in addition to maybe the subtle changes trying to be made, I would encourage maybe further investigation to look at more comprehensive emergency measures, just given the fact that we're all raising a lot more sustainable seafood than we were ten years ago. So, I think the exposure we have with the general public is increasing exponentially and having some viable ways to protect both our businesses and the public within DMRs regulations are important.

**Comment Received by Email February 9, 2026 from Bailey Bowden, Penobscot**

Maine Department of Marine Resources February 5, 2026
21 State House Station
Augusta, Maine 04333-0021
RE: Notice of Agency Rulemaking Proposal – Chapter 2 Aquaculture Regulations

I write today on behalf of the Town of Penobscot Shellfish Conservation Committee to express our opposition to the change proposed to Chapter 2 section 2.90 2.B.1 which strikes the following language : "*unless the Department issues a municipal shellfish transplant permit that authorizes the collection of undersized animals*".

Wild shellfish harvesting is the second most valuable commercial fishery in the State of Maine due in large part to the legislative mandated co-management structure for the industry. Removing the ability for the municipal committee to collect wild seed to be grown to a size that might better withstand predation pressure, transplanted, and then available to any properly licensed individual defies common sense. This volunteer effort is for the common good. Requiring municipalities to purchase seed from an approved source will strain budgets that are already stretched to the limit – especially when wild seed is readily available and often can be sourced from areas of high abundance or slow growth. Additionally, this does not apply to a person, entity, or foreign corporation that holds a standard lease.
I contacted the Chair of the Shellfish Advisory Council and was told that the ShAC was not made aware of this proposed rule change. The entire purpose of the ShAC is to be a liaison between the shellfish industry and DMR. The lack of communication with the ShAC is an act of bad faith on the part of the Department. Furthermore, there was a decision to strike this language, it was not an accident, and therefore intentional. This is yet another DMR plot to reduce the authority and ability of municipal shellfish programs.
We request that the language not be stricken and that municipalities be allowed to gather wild seed to place on a municipal LPA.

Bailey Bowden
Chair
Town of Penobscot Shellfish Conservation Committee

**Comment Received by Email February 9, 2026 from Jordan Kramer, Bath**
I am writing to voice my strong opposition to the proposed changes to Chapter 2 that would limit oyster seed sources for farmers operating on LPAs. I believe these changes will have far-reaching unintended effects that will chill investment, reduce the aquaculture industry's resilience, and make farming less equitable.

The proposed changes would hinder the development and economic viability of stand-alone nursery businesses. LPAs make up the vast majority of the state's farms. Excluding them from this seed source would greatly reduce the market for large seed. Though aimed at LPAs, these rule changes would directly and indirectly affect leaseholders- through loss of of the potential economic activity and the elimination of commercially-viable sources of large seed.

A robust and diffuse nursery network (handling local and imported seed) would increase the industry's resiliency. Recent years have seen multiple hatchery and nursery collapses in the state that have left farmers scrambling for seed late in the season. A healthy and decentralized nursery industry would make the state's seed supply less vulnerable to disease, pests, and localized environmental stresses. It could provide sources for emergency replacement seed (large enough to survive overwintering ) even if there is another disruption in the local hatchery supply chain. This is critically important to farm businesses of all scales, whether permitted by LPA or lease.

The proposed rule change would also reduce utility of the newly approved out-of state hatcheries. These new seed sources are only able to export their smallest oysters- (1-2mm shell length). These small oysters are difficult to handle and grow without specialized and expensive pieces of nursery equipment (upwellers, graders, etc), making them inaccessible to many smaller farms operating on LPAs. The addition of these new hatcheries provided a welcome source of operational and genetic diversity. Unfortunately, this benefit is not truly realized without nursery businesses to condition this seed to make it easily available to farm of all scales, in each of the state's health zones.

The proposed changes could also inhibit collaboration between small-scale farms operating on LPAs. Co-ops could not share the cost of an upweller if member farms could not source seed from it.

As the industry consolidates, it is important that family-farms can benefit from an economy of scale achieved through cooperation (not just expansion). The LPA program has supported many successful small-scale family businesses, while encouraging space-efficient high-intensity farming practices. It has made aquaculture accessible to Mainers of different means and is a rare bright spot in a wider agricultural landscape that has seen the loss of small family farms. Sea farmers that operate on this scale should not be punished with a more burdensome standard.

*Jordan Kramer*
*Bath, ME*
*Owner/Operator: Winnegance Oyster Farm*
*President: New Meadows River Shellfish Co-op*
*jordan@winneganceoysterfarm.com*

**Comment Received by Email February 11, 2026 from James Fisher, Deer Isle**
Please consider including an exemption to this rule for Municipal Shellfish Committees that are volunteering their time to reseed clam flats. Our Deer Isle-Stonington Shellfish Committee has experimented over the years with strategies to transplant clam seed within our zone, protect these areas from predators and to restore clam populations where collapse has occurred. Prohibition of Shellfish Committee efforts to rebuild clam flats appears to be an unintended consequence of this bill. Fortunately a very minor change in wording can correct this unintended consequence.

--
James Fisher, PhD Town Manager
PO Box 627, Deer Isle, ME 04627-0627
(207) 348-2324 (office) / (207) 812-6315 (cell)
deerislemanager@gmail.com / deerislemaine.gov

**Comment Received by Mail February 12, 2026 from David Taylor, Chair, George's Shellfish**
I am writing in regard to the aquaculture rule changes. This ruling would affect shellfish committees who are nonprofit and don't have the resource to purchase clam seed. If seed is at $40 a thousand a committee would have up to $20,000 for $500,000 seed clams. There is no way a committee could come up with that kind of money. Shellfish committees would always be trying to get grant money which is not a good solution there is never a program out there to help committees. This ruling should only be for aquaculture to keep them from harvesting wild product and transplanting it on a aquaculture lease they are a business and out to make a profit. The state should be protecting wild harvesters not making it difficult for them to keep harvesting.

**Comment Received by Email February 14, 2026 from Michael "Mike" Gaffney**
**Mike Gaffney also provided comment during the February 9, 2026 public hearing**
It doesn't all happen on the lease.

Regarding the proposed rule change updating the sourcing requirements for LPA licenses….

I write this to encourage the Department to write a rule here which will not have adverse impact on many oyster farmers who employ their LPAs, not as mini-leases for small scale growing, but as specialized "outbuildings" in support of their lease-based growing areas. If the new rule broadens the definition of sourcing to prohibit movement of larger oysters (juveniles and adults) between leases and LPAs – that would be a very large problem for my farm and many others.

I have assumed the "sourcing" requirement for LPAs (as with leases) has to do with the origin of the seed oysters. On our LPA applications we indicate the Maine hatcheries from which we purchase, though that seed is not initially placed on those LPAs. On our farm, new seed goes into upwellers or into nursery trays on our lease, and at a later stage of growth is moved periodically to LPAs. My farm employs an LPA under our string of shore-connected floats to house my shore powered electric tumbler and shaker table. Two other LPAs are used to hold market-ready oysters in an ice-free winter location when ice prevents us from accessing our lease. Both these applications entail movement of juvenile and market sized animals between lease and LPA.

Like animal husbandry ashore (cattle and sheep ranching), oyster husbandry (at least for many mid to large size farms) requires periodic movement of animals from lease to ancillary/auxiliary processing sites. A rancher moves his animals from lease (range) to feed lots, vet barns, shearing pens, etc. An oyster farmer moves his animals from lease to LPAs for the purpose of tumbling, sorting, flavoring, winter ice-free sales access, etc. Point is – it doesn't all happen on the lease. Agricultural ranchers have their off-lease sheds, barns, corrals, and pens. Aquaculture ranchers have their off-lease LPAs.

Thank you,
Mike Gaffney
Eros Oyster

**Mike Gaffney also provided comment during the February 9, 2026 public hearing**
My comments have to do with the part of the rulemaking that applies to sourcing for LPAs and from this discussion, I can see that I think the Department's focus is on entry level farmers, small scale farmers LPAs, where the whole thing happens on the LPA. I just want to sensitize the Department that for mid-size and larger oyster farms, LPAs are used as outbuildings, in the same way that land agriculture ranching occasionally will bring their animals in off the field or the range, which in our case is the lease, but they have to move them into a different area, either a feed lot or they're bringing in for vet treatment or for shearing, or for many other purposes, other stuff takes place. It's outside of the lease. And for medium and larger scale oyster farms, we use our LPAs, as I indicated, we use it as an area to store market oysters in an ice-free area so that we can sell throughout the winter. Other farms use them to change their taste in preparation for market, and we use them as well to process the oysters. We bring them in off the lease, our Tumblr and our equipment is on an LPA. We bring them to the LPA, we process them, and we take them back out to the lease. You know the unintended consequences could apply here. In the Department's trying to fix something for the small farmer on the LPAs and screw it up for the medium size farms. [So, I just want to caution you that's how these LPAs.] Being able to move juvenile and adult oysters back and forth between lease and LPAs is a really important part of our operations and we don't want you to screw it up. Thank you.

**Comment Received by Email February 14, 2026 from Travis Fifield, Stonington**
Hello,

Regarding the proposed rule change for Chapter 2 Aquaculture Regulations, which references "For LPAs, an approved hatchery, or facility would be the only authorized source of stock for hard clams, hen clams, Arctic surf clams, soft-shelled clams, razor clams, American oysters, European oysters, and bay scallops," I would like to submit the following comment:

Municipal LPA's for soft shell clams which are managed by their shellfish management committees are very low budget and rely on diggers to volunteer time (and in many cases, resources) to participate in using these sites for clam reseeding efforts and resource enhancement. The authorized sources change to require approved hatcheries or facilities as the source of that seed would undoubtedly require those stocks to be purchased, and thus severely limit the effectiveness of these budget-limited groups in their small-scale resource enhancement efforts.

The ability of these municipal groups to collect seed stock in the wild from the waters surrounding their towns should be preserved, and an exemption made for them in the rule as wild collection is generally the most cost effective method of collection. The chapter already acknowledges resource enhancement activities as a known use for LPA's by municipal shellfish committees where it exempts them from educational requirements (Section G1). Going a step further by exempting them from having to purchase seed from approved facilities could also help keep some of these low budget municipal operations alive, and municipal shellfish committee members participating.

Thank you

Travis Fifield
Stonington
207-702-1920

**Comment Received by Email February 20, 2026 from Cheryl Cook and Barbara Sptiz, Pemaquid**

February 20, 2026
Department of Marine Resources DMR.Rulemaking@maine.gov
21 State House Station
Augusta, Maine 04333-0021

Re: CHAPTER NUMBER AND RULE TITLE: Ch. 2, Aquaculture Regulations:
Comments on DMR Proposed Rulemaking regarding LPA sourcing and
aquaculture leasing procedures

On Monday evening, February 9,2026, we virtually attended a public hearing on a proposed rulemaking by DMR that would amend certain procedures for leases and create requirements for sourcing shellfish stock for LPAs. While the tenor seemed, at times, unnecessarily hostile to DMR representatives, the hearing underscored the extent to which these proceedings have the ability to inform the broader community of stakeholders. As such, we are extremely concerned about the trend that limits public hearings in favor of written comments.

Written comments are not a substitute for hearings, as they deprive the affected community of information not available outside the aquaculture industry and exposure to diverse perspectives. This is particularly the case given that, in our experience, written comments regarding an application are not made public, but provided only to the applicant upon request.

While this trend is no doubt aimed at addressing scarce resources at DMR, the solution should not come at the expense of the interests of all other stakeholders. Currently, a lot of money can be made in aquaculture, as investments by institutional capital, both domestic and international, underscore. These aquaculture interests can well afford to pay fees that support a robust regulatory system of which they are the primary beneficiaries.

We would like to offer the following more specific commentary with respect to the proposed rulemaking:

- It appeared from commentary by aquaculture farmers at the hearing that they operate with impunity on existing LPAs. While they have applied for the LPAs as individuals, distinct from their commercial lease holdings, the sites are often used as additional acreage for unspecified, accessory functions without regard to what is permitted by the regulations or original authorizations. It also appears that DMR does little, if any, diligence on how sites are used after the LPA is granted.
- We would ask DMR to clarify that existing LPAs must be brought into conformity with their original authorizations and not allow the pending rule to effectively grandfather non-conforming and unauthorized uses.
- To the extent existing LPAs are being used for husbandry activities not authorized by the original LPA grant, these sites should be relinquished if a new application under LD 2025 is granted.
- On a more general note, we ask that DMR more closely scrutinize LPA applications by lease holders to ensure they are not being used as creeping acreage that allow existing lease holders to avoid meeting the standards applicable to experimental and standard leases by filing for LPAs in their individual capacities.
- Submitted LPA and license applications can be confusing or incomplete, and in some instances contain information that is false on their face. We ask that DMR scrutinize these applications more closely. More public input from localities and other stakeholders would assist DMR in verifying these representations.
- We applaud DMR for including this requirement, despite opposition by aquaculture to the proposed extension to experimental leases of the pre-application meeting requirements that apply to standard leases. This nod by DMR to the crisis created by aquaculture in our local communities is a minimum and should not be removed.
- We would ask that DMR consider extending notice of these pre-application meetings more broadly or at a minimum to affected landowners.
- The regulation should specify a minimum notice period to be provided to the municipality prior to a pre-application meeting for a standard or experimental lease.
- If the legislature is going to reduce public participation in application-related

proceedings to written comments, those comments should be available to all participants and not only to applicants. This should include the record of any clarification obtained by DMR with regard to submitted comments and be distributed in a time frame that allows prior commenters to respond if necessary. This should be facilitated by easily accessible, publicly available information on the DMR website.

Finally, we offer the following with regard to this and future DMR aquaculture-related rulemakings:

- As a general matter, notice requirements for LPAs and leases should be extended to riparian owners beyond, respectively, 300 and 1000 feet. Coupled with ending public hearings, early, broad notice to all affected stakeholders is more critical.
- Given that an aquaculture lease or license is an effective monopoly on our shared water resources, public hearings should be the rule rather than the exception at every stage of the license or leasing process. The lack of public access to public comments exacerbates the harm and unreasonably prejudices non-aquaculture stakeholders.
- As noted above, If the legislature is going to reduce public participation to written comments, those comments should be available to all and not just to the applicant, including the record of any clarification obtained by DMR.
- Applications and decisions should remain accessible on the DMR website indefinitely once an application is granted or denied. This would go a long way to reducing the burden of FOAA requests on all parties.

While it may be beyond the scope of this rulemaking, sound policy should preference activities that support shared use by diverse stakeholders. All commercial and recreational users apart from aquaculture co-exist and use the coastal waters as a shared resource.

Maine's preference for aquaculture discounts the shared interests of other stakeholders, including commercial fishing, recreational fishing and boating, and environmental research, all of whose interests are clearly part of DMR's statutory mandate, "to conserve and develop marine and estuarine resources; to conduct and sponsor scientific research; to promote and develop the Maine coastal fishing industries; to advise and cooperate with local, state and federal officials concerning activities in coastal waters."

The legislature and DMR's failure to address the imbalance in favor of aquaculture has led to the current crisis and public outcry over the monopolization of our coastal waters by private interests.

Thank you for your consideration.
Respectfully submitted,
Cheryl Cook
Barbara Sptiz
297 Harrington Road, Pemaquid Harbor, ME 04558
215.880.0918

**Comment Received by Email February 20, 2026 from Neil Stanton, Westport Island**

Hi-

This is Neil Stanton, Scruffy's Cove Oyster Farm, on Westport Island. I have four LPAs: NSTA 321, 421, 523 and 624. First of all, I'd like to thank DMR for all your great support over the years. I feel very fortunate that smaller farmers, such as myself, are able to operate in Maine.

My comment is regarding the rulemaking on seed and stock. It makes sense to me to have rules on getting seed from approved hatcheries but someone told me that the new rule might also prohibit moving oysters on my farm from one LPA to another. Currently three of my LPAs are intertidal and one is subtidal. I move my oysters from the intertidal to the subtidal for overwintering and for pre harvest conditioning. Other farms may have similar reasons to move between LPAs. I'm not sure if the new rulemaking would prohibit this movement but if so I have trouble understanding the rationale. It would definitely not allow me to continue my farm if I couldn't move from intertidal LPAs to subtidal LPA.

Thanks again for all your support.

Neil

**Comment Received by Email February 20, 2026 from Emily Selinger, South Freeport**

Hello,

My name is Emily Selinger and I have owned and operated an aquaculture business out of South Freeport for the last 9 nine years. The following is a comment I would like to submit for consideration in regard to the proposed changes to Chapter 2 rules:

I have much appreciation and admiration for the hard work and support that the DMR aquaculture and public health staff provide for our industry. I understand that rule changes are proposed to streamline processes and better safeguard public health, and I generally support those efforts and wish for things to work as smoothly as possible for everyone. That said, I have some concerns about the changes proposed, however, and about the potential impact that they may have on my business as well as on those of others.

In regard to the proposed changes to LPA sourcing rules, I fear that the wording as proposed will cause much confusion between the activities of "sourcing" a site and "moving" product from one site to another. Many farmers, myself included, hold both leases and nearby LPAs and rely on being able to move product from one site to another over the course of their husbandry practices. It seems from listening in on the hearing that moving product from a lease to an LPA would still be allowed if the original source was from an approved hatchery, but some clarifying language in the rules at the very least I feel would help ensure that we are all interpreting things the same way.

Additionally, I worry that further restrictions on seed sourcing just puts more undue pressure on what remains a limited number of approved hatcheries for an ever-growing sector, as well as on those who have been operating upwellers and selling seed to other area growers as part of their business model who will no longer be able to do so. And more generally, I worry about the further squeeze this will put on folks just getting started in the industry. I know LPAs have been far stretched past their intended use as starter licenses, but until we have another similar license available to us to cover the many miscellaneous things that they provide for established growers like me, it feels quite stressful to continue to cut back on what is allowed on LPAs.

I am lucky to be operating out of a town that is quite friendly to aquaculture, but I know first-hand from talking with fellow farmers from other parts of the state that that is not always the case, and I fear unless there is some sort of framework or oversight by DMR at pre-application meetings that helps ensure that they actually happen in a timely manner (or at all) and that the focus is on the lease decision criteria instead of a general dislike for aquaculture, they will greatly and unfairly hinder folks in certain areas.

Finally, I am concerned about losing the ability to extend an emergency lease if mitigation of such an event that resulted in needing one takes longer than six months. None of us growers really want to think about the possibility of finding ourselves in a situation in which we might need to rely on an emergency lease, but if we did, it seems likely that six months may not always be long enough for full mitigation of whatever caused it's need in the first place, and without the ability to extend it's very unclear we are to do if we get to that point.

Many thanks for your time and consideration.

Emily

--
Emily Selinger

Emily's Oysters
Owner + Grower
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**Comment Received by Email February 22, 2026 from Andrew Buchner, Westport Island**
**Andrew Buchner also provided comment during the February 9, 2026 public hearing**
Dear Members of the DMR,
Thank you for the opportunity to submit public comment on the proposed changes to Chapter 2. I spoke briefly at the hearing in Augusta, but wanted to submit this in writing as well. My name is Andrew Buchner and I operate four LPAs in Westport Island as well as manage a mid-size aquaculture farm. I deeply appreciate the work DMR does and hope to share a few concerns as a small farmer who is directly affected by these changes.

First, regarding municipal involvement — I am not opposed to towns having a place in the aquaculture leasing process, and I find it to be an important factor in the application. However, I am concerned that requiring a pre-application meeting for experimental leases may open the door to increased local board involvement in a process that DMR is best equipped to manage. I am also concerned about the language stating that the town would be giving "feedback." I am much more in favor of a meeting that simply informs the town of the plans, and only if there is an articulable reason why they oppose it based on DMR rules should those comments be taken into account. I know that leases already have this process in place, but I would like to see the rules moving toward less municipal involvement, if any. Towns are already receiving a great deal of misinformation about aquaculture, and I believe keeping as much of this process with DMR protects both the integrity of the process and small operators like myself. I know this from firsthand experience on Westport Island, which has seen significant activity from organizations like Protect Maine's Fishing Heritage.

Second, I want to respectfully raise concerns about the proposed requirement that LPA seed come only from approved hatcheries. I am speaking as a small oyster farmer, and access to diverse seed sources can be important for keeping costs manageable and maintaining resilient stock. Although this is not the case now, I can also see a time where a small farmer would not want to be forced to purchase from the few corporations who control the seed. Perhaps one day, we wish to not purchase this seed because it is modified in some way that concerns us. I worry this change could limit competition and put small operators at a disadvantage. A possible alternative might be an opt-out option for farmers who complete a state-approved seed transfer training, which would still address biosecurity concerns while preserving flexibility. I would also propose that if these changes are deemed necessary, a requirement that seed or stock simply "originated" at an approved hatchery would satisfy the intent of the rule. In fact, I am not aware of any oyster farmers at this time whose seed does not already originate from one of these hatcheries.

Finally, I hope DMR can provide clarification on the proposed language in Section 2.90 regarding lease-to-LPA and LPA-to-LPA transfers. Many small farmers rely on the ability to move stock between their own sites as part of day-to-day operations. As currently written, this language could unintentionally restrict that practice, and I would greatly appreciate clearer guidance. Additionally, as was noted at the hearing, if a farmer applied for a new LPA specifically for the purpose of working it or moving stock to it and stated that in the application, such a transfer could be prohibited under the proposed rules. It was mentioned that existing LPAs would be "grandfathered in," however, due to the nature of LPAs, many farmers may find themselves needing to relocate them or reapply for various reasons, which could leave them without that protection.

Thank you for your time and for your continued commitment to supporting Maine's aquaculture industry. I am happy to discuss any of these points further.

Respectfully, Andrew Buchner

**Comment Received by Email February 22, 2026 from Jesse Roche, Westport Island**
**Jesse Roche also provided comment during the February 9, 2026 public hearing.**

Jesse Roche
44 Mulhall rd
Westport Island
ME 04578

In my situation, I have extremely fast growing oysters. 6mm to 2.75 inches in 4 months.
I am also growing out Quahog seed from 2mm to 14mm+ for municipal planting when beyond a threshold of predation by green crab.

I have an opportunity to also use this as a business plan to grow out seed for other slow growing farms and municipalities. My seed originates from approved hatcheries.
That said, I would like a pathway forward to accomplishing the plan of fast grow outs for municipalities and other private LPAs and regular leases.

I also propose that with ongoing successes with research and development between farms and municipalities that activities between the two be exempt from the changes proposed in the existing language.

For example, Maquoit bay is seeing the best clamming in years. Some bays and coves that have never produced clams now have natural spawning. These successes are due to interactions between a regular lease (Mere Point) under Dan Deveraeux along with state biologists .

I am currently involved with a similar undertaking on a smaller scale here on Westport Island as a member of the Shellfish Committee, Working with Marissa Macmahon and Dan Deveraeux on our project.

It is important that this crucial work as well as cross fisheries cooperation continue.

Thank you.
Sincerely,
Jesse Roche

**Comment Received by Email February 22, 2026 from Willy Leathers, Freeport**
**Willy Leathers also provided public comment at the February 9, 2026 public hearing**

Comments in ***Opposition*** of Proposed Chapter 2 Rules Changes

My name is Willy Leathers, I am a co-owner of Maine Ocean Farms, operating the lease CASRC2 and various LPA sites in Casco Bay. I have been in the aquaculture industry for 10 years, forming this business and applying for our first licenses in 2016. Over that time I have watched diligently how this industry has developed, grown to provide positive economic and environmental impacts on our local communities and the state at large, fostered a strong and hearty workforce, and bolstered the Maine seafood brand and legacy. At the same time, I have watched as the Department of Marine Resources shifted from being a trustworthy watchdog of public health and environmental stewardship, focused on their underlying goal of regulating while dually promoting growth and prosperity of our waterfront industry, to being a bullish, non-scientific process based, adversarial body, operating with blatant bias and disdain for the very industry they should nurture and support.

The changes proposed in this rulemaking process reek of that underlying disdain, they show clearly the intention and action of the Department to mislead, misrepresent, and pursue personal agendas. This proposal follows a pattern of misleading statements that can be traced back throughout previous rule making changes pursued in the past few years. They stem from the Departments utilization of these procedures to push through substantial shifts in the rules while deflecting attention to the cover of seemingly insignificant, or minor adjustments. The very language of the “Brief Summaries” formally presented and the notification emails disseminated lay the groundwork for this deception.

As an important note, I take objection to all of the major aspects of this proposal. I see the introduction of a Pre-Application meeting for Experimental Leases as specifically currying favor towards the aquaculture opposition groups and the municipalities that wish to pursue the infringing aspects of “home-rule”, as clearly articulated by the Department on the accompanying Fact Sheet. The Department provides misleading justification in its statement that this will reduce the overall timeline of lease processing, because it has in reality ceased including this phase of the application process in its metrics, in order to

improve the optics and fain progress. If the intention was as simple as the department claims it is, why not simply extend the current language used for standard lease pre-application meetings to include experimental? Instead the Department is utilizing this opportunity to substantial change the language for experimental and standard applications alike, and significantly alter the framework and intention of the meeting process itself. Likewise, I feel there are underlying intentions and a series of covert outcomes to the new language proposed for LPA stock sourcing. Limiting the potential growth of new and emerging species across the state, establishing arbitrary limitations on stock sourcing with no sighted or scientifically founded guidance. This series of changes is a blatant attempt to dramatically limit the use of LPA sites across the state. It is an effort by the Department to once again attempt to adjust the metrics by which they themselves are measured by simply changing the rules of the game. It is easy to see how drastically limiting the usability or viability of the LPA license will in turn have the ripple effect of less public opposition, less administrative burden, less individual sites to inspect, and a slowed pace of industry growth and expansion. While these may seem like large accusations or conspiratorial statements, they are tremendously easy to recognize and identify when you correlate the systematic patterns and actions of the Department over the past few years. I question whether the Department has even considered the implications or consulted the Attorney General's Office on how this restriction of wild seed source for certain species flies in the face of Maine's steadfast Right to Food Law. How do non-commercial / subsistence growers feel about that limitation? How do Maine's Indigenous communities feel about that directive? When questioned about this in the procedural hearing the Department could not establish even a rudimentary stance as to how these changes were necessitated. They are not based on any statement of biosecurity concerns, disease mitigation, or responsive action to systemic issues in stock sourcing. They are a series of unfounded changes that clearly fall within the guise of basic adjustments to simple rules, while in actuality they have seismic implications to the industry.

I choose to speak predominantly and directly to the third, major change proposed, because I feel that specific change was prompted by my businesses interaction with the Department upon pursuing an Emergency Lease in 2025. You will note that nowhere in the Brief Summary presented by the state, nor in the notification emails, nor in the justification fact sheet, is the subject of making changes to the Emergency Lease rules mentioned. The only language potentially referencing these significant changes states "It is also intended to provide consistency with existing law." At the public hearing held on 2/9/26 and in subsequent direct clarifying questions, the Department has attempted to feign the hardship that there was an unfortunate necessity to limit the wordcount in the public announcement of these proposed changes and that they simply couldn't afford to include all of the subject matters addressed. This is a very poor excuse for failing to mention a substantial portion of the rule changes proposed by name in the brief summary.

After a Public Health Emergency occurring in 2024, my business felt strongly that the state had not sufficiently investigated the sources of a pathogenic outbreak. We conferred at length with the state to pursue additional sampling, testing, source tracking, and investigative measures, but the state refused to act. We deemed that our best option and prudent measure to protect the health of our consumers and the public at large was to pursue an Emergency Lease, allowing our market product to reside in a distinctly separate body of water without the potential of ongoing and uninspected upland pathogen sources. The Department however took a singular stance that they needn't consider the potential risks to consumers when determining the grounds upon which to grant an Emergency Lease, which is a view point in direct opposition to the very language laid out here in Chapter 2 – 2.66 – Section 1, where it clearly states "The Commissioner may grant an emergency aquaculture lease for shellfish [. . .] when the health and safety of those shellfish or those of the consumer are threatened." Upon the Departments denial of the Emergency

Lease, without any consideration of this directive language, or rationale given for ignoring it, we decided as a business to pursue the legal appeal process. Throughout months of assembling court filings and reviewing the states stance, not once could they articulate the legality of the position they held, that they did not have to issue a finding based on the inclusive language of Chapter 2. The blatant disregard for adherence to these rules, and their arbitrary denial of relevance is dumbfounding.

To now see the Department attempt to sneak through changes to this portion of the rules, in a thinly vailed attempt to retroactively change the language to support their position is an astonishing and troubling action. If the Department feels they can simply manipulate the very rules which govern us to cover up their shortcomings, we as growers will never have the ability to rely on the rules for the very guidance, boundaries, and opportunities they are meant to establish.

The Department does not provide a single word of justification for seeking these changes to the Emergency Lease rules. They do not sight a single conversation, study, incident, occurrence, or intention. In my understanding the state has never once issued an Emergency Lease. From my direct experience pursuing this measure, it is my opinion that the state cowers in fear of what this portion of the rules lays out. We as growers are granted the opportunity to pursue a means of ensuring the health and safety of our products and the consumers, we are granted this at the broad discretion of the Commissioner, but with a timeline and open opportunity that reflects the alacrity needed to enact swift changes to ensure prudence, safety, and public health. There are many stopgaps and constraints presented specifically in this portion of the rules, meant to set a high bar for approval and give the Department authority to ascertain swiftly whether this measure is necessitated. The guardrails are in place, the limitations are already written, the process and structure are formed, why change this now? Without a single word of justification.

To specifically strike the entire paragraph that lays out the opportunity to extend an Emergency Lease beyond the initial 6 months granted is an incredibly brash move by the Department. Without a single word of justification, the Department feels they can insure any instance requiring the utilization of an Emergency Lease will be nice and cleanly wrapped up in 6 months? At a time when the Department is being shown to have failed even some of the most basic measures of ensuring public health through thorough shoreline surveys and transparent water quality monitoring, they feel that they can safely say a failed sewage treatment plant, a newly identified septic outflow, an upland contamination source, a viral or pathogenic outbreak, or the lasting effects of a natural disaster can all be cleaning wrapped up in 6 months? At a time when the normal leasing process timelines are only growing longer and the backlog getting deeper, this Department feels they can arbitrarily cut this language from the rules? I cannot fathom the ineptitude of removing this portion of the rules in this manner. In my particular instance it took this Department thirteen months to even conduct the most basic upland survey of potential pathogenic contamination sources, and even then that document was riddled with inaccuracies and blatantly false claims that they still refuse to explain to this day.

I don't think that this Department can truly comprehend what it would look like to have to utilize an Emergency Lease. The infrastructure costs of installation, the gear costs of duplicate marking buoys, anchors, chains, lines, the labor costs of transitioning product, the planning and
administrative costs of managing the process and communications with everyone involved, never mind the lost income and potential market loss from an incident. This is not some frivolous adventure to grab more growing space and it is not to be taken lightly that this would have to be utilized by a grower. This is intended to be a last resort to find a safe transitional space for product that is in jeopardy, or as a measure of prudence and necessity to truly protect public health. If this Department cannot see this for what it is

and comprehend the realities of this situation for a grower, they have no right attempting to limit or exclude its use.

I implore every grower to engage in this process and take action to protect our rights for operating under these rules. I ask every industry support group, organization, and business to offer scrutiny, feedback, and constructive guidance to bolster this process. I hope all of the legislators and committee members present will take this as a call to action that this Department needs a thorough audit and vetting to determine how rule changes of this caliber can be so deceptively presented and administered.

Sincerely,
Willy Leathers
Co-Owner: Maine Ocean Farms
Freeport, Maine

**Comment Received by Email February 22, 2026 from Eric Oransky, Freeport**
**Eric Oransky also provided comment during the February 9, 2026, public hearing**

Proposed Changes to Chapter 2 and the Structural Conflict of Interest within the Maine DMR Creates Hostile Conditions for Aquaculture

*"I am like a collect only the samples you need kind of person because I think when you collect a ton of samples and you don't know what you're going to do with the results whatever they are, then you can paint yourself into a corner that you don't want to be in, and so I try to collect the samples that we need to – do what our – to meet our objective"* -Director of Public Health and Aquaculture when speaking about the Departments investigation into the Campylobacter illness outbreak at the Aquaculture 2025 Conference.

**I. Hostile Threat to Maine's Aquaculture Industry**
The changes currently being proposed to Chapter 2 by the Department of Marine Resources (DMR) along with other attempts to force the Aquaculture industry into atrophy through coordinated efforts by DMR threaten to fatally undermine the industry. DMR's Systemic failures to meet both State and Federal standards such as NSSP (National Shellfish Sanitation Program) requirements for Shoreline Surveys, and Illness Outbreak Response, along with a failed State Biotoxin Monitoring, and Water Quality monitoring program, not only threaten Aquaculture, but also Wild Harvesters and jeopardize the greater Public Health. Failures which also threaten the State's reputation for high-quality seafood and the legal ability for Maine harvesters to engage in inter-state shellfish sales. These concerns are exacerbated by the continued refusal by DMR to remedy their failures and shortcomings or to investigate Public Health risks through timely and scientific means.

The Department makes decisions and imposes restrictions on growers that obscure their own failures with no scientific basis and apply these often unfounded "rules" inconsistently across industry as a tool for instilling fear and for punishing those who question their assertions or point to scientific studies and standards that undermine the states unfounded position. We have personally been the recipients of these blatant abuses of power, attempting to silence us and undermine our ability to operate a viable business. The DMR has even overtly attempted to sensor us in public meetings which are specifically intended as the avenue for raising industry concerns in a public setting. Please read the rest of this document. I know it is long, but it is critical that more people know the truth and that we correct our course before the industry collapses in atrophy.

The underlying issues stem from a structural conflict of interest within Maine's DMR that is crippling the aquaculture industry and violating citizens' constitutional rights. The Bureau of Public Health and Aquaculture are under the authority of one individual who runs both the Aquaculture Division, tasked with supporting industry growth, and the Public Health Division, which can unilaterally shut down farms and implement unsubstantiated restrictions, or "rule" found nowhere in law or statute without due process, without oversight, without regard for the consequences. No independent advocate within DMR protects the interests of growers or the future of this vital industry. These conflicting roles must be separated and toxic bureaucrats who manage them removed, to restore balance, accountability, transparency, and due process.

Without significant and immediate action, Maine's aquaculture—and its working waterfront—face irreversible decline.
Aquaculture is often cited as the fastest-growing food production method in the world, and Maine is poised to be a leader here in the United States. Maine's sea farmers have increased aquaculture's total economic impact from $50 million in 2007 to over $137 million in 2024, growing more than 25 different species. The Maine International Trade Center's market analysis suggested this industry could have grown to as much as $800 million by last year, 2025, but was only around $150 million as a result of poor management by DMR.

Maine's shellfish industry consists of roughly 1,200 individual wild harvesters, 700 small aquaculture sites or LPA's with very small footprints, and around 150 larger aquaculture leases. While not all are producing shellfish, the State's sites and leases are predominantly used for shellfish aquaculture. Distributed by roughly 200 certified Maine shellfish dealers.

*"Maine's blue economy stands at a pivotal moment, with immense opportunities to leverage its rich maritime heritage, abundant natural resources, and innovative research institutions. The findings of the Blue Economy Task Force highlight the need for a strategic, collaborative, and well-supported approach to drive sustainable growth in both legacy industries and emerging sectors. By fostering innovation, strengthening partnerships, and securing critical investments, Maine can position itself as a national leader in the blue economy, creating resilient coastal communities and long-term economic prosperity."* — Maine's Blue Economy Task Force, A Report To The Maine Legislature, January 31, 2025

According to a recent Maine Aquaculture Association survey, 86% of Mainers support the growth of the aquaculture industry. They recognize the emerging industry's role in preserving working waterfronts and diversifying the economic base of coastal and rural communities. Eighty Two percent of respondents say aquaculture is an important and valuable part of the local food system, and 83% support further expansion of aquaculture in Maine. We also have the stated support of our Governor, Janet Mills, who recognizes the opportunity aquaculture offers to the people, coastal communities, and the economy of Maine:

*"Aquaculture represents a promising opportunity to create new jobs, strengthen and diversify our economy, and expand Maine's reputation as a premier destination for seafood. I have been proud to support Maine sea farmers as they overcome the pandemic, and my Administration will continue to support the responsible growth of this industry as it creates new jobs and builds on the strong foundation of our marine economy."* — Governor Janet Mills

**II. Maine's Legislative and Policy Framework Favors Aquaculture Development**

Maine law and public policy clearly articulate a goal of promoting aquaculture:
- The Maine Aquaculture Roadmap (2022–2032), endorsed by the State, calls for a "supportive regulatory climate" to enable aquaculture growth while ensuring environmental and public health standards are met.
– Statements from the Governor's Office and the DMR repeatedly emphasize aquaculture as a strategic priority for Maine's working waterfronts and rural economies.

Yet despite these clear policy commitments — and the Legislature's and Governor's explicit recognition that aquaculture is a vital part of Maine's marine economy — the reality on the ground tells a very different story.

**III. The Structural Problem**
At the heart of the problem is how the Department of Marine Resources (DMR) is structured today — A structure and institutional bias that creates a direct and damaging conflict of interest.

The Bureau of Public Health and Aquaculture were married together in recent years, in such a way that both the Aquaculture Division, which is supposed to promote and support the growth of aquaculture, and the Public Health Division, which has the mandate to protect the public health, holds unchecked authority to shut down aquaculture operations through area closures, new rules, and enforcement actions. All of this with no oversight, transparency or accountability.

In other words: the same Bureaucrat is responsible for helping aquaculture businesses succeed and for making unilateral decisions that can cripple or close them — without any independent oversight or recourse for the farmers. Further compounding a lack of accountability as both Aquaculture and Public Health departments are under the management of a single person. Over the last three years the DMR has authorized and presided over the transfers of the states two largest oyster hatcheries, together producing over 90% of Maine's oyster seed supply to a Canadian Company, held by an Ontario Teachers Pension Fund. By nature their primary duty is to maximize profits, not nurture the growth of our states industry. This effective monopoly keeps raising the prices of seed year over year, while the same company is also buying wholesalers and distributors, driving down the price farmers receive for their wholesale and retail product. The result is a very real squeeze on the narrow margins of oyster farming. Which in turn will shortly begin forcing farmers to sell their lease to the same company. Creating a vertically integrated ecosystem in Maine as they have already done in New Brunswick, especially Prince Edward Island. All of this is good business practices for maximizing returns to Canada's Teachers Pensions, but at the expense of Maine Sea Farmers, their employees, families and communities. There was no public notice, no public input, no anti-trust review, and no accountability for DMR for undermining the future of the state's entire oyster industry.

The lack of separation leaves farmers exposed to arbitrary decisions and vulnerable to retaliation, especially when they raise concerns about departmental failures to meet legal and health related standards or challenge agency practices that are not based in science.

We saw this play out clearly during the 2024 Campylobacter outbreak investigation, where critical upland contamination sources were ignored, and sampling practices and statements made by the Public Health Department appeared aimed at supporting a pre-determined narrative that the illnesses were the result of sea birds, prior to performing any investigative efforts or sampling results. To sum up the position of the Bureau Chief on sampling: *"I am like a collect only the samples you need kind of person because I think when you collect a ton of samples and you don't know what you're going to do with the results whatever they are, then you can paint yourself into a corner that you don't want to be in, and so I try to collect the*

*samples that we need to – do what our – to meet our objective"* -Director of Public Health and Aquaculture when speaking to the Departments investigation into the Campylobacter illness outbreak at the ISSC Aquaculture 2025 Conference.

Should State policy and regulations not be directed by Laws created through the Legislature, and should scientific sampling and data be designed objectively and followed wherever it leads, whether the DMR "wants" it to lead there or not?

Even more troubling, the Department failed to meet its legal obligations under Chapter 2 and the National Shellfish Sanitation Program (NSSP) guidelines — failing to properly identify numerous real pollution risks in every Shoreline Survey going back at least 12 years, and their refusal to properly investigate after an illness outbreak according to required standards. The conclusions of their "investigation" were used to obfuscate longstanding failures in their shoreline surveys and water quality monitoring programs, which had left significant risks to Public Health unaddressed for decades. Instead of acknowledging these failures and moving to resolve them, the Department shifted the burden and blame onto the growers — the very farmers who had raised legitimate concerns about public health risks that remain present today nearly two years later. The Department's ongoing unwillingness to fully investigate known upland sources of contamination, to willfully and knowingly generate grossly inaccurate and even fraudulent "scientific" reports to support their unfounded assertions without actual testing to back their assumption have imposed arbitrary and punitive requirements on the farmers who expressed continued concern for public health. Gross and deliberate misrepresentations that are not based in common sense, law or in science.

At the last quarterly Aquaculture Advisory Councill meeting on June 26th, one year after the initial outbreak. Department and government representatives attempted to sensor us. The Council is comprised of both Departmental representatives and industry members and is supposed to be the forum for industry to raise concerns and to give input and guidance to the Department. We were given some time at the end of the agenda by the Chair, an industry member, to raise our concerns around the public health failures and the financial implications to the whole industry of the inconsistent application of new un-scientific, and unjustified "rules" against "implicated" growers by the Department. Half-way through our presentation we were interrupted by the co-chair, a government employee, who stated that this was not the place for this discussion. We continued with our presentation, then we were interrupted again when the co-chair made a motion to make it so we could no longer discuss this subject in the council, no one seconded the motion, so we were allowed to continue. This was another flagrant and wildly inappropriate attempt to silence those who questions the department's competence and challenged them to support their "rules" and regulations with sound science and to hold them to account to follow their own laws and respect the constitutional rights of the citizens and industry whom they supposed to act in the interest of.

The conflict of interest inherent in the Bureau's structure has created a clear incentive to misrepresent the causes and conclusions of the investigation. Because the Bureau is responsible for both public health enforcement and the very monitoring programs that failed to detect and mitigate known risks, there was a powerful internal pressure to shape the narrative in a way that would protect the Bureau's own reputation, rather than admit to systemic deficiencies in its Shoreline Survey, Biotoxin Monitoring and Water Quality Monitoring practices. In short, public health objectives were used not to protect public health, but to protect the Bureau itself from
embarrassment and accountability. This is the natural and unavoidable outcome of having a single body hold conflicting responsibilities without independent oversight and transparency.

This same pattern of behavior is also currently evident in the Department's recent effort to re-classify lease boundary corner markers as "structures" — an unfounded re-interpretation of Chapter 2, inconsistent with the Department's own longstanding practice. Corner markers are temporary boundary aids used to delineate lease areas, not aquaculture equipment or permanent installations, and have never been regulated as such. Yet this abrupt change in classification — imposed without public notice, rulemaking, or proper stakeholder input — raises further concerns about legality, transparency, fairness, and the potential for conflicts of interest within the Department's enforcement priorities and violates procedures under Maine Administrative Procedure Act (5 M.R.S. §§ 8001–11008) through the lack of proper rulemaking procedures. It is difficult to interpret this as anything other than an opportunistic attempt to create new grounds for enforcement tools to be used against growers who have pushed back against the Department's failings elsewhere and create a generally hostile environment with the implied message being "keep your head down and do as you're told by the Department, or we will make it impossible for you to operate your business". This may seem a trivial re-interpretation of a definition to some, but to a lease holder it could mean the difference between success or failure of their entire business. Failure to be in compliance with DMR regulations for Leases is grounds for the initiation of lease revocation proceedings.

So long as this conflict of interest remains, Maine's aquaculture industry will be forced to operate in a state of atrophy and constant fear. The same few individuals tasked with responsibly growing the industry, whose stated support is a key reason we were willing to invest so much of our own personal capital and time (10 Years) into creating and building a businesses with the goal of elevating Maines seafood reputation, can also take it away — without warning, without oversight, without justification, without sound science, and without accountability.

This structural conflict makes it impossible to maintain trust in the Department's ability to fairly regulate and support aquaculture, wild harvesting and fishing alike.

Farmers are investing substantial resources — time, capital, and personal commitment — to build sustainable businesses that Maine's economy and communities are growing to rely upon. Yet with one decision by one person at the DMR, those businesses can be arbitrarily and capriciously shut down, restrict, revoke, or rendered unviable, without recourse, without transparency or due process; our entire business and the future of the working waterfront are in grave jeopardy.

**IV. Summary of What Happened and What Needs to Change**

On July 11, 2024, Maine Ocean Farms (MOF) was informed by the Department of Marine Resources (DMR) of a potential Campylobacter outbreak possibly linked to oysters harvested on June 26. Despite no formal recall, and the department saying that it was not necessary, MOF immediately contacted all customers, and offered to buy-back all 7,272 oysters which had been harvest the previous day. DRM stated on that initial phone call it was okay to continue to sell these oysters despite the illness's because the closure had not been in place at the time of harvest, huh? In the interest of public health MOF voluntarily and immediately halted sales by
having all customers immediately separate the oyster from their inventory and cease sales until additional information was provided by DMR. The following week upon being informed that there was not going to be a recall by DMR, MOF again contacted customers and began selling. Less than 48 hours later DMR initiated a national recall-after they had all been sold. Of the 7,272 oysters in question only a few hundred had not been consumed by then. This back and forth on the recall not only created an unnecessary risk to public health, but undermined trust throughout multiple layers of Farmers, wholesales, distributors and

restaurants. Had MOF not stopped sales over the weekend there would have been Zero product left to recall as it would have been consumed in the weekend rush.

MOF voluntarily cooperated fully with DMR's newly required 14-day submergence during the investigation. The financial and logistical implications of the 14-day submergence are entirely untenable. In addition to spending over to $40,000 to design, buy and build new infrastructure and to find a way to implement the new requirement within the narrow parameters of our Lease, it also reduced our ability to produce market oyster by 50% while adding an additional labor cost of 30-50% varying seasonally. Let me say that another way, a 50% loss in production and a 50% increase in Labor costs-at the same time. The depuration study performed last winter in Rhode Island specifically for Campylobacter showed that there is detection at 5 days and non at 9 days, (the magic number is in-between.) DMR began to recommend, but not require 7-days to the entire Maine oyster industry and yet MOF and one other farm were required to do 14 days. Additionally, if the source of Campylobacter contamination, (which by the way was never directly traced to oysters, let alone Maine Ocean Farms, since DMR destroyed all of the recalled oysters without performing a single test) was from an upland source, which there are several possible sources-also un tested and/or was associated with runoff from the rainfall event that immediately proceeded the outbreak; the area received 2.56" of rain in the 120 hours preceding the harvest in question, then submergence of the oysters in the same location may offer zero risk mitigation. Just yesterday, (roughly 20-months later) we received an email from DMR that Rhode Island did a follow up depuration study and determined that 7-days is all the time that is required, and that we will now only be required to submerge for 7-days.

This delay in access to sound scientific data and the deliberate obstruction of an objective and transparent investigation, (which has still not taken place) access to information and data on which we must base our operational plan, while simultaneously protecting public health has a very real cost. The total financial cost alone to our small business was in excess of $300,000. Direct capital investment (out of pocket) in new infrastructure, greatly reduced efficiency to production, loss of trust in business networks and lost sales. It is only by sheer determination and our incredible team at Maine Ocean Farms that we are still in business at all.

During the "investigation" the department failed to test water samples or oysters for Campylobacter, ignored rainfall-triggered pollution risks from upland sources like two poultry farms with several hundred birds between them, and two large, unpermitted, 1,000gal human waste tanks within 150' of the immediate shoreline documented in MOF's own shoreline survey which was shared with DMR by MOF on August 16, 2024. They failed to look at overboard discharge from boats or the fact that there were no operable pump-out facilities within 10 miles of the implicated area. DMR prematurely blamed sea birds, within 48 hours of the initial closure without conclusive evidence and has since strategically only sampled in ways that support that assumption. MOF repeatedly sought transparency, and complied with burdensome protocols,
even as DMR destroyed critical samples including all recalled oysters without any testing, DRM withheld negative Campylobacter test results from later, additional samples submitted by MOF, refusing to produce these results in writing to date, and denied an emergency lease based on deliberate truncation of the Law by not considering the "risk to consumer" in their "Conclusions of Law" section of the Legal Decision as is required by Chapter 2. Aquaculture Regulations.

*"when the health and safety of those shellfish or those of the consumer are threatened" (Chapter 2.66 Emergency Lease Law)*

DMR has deliberately kept this lease denial and preceding application out of the public record on the State lease application and denial/approval database because the rationale for the lease as stated in the application would highlight their failures and truncation of law. Now they are attempting to make sure that no one could ever be granted an Emergency Lease by changing the language of Chapter 2.66 through disingenuous Rule-Making. Note the "Summary" in the email notice of Rule Making Proposal does not even mention changes to Emergency Leases. The proposed addition of language *"whether the emergency may be managed effectively without relocating the shellfish"*, though it sounds benign, will give them even more subjective and unilateral authority to circumvent the Emergency Lease Law, which is intended to allow temporary (6-month) relocation of existing operations in the case of unforeseen issues so that a business can continue to operate without risk to the organisms or public health while an investigation and sampling is performed. The current DMR proposal to change Chapter 2.66 on Emergency Lease also wants to remove the language which would allow the extension beyond 6-months completely. The proposed changes will allow the DMR to inconsistently and punitively force unsubstantiated restrictions on single farmers while continuing to obfuscate their own failures. They will be the first to tell us, as they have to our faces more than once, they do not care if they regulate us out of business with added costs, and burdensome, unfounded, un-scientific "rule", that is not their concern.

Through this all, MOF maintained rigorous safety protocols and transparent communication, while DMR has, and still refused a full investigation or to converse about the concerns—obstructing efforts to identify the true source of contamination and undermining both scientific consensuses as to the primary risk factors for Campylobacter in shellfish, and fair treatment and due process afforded under the 14th Amendment. The investigation report released by the DMR fails to meet NSSP requirements, is factually and scientifically inaccurate and obfuscates the departments own failure to meet NSSP Shoreline Survey requirements for over two decades instead of identifying the actual source and protecting public health while severely threatening the financial viability of MOF who has been punished for demanding sound science and accountability of DMR to follow their own laws, rules and regulations.

No industry in Maine should be forced to operate under these conditions. No other sector would tolerate such a fundamental conflict of interest, and neither should we.

This is not merely poor governance — it is a direct affront to the principles enshrined in the Maine Constitution. Article I, Section 1 states that "*all people are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.*"

Article I, Section 2 further declares: *"All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit."*

When a single state Bureau, a singular person— without independent checks or oversight — holds the power to both grant and revoke property rights, livelihoods, and opportunities, and does so through arbitrary, retaliatory, or self-protective actions, it violates these fundamental constitutional protections. Not to mention our unalienable 14th Amendment rights of due process and fair treatment under the law guaranteed by the US Constitution. No citizen should have to live in fear that lawful property they were granted can be taken or restricted without fair process, transparency, or accountability — especially by the same body that issued it. A body that has a clear conflict of interest and the incentive to protect itself over the industry it is supposed to be responsibly managing and nurturing.

The people of Maine support aquaculture. The Governor states her support of aquaculture. Maine law and the Legislature support the growth of aquaculture. But until this internal conflict is resolved — until independent oversight and a clear separation of functions are established — the industry will continue to be throttled by a structure that undermines not only its success, but the very constitutional rights of Maine citizens who participate in it.

We are not asking for special treatment. We are asking for fairness, for transparency, and for a regulatory structure that honors the public's will and respects the rights of Maine's citizens to build sustainable businesses that benefits both our beautiful State of Maine and the communities we live and work in along the coat as our ancestors have done for generations.

We must immediately and dramatically reshape this failed Department and the perverse underlying incentive structure to protect themselves over the Public Health and Maine's Aquaculture industry. Bring DMR's governance back in line with Maine's laws, our Constitution, and the heritage and will of the people of Maine.

Respectfully, Eric Oransky
Co-Founder, Maine Ocean Farms
eric@maineoceanfarms.com

**Comment Received from Eric Oransky at public hearing during the February 9, 2026, public hearing**

I would agree with that [Jesse Roche's comment], that there needs to be options to allow small scale operators to raise seed and then move it to other growers, other farmers, other LPAs, leases, in a way that doesn't cut people's business models off the knees.

I worry that the additional language on the experimental lease application is going to create an opportunity for home rule politics in towns which is going to - I know there have been cases where municipal employees have gone out and sort of staged moorings that weren't there in proposed sites in order to sabotage that. And then on the language around emergency leasing, I would comment that emergency leases are not experimental leases, or standard leases, or LPAs. They are very explicitly clearly for purposes of unforeseen circumstances and to say that that language in there which would effectively remove the viability of an emergency lease from a grower by saying that if the Department can determine it can be managed without moving it, you no longer apply - that's incredibly subjective, and undermines the entire purpose of an emergency lease, which is to allow an existing operation to protect public health and protect their business interests while whatever investigation needs to be done is done, and things are figured out.

Also, the language which removes the ability to extend it beyond six months undermines that effort as well, and that it basically gives the department carte blanche to say we don't like what you're doing, we're going to say you have to do this now, whether that's financially viable or logistically or technically viable isn't our problem. And you're now going out of business.

**Comment Received by Email February 23, 2026 from Jacqueline Clarke**
**Jacqueline Clarke also provided comment during the February 9, 2026, public hearing**
To: The Maine Department of Marine Resources
From: Jacqueline Clarke, Co-Owner Nor'Easter Oyster Company, LLC
Date: February 23, 2026

Re: Comments to Proposed Amendments to Chapter 2 of the Maine Department of Marine Regulations

Thank you for the opportunity to provide comments on the proposed amendments to Chapter 2 of Maine Department of Marine Resources Regulations.

My name is Jacqueline Clarke, and I am the co-owner of Nor'Easter Oyster Company.

My comments are related to the proposals to §2.07, which extends the pre-application meeting requirement to prospective Experimental Leases, and my comments are related to the pre-application process in general as it applies to Standard Leases.

I appreciate the intent behind requiring pre-application meetings for Standard Leases and the proposal for this to apply to Experimental Leases. Our farms operate in shared coastal spaces, and early conversations can and *do* absolutely help identify practical concerns, improve understandings, and build relationships.

However, I do have concerns about these pre-application meetings without clear guardrails, oversight, and protections for applicants. This is based on my personal experiences.
The aquaculture lease process administered by the DMR is designed to evaluate proposals under specific statutory criteria. Pre-application meetings at the municipal level introduce a stage in the process where factors outside those established criteria could potentially come into play – including social pressure, local politics, or generalized opposition to aquaculture.
Without clear structure and oversight, these pre-application meetings or even *notice* of them could unintentionally create opportunities for interference with prospective lease sites *before* an application is even formally submitted. This could include actions such as deliberate interference by a local official or a municipal resident with an applicant's ability to satisfy §6072's criteria, or fostering organized local opposition based on misinformation.
This undermines the fairness and consistency of the State-run leasing process, and disadvantages new aquaculture entrants, small businesses, and working watermen and women just trying to earn a livelihood.

I think the proposed changes to §2.07, and even §2.07 as it is currently written, needs some additional guidance. I urge the DMR to consider the following with respect to pre-application meetings as they exist for Standard Leases and as proposed for Experimental Leases:

1. These meetings need to be defined as informational and logistical only – not a venue for deciding whether a site should move forward outside the formal review process;

2. There needs to be State oversight to ensure discussions from all parties present remain factual;

3. There should be explicit language stating that proposed lease areas under consideration are not to be subject to obstruction, harassment, or punitive local actions intended to preempt the State's review authority or thwart an applicant's ability to meet the §6072 statutory criteria;

4. Local municipal officers who deliberately interfere with a proposed lease site must be held accountable; local municipal officers who facilitate the actions of town residents to interfere with a proposed lease site must be held accountable; and

5. There should be recognition of DMR's exclusive decision-making authority in the leasing process.

Maine's aquaculture sector is an important and growing part of our working waterfront economy. Regulatory processes should encourage transparency and communication, but they must also protect the fairness, consistency, and integrity of the State's review system.
Thank you for your considering my comments and for your continued work supporting responsible aquaculture in Maine.

**Comment Received by Email February 23, 2026 from Sebastian Belle, Maine Aquaculture Association**

February 13, 2026

Commissioner Carl Wilson
Maine Department of Marine Resources
21 State House Station
Augusta, ME.
04333-0021

Dear Commissioner Wilson,

Please accept the following comments from the Maine Aquaculture Association on the recently released proposed Chapter 2 Aquaculture Regulations. Our comments are sequential and referenced by the section number of the rules and page number on which the rule change occurs.

Pages 5-6 Section 2.07 Preapplication Requirements for Standard and Experimental Leases.

In the interest of continued transparency and municipal input MAA supports the addition of a preapplication meeting for Experimentals. However, increasing the similarity of the application process for experimental and standard leases continues the erosion of the purpose of experimental leases. Experimentals were originally designed to be a middle step between an LPA where an applicant tests a site on a small scale and a full scale standard lease. With the continued addition of process steps in experimental lease applications applicants will see little difference between the experimental and standard processes and are being incentivized to skip over experimentals and go directly to apply for standard leases. This will result in larger and more complicated lease applications, increase the Departments administrative load and extend the lease processing backlog.

Page 6 Section 2.07 A.
The requirement of a 30 day turn around for information requested by the DMR prior to the preapplication meeting is too short. MAA understands that the department has been frustrated by extended response times from applicants in some cases, however 30 days is too short. The applicant may have to consult with other parties such as equipment manufacturers or riparian landowners in order to gather information or adjust the information they are going to present in the preapplication meeting. MAA suggests that 60 days is a more reasonable deadline.

Page 22-23 Section 2.64 10. Experimental Aquaculture Lease Application Procedures comment period.
The proposed rule allows the Commissioner to seek clarification of comments submitted during the 30 day comment period. That clarification and comment then becomes part of the record upon which a lease decision is based. Neither the comments or any clarification are provided to the lease applicant and there

is no process whereby the applicant can rebut or answer the comments. There is also no process outlined whereby the Department is required to verify the veracity of the comments. This is unfair to applicants, puts them inherently at a disadvantage and allows commentators to seed the record for any decision appeals they may choose to make. The department should be required to provide copies of any and all comments and clarifications to the applicant before a decision is rendered. The department should also be required to explain how they verified the truth of those comments and clarifications.

Page 29 2.90 2 B. Limited-purpose aquaculture (LPA) license Sources.
The proposed rule inserts the term "facilities" into the source rule. Chapter 2 does not include a definition of a "facility" or a "DMR approved" facility. The term facility and the process whereby it becomes an "approved" facility should be clearly defined.

Page 34 2.90 Limited-purpose aquaculture(LPA) license 6. B. Maintenance standards.
The proposed rule requires that license holders make lawful efforts to ensure animal excrement does not accumulate on or near structures. MAA supports the provision to prevent animal excrement accumulating ON structures but thinks the provision to prevent animal excrement from accumulating NEAR structures is poorly defined, virtually unenforceable and should be struck from the proposal.

Thank you for your attention and I would be glad to answer any questions you or your staff may have.

Sincerely,

Sebastian M. Belle
Executive Director

**Comment Received by Email February 23, 2026 from Hillevi Jaegerman**

HILLEVI JAEGERMAN
1267 Westbrook st Portland | 207-838-7126| hillevi@basketislandoysters.com
2/23/26
Department Of Marine Resources
Attn: Diedre Gilbert
Chapter 2 Aquaculture Regulations
21 State House Station
Augusta ME
04333-0021
Dear Department Of Marine Resources:
I have reviewed the proposed changes to the Chapter 2 Aquaculture Regulations and I have some worry that there is not enough clarity in the wording and that the outcome of the experimental lease pre-application meeting and the LPA sourcing requirement wording changes will have an ill-effect contrary to their stated objectives to provide regulatory consistency and to be more streamlined.

In section 2.66 Emergency Aquaculture Lease for Shellfish 4A(3) the stated reason and need for an emergency lease is contingent upon the health and safety of shellfish in the leased area being threatened and that the emergency can only be mitigated by the relocation of shellfish (Added text in this proposed regulation change)). If the emergency qualifies under those two contingencies, why remove the ability to extend the emergency aquaculture lease? What will the proposed solution be if the situation, beyond the control of the leaseholder as specified in 4A(3), is not resolved within 6 months or less. This rule change weakens the DMR and aquaculture industry's resilience and means of response to emergencies.

Changes to 2.90 2.B(1)
LPA holders often operate on an incredibly small scale. In the past, our business operated as an intermediary to small scale operators who were growing quantities of seed below the minimum order size of the large hatcheries. Now, with consolidated ownership of the two largest approved providers of seed, this rule change increases the industry's dependence on a small number of actors. This marks another rule change where the Department limits its own ability to intervene (by striking the transfer permit text for example).

Lastly, I think there ought to be more clarity on what are considered to be "lawful [maintenance] efforts" (Maintenance Standards Added text B). Similar to how proper marking is well outlined and described so should be the required efforts leaseholders ought to undergo for proper maintenance.

Thank you for your time and review,
Sincerely,
Hillevi Jaegerman

Hillevi Jaegerman
Basket Island Oyster Company
Wolfe Neck Oyster Company
basketislandoysters.com
207-838-7126

**DMR Response to Comments**

To the extent that commenters raise issues or considerations that are not specific to the proposed rule, DMR is not addressing those issues here. In accordance with 5 M.R.S.A. §8052(5-B)(B)(1) and (2), DMR is addressing specific comments concerning the proposed rule and has synthesized the same or similar comments for purposes of addressing those comments.

**1. Emergency Lease Provisions**

The proposed regulation would strike language related to the extension of an emergency lease to be consistent with statute and clarify what factors may be considered by DMR when assessing the need for an emergency lease. Several commenters including Todd Molloy, Katherine Lipp, Luke Saindon, Greg Foote, Eric Oransky, Willy Leathers, Hillevi Jaegerman, and Emily Selinger raised concerns that the proposed changes would limit their ability or the ability of others to possibly obtain an emergency lease or otherwise address a potential ongoing public health concern.

Based on DMR's review of the comments it seemed that some stakeholders were under the impression that emergency leases are available to any aquaculturist or that they could be used to address any type of

public health concern. Therefore, before addressing the comments specific to the proposed change, DMR has provided additional information about emergency leases and the difference between statute and regulation, which helps provide context for the explanation of the proposed changes.

**A. What is an emergency lease?**
An emergency lease is a short-term lease that may be granted after DMR determines that the health and safety of shellfish are threatened, or those of the consumer are threatened and relevant application requirements are met. Emergency leases can only be applied for by existing standard and experimental lease holders and, if granted, only authorize the relocation of shellfish from a standard or experimentalF lease. In the last ten years, DMR has processed one emergency lease application which was denied as it did not meet the criteria to be granted.

**B. What is the difference between statute and regulation?**
A statute is a law passed by the Legislature that establishes a legal framework. A regulation, like Chapter 2, is promulgated by an agency under the authority granted by the relevant statute. Generally, regulations explain how the statute is implemented. Regulations must be consistent with statute and fall within the scope of the agency's regulatory authority.

Below is an overview of the *existing statute* for emergency leases. Only provisions relevant to this response are included.

**C. Existing statute**
Emergency leases are codified in statute under 12 M.R.S.A. § 6072-B. The statute includes the following provisions:

- The emergency lease is for the relocation of shellfish from a standard or experimental lease when the health and safety of those shellfish are threatened (12 M.R.S.A. § 6072-B(1)).
- The applicant for an emergency lease must hold a standard or experimental lease (12 M.R.S.A. § 6072-B(2)(A);
- An emergency lease may not be issued for a period greater than 6 months (12 M.R.S.A. § 6072-B(6));
- If a person who holds an emergency aquaculture lease submits an application under section 6072 [standard lease] or 6072-A [experimental lease] for all or a portion of that lease area before the emergency aquaculture lease expires, and if the commissioner's decision under section 6072 or 6072-A occurs after the expiration of that emergency aquaculture lease, the emergency aquaculture lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until the effective date of the lease issued under section 6072 or 6072-A. If the commissioner denies that person a lease under section 6072 or 6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the commissioner's decision (12 M.R.S.A. § 6072-B(7)).

Existing statute provides that an emergency lease cannot be issued for a period greater than 6 months, but the duration may be extended provided the emergency lease holder files a standard or experimental lease application for all or a portion of the emergency lease area before the emergency lease expires. Provided those parameters are met, the holder can continue to operate the emergency lease while DMR processes the standard or experimental lease application.

**D. Proposed Regulatory Changes**

The emergency lease regulations that are intended to implement the existing statutory framework are codified in Chapter 2.66. Below is a summary of the proposed changes, as they appear in the rule filing and an explanation for the respective modification. To avoid any potential confusion between the proposed rule text and DMR's clarification, the text in **bold** reflects DMR's explanation.

Chapter 2.66(4)

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 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 or §6072-A.

**To be consistent with statute, DMR is proposing to add §6072-A because in accordance with existing statute, experimental lease holders may also apply for an emergency lease. As currently written, the regulation is not consistent with statute as it only includes standard leases.**

      (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, whether the health and safety of shellfish at the leased area are threatened, whether the emergency may be managed effectively without relocating the shellfish, 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~~

**DMR is proposing to include in rule what is already in statute, namely, that the Commissioner may not issue an emergency lease unless the applicant demonstrates that the health and safety of the shellfish at the leased area are threatened. 12 M.R.S.A. § 6072-B(2)(B). Additionally, DMR proposes to add language clarifying that it considers whether the emergency may be effectively managed without having to relocate the shellfish. The proposed added language clarifies for lessees that DMR considers whether the threat to health and safety may be removed without resorting to emergency relocation of the organisms. and it helps ensure that emergency leases are granted in a manner consistent with their statutory purpose. DMR is proposing to remove the last sentence encouraging applicants to secure leases for non-emergency situations, because it is unnecessary.**

      ~~(4) All applicable criteria as established in Chapter 2.37(A).~~

      B. The Commissioner may consider the applicable criteria in Chapter 2.37(A).

**The current regulation provides that DMR must consider all applicable lease decision criteria, which could require findings that the proposed emergency lease would not unreasonably interfere with things like navigation, commercial fishing, riparian ingress and egress, marine habitat, etc. Because an emergency lease is intended to address a time sensitive issue that could have impacts on health and safety, requiring a full review of all applicable decision criteria may limit timely processing of emergency lease applications. However, during the emergency lease application review process,**

**concerns specific to one or more of the decision criteria may be identified. For example, if an emergency lease applicant applied for a site in the middle of a navigational channel, DMR would need to take that into consideration. This change clarifies that DMR may consider applicable decision criteria as necessary when evaluating an emergency lease application, but it is not required to make findings and conclusions about all of the criteria in Chapter 2.37(A) before issuing an emergency lease. This proposed change attempts to balance timely processing of emergency lease applications with public trust considerations.**

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.~~

**Because this subsection of the regulation is titled "Extension of emergency aquaculture lease" and because this subsection is proposed to be struck, several commenters interpreted this proposed change to eliminate the potential for a continuation of the emergency lease beyond the initial 6-month term. It does not, because the statute already allows an emergency lease to be extended if a standard or experimental lease application is filed for all or part of the emergency lease area before the emergency lease expires (see 12 M.R.S.A. § 6072-B(7)). The current subsection 6 was intended to mirror the existing statute; however, it is currently inconsistent with statute because it requires the standard or experimental lease application to be filed within 60 days of the emergency lease being granted. Under the statute, the only requirement is that the application be filed before the emergency lease expires, which would be six months from the date the emergency lease decision is signed. Therefore, the current regulation actually imposes a more restrictive timeline and submission requirement on applicants and is inconsistent with statute. DMR is proposing to strike this language to avoid this inconsistency and clarify that an applicant may obtain an extension of their emergency lease by filing an appropriate lease application at any time before the emergency lease expires.**

**DMR did not make any changes to the emergency lease provisions in response to these comments.**

**2. Issues with the Brief Summary (MAPA-3)**

Willy Leathers and Eric Oransky took exception to the fact that the brief summary included with the notice of proposed rule did not include a detailed assessment of the proposed modifications to the emergency lease regulations. Both commenters allege that this was an intentional omission by DMR to hide the change from other stakeholders.

In accordance with statute, when an agency proposes a rule, it must include a brief summary of the changes in its notice to the public. The Secretary of State's Office provides that the brief summary may generally highlight key components of the rule proposal. DMR's brief summary highlighted the key components of the rule proposal and included the following statement: "It [ rule proposal] also makes changes for clarity and consistency with existing law."

The emergency lease process is governed by existing law (see 12 M.R.S.A. § 6072-B). The proposed changes do not change how emergency lease applications are evaluated; they simply add clarity concerning how such applications are evaluated. In addition, subsection 6 is proposed to be struck in order to eliminate an inconsistency with statute that appeared to limit the circumstances under which an emergency lease may be extended. Given the nature of these changes, they were characterized correctly in the brief summary as modifications intended to provide clarity and consistency with existing law.

In addition to the brief summary, the rule proposal also includes the text of the regulatory changes with language proposed for removal or addition identified. The brief summary, along with the text of the rule changes, were made publicly available beginning on January 21, 2026, which was 19 days before the public hearing and 33 days before the close of the public comment period on February 23, 2026. The public and industry were notified of the proposed rule on January 21, 2026. Anyone who received or saw the notice and wanted to view the complete filing had the opportunity to do so.

Willy Leathers also raised his concern with the brief summary during the public hearing on February 9, 2026, stating that it should have been more detailed. In response to Willy Leathers's concern, the DMR staff person running the public hearing tried to clarify some of the factors DMR considers when determining how to present information in a brief summary. The DMR staff person stated that it can be costly to print such summaries as they are published in five separate newspapers.

In summary, DMR provided the public with both a brief summary highlighting the key components of the proposal and the full text of the regulatory changes. The categorization of the emergency lease modifications as changes for clarity and consistency with existing law accurately reflects what those changes do. The materials were made publicly available well in advance of the hearing and close of the comment period, and stakeholders were afforded an opportunity to review and comment. DMR did not seek to obscure the proposed changes.

DMR did not make any changes to the rule in response to these comments.

**3. Source of Stock Requirements for *Non-Municipal* Limited Purpose Aquaculture (LPA) License Applicants**

The proposed rule updates the sourcing requirements for Limited Purpose Aquaculture (LPA) licenses to provide consistency with existing regulations, ensure that reliable sources of stock are available for each allowable species, and streamline the LPA sourcing framework. As initially proposed, the changes to the rule provided that for LPAs, an approved hatchery or facility would be the only authorized source of stock for hard clams, hen clams, Arctic surf clams, soft-shelled clams, razor clams, American oysters, European oysters, and bay scallops. The initially proposed changes also provided that green sea urchins, sea scallops, marine algae, and blue mussels may be sourced either from an approved hatchery or facility or within the same Health Area as the LPA site.

Max Burtis, Willy Leathers, Eric Oransky, Dan Devereux, Michael Gaffney, Neil Stanton, Andrew Buchner, Jesse Roche, Hillevi Jaegerman, Sebastian Belle, Emily Selinger, Todd Molloy, Ken Sparta, and Jordan Kramer provided feedback on the source of stock requirements for LPAs. Some comments reflected confusion about existing regulatory requirements and how the proposed rule would be implemented in practice. Other commenters encouraged greater flexibility to allow the sourcing of American oysters from other aquaculture sites and requested definitions of the terms "DMR-approved facility" and "DMR-approved hatchery." Below are DMR responses to those points.

**A. Existing Regulatory Requirements and Landscape**
LPAs are annual licenses that expire December 31st each year but may be renewed. Because they are annual licenses, LPAs are limited in scale and have very specific sourcing requirements.

For at least a decade, the LPA source of stock regulations have required that all allowable clam species, except for razor clams, must be sourced from a DMR approved hatchery. This existing regulation prevents an LPA applicant from harvesting clams from the wild and placing them on an LPA site for their exclusive use. This measure is protective of the wild clam resource in consideration of the fact that there are over 600 LPA sites state-wide. As part of this rulemaking, DMR never proposed modifying the existing requirement that all clam species, except for razor clams, must be sourced from a DMR approved hatchery.

Additionally, existing sourcing regulations require that any other allowable species that may be sourced from the wild, including American oysters, marine algae, razor clams, sea scallops, bay scallops, green sea urchins and blue mussels must be taken in accordance with applicable season, or size limits, or other limitations on take. Collection of wild sources also requires the applicant to obtain the appropriate harvest license or purchase organisms from someone already licensed to collect the respective marine organism. These measures are intended to help ensure that any wild collection complies with existing law and rule. They also make clear that the LPA license itself does not authorize such collection activities.

DMR maintains a list of approved hatcheries and facilities that provide marine organisms for purchase. In accordance with Chapter 24 and 12 M.R.S.A. § 6085, these hatcheries and facilities have been inspected by DMR and found to comply with laws and regulations designed to prevent the spread of pathogens and introduction of invasive species, and to minimize risks to the health of cultured and wild marine organisms. The list is regularly updated and available on DMR's website.

**B. The Challenge with Existing Regulatory Requirements and Landscape**
When an LPA application is filed, the applicant needs to demonstrate that they have an available source of stock and that it complies with existing regulations. As aquaculture has continued to expand, many LPA applicants struggle to understand the sourcing framework.

For example, applicants wanting to culture bay scallops sometimes state in their proposal that they will source that organism from the wild. However, there is no wild fishery for bay scallops so they cannot collect that organism from the wild. There is, however, an approved hatchery that sells bay scallops. Explaining this to applicants, and requiring applicants to modify their proposal accordingly, takes time and resources of both DMR and the applicants.

Some wild fisheries, such as the green sea urchin fishery, are limited entry. This means that access to harvest the resource is restricted and not open to anyone who wishes to fish. LPA applicants may not realize this and sometimes state in their application that they intend to purchase a license to collect the organism. However, because the fishery is limited entry, they cannot obtain such a license. Therefore, they do not have a source of stock for their LPA. Again, this misunderstanding often leads to delays in the processing of an LPA proposal.

Within a Health Zone, certain areas are designated as restricted to avoid the spread of MSX, a parasite that causes mortalities in American oysters, but does not present a risk to public health. These mortalities can have disastrous economic consequences for aquaculturists that culture American oysters. To avoid the

spread of MSX, in accordance with Chapter 24, it is illegal to introduce American oysters, greater than 3mm in size, from the Damariscotta River, Upper Sheepscot River Estuary, and Quahog Bay to other bodies of water without first obtaining required permits and completing testing. To date, no hatcheries operating in Maine have tested positive for MSX. Some LPA applicants may be unaware of these restrictions and may propose to source American oysters from lease or license sites in the Damariscotta River, Upper Sheepscot River Estuary, and Quahog Bay, again leading to delays in processing applications

Additionally, pursuant to Chapter 24, all coastal waters within the State of Maine are a restricted area for the European oyster (*Ostrea edulis*). This is due to their invasive potential and disease risk to other marine organisms. Therefore, in accordance with Chapter 24, an LPA applicant would have to present evidence to DMR that the European oysters are free from infectious or contagious diseases. This would be achieved through independent testing, which needs to be reviewed by DMR's Pathologist. However, in accordance with Chapter 24, testing may not be required if the applicant can demonstrate that the European oysters were raised in a closed-system hatchery free of the infectious or contagious diseases found in the coastal waters of the restricted area.

**C. What the Rule Initially Proposed, Feedback Received, and Changes to the Final Proposed Rule**
Given these considerations, DMR initially proposed the following changes to help streamline the sourcing framework:

- Add razor clams, bay scallops, European oysters, and American oysters to the list of existing species that must be sourced from a DMR approved hatchery or facility.
- Require that green sea urchin, blue mussels, sea scallops and marine algae be sourced from either a DMR approved hatchery or facility or from within the same Health Area as the LPA site. This means that those species could be sourced from other aquaculture sites within the same Health Area as the LPA site, and that any wild collection would also have to occur in the same Health Area as the LPA site.
- Require, in the case of wild collection, the applicant identify the full name and license number of the individual authorized to collect the respective species from the wild. This ensures that individuals are appropriately licensed, from DMR, for collection.
- Provide that applicants may also source from a DMR approved facility.

Many commenters expressed concern that the proposed changes to the sourcing requirements would prohibit the movement or transfer of marine organisms between sites. However, the provision is specific to the source of the organism listed on an initial application. It would not prohibit movement or transfer of marine organisms after an application is granted, and those activities could continue in accordance with other applicable laws and rules.

Some aquaculturists who cultivate American oysters wanted to maintain flexibility with sourcing, including the ability to obtain American oysters from other leases or LPA sites, which they identified as a critical aspect of their operational practices. In the rule as initially proposed, an aquaculturist would have had to source American oysters only from a DMR approved hatchery or facility. In response to the feedback received, DMR has modified the rule to specify that American oysters must be sourced from either a DMR approved hatchery, facility, or from with the same Health Area as the LPA site.

Because LPAs are annual licenses and given DMR's concerns about MSX and efficient use of agency resources, DMR has added language to the rule that prohibits American oysters from being sourced from

MSX-restricted areas. This change means that except for MSX-restricted areas, LPA holders proposing to culture American oysters may continue to list other aquaculture sites as a source of stock or collect from the wild, provided those sites are within the same Heath Area and collections from the wild are from within the same Health Area and comply with existing law and rule. In the final rule, razor clams and bay scallops are required to be sourced from an approved hatchery or facility. This is consistent with existing measures to protect wild clam resources and ensures there is a viable source of bay scallops.

Because all coastal waters of Maine are restricted for European oysters, and LPAs are annual licenses, any European oysters must come from an approved hatchery or facility to ensure that required testing and other protective measures are met before deployment on an LPA. DMR acknowledges that, at present, no approved hatcheries or facilities currently offer European oysters for sale, but most LPA applicants do not propose to cultivate this species. Rather than removing European oysters as an authorized species to be cultivated on an LPA, this preserves the opportunity to grow this species should a hatchery or facility offer them for sale.

These sourcing provisions apply to all new LPA applications and any LPA application that may request changes to the source of stock at the time of renewal.

With legislation pending that may have implications for the definition of approved facilities, DMR is not going to undertake defining that term as part of this rulemaking. Approved hatchery is a term already contemplated in Chapter 24 and referenced in Chapter 2 for consistency. DMR currently maintains a publicly available list of approved hatcheries and facilities, which applicants can consult prior to applying.

In sum, DMR made the following changes to the proposed rule in response to comments about source of stock:

- Except for restricted areas as specified in Chapter 24, American oysters may be sourced from a DMR approved hatchery or facility, or from within the same Health Area as the LPA site.

**4. Source of Stock Requirements for *Municipal* Limited Purpose Aquaculture (LPA) License Applicants**

Bailey Bowden, James Fisher, David Taylor, Mike Pinkham, and Travis Fifield, who represent the interests of various municipal shellfish committees expressed concern that removing the transplant permit exception to source certain clam species from the wild would jeopardize the work of shellfish committees.

A municipal shellfish program established pursuant to 12 M.R.S.A. § 6671 authorizes a municipality to manage certain shellfish species in coordination with DMR. In some instances, municipal shellfish management activities may require the town to obtain a Limited Purpose Aquaculture (LPA) license. For example, if a municipality intends to grow out hard clam spat, in an upweller, to a particular size prior to seeding the clams on intertidal flats, an LPA is required to cover the upweller component of that activity. Other aspects of those activities, including collecting undersized clams, are covered by transplant permits issued pursuant to Chapter 7.

For at least a decade, the LPA source of stock regulations have required that all allowable clam species, except for razor clams, must be sourced from a DMR approved hatchery. This existing regulation prevents an LPA applicant from harvesting clams from the wild and placing them on an LPA site for their exclusive use. This measure is protective of the wild clam resource in consideration of the fact that there are over

600 LPA sites state-wide. As part of this rulemaking, DMR never proposed modifying the existing requirement that all clam species, except for razor clams, must be sourced from a DMR approved hatchery.

DMR initially proposed striking the language that provided an exemption to the existing sourcing requirement if DMR issued an individual a municipal transplant permit that authorized the collection of undersized clams. DMR proposed to strike that language because it has caused confusion for LPA applicants who may think that they are eligible to request a municipal transplant permit from DMR, which would then authorize them to collect undersized clams for their LPA from the wild. Additionally, with the proposed addition of bay scallops and American oysters to that section of the regulation, DMR did not want to create the impression that such permits may also be issued to collect undersized bay scallops from the wild as there is no fishery for that species, or that such permits would be issued to take undersized American oysters from the wild.

Based on the feedback received, it appears that commenters interpreted this change to mean that municipal shellfish programs would no longer be able to conduct their transplant activities. That authority is already in Chapter 7, so their existing transplant activities would not be affected by removing the exception language from Chapter 2. However, given the confusion around the exemption, DMR has updated the language as a matter of clarification, especially since razor clams, bay scallops, European oysters, are now part of those provisions and municipal shellfish programs do not have the authority to regulate some of those species.

In sum, in response to comments, DMR has modified the proposed language to clarify that an LPA applied for by a municipal shellfish program established pursuant to 12 M.R.S.A. §6671 is exempt from approved hatchery or facility sourcing provisions provided the species proposed is in the municipal shellfish ordinance and transplant permits are obtained pursuant to Chapter 7.

**5. Pre-Application Requirement for Experimental Leases**

This proposed rulemaking would require an applicant for an experimental lease to participate in a pre-application meeting with the Department and with the municipality, in their discretion, prior to an experimental application being submitted to the Department. Pre-application meetings are currently required by rule for standard leases, but not for experimental leases.

Willy Leathers commented in opposition to the proposed pre-application requirement for experimental leases because he felt it would "curry favor towards the aquaculture opposition groups and municipalities that wish to pursue the infringing aspects of home rule." Andrew Buchner stated that he would prefer rules moving toward less or no municipal involvement in the aquaculture process.

Sebastian Belle, with the Maine Aquaculture Association, commented in support of the pre-application requirement for experimental leases, but suggested that DMR extend the 30-day response time for applicants to 60 days because an applicant may need to consult with various stakeholders first. Sebastian Belle also felt that adding a pre-application requirement for experimental leases would create too much procedural parity with standard leases, which would incentivize applicants to just apply for standard leases. By incentivizing standard leases, Sebastian Belle speculated that there will be larger and more complex applications, which will add to DMR's workload. Cheryl Cook and Barbara Sptiz also submitted a comment in support of the requirement and suggested that notice requirements for such meetings be

expanded to “affected landowners” and there be a minimum notice period to municipalities for pre-application meetings.

Hillevi Jaegerman, Emily Selinger, and Jacqueline Clarke did not expressly state whether they were opposed to or in support of the proposed pre-application meeting change but expressed general concerns with or considerations for the proposed pre-application requirement. For example, Hillevi Jaegerman felt that there was not enough clarity in the proposed wording to ensure that the process is more streamlined. Jacqueline Clarke expressed concerns about the pre-application process being used by municipalities or other stakeholders, contrary to their intended purpose and included a variety of changes to the proposed rule. The suggestions included DMR holding municipal officers accountable if they deliberately interfered with a proposed lease site and encouraging state oversight of the pre-application process to ensure that all discussions are factual. Emily Selinger stated that DMR should institute a framework or oversight at pre-application meetings to ensure they run in accordance with their intended purpose.

Presently, pre-application meetings are an existing requirement for standard lease proposals and have been for over a decade. A pre-application meeting is scheduled by DMR and attended by a representative or representative(s) of the municipality, typically a Harbor Master or municipal official, from the community where the proposal would be located and the lease applicant. A DMR staff member also attends the meeting to help answer questions about the leasing process. The pre-application meeting is an opportunity for a potential standard lease applicant to present their proposed plans to the municipality prior to applying.

Municipal officials often have a lot of local knowledge of existing uses of an area and can help identify and communicate any potential conflicts a proposal may have with those uses. This can be especially helpful in cases where an applicant is unfamiliar with an area. By identifying potential conflicts early, the applicant can elect to address them prior to finalizing their application. An applicant’s ability to modify an application becomes more limited after an application has been deemed complete. This can result in applications being denied or applicants electing to withdraw their proposals and starting the process from the very beginning.

The proposed rule would expand the existing pre-application requirement to experimental leases. This proposed change was suggested to DMR by the Town of Harpswell, who formed an ‘Aquaculture Working Group’ (AWG) comprised of various community stakeholders (i.e. commercial fishermen, aquaculturists, municipal officers, etc.) to explore how to improve town review of aquaculture proposals, including experimental leases.

Through its work, the AWG identified that experimental leases were the only type of aquaculture application that did not require a meeting encouraging preliminary discussion or contact with the municipality before a proposal is submitted to DMR. Some AWG members described a situation in which an experimental lease application, for a proposed site in Harpswell, was submitted to DMR that raised local concerns specific to commercial fishing. Those concerns did not surface until after the application had been deemed complete, resulting in the need for a public hearing on the application. Representatives from Harpswell reflected that, had a conversation occurred with the applicant prior to submission of the experimental lease application, changes could have been made to the application that would have made the public hearing unnecessary.

As this example demonstrates, pre-application meetings can help facilitate communication between applicants and municipalities and proactively address any concerns, which has the potential to reduce the likelihood of use-related conflicts and the need for a public hearing. The pre-application requirement is typically completed within 60 days and could save an applicant up to 12 months of additional processing time if an unnecessary public hearing can be avoided. Public hearings play an important role when they are needed, but holding fewer unnecessary public hearings would free up DMR's resources to review other applications.

Some concern was expressed that adding a pre-application requirement for experimental leases would add to DMR's workload by incentivizing people to apply for standard leases instead of experimental leases. However, experimental leases expire after three years, with most lease holders applying to convert the site to a standard lease. If the pre-application change has the effect of incentivizing an applicant to apply for a standard lease initially, it may save time over the long term because DMR is processing one application instead of two (i.e. experimental lease and a subsequent standard lease). Also, many experimental lease applications can be more complex and controversial than a standard lease application. The level of complexity or controversy of an application is case specific and is typically a function of the proposed operations and the existing uses in an area, not the type of application or procedural framework of the respective application process.

Some commenters expressed concern that the pre-application process could be used by municipalities in ways that extend beyond its intended purpose or that conversations would not be fact-based. However, DMR has conducted pre-application meetings for more than a decade and has consistently found that municipalities are willing to engage constructively and share potential concerns with applicants early in the process. In addition, because the experimental and standard leasing processes are adjudicatory, there are more formal opportunities later in the process to evaluate potential issues as part of the established review framework. That same framework also requires DMR to make findings of fact and includes opportunity for applicants or others to seek judicial review of DMR's final determinations.

As the pre-application requirement is expanded to include experimental leases, DMR felt it was a good opportunity to update the existing language for pre-application meetings, both to better reflect the scope of the meetings and to respond to issues that have arisen over the years. An explanation of those changes, including responses to applicable comments on the proposed language, is below:

- The rule clarifies that DMR shall invite harbormasters and/or a municipal or other designee of the municipality(ties) in which the proposed lease is located to participate in the meeting. This gives the municipality greater discretion to decide if they want to participate in the meeting. If they decline the invitation, for any reason, then the meeting will occur between DMR staff and the applicant. A commenter suggested expanding who can participate in the meeting to "affected landowners." The purpose of pre-application meetings is to encourage and facilitate communication between the applicant and the municipality, not the public. Other interested parties such as "affected landowners" can participate in the process by providing public comment and/or testimony or, in some cases, by intervening in the proceeding. A commenter also suggested providing a minimum amount of notice to the municipality for a pre-application meeting request, but DMR is already responsive to municipalities' needs in scheduling pre-application meetings and, in its experience, has not found such a requirement to be necessary.

- The rule requires that, before a pre-application meeting is scheduled, the applicant provide DMR with basic information about the proposal, including the proposed site location, acreage, species, and culture techniques. If the applicant does not submit the requested information within 30 days of DMR sending a request for information, the request for a pre-application meeting is considered withdrawn. Prior to this change, applicants sometimes requested pre-application meetings and then during the meeting they would not have enough detail about their plans for municipalities to offer meaningful feedback. For example, an applicant might attend the meeting and not yet know what the acreage of the proposed site might be. In other cases, applicants may request meetings but then not respond to DMR's follow-up inquiries or later indicated that they no longer wished to proceed. This change ensures that there is basic information available for meaningful discussion, encourages applicants to request meetings only when they are prepared to move forward, and promotes timely communication. One commenter suggested extending the deadline to 60 days to allow applicants additional time to consult with others. However, the rule now clearly identifies the information required at the time a pre-application request is made, so those discussions should occur before submitting the request. In addition, DMR has worked in recent years to implement 30-day deadlines across the aquaculture program to promote consistency, predictability, and administrative efficiency. An applicant could also make a future request for a pre-application meeting when they are ready to move forward.

- The rule also provides clearer guidance regarding the purpose of the pre-application meeting and the expectations of participants. For example, the applicant is responsible for presenting and explaining the proposed project, and the municipality is expected to provide feedback on the proposal as it relates to the applicable lease decision criteria. Prior to this revision, the rule referenced the meeting primarily as an opportunity for the applicant and DMR to "gain local knowledge," without further defining its scope. Because all lease proposals are evaluated against established statutory decision criteria, this clarification helps ensure that discussions remain focused on issues relevant to those legal standards. It also introduces and reinforces for all participants the legal standards that will be considered as the proposal moves forward in the process. It also clarifies that DMR is present to answer clarifying questions about the leasing process. Prior to this change, some applicants had the expectation that DMR would assist them with their presentation or otherwise advocate for their proposal. Some towns also had the expectation that DMR would speak to issues beyond the scope of the leasing process.

The proposed changes create a more defined and streamlined framework for pre-application meetings that better reflects their overall purpose.

In reviewing the rule language and some the comments received related to scheduling, DMR did update the proposed rule language, in part A, to provide additional clarification about scheduling pre-application meetings so it is clearer that such much meetings must be requested by the applicant, and the applicant has 30 days to return requested information to DMR from the date the request for information is initially sent.

**6. Minimum Maintenance Standards for Limited Purpose Aquaculture (LPA) licenses**

To prevent adverse impacts to public health, the proposed regulation would require LPA holders to make lawful efforts to ensure animal excrement does not accumulate on or near structures. Sebastian Belle,

Maine Aquaculture Association, suggested that the word "near" be removed because he felt it is "poorly defined" and "virtually unenforceable." This exact same provision is in the lease maintenance standards (see Chapter 2.75). DMR has not had any issue enforcing this provision for leases and courts generally interpret regulatory language according to the common meaning of the word unless the rule provides a special definition. The rule does not propose or otherwise contain a special definition of near and such a definition is not necessary. Additionally, DMR has adopted the National Shellfish Sanitation Program Model Ordinance (NSSP MO) by reference in Chapter 94, which requires aquaculturists to prevent excrement from accumulating.

Hillevi Jaegerman suggested that there should be more clarity on "lawful efforts" to ensure animal excrement does not accumulate on structures. Birds are the primary source of animal excrement on aquaculture sites, and aquaculturists often deploy scare kites, zip ties, or other deterrents to avoid buildup of excrement. While aquaculturists are required to ensure animal excrement does not accumulate on structures, there would be many possible considerations concerning the legality of any proposed effort as those efforts may involve interaction with birds or marine mammals. Those considerations may further vary depending upon where the proposed site is located. Therefore, rather than prescribe specific deterrent methods or efforts in the rule, applicants or site holders should discuss their plans with agencies that have jurisdiction over the respective animal(s) and issue permits for aquaculture sites. Those agencies may include, but are not limited to, the Maine Department of Inland Fisheries and Wildlife, the U.S. Department of Fisheries and Wildlife, and the U.S. Army Corps of Engineers. Additionally, not prescribing specific measures gives aquaculturists flexibility to adjust those efforts as appropriate, so long as they remain lawful.

No changes have been made to this part of the proposed rule in response to comments.

**7. Experimental Aquaculture Lease Application Comment Procedure**

The proposed rule provides that if no public hearing is to be held on an experimental lease application, and the Commissioner requires clarification on a submitted comment from the person who submitted that comment, the Commissioner may in their discretion request that clarification from that person. The Commissioner must provide that person with 30 days to submit the requested clarification. Any information provided in response to the Commissioner's request within the deadline provided would be included in the record of the proceeding.

Sebastian Belle, Maine Aquaculture Association, provided the following feedback concerning this provision:

*Neither the comments or any clarification are provided to the lease applicant and there is no process whereby the applicant can rebut or answer the comments. There is also no process outlined whereby the Department is required to verify the veracity of the comments. This is unfair to applicants, puts them inherently at a disadvantage and allows commentators to seed the record for any decision appeals they may choose to make. The department should be required to provide copies of any and all comments and clarifications to the applicant before a decision is rendered. The department should also be required to explain how they verified the truth of those comments and clarifications.*

This provision would apply in cases where no public hearing is scheduled, but limited clarification is needed from an individual who submitted comments during the comment period. Because no hearing is being held, these inquiries would be for minor clarifications based solely on information already submitted. For example, a shorefront property owner may state in a comment, submitted during the

comment period, that they have a mooring near the proposed lease site, but did not specify the distance between the mooring and the site. In some cases, that additional detail could be helpful in informing the lease decision. Currently, DMR has no mechanism to obtain such targeted clarifications without either electing to hold a public hearing or re-noticing the entire proposal, both of which could significantly delay processing of the lease application.

There are currently more than 100 lease applications under review. Given existing capacity constraints, DMR is unable to proactively provide each applicant with copies of all comments received, offer an opportunity to respond, and independently verify the accuracy of every comment submitted. Moreover, no formal framework currently exists to support such a process. Developing one would likely take a significant amount of time to design to ensure transparency and fairness for all stakeholders. For example, if applicants are given the opportunity to respond to comments, commenters may likewise expect the opportunity to review and reply to those responses. Administering such a reciprocal process would substantially increase processing timeframes. However, such a framework seems unnecessary as applicants may already request copies of comments received during the review process. In addition, final lease decisions clearly identify the evidence upon which DMR relied in reaching its findings of fact and conclusions of law. If an applicant or other stakeholder disagrees with a decision, they may seek judicial review in accordance with applicable law.

DMR did not make changes to the proposed regulation based on the comment received.

**STATE OF MAINE**
**DEPARTMENT OF THE SECRETARY OF STATE**

# Rulemaking Fact Sheet

*(*see *5 M.R.S. § 8057-A(1))*

**Agency:** Department of Marine Resources
**Name, Address, Telephone Number, and Email Address of Agency Contact Person:**
Deirdre Gilbert, Department of Marine Resources, 21 State House Station, Augusta, Maine 04333-0021
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Web Address: http://www.maine.gov/dmr/rulemaking/
Email Address: DMR.rulemaking@maine.gov
**Chapter Number and Rule Title:** 2 Aquaculture Regulations
**Type of Rule:** Routine Technical
**Statutory Authority:** 12 MRSA §§6072, 6072-A, 6072-B, 6072-C
**Public Hearing(s):** February 9, 2026: 5:00 p.m. at DMR's Augusta office (Marquardt Building, 32 Blossom Lane, rm 118) and remotely via Microsoft Teams. If the February 9th hearing is cancelled due to inclement weather an alternate hearing will be held on February 11th at 6:00 pm in Room 118 of the same location, and remotely via Microsoft Teams. Remote access information is posted to DMR's website under "Meetings."
**Comment Deadline(s):** February 23, 2026
**Principal Reason(s) or Purpose for Proposing this Rule** [*see* 5 M.R.S. § 8057-A(1)(A)]:
This proposed rulemaking would require a pre-application meeting for an experimental lease application prior to an experimental application being submitted to the Department. The proposed rule also updates the sourcing requirements for Limited Purpose Aquaculture (LPA) licenses to provide consistency with existing regulations, ensure that reliable sources of stock are available for each allowable species, and streamline the LPA sourcing framework. It is also amends the rule to provide consistency with existing law.

**Is Material Incorporated by Reference into the Rule** [*see* 5 M.R.S. § 8056(2-A)]**?** No

**Analysis and Expected Operation of the Rule** [*see* 5 M.R.S. § 8057-A(1)(B) & (D)]**:**
The proposed rule would require an experimental lease applicant to request a pre-application meeting with the Department prior to submitting an experimental lease application, as standard lease applicants must do now. While this procedural requirement would require additional effort from an applicant, it may also save them considerable time later in the leasing process. For example, participating in a pre-application meeting may identify potential issues with their plans, which can be addressed before they apply. Addressing issues early may reduce the likelihood of a public hearing or denial of an application. The updated LPA sourcing requirements are intended to ensure that applicants have a viable source of stock, especially if their plans include sourcing from the wild.

**Brief Summary of Relevant Information Considered During Development of the Rule (including up to 3 primary sources relied upon)**[*see* 5 M.R.S. §§ 8057-A(1)(E) & 8063-B]**:**
After convening an Aquaculture Working Group, the Town of Harpswell suggested a pre-application requirement for experimental leases to help ensure that any issues with those proposals are

communicated to the applicant early in the process when they are still able to make changes to the application. The Town of Harpswell shared the possible pre-application requirement with the Department's Aquaculture Advisory Council (DMR AqAC) and the Department. Staff within the Pathology Program and LPA Program were consulted on efforts to streamline source of stock. The remaining changes were made to ensure that the rule is consistent with existing law.

**Estimated Fiscal Impact of the Rule** [*see* 5 M.R.S. § 8057-A(1)(C)]**:**
Implementation of these proposed changes will not require the expenditure of additional resources at this agency.

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

**Economic Impact, Whether or Not Quantifiable in Monetary Terms** [*see* 5 M.R.S. § 8057-A(2)(A)]**:**
Click or tap here to enter text.

**Individuals, Major Interest Groups and Types of Businesses Affected and How They Will Be Affected** [*see* 5 M.R.S. § 8057-A(2)(B)]**:**
Click or tap here to enter text.

**Benefits of the Rule** [*see* 5 M.R.S. § 8057-A(2)(C)]**:**