

Notice of Agency Rule-making Proposal

MAPA-3 revised 2-2016

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 2; Limited Purpose Aquaculture License Program

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

BRIEF SUMMARY: This rulemaking proposes a number of changes to the Limited Purpose Aquaculture License (LPA). It deletes a number of references to other chapters of regulation to reduce redundancy. It proposes several changes to reduce risk to public health, and would prohibit siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas with certain exceptions. It would prohibit siting of marine algae or shellfish seed LPAs within the 300:1 dilution zone around wastewater treatment outfalls and prohibit the use of MOU or biotoxin monitoring protocols on LPAs. It would limit the dimensions of LPAs to no longer than 4x100 feet, square or rectangular. It would require LPA license holders to complete an educational program prior to renewal of their license in 2019 and future years. It would amend gear marking requirements, so that each individual piece would no longer need to be marked and require buoys to be marked with the LPA identification number. The proposal would allow an individual to have three helpers, but limit an individual to being listed on no more than four LPAs as an assistant. The proposal clarifies the riparian landowner density exemption, notice to municipalities, site identification on the application, and who must sign the application. The proposal would also limit the allowable mid-year amendments to source of stock, species, mooring type/layout, assistants, and contact information.

Date, time and location of PUBLIC HEARING (*if any*):

January 22, 2018, 6:00PM, Yarmouth Log Cabin, 196 Main Street, Yarmouth, ME

January 24, 2018, 6:00PM, Rockland Ferry Terminal, 515 Main Street, Rockland, ME

If one or both hearings are canceled due to inclement weather, the alternate date and location will be: January 26, 2018 at 2:00PM, DMR Offices, Rm 118 Marquardt Building, 32 Blossom Lane, Augusta, Maine. Weather related cancellations will be posted to the DMR website at: <http://www.maine.gov/dmr/>

COMMENT DEADLINE: February 5, 2018

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

AGENCY CONTACT PERSON:

Amanda Ellis (tel: 207-624-6573)

Mail Written Comments to:

Department of Marine Resources, attn Rulemaking

ADDRESS:

21 State House Station, Augusta, ME 04333-0021

WEB SITE:

<http://www.maine.gov/dmr/laws-regulations/proposed-rulemaking.html>

E-MAIL:

dmr.rulemaking@maine.gov

FAX:

(207) 624-6024

TTY:

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

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

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

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

STATUTORY AUTHORITY FOR THIS RULE: 12 M.R.S. §6706

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

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

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

* Check one of the following two boxes.

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

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

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

APPROVED FOR PAYMENT				DATE:	
FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
010	13A	1120	10	4946	regulations

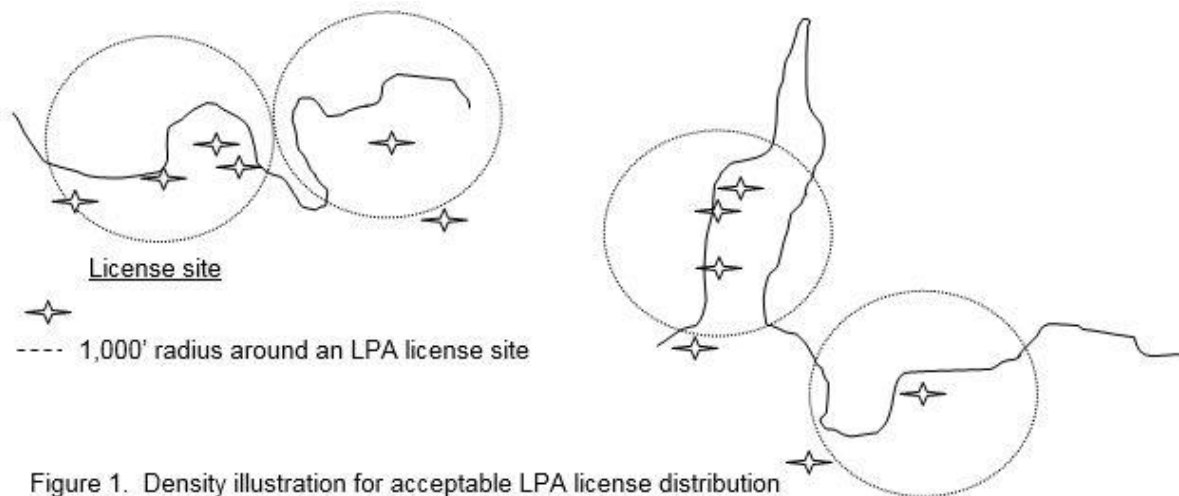
Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta

DEPARTMENT OF MARINE RESOURCES

2.90 Limited-purpose aquaculture (LPA) license

1. LPA License

- A. No person may engage in the activities described in Chapter 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR) in accordance with these regulations. An LPA license may be issued only to an individual or to a municipal shellfish management committee established pursuant to 12 MRSA §6671. The Department shall make application forms available. A non-refundable application fee in the amount of \$50 per license application for Maine residents or \$300 for non-residents must be paid when the application is submitted. LPA licenses expire at the end of each calendar year. No more than four (4) licenses may be held by any licensee at the same time. LPA licenses are non-transferable.
- B. Density standard. There can be no more than three (3) LPA licensed sites within a 1,000-foot radius of any other existing LPA licensed site. This standard does not require a minimum separation between individual licenses; rather it is a density of licenses within any area of a 1,000' radius. See Figure 1 below for four examples of this standard where a license site is encircled by a radius of 1,000 feet.



Exemption for riparian landowners. LPA licenses held by riparian property owners that are used to place authorized gear as listed in Chapter 2.90(2)(F)(2), ~~with the exception of shellfish rafts, immediately offshore within the length of shoreline under their ownership~~ 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.

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) unlicensed assistants per license may be declared as helpers. An individual shall be listed as an assistant on no more than four LPAs, other than their own. The list of unlicensed assistants may be amended, per instructions from the Department, to include new unlicensed assistants, but never to include more than three (3) individuals, by clearly indicating the new name(s) and having the license holder sign the Department approved-amended copy of their application. When the license holder is a municipal shellfish-management committee, the chairperson of the committee shall sign the copy on the committee's behalf. If the LPA license holder is 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.

D. ~~A license holder shall comply with all applicable statutes and regulations pertaining to the harvest, handling, sanitation, processing, storage, possession, transport, sale and consumption of shellfish. The issuance of an LPA license conveys only those rights specified in Chapter 2.90 and 12 M.R.S.A. §6072-C.~~

~~Persons who are issued a limited purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C must comply with DMR regulations Chapters 2.95, 9 and / or 15, 21, and 23, established in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.~~

E. ~~The Department may issue an LPA license when it determines that the requirements of 12 M.R.S.A. §6072-C and these rules have been met. In making this determination, the Department shall consider the information contained in the application, as well as other information relevant to the license criteria.~~

F. 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 Chapter 2.90(4).

B. Sources

Shellfish stock or seed may be obtained from either wild sources, hatcheries, or nurseries, with the exception of stock or seed of Hard Clam / quahog (*Mercenaria mercenaria*), Hen Clam (*Spisula solidissima*), or Soft shelled clam (*Mya arenaria*). Hatcheries or nurseries are the only permitted sources for these clam species, unless the Department issues a shellfish transplant permit that authorizes the collection of undersized animals. 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.

Applications must identify the source of the stock or seed to be cultivated or grown for each species, and for hatcheries or nurseries list the current name, address and phone number of the hatchery or nursery source for each species listed under Chapter 2.90(2)(A) ~~above~~. Applications must also include ~~additional applicable information required pursuant to Chapter 2.90(4) and Chapter 24. A licensee may not change the source of stock without written authorization from DMR.~~

All sources of hatchery supplied seed or stock must be from hatcheries approved by DMR. ~~Annual inspection of a molluscan hatchery will involve:-~~

~~Laboratory and diagnostic examination of representative lots of shellfish to determine that seed or stock are free from evidence of infectious diseases, pests, parasites or other organisms other than the intended species;~~

~~Evaluation of the disease history and other problems associated with the hatchery or the source or area from which the seed or stock originates; and~~

~~An audit and evaluation of biosecurity practices used in the production of the seed or stock.~~

~~It is the responsibility of the hatchery or the importing grower to provide the Department with the annual inspection and pathology reports in a timely manner so that proper review can be conducted prior to the permit deadline.~~

~~Authorized shellfish species must be free from evidence of infectious diseases, pests, parasites or other organisms other than the intended species pursuant to Chapter 24.~~

~~No shellfish seed or stock may originate from a closed area pursuant to Chapters 95 and 96.~~

~~All wild shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under Chapter 2.05 (1) (J) as the LPA site.~~

~~Use of wild shellfish stock or seed originating from outside the Health Area of the LPA site will require evidence that the seed or stock is consistent with the species authorized under Chapter 2.90(4) and may require evidence that the seed or stock is free from ~~evidence of~~ disease, and will require a permit from DMR. ~~The permit shall be reviewed according to the requirements outlined in Chapter 24.05 through 24.10.~~~~

C. Site location

- (1) The application must provide one (1) geodetic coordinate in degrees/minutes/seconds to the hundredths place, 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, ~~in particular noting~~ including the bottom characteristics of the license area and whether there are eelgrass beds present in proximity to the site.
- (3) The application must include a description of current commercial and recreational fishing and other uses of the proposed license area and the immediate vicinity of the proposed license area. The description should include type, duration and amount of activity.
- (4) The application must include a certified copy of the municipal tax map for the area in the vicinity of the license site. On the map, the applicant must indicate the actual scale of the copy of the map, the location of the proposed site, and a circle drawn to scale depicting a 300-foot radius from the site. The application must also include a list of the names and current mailing addresses of the riparian owners of shorefront property within 300 feet of the site, certified by the municipal clerk or by the Bureau of Revenue Services, Unorganized Division, for unorganized territory. If the license site is located in a marina slip or lobster pound or similar site as described in C. 2.90 (1) (B) ~~above~~, 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, and that the applicant agrees to comply with biotoxin monitoring requirements pursuant to Chapter 2.90(5)(C) is required. When the applicant is a municipal shellfish management committee, the chairperson of the committee 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 is an educational institution, the principal or a teacher 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 (~~selectman, councilor, alderman, or mayor, see 30-A MRS §2001 (10))~~ or other elected municipal official may sign the application. For the unorganized territory where a harbormaster does not have jurisdiction, a marine patrol officer may sign.

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

(3) Intertidal sites

- (a) Municipal Shellfish Management Committee. If the proposed location is above the extreme low water mark in a municipality with a municipal shellfish management committee established pursuant to [12 MRSA §6671](#), the signature of the chairperson of the municipal shellfish management committee, which shall verify that the proposed LPA will not unreasonably interfere with the activities of the municipal shellfish management program, is required.
 - (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 a harbormaster's or municipal officer's or official's denial of a signature. The Department may, following such review and upon a determination that the signature was withheld without basis, approve a license application. Such a determination must take into consideration a review by the local marine patrol officer of the application and a statement from the marine patrol officer that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

E. Notification of riparian property owners & municipalities

- (1) The applicant shall notify all riparian owners within 300 feet of the LPA site by sending, by certified mail, a copy of the LPA application, including information about how riparians can submit comments to the Department regarding issuance or renewal of the license, to the address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. Failure to include a copy of the receipt for certified mailing ~~must be included~~ 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) Failure to notify riparians and include copies of the receipts for certified mailing with the submitted application will result in the denial of the application.~~
- ~~(3) 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 (including other LPA sites), existing lease boundaries, other LPA licenses (including whether or not they are exempt from the density requirement in 2.90 (1)(B)), DMR water quality closure lines (including distances), 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 list of equipment described in this section, listed below, may not be used. ~~The descriptions are generalizations of the physical appearance, purpose and uses of each type of gear and are not a substitute for a project specific description with the dimensions of the gear to be used on site.~~ 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).

~~(a) Upweller or "FLUPSY"~~

~~An upweller device or "floating upweller system" (FLUPSY) is a self-contained approximately 8 by 20 foot raft similar to a floating dock that sits above the surface of the water roughly 2 feet. The raft generally contains approximately 12 circular "silos" or 30 inch by 20 inch diameter culture tubes that are partially constructed with fine mesh that allows ambient seawater to be pumped or tidally driven through the silos. The flow of seawater provides nutrients to shellfish "spat" or tiny seed contained within the silos. The spat are removed when they are large enough to be transferred to a grow-out site. These devices are most conveniently placed in marinas where power is available to operate a noiseless ¾ horsepower axial flow submersible electric pump.~~

~~(b) Shellfish rafts, associated predator nets and spat collectors~~

~~A shellfish raft is similar to a floating dock utilized as a working platform from which seed shellfish are suspended or contained by some form of device in which the shellfish are reared to a market size product. The raft may also be used as a work site to seed, sort, clean or harvest product and perform maintenance on the culture devices. A typical blue mussel raft is a floating square frame with beams spaced every foot spanning the raft width from which numerous ropes or dropper lines are suspended but do not touch the seafloor, to inhibit predators climbing up the ropes to eat the mussels. Seed mussels are attached to dropper lines mechanically or by~~

hand with a biodegradable cotton mesh and prevented from slipping off the lines by the placement of 6-inch pegs every foot or so. The vertical profile of an unseeded raft ranges from 2.5 feet above the water surface to roughly a 1-foot elevation when seed mussels are attached. A shellfish raft can be a solid platform from which shellfish tray racks and/or mesh bags containing shellfish are suspended beneath the raft in the water. The suspended devices would be accessed through openings similar to a trap door in the surface of the float. Predator nets are commonly suspended with weights for adequate tension and have large diagonal mesh openings of at least four (4) inches. Dropper lines may be used to collect mussel spat from the water column when they attach to the lines.

~~(c) Shellfish tray racks and over wintering cages~~

~~Shellfish tray racks have a cubic dimension similar to a box, cage or column-like unit that is made of coated wire mesh or rigid plastic on a wood, plastic or metal frame. A rack will generally contain interior shelves that can hold 1-2 mesh bags per shelf and is used to contain seed shellfish. The mesh material allows water to pass through providing nutrients to the shellfish.~~

~~(d) Soft bags, semi rigid bags and floating trays~~

~~Bags and tray devices are generally constructed of a plastic or similar material of various mesh sizes that are changed throughout the growing season to accommodate greater water flow as the shellfish increase in size. The bags and trays vary in size. Bags have general dimensions of 16-22 inches wide by 28-40 inches long by 2-3 inches in height. Bags are most often connected end to end, floated on the surface using pipe insulation placed inside the bags on the sides and moored at each end of length or string of bags. Trays may refer to the shelves contained in the shellfish tray racks described under Chapter 2.90(2)(F)(2)(c). Tray may refer to a rigid plastic or wire mesh container generally 3 feet wide by 4 feet long by 6 inches high that is deployed between parallel lines and may be floated on the surface or submerged.~~

~~(e) Lantern nets and pearl nets~~

~~A lantern net typically is a five or ten tier set of circular nets of approximately 18-inch diameter and 6-inch depth suspended from a central line. Mesh sizes typically vary from 1/8-inch mesh to 1.5-inch mesh size. A pearl net is a single, pyramidal mesh enclosure that is used to hold shellfish. Pearl nets are typically tied together in a string extending vertically in the water column.~~

~~(f) Fencing and brushing~~

~~Fencing and brushing are most commonly used by municipal shellfish programs in the intertidal zone for the collection of soft-shell clam spat in their management plans in conjunction with intertidal anti-predator netting.~~

~~(g) Moorings~~

~~Moorings devices vary in terms of materials, tension ratings and range of sizes available and are generally site specific. For the purposes of Chapter 2.90, they include the anchor type and all tackle securing fixed or floating gear.~~

~~(h) Scallop spat collector bags~~

~~Scallop spat collector bags are mesh bags containing additional mesh material to increase the volume of the bags. They are placed in the water column to catch larval scallops and allow settlement and initial growth inside the bags. Multiple collector bags are often attached to a single vertical line.~~

~~(i) Scallop ear hangers~~

~~Scallop ear hangers are devices that attach individual scallop shells to suspended line. Each line typically has multiple individual scallops attached by ear hangers.~~

~~(j) Marine algae – seaweed (rope, rafts with ropes attached, bags, long lines (vertical or horizontal), or rope grids. Ropes or bags may be placed on the surface or submerged.~~

~~(k) Bottom anti-predator netting~~

~~Anti-predator netting may be spread over the bottom or over gear placed in or on the bottom to exclude predators from the species being cultured. Mesh sizes should be appropriate to the type of predator being excluded. Nets must be anchored so as to prevent shifting due to tides or currents in order to reduce the risk of entangling birds.~~

G. Renewal of licenses

- (1) ~~In order to~~ To be eligible to renew an LPA license, a license holder in 2019 or in any subsequent year, the applicant must have completed any educational requirements established pursuant to 12 M.R.S.A. §6072-C(3)(A) and must submit an application for renewal to the Department online or postmarked no later than December 31st. If a renewal application is not submitted to the Department by December 31st, the license holder is required to insure that remove all gear and equipment at that licensed site is removed from the water from the licensed site on or before the termination of the license on December 31st.
- (2) Renewal applications shall be submitted on a form provided by the Department. A non-refundable application fee must be paid in the amount of \$50 per renewal application for Maine residents and \$300 for nonresidents.
- (3) The Department shall send an annual notice of ~~the~~ all proposed renewals to the municipality in which ~~the~~ those licenses is are located and request that the municipality post the notice. The notice shall state that ~~the municipality and riparians~~ 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 Chapter 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 4' or greater than 100' on any one side. Dimensions must be provided in whole feet.

~~B~~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).

~~C~~D. DMR Water Quality Program Closure Areas

- (1) LPA license sites may not be located within 300 feet of any area classified as prohibited closure boundary line.
- (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, restricted, or conditionally restricted, pursuant to DMR regulations Chapters 95 and 96.
- (3) Exemptions.

(a) Shellfish seed. An LPA license site may be located within an area classified by DMR as prohibited, restricted, or conditionally restricted under Chapters 95 and 96, provided that only shellfish seed is cultured on the site. An LPA license site for shellfish seed may not be located within the 300:1 dilution zone around a wastewater treatment plant outfall. Shellfish seed from an LPA site in a prohibited, restricted, or conditionally restricted area can be moved only to another aquaculture lease or license site and only as provided in this subsection. The seed must be segregated from other shellfish on the destination site as required by the DMR Public Health Bureau.

aj. Seed that is 25 mm or less in size can be moved to another aquaculture site without a relay permit under Chapter 21. The lessee or licensee of the destination site must notify the DMR Public Health Bureau at least eight days in advance that the seed will be moved. If there is harvestable product on the destination site, the area around the seed will be closed to shellfish harvesting for six months by DMR.

bij. Seed that is mixed in size, both over and under 25 mm or that is greater than 25 mm, requires a relay permit under Chapter 21 in order to be moved to another aquaculture site. The area around the seed will be closed to shellfish harvesting for six months by DMR.

~~(4)(b) Marine algae and green sea urchins~~

~~The boundary line and prohibited, restricted and conditionally restricted area prohibitions in Chapter 2.90(3)(C)(1 and 2) above do not apply to the sole culture of marine algae or green sea urchins. If the LPA site species list includes molluscan shellfish authorized according to Chapter 2.90(2)(B) this exemption does not apply.~~

(c) Marine algae

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

~~DE.~~ Department of Inland Fisheries and Wildlife (IF&W) Essential Habitats

LPA license sites may not be located within the areas regulated pursuant to 12 M.R.S.A. §§~~7753-12803, 7754(2)(3)-12804~~ and ~~7755-A(1)(2)(3)-12806~~ and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

~~EF.~~ United States Army Corps of Engineers (ACOE) Authorization

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

4. Authorized Species

An LPA license may be issued only for the cultivation of the following species: blue mussel (*Mytilus edulis*), hard clam / quahog (*Mercenaria mercenaria*), hen clam (*Spisula solidissima*), American or eastern oyster (*Crassostrea virginica*), European oyster (*Ostrea edulis*), sea scallop (*Placopecten magellanicus*), soft-shelled clam (*Mya arenaria*), razor clam (*Ensis directus*), green sea urchin (*Strongylocentrotus droebachiensis*), bay scallops (*Aequipecten irradians*), and for marine algae (all seaweeds, including kelp). Notwithstanding 12 M.R.S.A. [§6001 \(41\)](#), for

purposes of Chapter 2.90, the terms “shellfish” and “seed” include sea scallops (*Placopecten magellanicus*) and bay scallops (*Aequipecten 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 Chapter 2.05(7-1-G). ~~The use of marine algae legally obtained from Maine waters without significant modification as food for green sea urchins on an LPA site does not constitute a discharge.~~
- 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~~

~~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. There shall be no provisions made for biotoxin monitoring or testing for LPA sites. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at:~~
http://www.maine.gov/dmr/rm/public_health/closures/shellfishhotline.htm.

~~(2) Monitoring requirements~~

~~For any marine biotoxin-producing organism for which criteria have not been established under the National Shellfish Sanitation Program Model Ordinance, either cell counts in the water column or biotoxin meat concentrations may be used by the Department as the criteria for not allowing the harvest of shellstock.~~

~~(a) Paralytic Shellfish Poisoning (PSP); Diarrhetic Shellfish Poisoning (DSP); Domoic Acid (ASP) and Neurotoxic Shellfish Poisoning (NSP)~~

~~When local sampling by the Department indicates PSP, DSP, ASP or NSP toxin is present in the area, or phytoplankton which may cause PSP, DSP, ASP or NSP toxin are found in the area, then analysis for PSP, DSP, ASP or NSP will be required prior to DMR approval for the harvest or sale of shellstock from the LPA site or by persons who are registered or permitted as indicated above. A minimum of twelve (12) shellfish must be submitted by the LPA license holder, registrant or permit holder to the DMR Public Health Division Biotoxin Laboratory, by contacting the Boothbay Harbor facility at (207) 633-9555 or the Lamoine facility at (207) 667-2418, at least five (5) business days prior to anticipated harvest.~~

~~Prior to approving the harvest or sale of shellfish from any lease or LPA site, or by a registrant or permit holder, which has submitted shellfish samples to DMR, the DMR may, in its sole discretion, send samples to an accredited analytical laboratory for analysis for PSP, DSP, ASP or NSP toxin.~~

~~(3) Requirements and procedures~~

~~Sample results will be reported to the license holder on a marine biotoxin analysis certificate issued by the DMR Public Health Division.~~

~~—(a) Monitoring~~

~~The cost of monitoring for marine biotoxins, when required under the provisions of this section, shall be paid for by the license holder. When monitoring is required, it must be done prior to the harvest of shellfish from the site for human consumption, or for any other commercial or non-commercial use.~~

D. Record keeping

Complete, legible and accurate records of transport, transfer, harvest, and monitoring must be maintained by the license-holder and be 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 ~~and data related to marine biotoxin analyses;~~
- (2) Source of shellfish, including seed if the seed is from growing areas which are not in the approved classification status pursuant to Chapter 2.90 and/or Chapter 15;
- (3) Dates of transplanting and harvest;
- (4) Detailed records of sales; and
- (5) ~~Water source, its treatment method, if necessary, and its quality in land based systems pursuant to Chapter 15.32, 15.33, 15.34 and or 15.35; and~~
- (6) ~~Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.~~

E. Prohibitions

~~Commingle of shellstock is prohibited, except that primary dealers, as defined in Chapter 15.02(65), who are authorized by the Department in accordance with Chapter 16.21(C), may commingle shellstock. See Chapter 9.01(B).~~

~~Harvesters may not conduct wet storage activities. Wet storage of shellstock is prohibited, except by certified dealers pursuant to a current permit issued by the Department in accordance with Chapter 15. See Chapter 9.01(C).~~

~~—Amendments~~

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

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

6. Maintenance Standards

- A. All aquaculture gear must be maintained, and kept in a fully operational condition. The license holder is obligated to collect and or remove any loose or errant gear or equipment that is dislodged from the licensed site.
- B. Each LPA site that has gear on it must be clearly marked at each corner, centerpoint, or at ~~the center~~ each end of the gear, as is appropriate to the gear type deployed, with a marked floating device, ~~such as a buoy, or buoys able to support at least two (2) inch high letters spelling "Sea Farm".~~ The license holder's name, homeport or home address, and LPA license number Site ID and "Sea Farm" must be clearly displayed on every ~~marked~~ buoy

~~floating device and piece of gear or equipment.~~ The marked ~~buoys floating devices~~ shall be readily distinguishable from ~~interior markers and aquaculture gear.~~

- C. LPA license sites must be marked in accordance with the United States Coast Guard's Aids to Private Navigation standards and requirements.

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 Chapter 2.90(3)(D)(C)(3) and 2.95(A)(4).

Any shellfish harvested pursuant to an aquaculture lease, ~~LPA~~, 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 of shellfish requires a permit pursuant to DMR Regulations Chapter 21 Relay of Shellfish.

Depuration of shellfish requires a permit pursuant to DMR Regulations Chapter 20 Depuration.

3. Closed Area compliance: Direct market harvest of shellstock is prohibited in areas that are closed due to marine biotoxins pursuant to Chapter 96 and bacterial pollution pursuant to Chapter 95, and in those areas that may be closed by the Department. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at: <http://www.maine.gov/dmr/shellfish%20sanitation%20hot%20line.htm>.
4. Seed Shellstock source: Seed that comes from an approved hatchery will not require a permit, except for any applicable permits for importation or introduction. Seed that comes from any growing area in the approved classification or the conditionally approved classification in the open status will not require a permit. Seed that comes from growing areas in any other classification will require a permit. A permit may be issued by the department provided that:
 - (a) The movement of the seed is approved by the Commissioner if it is from a growing area in other than the approved or conditionally approved classification. Applications may be requested to be mailed by writing the Department of Marine Resources, attn: Public Health Division, 21 State House Station, Augusta, Maine 04333-0021 or may be printed from the Department's web site;
 - (b) Seed from growing areas in the restricted or prohibited classification have poisonous or deleterious substances that are at or below acceptable levels.
 - (c) Seed from growing areas in the prohibited classification are cultured for a minimum of 6 months.
 - (d) Seed for LPAs must meet the requirements of the Health Areas in Chapter 2.90(3)(D)(C)(3) and 2.05(1)(J).

- (e) Inspection: The Commissioner and his/her agents may inspect the lease site, seed, operations, and business records of seed permit holders.

B. Definitions

In addition to the definitions set forth in 12 M.R.S.A. §6001, Chapters 2.05 and 15.02, the following definitions shall apply in interpretation of this chapter.

1. "Approved" means a classification used to identify a growing area where harvest for direct marketing is allowed by the Department.
2. "Classification of Growing Areas" means that the growing area has been subjected to a sanitary survey and shall be correctly classified based on the twelve year sanitary survey, and its most recent triennial or annual reevaluation when available, as any one or combination of the following:
 - (a) Approved;
 - (b) Conditionally approved;
 - (c) Restricted;
 - (d) Conditionally Restricted; or
 - (e) Prohibited.

Growing areas not subjected to a sanitary survey every twelve years shall be classified as prohibited. Growing areas which do not have a completed written triennial reevaluation report shall be placed in the closed status immediately.

3. "Closed Status" means any classified growing area closed for a limited or temporary period because of:
 - (a) An emergency condition or situation;
 - (b) The presence of biotoxins in concentrations of public health significance;
 - (c) Conditions stipulated in the management plan of conditionally approved or conditionally restricted areas; or
 - (d) Failure of the DMR to complete a written sanitary survey or triennial review reevaluation report.
4. "Conditionally approved" means a classification used to identify a growing area which meets the criteria for the approved classification, only under certain conditions described in a management plan. See Ch. 15.02(A)(16).
5. "Conditionally restricted" means a classification used to identify a growing area which meets the criteria for the restricted classification, only under certain conditions described in a management plan. See Ch. 15.02(A)(17).
6. "Growing area" means any site which supports or could support the propagation of shellstock by natural or artificial means. See Ch. 15.02(A)(36).
7. "Open Status" means, except for an area in the prohibited classification, any correctly classified growing area that is normally open for the purposes of harvesting shellstock, subject to the limitations of its classification.
8. "Reopened Status": a growing area temporarily placed in the closed status shall be returned to the open status only when:
 - (a) The emergency situation or condition has returned to normal and sufficient time has elapsed to allow the shellstock to reduce pathogens or poisonous or deleterious substances that may be present in the shellstock to acceptable levels. Studies establishing sufficient elapsed time shall document the interval necessary for reduction of contaminant levels in the shellstock to pre-closure levels. In addressing pathogen

- concerns, the study may establish criteria for reopening based on coliform levels in the water; or
- (b) The requirements for biotoxins or conditional area management plans as established in the Department's Biotoxin Contingency Plan or Conditional Area Management Plans, respectively, are met; and
 - (c) Supporting information is documented by a written record in the central file.
9. "Restricted" means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration. See Ch. 15.02(A)(75). (The term "special license" in this chapter section does not refer to licenses issued pursuant to 12 MRSA §6074.)
10. "Seed" means any juvenile shellstock that meet one of the following criteria:
- (a) Which are obtained from hatcheries.
 - (b) Which do not exceed 10 percent of the market weight.
 - (c) Which are 6 months or more growing time from market size.
- Note: Seed mussels are defined separately in Chapter 12.03(B).
11. "Shellfish" means all species of:
- (a) Clams, mussels, quahogs and oysters, whether:
 - (1) Shucked or in the shell;
 - (2) Fresh or frozen; and
 - (3) Whole or in part.
 - (b) Scallops in any form, except when the final product form is the adductor muscle only. See Ch. 15.02(A)(81)
12. "Shellstock" means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 MRSA §6001(42) and Ch. 15.02(A)(82)).
13. "Status of Growing Area" means that the status of a growing area is separate and distinct from its classification and may be open, closed or inactive for the harvesting of shellstock.

Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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

CHAPTER NUMBER AND RULE: Chapter 2; Limited Purpose Aquaculture License Program

STATUTORY AUTHORITY: 12 M.R.S. §6072-C

DATE AND PLACE OF PUBLIC HEARING:

January 22, 2018, 6:00PM, Yarmouth Log Cabin, 196 Main Street, Yarmouth, ME
January 24, 2018, 6:00PM, Rockland Ferry Terminal, 515 Main Street, Rockland, ME

COMMENT DEADLINE: **02/05/2018**

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

This rulemaking proposes a number of changes to the Limited Purpose Aquaculture License (LPA). These changes are intended to reduce risks to public health, implement statutory changes, and improve the overall administration of the the LPA program.

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

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

This rulemaking proposes a number of changes to the Limited Purpose Aquaculture License (LPA). It deletes a number of references to other chapters of regulation to reduce redundancy. It proposes several changes to reduce risk to public health, and would prohibit siting LPAs for shellfish in prohibited, restricted and conditionally restricted areas with certain exceptions. It would prohibit siting of marine algae or shellfish seed LPAs within the 300:1 dilution zone around wastewater treatment outfalls and prohibit the use of MOU or biotoxin monitoring protocols on LPAs. It would limit the dimensions of LPAs to no longer than 4x100 feet, square or rectangular. It would require LPA license holders to complete an educational program prior to renewal of their license in 2019 and future years. It would amend gear marking requirements, so that each individual piece would no longer need to be marked and require buoys to be marked with the LPA identification number. The proposal would allow an individual to have four helpers but limit an individual to being listed on no more than four LPAs as an assistant. The proposal clarifies the riparian landowner density exemption, notice to municipalities, site identification on the application, and who must sign the application. The proposal would also limit the allowable mid-year amendments to source of stock, species, mooring type/layout, assistants, and contact information.

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

Recommendations from the aquaculture industry, input from the DMR Aquaculture Advisory Council, and feedback from DMR staff members who administer the LPA program.

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

Enforcement of this rule will not require additional activity in 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* §8057-A(2)(A)]

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

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

Note: If necessary, additional pages may be used.

