MAPA-4

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: Chapter 2 Aquaculture Leasing Regulations

ADOPTED RULE NUMBER:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

CONCISE SUMMARY:
This rule clarifies the aquaculture leasing regulations, including the elimination of redundant language from 12 M.R.S.A. §6072, 6072-A, and the Maine Administrative Procedures Act. It eliminates duplicative references to the National Shellfish Sanitation Program (NSSP) Model Ordinance, and includes the addition or modification of provisions based on the NSSP including maintenance of a lease operation plan, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an authorized representative of an aquaculture license holder, in accordance with 12 M.R.S.A. §6810-B, may engage in. It makes several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It enacts lease expansion application procedures in accordance with 12 M.R.S.A. §6072(12-C). The rule restricts the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It clarifies that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The rule also clarifies and establishes additional minimum lease maintenance standards.

EFFECTIVE DATE:
(LEAVE BLANK-ASSIGNED BY SECRETARY OF STATE)

AGENCY CONTACT PERSON: Amanda Ellis (207) 624-6573
AGENCY NAME: Department of Marine Resources
ADDRESS: 21 State House Station
Augusta, Maine 04333

WEB SITE: http://www.maine.gov/dmr/rulemaking/
E-MAIL: dmr.rulemaking@maine.gov
TELEPHONE: (207) 624-6573
FAX: (207) 624-6024
TTY: (207) 633-9500 (Deaf/Hard of Hearing)

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

APPROVED FOR PAYMENT_____DATE:_____

FUND	AGENCY	S-UNIT	APP	OBJT	AMOUNT
Please forward invoice to: Natural Resource Service Center, 155 SHS, Augusta					
010	13A	1120	10	4946	regulations

DEPARTMENT OF MARINE RESOURCES – PROCEDURAL RULES

CHAPTER 2

AQUACULTURE LEASE REGULATIONS

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DEPARTMENT OF MARINE RESOURCES

Chapter 2 - Aquaculture Lease Regulations

2.05 Definitions

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

   A. Aquaculture.
   "Aquaculture" means the culture or husbandry of marine organisms by any person. ~~Storage or any other form of impounding or holding wild marine organisms, without more, shall not qualify as aquaculture.~~ In order to qualify as aquaculture, a project must involve affirmative action by the ~~lessee~~ individual to improve the growth rate, survivability or quality of the marine organism. These activities do not include impounding lobsters, wet storage or activities conducted under the authority of municipal shellfish conservation programs in accordance with 12 M.R.S.A. 6671(3)(A)(3).

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

   C. Riparian Owner.
   For the purposes of 12 M.R.S.A. §§6072 and 6072-A and 6072-B "riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.

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

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

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

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

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

   H. Scientific research.
   “Scientific research” is a study or investigation intended to lead to new discoveries or advances within its field or to impact on the progress in that field, as determined by the Department. In making its decision, the Department shall consider the nature, funding and objective of the planned research, and the disposition of organisms used in research. The results of any scientific research shall be part of the public record.

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

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

(1) Area 1: Downeast and Canada border
Eastern Line - Head of tide on the St. Croix River and International Boundary Line Canada and the U.S. (Maine).
Western Line from West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).

(2) Area 2: West of Quoddy Head to Schoodic Point
Eastern Line - West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).
Western Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.

(3) Area 3: Schoodic Point to the Maine - New Hampshire border
Eastern Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.
Western Line – the Maine and New Hampshire border.

(4) Area 4: Damariscotta River
Head of tide to a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.

(5) Area 5: Casco Bay
Eastern Line - Small Pt. due South Magnetic to the boundary of the territorial waters.
Western Line - A straight line from Active Lt. 2 Lt's. Cape Elizabeth to C "1" East Hue & Cry (43° 31.9N)(70° 08.8W); then proceed WSW to the boundary of the territorial waters.

K. Fallow.
"Fallow" means a lease site without cultured organisms

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

M. Operational Plan
"Operational plan" means a written document outlining how a lease operator will utilize his lease area and structures and handle product to, on and from the site. The completed lease application, executed lease, and any amendments thereto, may be used as an operational plan.

N. Pending.

"Pending" means an application in process, from the date of submission of a draft application until final agency action, or until the application has been terminated or withdrawn.

2.07 Pre-Application Requirements for Standard Leases

~~1. Pre-application meeting. Prior to filing an application for a standard lease with the Department, an applicant shall attend a pre-application meeting with DMR staff and the harbormaster(s) and/or a municipal officer(s) or other designee(s) of the municipality(ies) in which the proposed lease is located to discuss the proposed application. The pre-application meeting will be held in the municipality in which the proposed lease site is predominantly located. The purpose of the meeting will be for the applicant to introduce the proposal to the municipality and the Department and for the applicant and the Department to gain local knowledge from the municipal officials. In addition the pre-application meeting will specifically define the environmental baseline or characterization requirements and other informational needs, including approximate location of the lease site that the Department determines are necessary to adequately present the proposed lease for review.~~

~~2. Pre-application scoping session. The applicant shall hold a pre-application scoping session in the municipality in which the proposed standard lease is predominantly located. The applicant is required to attend the pre-application scoping session. The purpose of a pre-application 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 prior to development of an application;~~
~~C. Allow the public an opportunity to ask questions of the applicant and the Department; and~~
~~D. Provide the Department with information that can be used during the Department site review.~~

~~3. Notice. The Department shall provide notice of the scoping session to riparian landowners within 1,000 feet of the proposed lease, to officials of the municipality or municipalities in which the proposed lease would be located, and interested governmental agencies. All other interested individuals or parties may request to be placed on the Department's service list for notification of the scoping sessions or other proceedings relating to the processing of aquaculture lease applications. The Department shall issue a press release to the print media regarding the public scoping session and 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. Application submission. During the 6 months following the scoping session, or until a completed application is received by the Department, whichever is earlier, the Department cannot accept an application for a lease in the same location(s) as any proposed lease discussed at the public scoping session. Such locations must be clearly identified and agreed to by the Department in consultation with the applicant by the conclusion of the public scoping session.~~

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

1. For the applicant to introduce the proposal to the municipal officers and the Department;

2. For the applicant and the Department to gain local knowledge from the municipal officers; and

3. To define the environmental baseline or characterization requirements and other informational needs, including approximate location of the lease site, that the Department determines are necessary.

2.08 Application Procedures for Standard Leases

1. Draft application submission. An applicant must file a draft lease application, and must make a reasonable effort to provide all required information as outlined in Chapter 2.10. The nonrefundable draft application fee is $500.

   A. If additional information is required, the Department will respond requesting further information within 30 days of receipt of the draft lease application.

   B. If a draft application is not submitted within 4 months following the pre-application meeting, the applicant must complete the pre-application meeting requirement as outlined in Chapter 2.07 again prior to filing a draft application. The Commissioner may provide an exemption from this requirement for no more than 9 months following of the pre-application meeting for good cause shown.

2. Scoping session. Within 4 months of submission of the draft application, the applicant shall hold a scoping session in the municipality in which the proposed standard lease is predominantly located. The applicant is required to attend the scoping session. The purpose of a scoping session shall be to:

   A. Familiarize the general public with the proposal;

   B. Allow the public an opportunity to provide the applicant with additional local information to inform development of the application; and

   C. To allow the public an opportunity to ask questions of the applicant.

3. Notice. The Department shall provide written notice of the scoping session to riparian landowners within 1,000 feet of the proposed lease and to the municipality in which the proposed lease would be located. The applicant shall publish a notice in a newspaper of general circulation in the area of the proposed lease at least ten days prior to the scoping session.

4. Location of Pending Application. During the 6 months following the scoping session, or until a completed application is received by the Department from the applicant for the location noticed in the scoping session, whichever is earlier, the Department cannot accept an application for a lease in the same location as a proposed lease discussed at the scoping session.

5. Final Application. An applicant must submit a final lease application to the Department and must make a reasonable effort to provide all required information as outlined in Chapter 2.09. The final application fee is due at the time of submission.

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

      i. Discharge Leases: $1,500

      ii. Non-Discharge Leases: $1,000

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

6. Completeness Determination. Within 30 days of receipt of a written final application, the Commissioner or his designee shall determine whether the application contains sufficient

information in which a decision regarding the granting of the application may be made, and notify the applicant of his determination.

A. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required.

B. An application shall not be complete unless the non-refundable final application fee has been paid.

C. If an applicant has not submitted a complete application within 90 days of the date of the Department's notice under Chapter 2.08(6)(A) the application shall be void.

D. Termination without hearing. If the Commissioner or his designee determines before a hearing has been scheduled that either that the application could not be granted on its face or the applicant lacks the necessary financial or technical capacity the applicant shall be notified in writing of that determination and no further Department action on the application is required. If a hearing has been scheduled and the Department's site review or other information reveals that one or more of the criteria for a lease approval are unlikely to be met the Department, in its discretion, may ask the applicant to withdraw the application or waive the hearing and, in the case of a hearing waiver, the Department will issue a written decision denying the application.

2.10 Application Requirements for Standard Leases

~~1. Form. Aquaculture lease applications shall be submitted on forms prescribed by the Commissioner and shall contain all information required by applicable statutes, regulations in Chapter 2 and by the Commissioner for the consideration of the aquaculture project. Hearings on applications will not be held until both the applicant and the Department have done the required environmental reviews.~~

~~For discharge applications, the Department shall coordinate with the Department of Environmental Protection and other state and federal agencies to ensure that all state and federal regulatory requirements are identified.~~

~~2. Fee. An application shall not be considered complete unless a non-refundable application fee has been paid. The amount of the fee is determined by the nature of the aquaculture activity proposed. The application fees for no discharge leases and discharge leases are as follows:~~

~~APPLICATION FEES: No Discharge leases Discharge leases~~

~~Effective January 1, 2007: $1,500 $2,000~~

~~3. Required Elements. In addition to requirements specified in 12 M.R.S.A. §6072(4), the following at a minimum is required for an application to be considered complete:~~

~~A. A description of the location of the proposed lease by corner coordinates or boundaries with coordinates for one starting point, a map of the lease area and its adjoining waters and shorelands, with the names of the known riparian owners indicated on the map as listed in the municipal or State property tax records and a certified list of the names and addresses of riparian owners as they are listed in the municipal or State property tax records. In determining ownership, assume ownership to the mean low water mark unless otherwise known.~~

B. A list of the species to be cultivated and a description of the proposed source(s) of organisms to be grown at the site. (See D.M.R. Regulation: Chapter 24, "Importation of Live Organisms"). The applicant shall identify the source of organisms to be cultured for the lease site.

C. Environmental Characterization and Baseline.

(1) No 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, and current speed and direction.

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.

This environmental characterization shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one site characterization, but one characterization must be completed between April 1 and November 15, dates inclusive.

(2) Discharge applications. Applicants that have submitted applications that involve a discharge into State waters must also conduct a Department approved environmental baseline according to Chapter 2.10(3)(C)(2)(a) and (b) below. The baseline will serve as a benchmark for monitoring the effects of farms on sediments, marine organisms, and water quality. The baseline requirements are as follows:

This baseline shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one baseline, but one baseline must be completed between April 1 and November 15, dates inclusive.

The baseline must include a clear and decipherable video or still photography showing bottom characteristics as well as the written description.

(a) Sediment & benthic characterization

(i) A visual survey shall be conducted to document all representative bottom types within the proposed lease area. Representative bottom types include boulder-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.

D. A description of the commercial and recreational navigation uses of the proposed lease site, including type, volume, time, duration, location and direction of traffic.

E. 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. A description of 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.

G. The written permission of every riparian owner whose land to the low water mark will actually be used.

H. A description of riparian owner's current use of lease site for purposes of access to riparian owned land.

I. Financial Capacity. The applicant shall provide information showing, to the satisfaction of the Department, that it has obtained all of the necessary financial resources to operate and maintain all aspects of the proposed aquaculture activities. Each applicant shall submit accurate and complete cost estimates of the planned aquaculture activities. The following

submissions are examples of acceptable documentation indicating adequate financial capacity:

(1) a letter from a financial institution or funding agency showing intent or willingness to commit a specified amount of funds, or

(2) the most recent corporate annual report and supporting documents indicating sufficient funds to finance the aquaculture activities, or

(3) copies of bank statements or other evidence indicating availability of the unencumbered funds or proof that equipment and seed stock are available to the applicant.

J. Technical Capability. The applicant shall submit a resume' or other documentation as evidence of technical expertise and capability to accomplish the proposed project.

K. Equipment. The applicant shall submit detailed specifications on all gear, including nets, pens, and feeding equipment to be used on the site. Vessels that service a site are not subject to this provision. This information shall include documentation that the equipment is the best available technology for the proposed activity. Where the Department determines in the review of the application that technological or economic limitations would make the use of such equipment unfeasible, a design, operational standard, management practice, or some combination thereof may be substituted to meet the intent of this provision.

For any applications where petroleum products are to be used, a spill prevention control plan shall be provided with the application.

Documentation shall include both plan and cross-sectional views and either schematic or photographic renderings of the generalized layout of the equipment as depicted from two vantage points on the water. The location of the vantage points from the proposed lease area shall be included in the application.

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.

4. Completion

A. Upon receipt of a written application, the applicant shall receive notice by the Department that the application was received. Within 30 working days of receipt of a written application, the Commissioner shall:

(1) Determine whether the application is complete, containing sufficient information in which a decision regarding the granting of the application may be taken, and notify the applicant of his 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 complete.

(2) When the application is complete, the Commissioner will make a determination whether the application could be granted and whether the applicant has the financial and technical capability to carry out the proposed activity. If the Commissioner makes both determinations in the affirmative, he or his designee shall schedule a hearing on the application. If the Commissioner or his designee determines either that the application could not be granted 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.

5. Proposed Site Marking

~~At least 30 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased.~~

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 allowing 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, 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 ~~arrested, indicted or~~ 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 ~~arrested, indicted or~~ 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. ~~For example, if a corporation holds an aquaculture lease of 100 acres and two people own 50% stock interest in the corporation, the corporation will be credited with leasing 100 acres and each individual will be deemed to hold 50 aquaculture lease acres.~~

2.15 Notice of Lease Application and Hearing

~~1. Notice of Completed Application~~

~~At the time that an application is determined to be complete in accordance with Chapter 2.10(4), 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 the officials of the municipality or~~

~~municipalities, including the harbormaster if applicable, in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.~~

~~2. Personal Notice of Public Hearing~~

~~At least 30 days prior to the date of the public hearing, the Department shall mail a copy of the notice of hearing and make copies of the lease application and the Department site report available, to the following persons:~~

~~A. Riparian owners as listed in the application;~~

~~B. The municipality or municipalities in which the lease area is located, or the proposed lease abuts;~~

~~C. The applicant; and~~

~~D. Any public agency the Department determines should be notified, including but not limited to, State Planning Office, Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Regional Planning Office, United States Coast Guard, and United States Army Corps of Engineers.~~

~~3. Public Notice of Public Hearing~~

~~The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons who would be entitled to intervene.~~

~~Public notice shall include the following information:~~

~~A. a statement of the legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 et seq. and the aquaculture lease provisions of 12 M.R.S.A. §6072;~~

~~B. a short, plain statement of the nature and purpose of the proceeding and the nature of the aquaculture lease application;~~

~~C. a statement of the time and place of the hearing;~~

~~D. a statement of the manner and time within which applications for Intervention may be filed; and~~

~~E. a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.~~

~~The Department shall also distribute press releases regarding the public hearing to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing.~~

1. Notice of Completed Application. At the time that a final application is determined to be complete in accordance with Chapter 2.09(6), 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. 9051-A and by mail to the following persons:

   A. Riparian owners as listed in the application;

   B. The applicant; and

   C. Any state agency the Department determines should be notified, including the Department of Environmental Protection, Department of Inland Fisheries and Wildlife, and the Department of Agriculture, Conservation and Forestry.

4. Proposed Site Marking. At least 30 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased.

2.20 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 ~~an Application~~ a proposed lease. This description shall include information describing the intervenor applicant's existing use of the proposed lease area. ~~In the event that the applicant is not a member of a class which may be substantially and directly affected by the proceeding, the applicant shall describe any other interest he may have in the lease proceeding which merits Department approval of his intervenor status~~; and

   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 ~~10~~ 15 days prior to the hearing. The Commissioner may waive the ~~10~~ 15 day deadline for good cause shown.

3. Participation Limited or Denied

   At least 5 days prior to the hearing, the Commissioner shall decide whether to allow or refuse intervenor applications. The Commissioner shall provide written or oral notice of his decision to the intervenor applicant and all other parties to the proceeding. ~~When participation of any intervenor is limited or denied, the Commissioner shall include in the hearing record an entry noting his decision and the reasons therefore.~~

~~A. Full Participation. The Commissioner shall approve intervenor status for any person who is substantially and directly affected by the granting of an aquaculture lease application, and for any other agency of federal, state, or local government.~~

A~~B~~. Limited Participation. The Commissioner may grant limited intervenor status to an intervenor applicant where the Commissioner determines that the applicant has a lesser interest than that necessary for full intervenor status but whose participation as a limited intervenor is warranted or would be helpful to the Commissioner in his decision making. The Commissioner may also grant limited intervenor status when the applicant has an interest in the proceeding and where the Commissioner determines that the applicant's interest or evidence to be offered would be repetitive or cumulative when viewed in the context of the interest represented or evidence to be offered by other intervenors. The Commissioner shall describe the manner in which a limited intervenor is permitted to participate in the adjudicatory process in his written notification of the granting of such status.

B~~C~~. Consolidation. The Commissioner may require the consolidation of two or more intervenors' testimony, evidence and questioning if he determines that it is necessary to avoid repetitive or cumulative evidence or questioning.

C~~D~~. 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.

~~2.25 Agency File~~

~~1. Upon receipt of an aquaculture lease application, the Commissioner shall open an agency file, which shall include all written correspondence from parties and non-parties concerning the application and memoranda of oral communications between the department and parties and non-parties concerning the lease application.~~

~~2. Public Inspection~~
~~The agency file shall be open for public inspection by prior appointment during normal business hours. The Department will supply copies of the file contents to any person for a charge according to the Department schedule.~~

2.27 Department Site Review

1. On site Inspection

A. An inspection of the proposed aquaculture site and the immediate surrounding area will be conducted by the Department. The site must be marked as referenced in Chapter 2.10(5) by the applicant.

B. Information obtained on site will include but will not necessarily be limited to bottom composition, depth and features; typical flora and fauna; relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; and navigation channels and moorings.

2. Documented Information

Site specific documented information which is available will be assembled and included in the Department report, including verification of the location of the proposed lease boundaries, distances to shore, navigational channels and moorings, tide, current, and temperature data, patterns of ice formation and flows, location of shellfish beds, observed fishing activity in and

around the proposed site, and the location of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease. The description and location of existing or proposed aquaculture lease sites within the area will be included. For the purpose of this report the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

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

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

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

2.29 Prehearing Conference

The Commissioner may require parties to attend a prehearing conference if the complexity of the issues or volume of evidence indicates that a prehearing conference would aid in the determination of issues raised by the application. The Commissioner may issue a prehearing 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. Presiding Officer~~

~~A. The presiding officer at any aquaculture lease hearing shall be either the Commissioner or a Department employee or representative designated by the Commissioner to act as hearing officer.~~

~~B. The presiding officer shall have the authority to:~~

~~(1) rule upon issues of evidence and procedure;~~

~~(2) regulate the course of the hearing;~~

~~(3) certify questions to the Commissioner for his determination;~~

~~(4) administer oaths; and~~

~~(5) take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.~~

~~C. The presiding officer may permit deviation from these procedural regulations for good cause shown, in so far as compliance is found to be impracticable or unnecessary.~~

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.

~~A. Opening Statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.~~

~~B. Record of Testimony. All testimony at aquaculture lease hearings shall be recorded and, if necessary for judicial review, transcribed.~~

~~C. Witnesses. All witnesses must be sworn and will be required to state his/her name, residence, and whom, he/she represents, if anyone, for the purpose of the hearing~~.

~~D. Testimony in Written Form. At any time prior to or during the course of 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 such pre-filed written testimony must be sworn and all persons offering sworn 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 or affiliated with 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.

~~4. Cameras and Microphones~~

~~The placement and use of television cameras, still cameras, motion picture cameras, microphones and other recording devices may be regulated by the presiding officer to ensure the orderly conduct of the hearings.~~

2.31 Evidence

~~1. Evidence which is relevant and material to the subject matter of the hearing, and is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious may be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted.~~

~~2. The presiding officer may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical, or scientific matters within the Department's specialized knowledge as well as statutes, regulations and non-confidential agency records. When facts are noticed officially, the presiding officer shall state the same during the hearing or otherwise notify all parties and they shall be able to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the hearing record.~~

1~~3.~~ 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. ~~All hearing evidence shall also be available for public examination upon prior appointment at the Department of Marine Resources in Hallowell during normal business hours.~~

C. The agency record ~~file containing the application and agency correspondence~~ shall be submitted as documentary evidence in the hearing record.

2~~4.~~ Objections

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

3~~5~~. 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~~6~~. Public Participation

Any person may participate in a hearing by offering testimony ~~making oral or written statements explaining his position on the issues~~, and may submit ~~written or oral~~ 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~~7~~. 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 his/her testimony each witness may be questioned in the order described below. The presiding officer may require that questioning of witnesses be conducted only after the conclusion of testimony by an entire category of witnesses for the purposes of efficiency or clarity of record.

(1) The presiding officer, Department legal counsel and Department staff may question witnesses at any time.

(2) The applicant.

(3) Federal, state and local agency representatives.

(4) Intervenors.

(5) At the discretion of the hearing officer, all other members of the public may have the opportunity to question witnesses directly or by oral or written questions through the presiding officer.

6~~8~~. Conclusion of Hearing

A. At the conclusion of the hearing the record shall be closed and no other evidence or testimony will be allowed into the record, except by stipulation of the parties or as specified by the presiding officer.

B. The Commissioner may re-open the hearing record after it has been closed to take additional evidence on specific issues where the Commissioner is not satisfied that he has all of the information before him necessary to make a decision.

~~9. Record~~

~~A full and complete record shall be kept for each aquaculture lease application proceeding. The record shall include, but shall not be limited to, the application, supporting documents, all exhibits, proposed findings of facts and conclusions of the presiding officer, if any, staff documents, the Commissioner's findings of facts and conclusions, and a recording or transcript of the hearing.~~

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 ~~an opportunity~~ 10 days to file responses or exceptions to the report, ~~within 10 days~~ beginning 3 days after the date of postmark or the date the electronic mail was sent~~following receipt of the report~~.

2. In submitting responses and exceptions, parties may submit a petition to the hearing officer to correct mis-statements of fact in the report. The hearing officer may correct any mis-statements of fact in his report prior to submission of the report to the Commissioner.

3. The report shall be submitted to the Commissioner with the parties' responses and exceptions.

4. Nothing in this section shall prevent the Commissioner from reaching his decision based solely on the record, after review of the hearing tape or transcript and after review of the hearing record.

2.37 Decision

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

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

   A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:

      (1) Riparian Owners Ingress and Egress. The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. He/she shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.

      (2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation. ~~For example: A lease area adjacent to the usual course of a barge in tow shall be held to a stricter standard than one in an area frequented by only outboard skiffs.~~ 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. ~~Leases may not unreasonably interfere with public use or enjoyment of such beaches, parks, docking facilities, or conserved lands.~~ In determining interference with the public use or enjoyment of conserved lands, the Commissioner shall consider the purpose(s) for which the land has been acquired.

(8) Lighting

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

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

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

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

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

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

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

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

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

(9) Noise

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

- Watercraft, harvest or transport barges, and maintenance equipment while underway;
- The unamplified human voice and other sounds of natural origin;
- Bells, whistles, or other navigational aids;
- Emergency maintenance and repair of aquaculture equipment;
- Warning signals and alarms; and

- Events not reasonably within the control of the leaseholder.

Mitigation:

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

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

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

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

(10) Visual Impact

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

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

Height limitations. All buildings, vessels, barges, and structures shall be no more than one story and no more than 20 feet in height from the water line. Height shall be measured from waterline to the top of the roof or highest fixed part of the structure or vessel. This height limitation excludes antennae, cranes, and other similar auxiliary equipment. Structures that exist ~~or are under construction~~ as of ~~the effective date of this rule~~ 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: ~~These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also address the ability of the lease site and surrounding area to support ecologically significant~~

~~flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the lease purpose.~~

(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 environmental monitoring be conducted on lease sites. Such monitoring shall: be conducted by the applicant or the applicant'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.

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

~~3. Within 120 days after the hearing on an application, the Commissioner shall render a final decision, unless the applicant agrees to a longer time.~~

3. 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. Within 30 days of the Commissioner's decision and prior to issuance of the lease, the applicant must complete the following requirements:

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

Category of Aquaculture Lease:

No structure, no discharge	$ 500.00
No structure, discharge	$ 500.00

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

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

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

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

~~3. Immediately following, but not before signing of the lease by the Department and the applicant, the lessee must complete the following requirements:~~

~~A. file the lease or a memorandum of lease in the Registry of Deeds of the county in which the lease tracts are located, and~~

~~B. publish notice of the lease issuance in the newspapers in which the aquaculture lease hearing notices originally appeared, following Department approval of the notice.~~

3~~4~~. Compliance

Failure to maintain an escrow account or performance bond, to pay rental fees in a timely manner, or failure to comply with the terms of the lease, these regulations or any applicable laws shall be grounds for lease revocation under Chapter 2.42.

4~~5~~. 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.

5~~6~~. Other Licenses

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

~~Persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 for shellfish must also comply with DMR regulations Chapters 2.95, 9 and 94 / or 15, 21 and 23 in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.~~

~~7. Environmental Monitoring~~

~~The Commissioner may require that environmental monitoring be conducted on lease sites. Such monitoring shall: be conducted by the applicant or the applicant'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.~~

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 ~~Chapter 2.41(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 ~~deemed complete b~~y the Commissioner 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 ~~shall~~ may schedule one hearing to consider the applications concurrently.

~~2.42 Annual Lease Review and Revocation~~

~~The Commissioner shall conduct an annual review of each aquaculture lease.~~

~~1. If the Commissioner determines following an annual review or at any other time that the applicant has conducted substantially no research or aquaculture depending on the purpose of the lease within the preceding year, that the aquaculture or research within the aquaculture lease area has been conducted in a manner substantially injurious to marine organisms, or that any other lease condition or the terms of these regulations or any applicable law has been violated, he may revoke the lease.~~

~~2. Unless the leaseholder waives the same, the Commissioner shall hold an adjudicatory hearing to consider revocation of a lease, subject to the notice and hearing procedures set forth in these regulations.~~

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.

~~Fifty dollars ($50) per acre per year for the first two years of the term of new leases for the bottom culture of blue mussels. This discount only applies to leases which are the result of new lease applications declared complete by DMR during the calendar years 2009, 2010, and 2011. Beginning with the third year of the term of the lease, the standard lease rent of one hundred dollars ($100) per acre per year will apply.~~

~~One hundred dollars ($100) per acre, per year for all other leases.~~

~~All rent is payable on or before October 1 of each year throughout the term of the lease.~~

2.44 Lease Amendments ~~for Adding or Deleting Species~~

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 to add or remove species or gear type, or modify operations.

2. Requests for amending leases ~~for adding or deleting species grown at a lease site~~ must be submitted on forms prescribed by the Commissioner.

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 officials 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~~. ~~A leaseholder who seeks a species amendment that will result in a change to the original lease conditions or alters the intent of the original decision, at the agency's, shall file an application for an aquaculture lease pursuant to Chapter 2.10.~~

2.45 Lease Renewal

1. ~~A lessee must file with the Department an application to renew a lease at least 90 days prior to the lapse of the lease. The~~ 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 90 days prior to the lapse of the lease. The application shall include a nonrefundable application fee of ~~$1,000 for non-discharge leases and~~ $1,500 ~~for discharge leases, and shall include information on the type and amount of aquaculture to be conducted during the new lease term~~. A lease issued for scientific research pursuant to 12 M.R.S.A. §6072-A is exempt from the renewal fee requirements in this section.

~~2. Renewal of a lease shall be an adjudicatory proceeding with notice as provided by these regulations, except that no hearing is required unless it is requested, in writing, by five or more interested persons.~~

2~~3~~. 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. the lessee has complied with the lease agreement during the term of the lease;~~

   A~~B~~. ~~the lease is not being held for speculative purposes.~~ Consideration of speculative purposes includes whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term; and

   B~~C~~. ~~the Commissioner determines that it is in the best interest of the state to renew the lease.~~ 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.

~~2.46 Fallowing~~

~~The Commissioner may require a person to submit an annual fallowing plan and a reassessment schedule and may approve them, reject them, or request changes. Revisions to the plan must be submitted in accordance with the reassessment schedule unless the Commissioner authorizes an exception due to extraordinary circumstances. A lease site fallowed pursuant to an enforcement action may not be considered fallowed for the purpose of this section.~~

2.60 Lease Transfer

1. Application. A lessee may apply for Department approval of the transfer of his aquaculture lease to another person for the remaining portion of the lease term on a form supplied by the Commissioner. The lessee must pay the transfer fee of $2,500 for non-discharge leases and $5,000 for discharge leases prior to the execution of the new lease. 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 public,~~ 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 officials may provide comments to the Department on the proposed transfer ~~renewal~~ within ~~14~~ 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. 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 applicant 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 by mailing a copy of the lease expansion application, after it has been deemed complete by the Department, by certified mail to the address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. The notice shall state that the public, riparians, and municipal officials may provide comments to the Department on the proposed expansion within 30 days of the date of the notice. Failure to include a copy of the receipt for certified mailing with the application will be grounds for denial of the application.

   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 transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

2.64 Experimental Aquaculture Lease Application ~~Requirements~~ Procedures

~~1. The Commissioner may grant an experimental lease pursuant to 12 M.R.S.A. §6072-A for areas in, on and under the territorial waters including the public lands beneath those waters and portions of the intertidal zone for commercial aquaculture research and development or for scientific research.~~

~~2. Experimental Aquaculture Lease Application Requirements~~

~~A. 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.~~

B. Fee. An application shall not be considered complete until a nonrefundable application fee has been paid for in cash or by certified check. The application fee for an experimental lease application shall be $100.

C. Required elements:

(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 proposed lease by coordinates or boundaries with coordinates for one starting point (metes and bounds), total acreage, a map of the lease area and the adjoining waters and shoreline, with a certified list of names and addresses of riparian owners indicated on the map as listed in the municipal tax records.

(3) 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.

(4) A description of the degree of exclusive use required by the project.

(5) 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 Department biologist or Marine Warden may be submitted to verify this information.

(6) The written permission of every owner of intertidal land in, on or over, which the experimental activity will occur. If private property is to be used for access, written permission from the property owner must be provided with the application.

(7) 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).

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.

D. 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.

E. Completion. Upon receipt of a written application, the Department shall notify the applicant of its receipt. Within 20 working days of receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information on which a decision regarding the granting of the application may be made. The Commissioner shall notify the applicant of his/her 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 complete.

F. Proposed Site Marking. During the time period when the application is being considered by the Department, the applicant must place visible markers to delineate the area proposed to be leased.

3. 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 amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

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.

4. Notice of Application and Comment Period.

A. Notice of Completed Application

At the time that an application is determined complete in accordance with 2.64(2)(E), 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 officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

B. Public Scoping Session

The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled 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 the Department, 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.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's

service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

C. 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, or the proposed lease abuts, shall receive a summary of the 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 a summary of the application in a newspaper of general circulation in the area proposed for an experimental lease.

5. Public Hearing. The Department may hold a public hearing on the proposed experimental lease. If 5 or more persons request a public hearing in writing within the established comment period, the Department must hold a public hearing.

1. Notice of Public Hearing. The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons interested in the lease hearing. The Department shall also distribute press releases to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing. Notice of the public hearing shall include the following information:

(1) a statement of legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 *et seq*. and the aquaculture lease provisions of 12 M.R.S.A. §6072;

(2) a short, plain statement of the nature and purpose of the proceeding, the nature of the experimental lease application, and directions on how to obtain copies of the lease application and site report from the Department;

(3) a statement of the time and place of the hearing;

(4) a statement of the manner and time within which applications for intervention may be filed;

(5) a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.

6. Municipal Approval. The Commissioner may not issue an experimental lease for the intertidal zone within a municipality with a shellfish conservation program (12 M.R.S.A. §6671) without the consent of the municipal officers.

7. Decision. The Commissioner shall issue a written decision within 60 days of the close of the comment period or the date of the public hearing, unless the applicant agrees to a longer time.

The Commissioner may grant an experimental lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-A.

A. Standards. In making the decision, the Commissioner must consider all applicable criteria as established in Chapter 2.37(1)(A)(1-7) of this regulation, except that the Commissioner may not consider the degree to which an experimental lease interferes with the use or enjoyment of conserved lands.

B. Conditions. The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. The Commissioner may require environmental monitoring of a lease site (see Chapter 2.37) and may establish any reasonable requirement to mitigate interference, including but not limited to those restrictions outlined in Chapter 2.37(1)(B).

8. Limit on Size and Duration. An experimental aquaculture lease may not be issued for a time period greater than 3 years or for an area greater than 4 acres.

9. Statement of rights conveyed. The Commissioner shall include the following statement in a lease issued under this section: "An experimental lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease."

10. Actions required of lease holder. After being granted an experimental lease, a lessee shall:

A. Record the lease in the registry of deeds of each county in which the leased area is located.

B. Publish a notice in a newspaper of general circulation in the area affected.

C. Annually submit to the Commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the Commissioner are confidential records for the purposes of 1 M.R.S.A. §402(3)(A). The submitter of commercial research and development may designate information as being only for the confidential use of the Department. The Department's public record must include the indication that information so designated has been submitted to the Department, giving the name of the submitter and the general nature of the information. Upon written request, a copy of the public records in the report must be provided by the Commissioner to the municipality or municipalities in which or adjacent to which the lease is located.

D. 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.

E. Mark the lease site according to the procedures established in Chapter 2.80 of these Regulations.

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

G. Persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072-A for shellfish must also 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.

11. Lease Rental Fee. Lessees shall pay a lease rental fee as established in Chapter 2.43 of these Regulations.

12. Renewal. Only experimental leases for scientific research may be renewed. Commercial research and development experimental leases may not be renewed. Before deciding on a request for a renewal, the Commissioner must hold a public hearing. The Commissioner shall renew an experimental lease for scientific research unless the Commissioner finds that:

A. the lease holder has not complied with the terms of the lease;

B. research has not been conducted during the term of the lease;

C. the research is being conducted in such a manner that is injurious to the marine organisms; or

D. it is not in the best interest of the State to renew the lease.

13. Annual Lease Review and Revocation. The Commissioner shall conduct an annual review of each experimental lease. The Commissioner may revoke an experimental lease if:

A. there has been no substantial research conducted on the site within the preceding year; or

B. if research has been conducted in a manner injurious to the environment or marine organisms; or

C. if any other lease condition or terms of these regulations or any applicable law has been violated.

The revocation of an experimental lease is an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

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 is signed.

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

2. Fee. An application shall not be considered complete until a nonrefundable application fee has been paid. The application fee for a limited-purpose lease application shall be $100.

3. Completion. Upon receipt of a written application, the Department shall notify the applicant of its receipt. Within 30 days of receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information on which a decision regarding the granting of the application may be made. The Commissioner shall notify the applicant of his/her 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 officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

5. Restrictions on Pending Applications. An applicant may have no more than two pending experimental leases at any time. For purposes of this section, a pending limited-purpose lease includes any application for an aquaculture lease filed by an entity in which the applicant has a legal interest (such as a partner in a partnership, a shareholder in a corporation, or a member in a limited liability company).

6. Proposed Site Marking. During the time period when the application is pending, the applicant must place visible markers to delineate the area proposed to be leased.

7. Department Site Review. The Department shall inspect the proposed site and immediate areas to obtain or verify information such as: the location of proposed lease boundaries; the general characteristics of the area, including bottom composition, depth and features; typical flora and fauna; numbers or relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; navigation channels; moorings; locations of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease site; and the amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

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

9. Public Scoping Session. The Department may conduct an informal public scoping session on the lease application prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant, and to provide the Department with information that can be used during field work or agency review of an application. The applicant is required to attend and participate in a public scoping session on their application when one is held.

10. Comment Period. Any person may provide the Commissioner with written comments on the experimental lease application. At least 30 days prior to the deadline for comments, the riparian

landowners listed in the application and the municipality or municipalities in which the proposed lease would be located shall receive a summary of the 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 a summary of the application in a newspaper of general circulation in the area proposed for an experimental lease.

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

    A. Standards. In making the decision, the Commissioner must consider all applicable criteria as established in Chapter 2.37(1)(A), except that the Commissioner may not consider the degree to which an experimental lease interferes with the use or enjoyment of conserved lands.

    B. Conditions. The Commissioner may establish conditions in accordance with 12 M.R.S.A. 6072-A(15) and may establish any reasonable requirement to mitigate interference, including but not limited to those restrictions outlined in Chapter 2.37(1)(B). The Commissioner may require environmental monitoring of a lease site in accordance with Chapter 2.40(7).

12. Actions required of lease holder. After being granted an experimental lease, a lessee shall:

    A. Annually submit to the Commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the Commissioner are confidential records for the purposes of 1 M.R.S.A. §402(3)(A). The submitter of commercial research and development may designate information as being only for the confidential use of the Department. The Department's public record must indicate that information so designated has been submitted to the Department, giving the name of the submitter and the general nature of the information. Upon written request, a copy of the public records in the report must be provided by the Commissioner to the municipality or municipalities in which the lease is located.

    B. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

       Category of Aquaculture Lease:

No structure, no discharge	None
No structure, discharge	$ 500.00
Structure, no discharge	Total combined area of all structures on lease:
≤400 square feet	$1,500
>400 square feet	$5,000
Structure, discharge	$25,000

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

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

C. 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.

13. 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 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).

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. 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.

~~2.65~~ 2.66 Emergency Aquaculture Lease

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, pathogen or parasites to the new location and that the proposed lease meets all the standards set forth in these regulations.

2. Application Requirements

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

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

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

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

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

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

(4) Terms for Temporary Approval. The Letter of Permission will remain in effect until the Department issues an emergency lease. If the Department denies the emergency lease request, the applicant must remove the animals 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~~, Department Biologist,~~ or Marine ~~Warden~~ Patrol Officer ~~or Aquaculture Environmental Coordinator~~ 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, ~~or~~ pathogens, pests, or parasites based on standard methods of diagnosis.

E. Completion. Upon receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information for making a decision on the application. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.

F. Proposed site marking. The applicant must place visible markers to delineate the area proposed to be leased according to the procedures established in Chapter 2.80.

3. Department Site and Project Review. The Department may inspect the proposed site and immediate area to obtain information on but not limited to the general characteristics of the area, the commercial and recreational use of the area and evidence of fishing activity, moorings and

navigational channels. The Department may seek advice with regards to shellfish diseases for consideration in the final decision.

4. Decision. After reviewing the application and any information obtained by the Department, the Commissioner shall issue a written decision. The Commissioner may grant a lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-B.

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

   A. The applicant's status as a leaseholder pursuant to 12 M.R.S.A. §6072;
   B. The threat to the water quality of the receiving waters and to the health of marine organisms in those waters;
   C. The reason and need for an emergency lease. The Commissioner shall consider the need for an emergency lease and whether the cause of the emergency was an unanticipated, natural phenomenon that was beyond the control of the leaseholder. Applicants are encouraged to secure a lease under 12 M.R.S.A. §6072 or §6072-A for non-emergency situations; and
   D. All applicable criteria as established in Chapter 2.37(A).

   ~~B. Conditions. The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the health and safety of the receiving waters and the marine organisms, and that encourage the greatest multiple, compatible uses of the leased area. These conditions must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the Commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38 §465-B.~~

5. Limit on Duration. An emergency aquaculture lease may only be issued for 6 months or less.

6. Extension of emergency aquaculture lease. A person wanting to extend an emergency lease beyond 6 months must submit an application for either a standard lease pursuant to 12 M.R.S.A. §6072 or a limited purpose lease pursuant to 12 M.R.S.A. §6072-A for that lease area within 60 days of being granted the emergency aquaculture lease. If the application for a new lease is accepted, the emergency aquaculture lease will remain in effect until the effective date of the new lease. If the Commissioner denies that person a lease under §6072 or §6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the Commissioner's decision.

7. Public Notice. Upon granting an emergency aquaculture lease, the Commissioner must provide notice to the municipality in which the emergency aquaculture lease is located. Within at least 30 days from granting an emergency aquaculture lease, the Commissioner shall:

   A. Publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restrictions in the leased area;

   B. Mail a notice to any ~~public~~ state agency the Department determines should be notified~~, including but not limited to State Planning Office, Department of Environmental Protection, and the United States Army Corps of Engineers~~.

8. Actions Required of lease holder. After being granted an emergency aquaculture lease, a lessee shall establish an escrow account or secure a performance bond in the amount required by

the Department in the lease. The amount is to be determined according to the schedule contained in Chapter 2.40.~~:~~

~~A. Record the lease in the registry of deeds of each county in which the leased area is located; and~~

~~B. 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.~~

9. Revocation.

The Commissioner may revoke the lease if he/she determines that the aquaculture project fails to meet the criteria contained in 12 M.R.S.A. 6072-B(1) Chapter ~~2.65(4)~~ 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. ~~Each~~ The lessee shall mark the lease in a manner prescribed by the Commissioner in the lease, and ensure that all structures authorized by the lease remain within the boundaries of the lease.

2. ~~Each~~ The lessee shall maintain his aquaculture lease in such a manner as to avoid the creation of a public or private nuisance and to avoid substantial injury to marine organisms.

3.~~2. Each~~ The lessee is obligated for the routine collection and proper disposal of all errant gear, errant equipment, or errant solid waste from the lease site.

4. In order to prevent adverse impact to public health, the lessee shall make lawful efforts to ensure animal excrement does not accumulate on or near structures.

5. The lessee is obligated to properly contain and dispose of human waste generated during lease operations.

6. The lessee must maintain a copy of the lease's operational plan, executed lease and any amendments thereto on file and produce these documents upon request by the Department.

2.80 Marking Procedures for Aquaculture Leases

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.

2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

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.

4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.

2.90 Limited-purpose aquaculture (LPA) license

1. LPA License

A. No person may engage in the activities described in 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR) in accordance with these regulations. An LPA license may be issued only to an individual or to a municipal shellfish management committee 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.

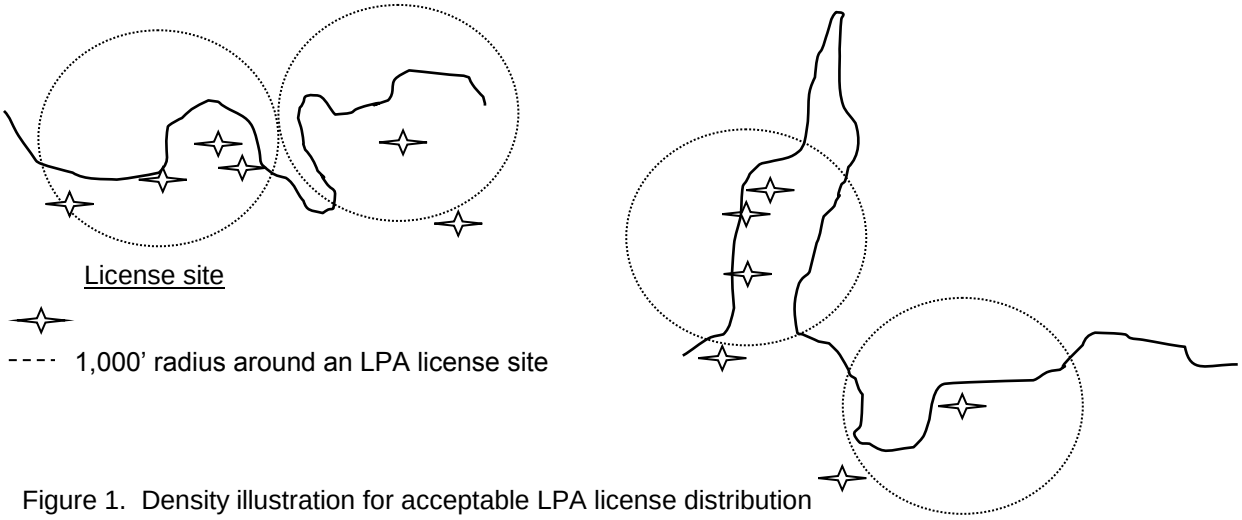

Figure 1. Density illustration for acceptable LPA license distribution

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

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

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

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

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 2.90(2)(A).

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

All wild shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under 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 2.90(4) and may require evidence that the seed or stock is free from disease, and will require a permit from DMR.

C. Site location

(1) The application must provide 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, 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 2.90 (1) (B), the owner or controlling entity of which has consented in writing to the placement of the gear, the map and list are not required.

D. Required Signatures
The application form shall require the following signatures:

(1) Applicant. The individual applicant's signature, including printed name and date, which shall verify that the application does not contain false information and that the applicant will comply with all applicable laws and regulations is required. When the applicant is a municipal shellfish management committee, 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 represents an educational institution, an administrator shall sign the application on its behalf.

(2) Municipality. Harbormaster's signature, which shall verify that it is the harbormaster's opinion that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

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

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

(3) Intertidal sites

(a) Municipal Shellfish Management Committee. If the proposed location is above the extreme low water mark in a municipality with a municipal shellfish management committee 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 with the application will be grounds for denial of the application. If the license applicant is the only riparian, or if the license site is located in a marina slip or lobster pound or similar site as described in subsection 1(B) above, the owner or controlling entity of which has consented in writing to the placement of the gear, the notification requirement is waived.

(2) The Department shall notify any town or plantation of the final status of an application. Failure to do so does not invalidate a license.

F. Site Plans

(1) Plan view
The application must include a plan view, which must be on 8.5" x 11" size paper and show the maximum layout of gear to be deployed drawn to scale, with the scale indicated to verify the 400 square foot limit. The site plan must include a north arrow with True or magnetic clearly indicated, arrows that indicate the tide's primary ebb and flood directions, mean high and low-water marks, and the distance from the license to these mean high and low-water marks. The site plan shall also include to a distance of 1,000 feet from the license in all directions, the locations of any federal or local channels, anchorages, moorings, structures, existing lease boundaries, other LPA licenses (including whether or not they are exempt from the density requirement in 2.90 (1)(B)), DMR water quality closure lines (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 equipment listed below, may not be used. All dimensional information on the mooring equipment contained inside and outside the boundaries must be included pursuant to 12 M.R.S.A. §6072-C (5)(E)(2).

Upweller or "FLUPSY"

Shellfish rafts, associated predator nets and spat collectors

Shellfish tray racks and over wintering cages

Soft bags, semi rigid bags and floating trays

Lantern nets and pearl nets

Fencing and brushing

Moorings

Scallop spat collector bags

Scallop ear hangers

Long lines (vertical or horizontal)/rope grids

Bottom anti-predator netting

G. Renewal of licenses

(1) To be eligible to renew an LPA license, in 2019 or in any subsequent year, the applicant must have completed any educational requirements established pursuant to 12 M.R.S.A. §6072-C(3)(A) and must submit an application for renewal to the Department online or postmarked no later than December 31st. If a renewal application is not submitted to the Department by December 31st, 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.

(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 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.

A. Dimensions
The site must include four 90-degree angled corners, and may be no less than 1’ or greater than 400’ on any one side. Dimensions must be provided in whole feet.

C. Territorial waters
LPA license sites must be located within Maine’s territorial waters as defined in 12 M.R.S.A. §6001(48-B) and pursuant to 12 M.R.S.A. §6072-C(2).

D. DMR Water Quality Program Closure Areas

(1) LPA license sites may not be located within 300 feet of any area classified as prohibited.

(2) Except as provided in subsection (3) below, LPA license sites may only be located in areas that are classified as approved or conditionally approved pursuant to DMR regulations Chapters 95 and 96. Should an area be downgraded, an LPA located within the area may be renewed for one additional year at the next date of renewal.

(3) Exemptions

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

i. Seed that is 25 mm or less in size can be moved to another aquaculture site without a relay permit under Chapter 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.

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

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

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

E. 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. §§12803, 12804 and 12806 and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

F. United States Army Corps of Engineers (ACOE) Authorization
Upon receipt of an LPA license application, the Department shall forward a copy of the application to the ACOE for their review and approval. A permit from ACOE is required prior

to the placement or use of any gear proposed in a LPA application. No structures may be located within the boundaries of a Federal Navigation Project.

4. Authorized Species
An LPA license may be issued only for the cultivation of the following species: blue mussel *(Mytilus edulis)*, hard clam / quahog *(Mercenaria mercenaria)*, hen clam *(Spisula solidissima)*, American or eastern oyster *(Crassostrea virginica),* European oyster *(Ostrea edulis)*, sea scallop *(Placopecten magellanicus),* soft-shelled clam *(Mya arenaria)*, razor clam (*Ensis leei*), green sea urchin (*Strongylocentrotus droebachiensis*), bay scallops (*Aequipecten 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 (*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 2.05(1-G).

B. An LPA license applicant may declare assistants to be named on any LPA license. Declared assistant(s) named on any LPA license must be in possession of a copy of the LPA license whenever engaged in any activity at that licensed site. Individuals other than the license-holder's declared assistants may assist the license holder and, in that capacity, utilize, raise, lift, transfer or possess any approved aquaculture gear belonging to that license holder if a hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

C. Marine Biotoxins

(1) Closed Area compliance
There shall be no provisions made for biotoxin monitoring or testing for LPA sites.

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

(1) Department's LPA license number, site location and date.

(2) Source of shellfish, including seed if the seed is from growing areas which are not in the approved classification status pursuant to 2.90 and/or Chapter 15;

(3) Dates of transplanting and harvest;

(4) Detailed records of sales; and

(5) Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.

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

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

6. Maintenance Standards

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

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

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

2.92 Aquaculture lease site workers operating under the authority of ~~a shellfish~~ an aquaculture license holder (12 M.R.S.A. §6810-B ~~§6601(2-A) and §6406~~)

1. ~~Individuals~~ Unlicensed individuals ~~not licensed pursuant to the following statutes~~ may ~~nonetheless~~ 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 ~~either~~ holds the aquaculture lease for the site ~~or is employed by the lease holder~~. The license holder must direct and oversee the work of the unlicensed individuals. ~~Licenses covered by this rule include:~~

~~A. A commercial shellfish license pursuant to 12 M.R.S.A. §6601 (2-A);~~
~~B. A mussel hand-raking license pursuant to 12 M.R.S.A. §6745 (2-A); or~~
~~C. A mussel boat license pursuant to §6746 (2-A).~~

Such unlicensed individuals shall keep a copy of the ~~appropriate~~leaseholder'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 ~~any such~~the lease holder's license~~s~~, 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 ~~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) 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, and Chapter 2.05 and Chapter 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 Chapter 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 Chapter 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 Chapter 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 Chapter 15.02(A)(75). (The term "special license" in this chapter section does not refer to licenses issued pursuant to 12 M.R.S.A. §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 Chapter 15.02(A)(81)

12. “Shellstock” means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 M.R.S.A. §6001(42) and Chapter 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/rulemaking/

CHAPTER NUMBER AND RULE: Chapter 2 Aquaculture Lease Regulations

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

DATE AND PLACE OF PUBLIC HEARING(S):
January 22, 2019, 5:00PM, Yarmouth Log Cabin, 196 Main Street, Yarmouth, ME
January 23, 2019, 5:00PM, Rockland Ferry Terminal, 517A Main Street, Rockland, ME
January 24, 2019, 5:00PM, Ellsworth City Hall, 1 City Hall Plaza, Ellsworth, ME
If any hearing(s) listed above is postponed due to weather, an alternate hearing will be held as follows: January 25, 2019, 2:00PM, Marquardt Building, 32 Blossom Lane, Augusta, ME. Notice of a postponement will be posted on DMR's website.

COMMENT DEADLINE: February 4, 2019

PRINCIPAL REASON(S) OR PURPOSE FOR PROPOSING THIS RULE: [*see* §8057-A(1)(A)&(C)]
The purpose of the proposed rule is to clarify the aquaculture leasing regulations, including the elimination of redundant language from 12 M.R.S.A. §6072, 6072-A, and the Maine Administrative Procedures Act. It would also eliminate duplicative references to the National Shellfish Sanitation Program (NSSP) Model Ordinance which was adopted by reference in 2017. The proposed rule clarifies and establishes additional minimum lease maintenance standards. It would also establish lease expansion application procedures in accordance with 12 M.R.S.A. §6072(12-C).

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)]
The proposed rule includes the addition or modification of provisions based on the NSSP including: maintenance of a lease operation plan on file, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an aquaculture license holder, in accordance with 12 M.R.S.A. §6810-B, may engage in. It would also make several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It would create lease expansion application procedures in accordance with 12 M.R.S.A. §6072(12-C). The proposed rule would also restrict the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It would clarify that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The proposed rule also clarifies and establishes additional minimum lease maintenance standards. Overall, these changes are intended to protect public health, incorporate statutory changes, remove duplicative language, and clarify leasing regulations.

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]:

In developing the rule, the Department relied on feedback from the Aquaculture Advisory Council, Aquaculture Division staff, and Marine Patrol.

ESTIMATED FISCAL IMPACT OF THE RULE: [*see* §8057-A(1)(C)]
Enforcement of these proposed amendments will not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

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

ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS: [see §8057-A(2)(A)]

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

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

Note: If necessary, additional pages may be used.

Basis Statement

This rule clarifies the aquaculture leasing regulations, including the elimination of redundant language from 12 M.R.S.A. §6072, 6072-A, and the Maine Administrative Procedures Act. It eliminates duplicative references to the National Shellfish Sanitation Program (NSSP) Model Ordinance, and includes the addition or modification of provisions based on the NSSP including maintenance of a lease operation plan, preventing the accumulation of animal waste on structures, proper disposal of human waste, and the activities that an authorized representative of an aquaculture license holder, in accordance with 12 M.R.S.A. §6810-B, may engage in. It makes several changes to the leasing procedures for standard and limited-purpose aquaculture leases, including the adjustment of the timing for the scoping session, the information required to be submitted regarding an applicant's financial capability, and a prohibition on the siting of leases within the 300:1 dilution zone around a wastewater treatment plant. It enacts lease expansion application procedures in accordance with 12 M.R.S.A. §6072(12-C). The rule restricts the number of pending limited-purpose lease applications any one applicant could have in process to two applications. It clarifies that an emergency lease could be utilized when the safety of the consumer is threatened, as well as that of the shellfish or animal. The rule also clarifies and establishes additional minimum lease maintenance standards.

In consideration of the comments received, the Department has made the following changes:

- Kept the term "Experimental" in reference to limited purpose aquaculture leases.
- Allow up to two tracts to 1) accommodate site rotation/fallowing or 2) to site around geographic feature, navigation corridor or existing uses so long as the tracts are no more than one half mile apart
- Removed the provision allowing other proposals for same site to be accepted if an applicant is required to hold a second scoping session.
- Clarified that assessment of both discharge and non-discharge leases must consider existing and potential uses in application
- Clarified requirements of oil spill prevention and control plan
- Clarified that riparian permission is only needed for use of intertidal lands if the riparian owns the intertidal lands that will be used by the applicant

Summary of Comments:

Notice of this proposed rulemaking appeared on January 2, 2019 in the five major daily newspapers as published by the Secretary of State. On January 9, 2019, the rule was posted on the DMR website, and electronic messages were sent to individuals who subscribe to DMR notices. Electronic notice was provided to aquaculture lease and license holders, who provided the Department with an email address. Public hearings were advertised in compliance with the procedures outlined in the Maine Administrative Procedures Act and were held as follows: January 22, 2019, 5:00PM, Yarmouth Log Cabin-Yarmouth, ME; January 23, 2019, 5:00PM, Rockland Ferry Terminal- Rockland, ME; January 24, 2019, 5:00PM, Ellsworth City Hall-Ellsworth, ME. The comment period closed on February 4, 2019.

Attendance at the Yarmouth Public Hearing

Name	**Affiliation**
Tom Santaguida	Zone F Lobstermen
John Powers	
Michael Breton	

Martin Castillo	Zone F Sternman/Sternwoman
Kelsey Fenwick	
Andrew Libby	Not Specified
Monty Vogel	
Thomas Henninger	
Matt Moretti	Wild Ocean Aquaculture
Paul Dioli	Maquoit Bay
Nate Perry	Pine Point Oyster Company
Jimmy Catlin	Oyster Growers
Bob Earnest	
Doug Niven	
Derek Devereaux	
Peter Francisco	Eider Cove Oysters
Lori Howell	Farmer
Peter Stocks	Mussel/Scallop Aquaculture
Randy Hamilton	LPAs
Toby Ahrens	Mussels
Meredith White, Jeff Auger, and Bill Mook	Mook Sea Farm
Crystal Canney	The Knight-Canney Group
Daniel Devereaux	MPOC
Willy Leathers	Maine Ocean Farms
Jesse Shannon	Hidden Creek Oysters
Kathie Dioli	Maquoit Bay Preservation Group
James Crimp	Ocean Approved
Bill Ferdinand	Eaton Peabody

Attendance at the Rockland Public Hearing

Name	**Affiliation**
Seth Barker	Maine Sea Farms
Jonathan Turcotte and John Clapp	Glidden Point Oyster Company
Jaclyn Robidoux	Maine Sea Grant
Parker Gasset	University of Maine
Phoebe Jekielek	Hurricane Island Foundation
Crystal Canney	The Knight-Canney Group

Attendance at the Ellsworth Public Hearing

Name	**Affiliation**
Andrea “Trey” Angera	Maine Seaweed Exchange/Springtide Seaweed
Sarah Redmond	Springtide Seaweed
Donna Brewer	None Specified
Marsden Brewer	Maine Aquaculture Co-op
Mike Briggs	Taunton Bay Oyster
Stephen Rappaport	The Ellsworth American
Spencer Swanson	Mussel Bound
Victor Doyle	None Specified

Alex and Fiona de Koning	Acadia Aqua Farms
Evan Young	Blue Hill Bay Mussels
Bailey Bowden	Town of Penobscot

Tom Santaguida, Yarmouth Public Hearing, January 22, 2019
I am going to go by section, so people follow along. Section 2.07 under four, the preapplication meeting. That's really good and then jumping over to the scoping session. Under the scoping session at the time when fishermen if they get notice of the scoping session, which I guess is wanting for better methods and procedures for notifying fishermen. Then fishermen could meet. I think looking ahead in the future that notice is too late. A lot of the avoidance of conflict, under some circumstances, a pre-application period is a time when an applicant hasn't submitted anything formal can meet with fishermen. One idea is we have subzones in our lobster zones, so F-6 is Freeport and Bailey Island. So, if someone was going to submit an application they would have to get the list of Zone F-6 lobster fishermen and other commercial fishermen who use zone F-6. They could make it a requirement in rule that they notify them. I don't know if there is room for that at this point. That was a comment I had. Pre-application time is better because it will enhance more open dialog and if an applicant is in process already and he calls up some fishermen there might be some reluctance to do that because it is on the record. Side conversations after an application is filed might not be as productive as before.

And then on fishing use. One of the requirements is a description of observed current commercial and recreational fishing activity occurring in the proposed lease tract and the immediate vicinity of the proposed lease site. The development of thought could be thought about, because the person applying for the lease may not have the experience level high enough to adequately comment on that.

Monty Vogel, Yarmouth Public Hearing, January 22, 2019
As far as notification goes, I'd like to extend that not just to lobstermen or other fishermen, but to abutters. If there is some new project going in anywhere generally abutters have to be informed. I see no difference here. Landowners within a mile radius should be informed on any new application.

Bill Ferdinand, Yarmouth Public Hearing, January 22, 2019
I am a lawyer with Eaton Peabody and we do aquaculture leases. I am not really opposed to this, but some ideas occurred to me as I was reading this and through our experiences with the leasing process. One is the public comment period and when you have an adjudicated hearing, they get a little bit mixed up and I wasn't sure how you guys are trying to resolve that here. I've seen in other permitting processes that the public comment period is more open and the hearing has a set timeline. The comment period, you don't stop it before the hearing for example. You could even have it go beyond the hearing. DEP has ways of managing that and maybe you could talk with them. All the agencies that do this have a longer and looser comment period. At the PUC they even register them and people can see them online. The hearing has its own process with parties and everything. I'd look at a more loose comment period. I missed your discussion on separate applications for different tracts. This comes up in other permitting contexts too. I think it would save some time for you guys if you have things that are functionally related to one another. They call it a common scheme of development at DEP. Those tracts should be applied for together. If they have nothing to do with each other then maybe you want to separate them. If you have an application, yeah it will have different tracts, but if they are related and functionally operating together you probably want to look at them together. Otherwise, you'd have to do separate hearings and it could get really confusing. DEP calls it a common scheme of development

and it would be a judgment call on your part. I was down at an aquaculture conference earlier this month and Massachusetts is looking at a safe harbor, or if you are familiar with the DEP process, permit by rule. I am seeing a lot of commonality in oyster growing and I am starting to hear a lot of commonality coming out of the Department about how you approach these things. Massachusetts is now saying if you are this size of lease, growing this type of shellfish, with this type of equipment, we could approve that more easily. So you give people the opportunity to comment and if there is nothing wrong with it you can have a shortened approval process. Permit by rule is how they do it at DEP. Massachusetts is actually working on the operation or parameters of that approach. That might save you guys some time. I think that would help you and growers. It would provide them with some stability. I think in general you should be looking down the road to standardize the process. Otherwise, you will be doing a lot of hearings.

Lori Howell, Yarmouth Public Hearing, January 22, 2019
I am not really opposed, but I have concerns about a few things. I too have concerns about the tracts. I like the common scheme of development or purpose being the same. I do think you'll have to make some allowances or allow restrictions to be placed on a lease. Lets say its ten acres or two acres right down the middle and there is hard bottom down the middle or that's an area of frequent navigation. I think you are going to have to work out how you are going to address that. In reality it would be one lease, but maybe there is an area in between. There will be cases like that and it doesn't make sense to have two lease hearings for sites that are potentially right next to each other. I would like to see the definition of emergency lease being even more broadened. With the operational plan with the ISSC to make it a fixed document, it was to allow and encourage us to make continuous improvement. One of the definitions for operational plan suggests you have to address the types of vessels used and the number of trips per day. If I said in my operational plan that we are going to go out five times a day but we change our operations, maybe for public health reasons, to get things into the refrigerator within two hours. Now I am making ten trips and that doesn't seem to matter, but I don't think you guys want to be overwhelmed with requests for those types of changes. I don't like the scoping session draft application. That sounds to me like it is overly cumbersome and some of the time limits sound difficult. I forget what some of timelines are, but it sounds like they couldn't even be met if the next step didn't happen within a fairly brief period of time. You'd have to start over again. I'll submit comments that address that more specifically.

Nate Perry, Yarmouth Public Hearing, January 22, 2019
In general, I want to applaud the Department for attempting to streamline and continue to evolve the process. Specifically, I'd like to see some clearer definition on "direct and oversee" in section 2.90(1). What is DMR's definition of "direct and oversee" for a farm's employees. That could be rather cumbersome depending on what you come up with for a definition. Without further exceptions added, I do oppose the rule for eliminating multi-tract leases.

Parker Gassett, Rockland Public Hearing, January 23, 2019
The Department should consider an exception that would allow siting within the 300:1 dilution zone for non-food leases. Such an exception would allow municipalities to conduct remediation.

Andrea "Trey" Angera, Ellsworth Public Hearing, January 24, 2019
Id like to clarify that pending relates to the number of applications you have not leases you may have. In the regulations the names be designated something. Like LPAx or something. I think the language on operational plans should be clarified. I understand what the goal is, but even in the section where it says

you can use your application as the plan. It would be nice if you added a comma to say: "so long as it meets the requirement of the authorizing statute." I am afraid that people will do one thing or the other. That they never have to do it again. With regards to financial capability, what I am noticing in general is that there are buyers that fund these projects. So the buyers fund the leases. Does that create a strawman situation where buyers can bypass the limitation on the number of leases? Also whose responsible if all the money is coming from one of your customers? I just thought the financial obligations, it should not be solely captive to one particular customer.

Marsden Brewer, Ellsworth Public Hearing, January 24, 2019
The change in name experimental is really a nightmare. It just really confuses stuff. Not allowing tracts on leases particularly tracts work really well in scallop aquaculture, because you have separation between the gear, which is an area that is not being used, but it can still be fished. In Japan they use 150 feet of separation between lines. It's also a good business for their food and not overdoing it. Making it so it works for other species. Maybe you could do something different with that so it will work for just a single line culture.

Fiona de Koning, Ellsworth Public Hearing, January 24, 2019
I'd like some provision that if we are limiting the number of pending experimental applications to two per applicant. That the Department have some guideline to get reviews done timely.

Tom Santaguida, submitted via email, January 24, 2019
I am a resident of Brunswick, Maine. I am a Zone F lobsterman. For background purposes to support my comments: I have been employed in the commercial fishing industry every year in some capacity since 1972 (47 years). In 1987, for about one year, I was employed by the Department of Marine Resources (DMR) as a Fisheries Technologist. I primarily built gear for fisheries research projects (I built all of the square mesh cod-ends, for one example) but my duties also included aquaculture lease application site visits and DMR site visit report preparation. I am also familiar with rule making and administrative procedures - I was employed late 1987 to late 2007 by Inland Fisheries and Wildlife, the last 10 years as Major and Colonel of the Warden Service. To be clear, during this 20 year period I was still actively involved in commercial fisheries as a fisherman. I think it is very important that DMR consider some expansion of some specific areas of Chapter 2 that are currently being considered in rule making. Aquaculture is a growing industry and all indicators are that it will continue to grow. It is important for Maine to identify areas of potential conflict on the horizon that might develop between this growing industry and traditional and existing commercial fisheries. My comments about the proposed rulemaking activity for changes to Chapter 2 include:

Section 2.07 (Pre-Application Meeting)
I strongly support pre-application activities on behalf of the applicant. Currently, DMR recommends but nowhere requires that applicants reach out to members of the local traditional fishing community to discuss the application and develop a conversation and ideas about that application. While this is a "recommendation" to applicants, again it is not required. In the current proposed rule changes, the Pre-Application Meeting directs the applicant to meet with municipal officers and DMR for a two way informational process. It is during the pre-application time window that the applicant should also be required to contact members of the local fishing community to have a discussion about the intent of the applicant and for the applicant to get feedback from commercial fishermen in the area of the proposed lease.
The platform for this interaction could be:

- Include a minimum number of fishermen in the Pre-Application Meeting
- Have a "stand alone" pre-application step whereby the applicant must contact local fishermen (of all fisheries potentially impacted) and arrange a meeting to describe the proposed lease. One idea for this step would be to require the applicant to notify by mail, all license holders in a lobster sub-zone with a letter of intent to apply and a notification of an opportunity to meet and discuss the proposed application so both parties may provide and obtain information and potentially work out a variety of problems – prior to formal process starting. This also has the ancillary benefit of everyone getting to know each other – which will facilitate conflict resolution at some future time. A second idea would be to require the would be applicant to contact the most relevant Lobster Zone Council representative to determine who the applicant should speak with. The applicant should have to document and provide documentation that pre-application discussion with fishermen of traditional fisheries in the proposed lease area occurred.

2.08 – 2 (Scoping Session)

I am aware the scoping session acts to achieve the outcome of the comments I made above, however there are two deficiencies with the use of the scoping session to achieve the outcomes I listed above.

1. The scoping session is post-application. If pre-application information is sought by the applicant, location changes might be reasonable for the applicant to consider and reduce or eliminate cumbersome opposition that occurs inside the post-application formal processes;
2. Notification of the scoping session is not sufficient for the average person to receive, manage and respond to. The average person may or may not access newspapers, and may or may not be on DMR's e-mail lists. I am very well aware DMR can only do so much to notify the public about events such as scoping sessions. My comment is that, even with DMR doing the absolute best they can to notify, it does not address the reality that a substantial number of potential stake holders will never see the notice. This brings me back to my comment about why the proactive, pre-application steps – made by the applicant – are so very important and also target a very specific group of people (fishermen) who are potentially going to end up providing information that is specifically relevant to statutory decision-making criteria.

2.10 – 1D (Application Requirements for Standard Lease: Fishing Use)

In Section 2.10 (1)(D) the proposed rule change includes the language: A description of observed current commercial and recreational fishing activity occurring in the proposed lease tract and the immediate vicinity of the proposed lease site. The description should include the type, duration and amount of activity. This requirement is significantly inadequate on many levels. Since fishing activity is one of the statutory considerations in the decision, it needs better attention. First, the time that observation occurs may not in any way coincide with actual activity that does indeed occur. Next, the applicant may not be knowlegeable enough to 1) identify type of activity 2) identify duration 3) identify amount. Further, the applicant is biased and not objective. The applicant wants to get the lease. That is a strong and motivating bias. The applicant also is probably not going to pay very close attention to commercial fishing activity – at the reporting level – at least until the application is filed. In fact, numerous applicants are not even from the general area the lease is being proposed, so there is no real way they are able to report on this requirement in a meaningful way. I comment that this requirement needs significant expansion and development. To be able to accurately describe on type, duration and amount of commercial and recreational fishing activity in a proposed lease site requires historical and in-depth understanding of that location. My recommendation is to have a Marine Patrol Officer who has patrolled the area for a minimum of one year be the person to provide this information, not the applicant. If the seasoned MPO does not know, he or she will know who to inquire with to get accurate information and the MPO will understand that information and how to assess it.

Mike Briggs, Taunton Bay Oyster Company, submitted via mail, January 31, 2019

Following are my comments against one of the conditions proposed for rule-making changes.

(1) Siting Restrictions:

b) A lease must be one contiguous tract except where there is a navigational channel that would otherwise transect the lease, and then may not exceed two tracts. The distance between the two tracts must be the minimum distance practicable to avoid unreasonable interference with navigation. Site selection will either make or break an oyster farmer. I can only assume that the state and the DMR would like to see a successful aquaculture industry in Maine. Most of Maine's oyster industry locations are in estuaries. Sometimes the only options in these usually narrow and twisting bodies of water is to apply for several individual sites. An oyster farmer such as myself bottom plants. It is nearly impossible to harvest bottom planted oysters with surface gear floating overhead. So an area for surface gear and an area also for bottom planting is needed. Most bottom sites are close to shore to stay in shallow water. Ordinarily I would choose a bottom site and then place floating gear as far away from riparian's as possible. Now with this rule change I'd have to place the floating gear next to the bottom site, if even possible, and closer to riparian's just to meet the requirements of this proposed rule. This in turn will upset riparian's more and here we go with a contested and costly hearings process. The alternative is to go through the process twice or choose a poorer site that would increase the odds of failure. This is such an unnecessary burden to everyone concerned, including the DMR. Also, you can't place an oyster farm just anywhere. Bottom area is especially hard to find and sometimes requires several small areas, because one large enough sometimes doesn't even exist within the area the applicant has access to. You could conceivably have to go through this process 4 or 5 times just to have a 4 or 5 acre farm.

I'll use myself as an example. I have started the process applying for four sites in Taunton Bay. Each site has it's own individual purpose. One site for bottom culture is in the upper portion of the bay where water is very warm and oysters grow quickly. Another site (also bottom) is close to the mouth of the river where the water is colder and oysters grow slower. The reasoning behind this site is that it can be harvested in the colder months when the first site would be iced-over. Also, the water is cold enough so it is unlikely that oysters will spawn or if they do it will be later than the site in the upper bay. Oysters have poor quality meats after spawning. When oysters spawn in the upper bay we can harvest the better quality oysters in the lower bay until meats fill out in the spawned oysters. The third bottom site is even closer to the mouth of the river. This area rarely freezes over. This will give us product during the coldest times of the winter. The fourth site is for surface, specifically for a series of upwellers placed in the upper bay. Total acreage of the four sites is 8-9 acres.

Obviously, it would be impossible to find one site to meet my needs. With this rule- change proposal I'd have no choice but to have 4 Pre-application meetings, fill out 4 draft applications, have 4 Scoping sessions, 4 Site Reviews, fill out 4 final applications and endure 4 Public Hearings to say nothing of the addition $4500 in application fees. What if l feel the need to retain an attorney? How much more will retaining one 4 times add to the cost? This proposed rule-change is ridiculous and is a slap in the face to the entire industry.

I'll continue to use my 4 site application as an example. I've heard from several DMR staff that one of the reasons behind this change is that some of the sites are far apart, sometimes a mile or two. In a boat at 30 MPH it takes two minutes to go a mile. If the site is 2 miles away a round trip will take all of 8 minutes. If all 4 sites were 2 miles apart that's a total of 32 minutes of travel time. To counter the cost of 24 minutes of travel time for the additional 3 tracts, the states solution is to spend hundreds of

additional man- hours (state and applicant) and countless thousands of dollars by going through the entire process 4 times. This defies common sense. That would be like making a round trip to the grocery store to buy one item to a time. What if this proposal is seriously contested as mine was in Northern Bay? How much more time and money would that cost the DMR and the applicant to go through the whole process 4 times rather than 1? Has anyone done a cost analysis to compare (for instance) doing 4 sites individually compared to the cost of doing them all at once, even with the additional revenue from multiple fee charges? All this proposal will do is give the opposition another tool to grind down applicants. How much louder will they holler and say the river is being over-run with oyster farms when there are 4 separate lease applications even though there wouldn't be any more acreage? The department should know by now the opposition is all about deception, not substance. Anyone remember what the LPA's did in the Bagaduce?

This proposed rule-change will discourage people from entering the industry or expanding their current businesses. It will create more failures trying to comply with the rule-change. In turn this will reduce revenue the department receives from lease rental fees. Also, the department has done a poor job getting these applications granted in a timely fashion as it is. What will happen when the work load is increased by 200% or 300% due to processing all sites individually? This is a penny wise pound foolish approach and a huge unnecessary burden for applicants and the DMR. Keep in mind all the industry has heard lately is how the department is going to make the application process easier. I hope common sense will prevail and this proposed rule- change is dropped.

Bill Mook, submitted via email, January 31, 2019

2.08 Application Procedures for Standard Leases

1. Draft application submission. It seems the purpose of this is to provide more information to DMR and the public prior to the Scoping Session, yet it will add time and complexity to an already lengthy and complicated process. The scoping session is supposed to be a less formal opportunity for the public to learn about the proposal and for the applicant to understand what public concerns may arise. We suggest that instead of a formal draft application, the applicant be prepared to forthrightly address specific questions provided to the applicant by the Department. These questions could be based on the Department's experience with the concerns typically raised in the leasing process, and specific issues that may have been identified in the pre-application meeting.

2. Scoping session. To make sure that notice of scoping sessions is sufficient to avoid the accusation by members of the public that they were "blindsided" by the proposal, we suggest that the advertising period is increased to two weeks and further suggest use of additional means (social media?) of getting the word out? This is one step where a bit more time may be warranted.

5. B. Location. First, there needs to be a clear definition of "materially differs." Second this potentially adds yet more time to the process, even in the event that the applicant changes the location based on feedback at the scoping session.

6. D. We have concerns about this provision giving the Commissioner the ability to deny a lease without a hearing. The final application represents a large investment in time, money or both for the applicant. It seems incredibly unfair unless there is clear guidance as to the specific deficiencies that would cause termination without a hearing, so that the applicant can reasonably know the proposal is deficient prior to preparation and submission.

2.10 Application Requirements for Standard Leases

1. A. (1) b) "A lease must be one contiguous tract except where there is a navigational channel that would otherwise transect the lease, and then may not exceed two tracts." There are several reasons

that this is ill-advised.

- Tracts provide a way to lease less acreage while ensuring riparian access.
- Leasing less acreage lessens blow-back from opponents
- Tracts provide flexibility in the adjudicatory hearing process to make changes. They can be dropped or shifted more easily than making changes to gear plans and having those changes reviewed and commented on by all parties.
- Having to make separate applications for multiple tracts that are part of and necessary to a farm's operation will shift the industry towards better financed, bigger operations, diminishing the industry's ownership diversity. Having a full range of farm scales and types of ownership will arguably foster more resiliency and innovation.
- This will mean more applications, more cost, more backlog of pending leases and goes completely against the stated desire to "streamline" the leasing process.
- If multi tract leases were lumped into one giant lease it unfairly punishes the farmer by creating the impression of a much larger farm operating than actually exists. For example, our winter lease is made up of 3 tracts totaling 2 acres. The tracts are functionally related. If they were lumped together the lease would be considerably bigger, causing more opposition and requiring considerably more rent to be paid for acreage we would be unable to use.

1.M. Suggested wording: "The written permission of riparian owners for use of any intertidal lands that they own that will be used."

Susan Olcott, submitted via email, February 1, 2019

I wish to submit comments on the DMR's Rule-making proposal. I have previously submitted comments on the Mere Point Oyster Company's lease for Maquoit Bay to the effect that I fully support the development of an aquaculture industry in Maine, but I believe that the appropriate rules and regulations are not currently sufficient to handle the scale proposed for this lease application. This lease stands to set a precedent for other leases along the Maine coast and has the potential to open up a great deal of public waters for private gain without appropriate input from other ocean users and coastal residents. The character of the Maine coast and what it offers to Maine citizens as well as those who value it as a tourist destination would be adversely changed if leases such as this one are allowed to move forward without careful consideration for their location or scale.

My first comment applies to the necessity of local input in decision-making. While the state law dictates that the DMR and not individual municipalities have official regulatory authority over standard leases, I believe that there needs to be a more proactive process to include input from those who would be directly impacted by a lease. Because each town already has a Marine Resource Committee, it would be logical for this body to be tasked with gaining public input from their town and bringing each proposed lease to a vote at the Town Council. The Lobster Zone Councils would be another logical avenue to gather public input and facilitate notification. As far as specific notifications of those impacted, it is also concerning that the radius of notification is so small. In the case of the Mere Point application, no adjacent property owners were notified because all of the properties were just beyond the required 1000-foot limit. I would urge the DMR to extend this range to include all coastal property owners adjacent to a lease site, as many of these are the people who will be making use of the water for commercial or recreational purposes. I applaud the DMR's proposal to allow for more time and notification between the pre-application and final application in order to facilitate feedback from the public for the applicant ahead of the final application submission. That gives interested parties more

time to understand the application and to potentially suggest changes to the applicant based on their concerns. In the case of the Mere Point application this may have helped to create some compromises in the lease design and scope.

My second suggestion would be to place a hold on this project while a broader effort to proactively plan for sites appropriate for aquaculture along the coast are identified. Legislative changes are needed along with changes to the DMR's rules in order to move forward cautiously. Putting a hold on current standard lease applications until that can happen is necessary. There are tools in existence that have been used in the ocean planning process both regionally and at the state level that could help to evaluate particular areas and guide decision-making. For example, the state of Maine previously collected valuable data as a part of the Coastal Atlas that would be useful in looking at areas with little use or ecological conflict as well as suitable conditions. It would help put aquaculture within the context of other activities that Mainers value along the coast.

Finally, I urge the DMR to consider the significance of habitat assessment in their decision-making. Mere Point's application, for example, is in an area of ecological significance, a designation made through several resource agencies through the Beginning with Habitat program. This designation is not currently referenced in the DMR's regulations as a consideration for locating an aquaculture lease and ought to be similarly to the "Essential Habitat" designation by IF&W that prevents LPAs from being located in those areas.

I would like to thank you for carefully considering these suggestions and would be happy to provide any further resources or support to help guide this process. Specifically, I was part of a national review of aquaculture regulations while I worked with the Ocean Conservancy and would be happy to share anything helpful from those reports. For example, in Washington, they have been struggling with how to manage geoduck harvest as the regulations guiding wild harvest versus farmed geoducks are similarly separated between the state and each town, with the additional complication of Native harvest allowances. More locally, the New England report concluded "aquaculture production along the eastern seaboard is witnessing an uneven evolution as are the regulatory means designed to regulate its development. There are opportunities on the legal and regulatory front. Pinpointing those meaningful opportunities is the first step in prosecuting a successful strategy that will discourage activities that hold the potential for harm and allow intelligent advances to move forward." It is my hope that Maine will be a leader in evolving its regulatory structure in order to guide this growing industry for the benefit of all of its citizens.

Lori Howell, submitted via email, February 1, 2019

Operational Plan: The Model Ordinance at Chapter 6 (see attached) has the requirement of an Operational Plan at Chapter 6@.02 B. *only* for those activities where there is a significant public health concern, including but limited to: Aquaculture that attracts birds or mammals, Shellfish grown in prohibited or unclassified areas, shellfish grown on land or in a polyculture system or in Federal waters. Each of these activities has general requirements set forth for the operational plan. Farms that do not pose significant risk do not require plans. DMR Chapter 2, Definition M requires a written document outlining how the operator will utilize the lease area, and structures, and handle product to, on, and from the site. Definition M also states that the lease application, the executed lease and any amendments may be used as the operational plan. Section 2.44 would require a lease amendment to modify operations. We have no objection to the requirement of an operational plan; however we feel that the plan should be separate from the lease. The plan may include the lease, but many other details,

such as the number of boat trips, types of boat # of people working the site, particular handling practices, and others should be separately specified. Should these change, the change would be approved by the Department, rather than requiring an amendment of the lease per section 2.44. Draft Application: 2.08- Although the Department is attempting to reduce conflict and ensure that applications are complete; we have concerns that requiring a draft application before a scoping session will delay the entire process. In addition, the time frames in this section (scoping session within 4 months of draft application, in particular) is concerning. The Department is substantially over-burdened and it can already be months for various meetings or hearings to be scheduled. In addition, submission of a draft application prior to a scoping session may mean that applicants are substantially wedded to their applications, and may be less willing/likely to make changes based on information received at scoping sessions. In addition, the time period of 4 months from acceptance of the draft application to the scoping session is not long enough and it may not be possible to find a date that works for the applicant and the DMR within this time frame. Prohibition on Multiple Tracts: 2.10 1A. (1) (b). Application Requirements; Required Elements. We urge the Department to give further consideration to the prohibition on multiple tracts. We agree that multiple tracts that are substantially separated from each other, or that will be used differently may not be appropriate within one lease application. However, if two areas are in close proximity, will have similar use, then multiple tracts should be allowed. To require two sets of fees, documentation, and two lease processes would be burdensome for both the Department and the applicant. As an alternative, greater use could be made of restrictions for portions of a lease prohibiting their use in whole or in part. These restrictions and/or separate tracts may be warranted due to navigational use by others, because of differing bottom characteristics or other reasons. In the effort to keep the total number of acres leased down (and avoid increased ire of the public), it is preferable that separate tracts that have common attributes be permissible within a single application. Vessel Use: Section J's requirement to provide "information on the anticipated typical number and type of vessels that will service the proposed site, including the frequency and duration of vessel traffic" is problematic. The application is completed a year or more before a lease is granted and is just an estimate at the time of submission. To expect any such estimate to hold through a period of over 20 years is not realistic. This requirement will lead either to challenges after the lease is granted if type or number of vessels, or traffic pattern changes, or, will result in
overly broad statements on lease applications. There is only so specific an applicant can be before restricting his or her business. Furthermore, changes in regulation will lead to changes in boat traffic, such as the Vibrio rules that require refrigeration within a set period. For operators located in close proximity to their land-based facilities it may make more sense to make extra trips, or, in the alternative, may require larger vessels with on-board refrigeration or ice capacity.
Word Choice: 2.40 2. A. The bond shall be in the name of the *"executed* lease holder." This is not the best word choice here. 2.44 (1). Lease Amendments . ...Amendments may be requested to add or remove species or gear type, or modify operations. Does this require a change in the operational plan? Emergency Aquaculture Lease. 2.66 Aquaculture is a difficult business on all fronts. One of the most difficult aspects is the regulatory and administrative hurdles of obtaining leases. We would like to see the acceptable reasons for an emergency lease expanded to include LPA holders applying for an Emergency Lease. As the new LPA requirements prohibit LPAs in restricted waters, limit the number of LPAs on which a person may be listed as an assistant, we believe that applicants should be allowed an emergency lease provided that a Limited Purpose or Standard Lease was applied for within the grace period. In addition, in the event of a downgrade of water quality although a grace period is allowed, it often takes more than a year to obtain a lease.
Further, an emergency lease should be allowed whenever an applicant has applied but that the application is still pending. Consideration should be given and leeway provided for these situations. We

also feel that an Emergency Lease should be longer than 6 months. If, for example, if a condition that effects the health of the animals or the consumer has not resolved or still remains at a prior LPA or other lease site, the applicant may need to apply for a new site. It is difficult to obtain a lease within 6 months.

Merritt Carey, submitted via email, February 2, 2019

The Maine Aquaculture Co-op (Co-op) is Maine's first aquaculture cooperative, formed in 2016, with a board and membership comprised of Maine fishermen and aquaculturists. We seek to expand Maine's seafood-producing industries through the thoughtful integration of fishing and farming, to diversify income opportunities for Maine fishermen, maintain our robust working waterfront, and strengthen our coastal communities. We are focused on scallop aquaculture and have 5 farms currently; with more coming on line each year. Two of our farms (one in Stonington and one in Tenants Harbor) are selling product. The Co-op is generally supportive of the proposed Rule changes, and appreciates the procedural clarity
and additional flexibility these changes will provide. With that in mind, we offer the following comments:

• *Section 2.08 (4): Application Procedures for Standard Leases* — The Co-op supports this proposed change but seeks the following clarification: Does "*application for a lease in the same area"* refer to all leases (LPA, Experimental and Standard); or just standard? We recommend it refer to any of the three lease types. Given the length of time a Standard Lease Application process can take, this would ensure that the prospective area is not leased to another entity who may pursue a less time-consuming lease application (i.e. LPA).

• *Section 2.08 (6) (D): Termination without hearing* — The Co-op requests clarification on the procedure and criteria the Department will use to make discretionary determinations to terminate a lease application without a hearing. Towards that end, the Co-op suggests a requirement that reasons for denial of a hearing be put in writing when the applicant is notified of the decision.

• *Section 2.10 (1) (A) (1) (b)* — The Co-op does not support this requirement; we believe it creates logistical hardships for applicants that could put downward pressure on this growing industry. These hardships include the imposition of additional fees and prolonged timelines stemming from the potential need to submit several lease applications rather than a single application as currently permitted. For a shellfish aquaculture farm to be financially viable, large tracts of leased area are generally required. These are also the most likely to present conflicts with existing surrounding uses. Having flexibility to configure a lease to limit potential conflict with other uses (including by using non-contiguous tracts) may be integral to the viability of an operation.

• *Section 2.44: Lease Amendments* — The Co-op supports this proposed change and appreciates the flexibility this provides. The Co-op believes this will allow for diversification and modification of leases as necessitated by market conditions.

• *Section 2.61: Lease Expansion* — The Co-op supports this proposed change on the basis that it will allow for expansion of leases as necessitated by market conditions without the undue burden of engaging in a new lease application process. However, the Co-op seeks clarification on the intent, scope and practical impacts of the following language:

o "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".

• *Section 2.64 (2): Limited-Purpose Aquaculture Lease Application Procedures; Fee* — This section

states, “The application fee for a limited-purpose lease application shall be $100.” Section 2.90 (1) (A) “LPA License” states: “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.” These Sections appear to be contradictory, unless a Limited Purpose Aquaculture Lease application is different than a Limited Purpose Aquaculture License application (in which case the language makes that distinction confusing). We request clarification on the various application fees included in this Rule.

William Leathers, submitted via email, February 2, 2019

I am writing to submit a comment regarding the proposed rule changes to Chapter 2 Aquaculture Lease Regulations.

In regards to 2.10 1 A (1) b) *Siting Restrictions :* where it states that "A lease must be one contiguous tract except where there is a navigational channel that would otherwise transect the lease, and then may not exceed two tracts." I am commenting in opposition to this proposed change.

I ask that the DMR instead consider creating requirements of multi-tract leases that must be met in order to qualify. At least maintaining the ability to have 2 tract leases. Example requirements could be:

- Maximum and minimum size of individual tracts and combined acreage
- Maximum and minimum distance between tracts
- Requirement to be in same body of water (i.e. cove, river, etc.)

By eliminating the ability to plan a multi-tract lease I feel that the options for lease development for the best "mixed use" of a body of water are being limited. I can see many positives for an applicant to develop a multi-tract lease that would allow significant and ample use of the water between tracts for commercial fishing, recreating, navigating, etc. Diffusing the density in scale of the aquaculture operations and compromising with the community and other parties who utilize that particular body of water. An example scale to consider for implementation of a multi-tract lease plan. The desired size of an applicants lease is 10 acres to grow their product, instead of one contiguous 10 acre plot they determine it best to develop two 5 acre tracts about 1500 feet apart to leave ample room for sailboats to navigate, lobsterman to fish, etc. While in the alternative if they needed to compromise with other uses and multi tract leases where not an option the applicant might in reality need to apply for a 12 acre lease and commit to leaving a corridor available through their site. A point of contention between parties as they proceed through the process and a potential inability to find compromise. If the applicant had to end up filing for two separate leases to diffuse the density of their operation or compromise with all parties it would end up meaning a great increase in the amount of paperwork filed when product was transferred from one lease to the other throughout the grow out process and a whole duplication of the initial lease hearing process.

Bailey Bowden, submitted via email, February 3, 2019

2.07 It should be a requirement that the Pre-Application meeting be held in host municipality.

2.08 6 D Termination without hearing. If the Department denies an application on its face or due to financial concerns, the Dept should be required to issue a written decision denying the application so that other people may attempt to lease the same area – without being penalized by 2.08 (4).

2.10 1 I The existing language states " This information shall include documentation that the equipment is the best available technology for the proposed activity. I feel strongly that this language must be included in order for the Department to make their decision based on the best information available. Granting permission to use imaginary equipment cannot be allowed. How can the Department determine any environmental risks associated with something that doesn't exist ? This actually happened – see
https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/EXECUTEDDecision-N.Bay-BAGNB.pdf
The "spray system" Mr Briggs references appears to be under development and does not exist. Given the lack of information regarding the "spray system", it is impossible for the Department to adequately assess whether it would mitigate sound levels as the applicant claims and is required by regulation"

2.20 3 A I oppose any effort to limit the participation of Maine citizens in any legal process. Rules like these force citizens to lobby their legislators to create laws that will level the playing field and may actually end up hindering the spread of aquaculture. The State holds the tidal waters in Public Trust, violation of this trust may have severe implications for the Dept in the future.

2.25 Agency File More smoke and mirrors to keep citizens out of the process.
2.40 7 Why has the Commissioner's authority to require environmental monitoring been removed ? According to Ms Dierdre Gilbert, if the rule doesn't say you CAN do it – you cannot do that thing. With the rapid expansion of aquaculture efforts – it must be remembered that other creatures may be farmed in the future that are not oysters or sea greens.

2.45 2 Striking this section basically makes a lease renewal automatic! How can any new evidence be introduced that might make a difference in granting a lease ? This is a great way to make anti-aquaculture supporters!

2.45 3 A Striking this section removes the requirement that lease terms are adhered to. This blatant promotion of aquaculture is an admission of the Department to properly manage existing wild fisheries and that farming WILL be our future.

Nate Perry, submitted via email, February 4, 2019
I would like to formally comment on one specific proposed rule change:

Ch 2.10 1. A. 1. b
b) A lease must be one contiguous tract except where there is a navigational channel that would otherwise transect the lease, and then may not exceed two tracts. The distance between the two tracts must be the minimum distance practicable to avoid unreasonable interference with navigation.
It is my understanding in speaking with several DMR staff who helped assemble these proposed changes, that the elimination of multi tract leasing is meant to reduce undue burden on DMR during the application process.
It seems that DMR could detail restrictions and guidelines for multi tract applications without completely eliminating them. There are very legitimate reasons to use a multi tract site layout! For example, an applicant may wish to exclude a piece of traditional lobster fishing bottom, but use ideal areas on either side that aren't heavily fished. In this scenario a multi tract lease would avoid conflict with traditional users, but allow the farmer to continue with a plan to use multiple tracks to make the operation plan work. Often applicants seek growing areas with slightly different environmental

characteristics that will each play a crucial role in their business model, farm operations, and final product. Again, DMR could provide some guidelines on how multi-tract plans may and may not be used. This would allow the Department to curtail some of the potential abuses and 'creative' extremes. DMR could propose guidelines, say for the proximity of tracts on one lease, by distance, common water body, necessity to the outline process, etc. Perhaps one way DMR could accomplish it's goal of reducing undue burden in the application review process is to amend the proposed rule to include more exceptions beyond just navigation channels. For example, provide an exception for the use of multi tracts, if they are used to leave of parts of the resource or existing fishery (lobstering bottom) open. Perhaps require that the application demonstrate the need for the use of all proposed tracts, as part of the overall operation plan. The alternative for growers who feel they really need to use several non contiguous areas in on common operational scheme is to apply for either several different applications or one single large lease which is potentially over encompassing of the resource and it's other users. I couldn't imagine a more burdensome scenario for everyone involved; DMR and applicant alike. Not to mention the flags that will pop up when municipalities, riparians, and traditional users and fishermen, catch wind of multiple leases all in one spot at once. I know my input represents the opinion of a majority of my fellow sea farmers, having spoken to growers from every part of the Maine coast in recent weeks. And it is also my understanding that the Aquaculture Advisory Council made clear they thought this part of the proposal was a 'bad idea'. I strongly urge you to remove (or table until next session) section ch 2.10 1.A.1.b., until more comprehensive solutions can be put on the table and considered by both industry and managers. Please also consider the exceptions I've detailed above. I commend the Department for striving in last few years towards more efficiency/expediency, but this rule will NOT accomplish that goal. It will severely limit growers options, possibly pit them against existing users, and likely result in unnecessary applications flooding DMRs inbox.

Maine Aquaculture Association, submitted via email, February 4, 2019

As per the Department's request, the Maine Aquaculture Association (MAA) would like to offer the following comments on the Agency Rule-making Proposal on Chapter 2; Aquaculture Lease Regulations. These comments are based on polling our membership and on discussions with non-members about their concerns. MAA offers our comments and suggestions in the spirit of constructive feedback while recognizing the hard work the department staff have put into developing the proposed rules. As we have in the past, MAA would like to respectfully suggest that the process the department is currently using to develop draft rules is flawed because it only allows for input from stakeholders after the draft rule is developed internally by department staff. MAA believes more engagement with regulated stakeholders earlier in the process would improve the final product, and increase stakeholder support for the department.

General Comments: MAA appreciates the fact that the department is seeking to clarify and improve Chapter 2 while eliminating language duplicative of the Administrative Procedures Act (APA), Title 12 Statutes and the National Shellfish Sanitation Program (NSSP). MAA understands that a number of the modifications proposed in the rulemaking are "process improvements" designed to assist department staff in efficiently processing lease applications. Having said that MAA would respectfully suggest that a number of the proposed modifications will lengthen the application process, result in applicants applying for larger leases than necessary and/or significantly increase the number of leases an applicant will file in order to achieve their operational goals while complying with the proposed rules.

Specific comments:

2.08 Application Procedures for Standard Leases

As currently drafted this provision requires an applicant to submit a draft application and hold a scoping session after the preapplication meeting. After the scoping session the applicant submits a final application. 2.08 (5.)(B) states that if the location of the proposed lease in the final application "materially differs" from the location described in the scoping session the department may require an applicant to hold another scoping session. Although that may make sense in order for the public to know accurately the location of the proposed lease, it is in essence penalizing an applicant for trying to respond to public concerns. The requirement for a second scoping session will inevitably lengthen the application process. That time penalty will provide a strong disincentive for applicants to be responsive to public concerns by adjusting their applications based on information they have received at the scoping session.

DMR should clarify what they mean by "materially differs" and establish guidelines for their interpretation of that term that allows applicants to reasonably adjust their applications without triggering the need for a second scoping session.

2.08 (5) (B) also states that if the department requires a second scoping session the Department may accept applications for the same location until that second scoping session occurs. That provision should be stricken entirely because it provides even stronger disincentive for an applicant to respond to public concerns and adjust their application if they know it heightens the risk of a competing application for the same location.

2.08 (5) states a final application that should include "all required information as outlined in Chapter 2.10". That will have to include an environmental characterization and baseline study. That characterization and baseline study will have to have been conducted between April 1 and November 15. If after an applicant submits a completed application and the department determines that the environmental characterization and baseline is not adequate 2.08 (6)(C) says the applicant has 90 days from the date of notification by the department that their application is incomplete. If that notification comes between November 15 and January 1 it is not possible for an applicant to hit within the 90 days the April 1 beginning of the time period where site studies are allowed.

The 90-day period should be extended to 180 days to allow an applicant to conduct additional site characterization studies to gather any additional environmental and baseline data the department is requiring in order to deem the application complete. Alternatively, the department could relax the calendar restrictions on the period during which site characterization and baseline studies could be conducted.

2.08. 6 (D.) Termination without hearing.
This entire section should be stricken as it completely removes an applicant's right to due process. There is no provision for appeal of the commissioner's decision and no clear guideline for how the commissioner makes the determinations that allow them to deny an application. It gives virtually unlimited authority to the commissioner to deny an application with no redress for an applicant. It is a dramatic erosion of applicant rights.
2.10 (1.)(A)(1) Siting Restrictions.

(a) States that no lease may be located within the 300:1 dilution zone around a wastewater treatment facility. MAA knows of no peer reviewed literature that suggests that growing shellfish seed less than 25mm that will be moved to an approved growing area represents any risk to public health. MAA supports these prohibitions for shellfish above that maximum size and for marine algae in general unless the marine algae are part of a mitigation project and when the products grown on that mitigation project will not be for direct human consumption. DMR should not prohibit leases within the 300:1 dilution zone for the exclusive culture of shellfish seed that will be relayed to another lease site that is approved for shellfish culture and that the movement of which complies with DMR relay regulations and permitting.

(b) Requires that leases be one contiguous tract except if they are bisected by a navigational channel. MAA understands that the Department has recently had some lease applications that include multiple tracts that are separated by significant distance and that these applications present a number of challenges to department staff. Having said that MAA strongly objects to the proposed rules as drafted because they will have several unintended consequences that will increase the Departments work load and social conflicts. In certain circumstances applicants will be forced to include areas within their lease applications that they do not intend to actually use in order to avoid submitting two separate applications. These larger than necessary lease applications will increase the likelihood of social conflict. Conversely in other circumstances applicants will be forced to submit multiple lease applications even though the various "tracts" are in close proximity and have similar environmental conditions. While this may increase revenues to the Department through increased application fees it will significantly increase the administrative work load for a Department that has repeatedly gone on record saying they are under resourced and facing an increasing workload.

To address these unintended consequences while addressing the departments original concerns about multi tract applications MAA would like to submit the following alternative language to the Department for consideration.

2.05 (1.) Definitions

M. A Multitrack lease consists of a lease that is comprised of more than one discreet and separate areas described by specific corner coordinates or boundaries with coordinates from one starting point.
2.10 (1.)(A)(1) Siting Restrictions.

(b). Multitrack leases are prohibited except that the Commissioner may grant multi-tract leases in the following circumstances.

1. A multitrack lease is part of a site rotation and fallowing management scheme that is a component of a biosecurity plan that the Department has reviewed and approved and the environmental characteristics of the multiple tracts have been demonstrated by a site review to not differ significantly.
2. A geographic or hydrologic feature (such as a ledge, intertidal mud flat or promontory) interrupts a proposed lease area in such a way that it causes the area to be naturally divided into more than one area and the separation between adjacent tracts is no greater than one half of a mile.
3. A navigation channel divides a proposed lease into two adjacent tracks and the distance

between the two tracts must be a minimum distance practicable to avoid unreasonable interference with navigation.

2.10 (1)(B) Environmental Characterization and Baseline.

(1) Non-discharge applications.

The department has changed the wording on this section to drop "The environmental characterization shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site" That language is retained in the following section 2.10 (1)(B)(2) for discharge applications.

While MAA acknowledges that the potential types of impacts are different between discharge and non-discharge leases MAA would respectfully suggest that the Department retain the language in 2.10(1)(B)(2) with a small modification to make clear that the department is protecting the public trust in both discharge and non-discharge applications. MAA suggests striking "existing and potential uses of the site as a result of the operation" from 2.10(1)(B)(2). The elevated requirements for discharge applications are clearly outlined in subsequent sections. Those requirements make very clear that the Department is treating the risks of impacts from discharge leases very differently than non-discharge leases. By omitting the" existing and potential uses" language in 2.10(1)(B)(1) the department seems to suggest it is not concerned about the potential impacts of non-discharge sites on existing or potential uses of the site. By removing that language from 2.10(1)(B)(2) but retaining all the subsequent language that clarifies how the Department treats discharge applications differently the Department will eliminate confusion and not create the impression that they don't care about potential impacts from non-discharge applications.

2.10(1)(K) Oil Spill Prevention and Control Plan

(i) And (ii) use the terms "procedures" and "control measures" to "prevent oil spills" It is unclear what the difference is between those terms. They seem duplicative.

2.15 Notice of Lease Application and Hearing

(2) Timing of Public Hearing. MAA notes that throughout the proposed rules the department has established time periods within which an applicant must take certain actions or the application will be in jeopardy or even voided. MAA acknowledges that the department should have some flexibility to determine when a site review is conducted in order to adequately evaluate the proposed location. Having said that, completing site reviews in a timely fashion has been identified repeatedly by the department itself and external reviewers as one of the reasons processing lease applications has, at times, taken too long. MAA would like to see the following language inserted as an additional sentence at the end of 2.15(2).

"The Department will make reasonable efforts to ensure that the time between when a final application is deemed complete and when the Department site review occurs and a public hearing is held is the shortest possible time."

2.15(3)(C).

The department has dropped the requirement to notify any of the federal agencies. Does this mean that the Department is changing it long held policy of "One Stop Shopping" and being the agency that

distributes the completed application to other state and federal agencies and consults with said agencies to ensure all agencies are reviewing the same facts and communicating with each other and the applicants about their respective agencies possible concerns or questions about the application? The one stop shopping policy was established in the early 80's to help eliminate confusion and duplication of effort between agencies. Its development was the first of its kind in the country and was credited as being a major reason aquaculture began and developed in Maine as opposed to other States that did not have a one stop system. MAA recognizes that different agencies have different concerns and authorities and that in two cases at least (DEP and ACOE) they may even have different permits with different application forms. Having said that if DMR is making a policy shift away from the one stop shopping approach MAA strenuously objects.

2.25 Agency File
The Department is dropping the requirement for the establishment of an agency file. It is unclear to MAA what that actually means since clearly the Department is going to have a file or record on every application. The lack of clarity is compounded by the fact that under 2.31(1)(C.) the Department still refers to "the agency file".

2.31 Evidence
2.31(1) and 2.31(2) have been stricken. MAA objects to the striking of 2.31(1) because it gives clear and overt guidance on how evidence would be deemed relevant and material. Although the APA gives some guidance on this issue 2.31(1) specifically references the Departments "experience, technical competence and specialized knowledge". MAA believes that by striking 2.31(1) the Department is weakening its ability to reject irrelevant or immaterial evidence. 2.31(1) should be retained.

2.31(9) The department is striking the language that clearly defines what constitutes a "full and complete" record of the aquaculture lease application proceeding. While the APA gives some guidance on what constitutes "a record" it is less specific than the language in 2.31(9) and MAA believes that by striking 2.31(9) the department is giving itself more discretion as to what constitutes the "record". Historically, under the existing 2.31(9) the department has had a very successful record of being able to defend itself if a leasing decision is appealed. MAA is concerned that by relaxing the guidance around what should be included in the "record" of a lease application proceeding the department may be opening itself up to more and more successful appeals.

2.37 Decision
2.37(A)(7) The draft rules remove the provision that leases may not "unreasonably interfere" with public use or enjoyment of…. By removing the language on unreasonable interference, the department is lowering the threshold for what constitutes interference. MAA strongly suggests that the "unreasonable interference language be retained in 2.37(A)(7) otherwise Any interference at all will constitute grounds for denial. That is a significant change to the criteria and is significantly counter to the statutes.

2.37(A)(10) The draft rule establishes a grandfathering date for height restrictions at April 1, 2018 instead of the effective date of the rule. MAA suggests that constitutes backsliding of the grandfather clause. MAA supports the original language in the rule.
2.37(B) Conditions
The department has struck the ability of a lease applicant to agree to a longer time period after the hearing before the commissioner issues a decision. While the MAA supports having a finite time period

after the lease hearing within which the commissioner must render a decision, and although we believe that time period should be shorter than 120 days, we see no reason that the commissioner should not be willing to grant a longer period if the applicant requests it. There may be instances where an applicant would like a longer period to give them an opportunity to resolve any stakeholder conflicts that may have arisen as a result of the lease application. It is not clear to MAA why that would be a problem. MAA assumes the department would be supportive of an applicant's efforts to resolve those conflicts if possible. If the department want to give applicants a finite time period if they ask for an extension of the 120 period MAA would support some reasonable limit on the extension period.

2.40 Lease Issuance
(3)(A) The department is striking the requirement that a lease is registered in the county Registry of Deeds. MAA strongly objects to that change as it has a negative effect on the financing community interpretation of an applicant's security of tenure and therefore ability to raise financing. MAA does not object to the striking of 2.40(3)(B).

2.45 Lease Renewal
(1) The department is raising lease renewal fees for non-discharge leases by $500. MAA objects to the rise in fees. Currently Maine aquaculturalists pay more than any other marine resource user for access to Maine resources. In addition, the Maine aquaculture sector is one of the few marine resource categories that is growing, creating new working waterfront jobs and generating more tax revenue for the state. It is counterproductive and unfair to penalize the sector that is helping the states economy and general fund by raising fees. Recently the length of leases was doubled, significantly reducing the Departments workload. What is the justification for the raise in fees?

2.46 Fallowing
MAA believes Fallowing can be a very important non-chemical disease control method. Why is the department dropping its ability to review and approve fallowing plans?

2.60 Lease Transfer
(2) The Department is lengthening the period of time for public comment on a proposed transfer from 14 to 30 days. MAA objects to this change. Applicants, intervenors and interested parties have only 10 days to respond to a hearing officers draft findings and report, why should the public have any more than that in the case of a transfer? MAA supports consistency in response time allowed for both applicants and members of the public.

2.64 Experimental Aquaculture Lease Application Procedures
The Department is renaming the Experimental Leases to "Limited-Purpose Aquaculture Leases". MAA is concerned that this may cause confusion with "Limited Purpose Aquaculture Permits" AKA LPAs. The term "experimental Lease" has been used for some time and everyone in the sector knows what it means, why change it?

2.64 (3) The Department is lengthening the time period they have to determine whether an experimental lease application is complete by 10 days. Once again, the department is giving itself more time while the time for applicants to respond has been shortened in a number of instances in the proposed rules. Additionally, to time for public responses to department decisions has also been lengthened. The general trend seems to be, reduce the time applicants have and increase the time the department and/or the public has. How is this fair? At what point do the rights of applicants begin to be

discriminated against? MAA objects to the addition of 10 days to the time period the department has to determine if the application is complete.

2.64(5) The department is adding a prohibition on an applicant having more than two limited purpose lease (AKA Experimental Lease) applications at one time. What is the justification for this? Two seems a very arbitrary number. For example, if a scientist is conducting a field trial that requires multiple sites to test their hypothesis do, they have to apply for two sites, wait for those to be processed and then apply for the next two sites? This would significantly extend the time it would take for them to be able to begin their research. Likewise, if a company is prospecting for new lease sites why restrict them to only two pending applications. This seems as the prohibition is specifically designed to slow down growth of the aquaculture sector in the state. Is that the DMR's policy? MAA would respectfully suggest increasing the limit on the number of pending limited purpose lease applications to 4.

2.65(6) Same comments as above in 2.10(1)(K) Oil Spill Prevention and Control Plan.

(A) And (B) use the terms "procedures" and "control measures" to "prevent oil spills" It is unclear what the difference is between those terms. They seem duplicative.

2.66 Emergency Aquaculture Lease
MAA notes that the department has changed the term for a "nondisease" emergency lease to "environmental" emergency lease throughout this section. That relabeling appears to significantly narrow the circumstances under which an emergency lease could be granted. By using disease and nondisease the original definition effectively gave the department authority to grant and emergency lease for any circumstances it deemed necessary. If the circumstances were not a disease then everything else fit into the non-disease category. By relabeling nondisease to "environmental" the department is eliminating many scenarios in which it might actually want to be able to grant an emergency lease. For example, if a rescue operation requires the temporary relocation of an aquaculture operation in order to ensure the safety of the rescue workers that is not an "environmental" circumstance. MAA would suggest the department review the language change and ensure they are not unintentionally limiting their authority.

2.92 Aquaculture Lease Site Workers operating under the authority of an aquaculture license holder.

"the license holder must direct and oversee the work of the unlicensed individuals"

MAA objected to this language when it was originally proposed and we object to it again. Specifically, the term" direct and oversee" seems to imply the presence of the license holder while the non-licensed individual is working on the lease. Aquaculture is fundamentally different than fishing in the sense that lease holder often hold multiple leases on which work is going on concurrently. It is not physically possible for the lease holder to be present on multiple lease sites at the same time. DMR should clarify this language to make clear that the physical presence of the lease holder/ license holder is not necessary.

Many thanks for your willingness to consider these comments and suggestions.

Ivy Frignoca, Friends of Casco Bay, submitted via email, February 4, 2019
Chapter 2.05 Definitions, 1.G defines "Discharge," "for the purpose of this Chapter only, [as] 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." "Human waste" also should be listed as an example of a pollutant. DMR's other regulations do not clearly ban the discharge of human waste, although to do so is clearly illegal under the National Shellfish Sanitation Program requirements incorporated into DMR's aquaculture regulations. Adding a reference to this definition would help alert aquaculturists to the proscription against the discharge of human waste into state waters.

Chapter 2.05 Definitions, 1.M defines "operational plan." The definition of "operational plan" should be expanded to require a plan to contain and minimize marine debris, including human waste.

Chapter 2.10 Application Requirements for Standard Leases, 1.B (2)(b) requires water column quality to be characterized on two separate occasions, one of which shall be conducted between August 15 and September 15. This requirement should be strengthened to include language that DMR may, at its discretion, require additional water quality monitoring if indicated by site conditions.

Chapter 2.10 Application Requirements for Standard Leases, 1.J requires that the lease application also include information on the number and type of vessels that will service the proposed site. This section should require a description of the marine sanitation device (MSD) that will be aboard and used on every such vessel.

Chapter 2.27 Department Site Review, 2 lists documented information. This list does not include essential habitat such as eelgrass beds. Is that information intended to be provided under Chapter 2.27, 1.B? It might be helpful to clarify that DMR will specifically evaluate and consider essential habitats during site reviews of proposed standard lease sites.

Chapter 2.37 Decision 1.B Conditions deletes language that allows the Commissioner discretion to establish conditions that "address the ability of the lease site and surrounding area to support ecologically significant flora and fauna…." That language should not be deleted from the rules.

Chapter 2.65 Limited- Purpose Aquaculture Lease Application Requirements should be expanded to require a plan to contain and minimize marine debris, including human waste. The section should explicitly require an MSD on each vessel.

Chapter 2.90 Limited-purpose aquaculture (LPA) License. This section should be strengthened to include a requirement to have an MSD aboard vessels engaged in aquaculture activities. The annual education for LPA license holders should include training on how to minimize and contain marine debris. The training could introduce relevant portions of Best Management Practices, such as those developed by the Maine Aquaculture Association.

Maquoit Bay LLC (Paul and Kathie Dioli), submitted via email, February 4, 2019

<u>Increasing Public Involvement at All Stages of the Application Process</u>

A key amendment in the proposed rulemaking involves an adjustment to the timing of the scoping session for proposed aquaculture leases. We appreciate and support the Department's proposed changes that allow for public involvement from the very beginning of the review process. By requiring the applicant to submit a draft lease application under section 2.08 prior to the scoping session, the Department ensures that the public will be aware of the boundaries of the proposed lease and what areas could be impacted. This shift in timing will facilitate a more meaningful dialogue between the applicant, the municipality, and interested members of the public who will be better equipped to ask direct questions about the potential impact of the lease.

Another way to ensure that members of the public are informed and involved is to require site markings before the scoping session. At a minimum, the proposed lease site should be marked with Proposed Sea Farm buoys for a sixty (60) day period between May 1st and October 1st when individuals who will be

impacted are most likely to see them. Under section 2.80 ("Marking Procedures for Aquaculture Leases), the language "When required by the Commissioner" should be deleted, making this marking a requirement for all leases rather than a requirement that is imposed at the discretion of the Commissioner.
It is critical to get more people from the municipality involved from the outset, before boundaries become fixed. The Legislature delegated an important responsibility to the Department to make decisions about what happens to waters that are owned by the state and enjoyed by the public, which carry ramifications far broader than decisions impacting land owned by private individuals. The Department would be shirking its responsibility if it allowed lease applicants to pick the boundaries of the lease without public input. The rules should allow for municipalities to make zoning decisions to limit maximum lease sizes in residential areas along the coast if they so choose. It is important for municipalities to be able to review and approve leases that could impact residents and local beaches, boat launches, and conservation lands within the municipality.

Determining Reasonableness of the Proposed Lease
The current and proposed rules require the Commissioner to take a number of factors into account in determining whether or not the lease would unreasonably encroach on the rights of the public. We urge the Department to adopt additional, more specific, requirements in this rulemaking, as explained below.

The Department should document the distance from the lease site to public facilities and measure the visual and auditory impact of public boat launches to public beaches and conservation land. The standards for noise and visual impact under section 2.37(A)(9)-(10) should be more explicit and quantifiable. In terms of visual impact, no building structures should be allowed on the lease site. Allowable structures should be limited to vessels and dock platforms such as rafts and floats. The height limitation should also be changed to be no more than two (2) feet above the water line rather than twenty (20) feet. Additionally, it should be required to remove gear and equipment from stationary structures (such as dock platforms) on a daily basis and the Department should impose limitations on the size and number of dock platforms.

Under 2.37(A)(1)("Riparian Owners Ingress and Egress"), we propose adding language regarding the number of riparian owners and frequency of use during the peak period. The Commissioner should be directed to consider the type of shore involved, the population density (including homes, docks, and moorings), and the number of vessels that can reasonably land on the shore.

Under 2.37(A)(2)("Navigation"), language should be added that takes into account the number of vessels and vessel frequency during peak period. The Commissioner should consider the current uses, number of vessels, frequency of vessel use, and types of use (navigation, commercial fishing, sailing, etc). If applicable, the Commissioner should evaluate impact of navigational channels in the area on current uses.

We disagree with the deletion in 2.37(A)(2)(7)("Interference with Public Facilities"). Leases should not be able to unreasonably interfere with public use or enjoyment of such beaches, parks docking facilities, or conserved lands. Furthermore, we propose that the projected impact, rather than measured distance from the public facility, be used to make a determination in this regard.
In determining whether the proposed lease would cause unreasonable interference, the Commissioner should also be directed to consider whether or not there are more suitable locations for the lease in the

area. We propose that a new subsection 2.37(1)(A)(11) be added to the rules as follows:

2.37(1) A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:

(11) Other Suitable Locations. The Commissioner shall consider whether there is a more suitable location in the vicinity of the proposed lease that could accommodate the proposed lease activities and that would interfere less with existing and surrounding uses of the area.

This proposed amendment aligns with statutory authority, as the governing statute emphasizes the need for the Commissioner to determine whether the lease will "unreasonably interfere" with numerous uses of the surrounding area. 12 M.R.S.A. § 6072(7-A). It is a logical interpretation of the statute that the Commissioner may factor in whether or not there is a more suitable location for the proposed lease in determining whether or not the forecasted interference would be reasonable. This amendment would allow the Department to review all aquaculture projects with a critical eye to what it means to all who use and make their living on the water, taking a more holistic approach to the future of Maine's coastline. The Applicant should be required to track and communicate to the public any and all changes that have been made to a completed lease application in order to improve transparency and ensure that concerns are addressed. Should the Applicant fail to comply with any of the rules in this section, the failure should be grounds for denying the lease.

Lease Expansion Application Process

We support the addition of section 2.61 in the proposed rulemaking that creates a formal process for applying for a lease expansion. However, the Commissioner must be required to take the reasonableness of the proposed expansion and its potential impacts into account at this stage as well. The Commissioner should be able to make a decision about the initial proposed lease without committing to the full size and any issues that might be carried forth by an expanded lease at a future date.

We suggest that the Department go further and amend the requirements for ownership and transfer of leases. Aquaculture leases should be owner operated, with lease transfers limited to family members under section 2.60. Standard aquaculture lease transfers should require approval by both the Commissioner and the municipality in which the lease is located. We propose an additional amendment to reduce the lease period from ten (10) years to five (5) years. Lease renewal must be contingent on full compliance with all rules and regulations under this chapter.

Addressing Conflicts of Interest

In addition to the proposed amendments drafted by the Department, we urge the Department to adopt an amendment that would minimize the impact of potential conflicts of interest in the decision-making process in order to protect the interests of the general public. Any public official having jurisdiction over potentially competing public uses should be disqualified from having an entity in which he or she has a pecuniary interest apply for a private commercial lease of any kind. Under Maine law, any lease (including an aquaculture lease) is void as against public policy whenever it would place a public official "in a *situation of temptation* to serve his own personal pecuniary interest to the prejudice of the interest of those for who the law authorized and required him to act." *Tuscan v. Smith*, 130 Me. 36, 153 A. 289 (1931) (emphasis added). This issue must be addressed through an amendment to the DMR rules.

An applicant should provide assurances that there are no conflicts of interest as part of the application requirements under section 2.10(1). The section could be amended as follows:
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:

N. Conflicts of Interest. The applicant shall provide a written statement under penalty of perjury that no public official with jurisdiction over the area in which the proposed lease is situated has a personal pecuniary interest in the application.

In addition, the Department could amend Section 2.12 ("Multiple Ownership") to preclude anyone with this conflict of interest from applying for a lease regardless of the entity's ownership structure.

Definition of Riparian Owner

We recommend that the Department adjust the definition of "riparian owner" in the rules and the implications of that definition on the provisions that impact this category of individuals. The applicable statutory provision, 12 M.R.S.A. § 6207, does not define riparian owner with regard to a distance from a lease site. To the contrary, riparian owners get a statutory preference when they are within 100 feet of a lease site, § 6207(8)(E), and get statutory notice when they are within 1,000 feet, §§ 6207(11-A)(D) & 12-A(A). Thus the Department exceeds its statutory authority and abuses its discretion when it adopts or interprets 13-188 CMR Ch. 2, § 2.05(1)(C) in a way that limits the substantive approval criteria that it must consider under § 6207(7-A)(A) to only the subset of riparian owners who get certain procedural notifications under the statute. The size and scale of the proposed lease should determine whether or not riparian owners receive direct notice. Regardless of whether or not the Department decides to amend the definition of riparian owner, the statute requires that evidence of the interference of ingress and egress to riparian owners be considered as a factor in weighing the reasonableness of the proposal.

Proposed Amendment to Discharge Definition and Discharge Lease Requirements

We urge the Department to add power washing to the definition of "Discharge" under section 2.05 and to take the applicant's intent to conduct power washing into account when determining whether the lease will interfere unreasonably with the surrounding areas. On site power washing of standard leases increases the large volume loading of biotic materials in the water column, which impacts the color and turbidity of the water as well as the amount of dissolved solids. The Department of Environmental Protection ("DEP") recommends that such leases have benthic monitoring. Accordingly, the Department should classify leases contemplating power washing to be discharge leases for the purposes of these rules regardless of whether or not they require permits under the Clean Water Act. This will ensure that the Department collects appropriate information and plans for monitoring impact.

Given the large size of standard leases, we believe that new language should be added to section 2.10 ("Application Requirements for Standard Leases") that imposes additional siting restrictions and visual survey requirements. Specifically, leases greater than ten (10) acres shall not interfere with commercial fishing to any degree and if these leases are located off shore of densely populated shoreline they will require municipal approval. The visual survey performed under section 2.10(1)(B)(2) should include at least 50% of the lease site, which would bring the rules into alignment with other land based state department approval criteria.

It is also our position that limited-purpose aquaculture leases should be prohibited from storing

petroleum products on-site. We propose deleting the "Oil Spill Prevention and Control Plan" from section 2.65 and replacing with a blanket ban on petroleum product storage in order to better protect public waters from oil spills.

Conclusion

We support the Department's restructuring of the application process in order to allow for earlier and more robust public involvement. However, there are a number of additional amendments that could be made to better protect state resources and the rights of riparian owners, as outlined above. We hope the Department will take this feedback into consideration while finalizing the proposed rules, and we are available to address any questions or concerns.

Department Response to Comments:

Changing "Experimental Leases" to "Limited Purpose Leases"

The Department received a number of questions during public hearing and at least one comment suggesting that the change in terminology was confusing given the similar term for "Limited Purpose Aquaculture Licenses" known as LPAs. While the intent of the change was to be consistent with the terminology used in statute, where "Experimental" leases are actually names "Limited Purpose" leases, the Department recognizes that this confusion will not be useful and is not going to make this change at this time.

Multi-tract leasing

Several commenters objected to the proposed siting limitation that require leases to be one contiguous tract except where a navigational channel would otherwise transect the lease. The Department agrees that this may have the perverse result of creating more adverse impacts on existing uses, and will modify this proposed language to encompass a broader array of potential siting issues to accommodate leases with no more than two tracts. The modified language will allow multitract leases for site rotation and fallowing if the environmental characteristics of both tract locations are sufficiently similar, and also will allow for two tracts to accommodate siting around geographic features, navigational corridors, and existing uses, so long as the tracts are no more than 1/2 mile apart.

There are currently 25 active leases and/or pending lease applications with multiple tracts, and 16 of these are comprised of two tracts. All multi-tract leases currently approved and those in process that have been deemed complete will be grandfathered and renewals will be considered for all tracts for those leases as well.

DMR's development of draft rules

One commenter suggested that "the process the department is currently using to develop draft rules is flawed because it only allows for input from stakeholders after the draft rule is developed internally by department staff." The commenter suggested more engagement with regulated stakeholders would improve the rule-making process. Rule-making is a public process governed by the Maine Administrative Procedures Act. Generally, DMR discusses ideas about possible rule changes with members of respective Advisory Councils and considers their suggestions for improving regulations. The membership of the Advisory Councils is diverse, representing a range of interests and stakeholders. DMR develops proposed rules and then stakeholders can provide their feedback. DMR considers and responds to the feedback and may make modifications to the proposal. In this instance, DMR discussed

some possible rule-changes with members of the DMR Advisory Council and DMR Aquaculture Advisory Council.

Placing a hold on the issuance of standard lease applications
One commenter recommended that DMR not issue any standard leases until a variety of statutory and regulatory changes are implemented. DMR does not find a compelling basis for this proposed moratorium and will not accept this suggestion.

Expanding personal notice to abutters
Some commenters suggested expanding personal notice of a lease proposal to "abutters" within a one-mile radius, or "all coastal property owners adjacent to a proposal." Pursuant to 12 M.R.S.A. 6072(5), notice of the lease proposal specifies, in part, that riparian owners within 1,000 feet of the proposed lease site be provided with personal notice of the completed application and hearing. The current regulation is consistent with this statutory provision, and the intent of this provision is to ensure that those riparians most directly affected by the proposed lease site will receive personal notice. The suggestion to expand this to a wider geographic area may create an unnecessary burden on the applicant. Any issues raised by shoreline owners further away from the proposed site are adequately addressed in the current law through consideration of other public uses of the area. As required by applicable statutes and regulations, the Department also provides personal notice of completed applications and hearings to the municipality, or municipalities where the proposal is located. The Department also provides general notice of proposals and hearings on its website and interested persons can request to be included on the Departments general email list-serve concerning lease proposals. Interested persons may also request, in writing, to receive notifications concerning specific proposals. There are many ways for interested persons, not subject to personal notification requirements, to stay informed about lease proposals.

Participation of commercial fishermen in the pre-application phase of the leasing process
One commenter wanted to increase the participation of commercial fishermen during the pre-application process. The commenter suggested requiring applicants to contact members of the local fishing community to attend the pre-application meeting. The commenter recommended having a minimum number of commercial fishermen at the pre-application meeting, or have a separate pre-application meeting for commercial fishermen. The Department agrees that increased participation by fishermen at an early stage of the proposal would be beneficial, but does not feel it is reasonable to require attendance from fishermen, as this places an unreasonable burden on the applicant to ensure something over which he/she would have limited control.

Furthermore, the purpose of the pre-application meeting is for the applicant to introduce the proposal to the municipality and DMR. The intent is for the applicant and DMR to gain local knowledge from the municipal officials. In addition, the pre-application meeting helps define the environmental baseline or characterization requirements and other informational needs prior to a scoping session.

The scoping session is the applicant's opportunity to present their proposal to members of the public, commercial fishermen, and other stakeholders. As proposed, the scoping session would be held after the applicant submits a draft lease application. DMR believes that submitting a draft application will provide commercial fishermen who operate in or near the proposed lease area with a better sense of the proposal. After the scoping session, the applicant can make modifications to their proposal based on feedback received during the scoping session.

The commenter asserted that the notification requirements concerning scoping sessions are not sufficient for the average person to receive. Personal notice of the scoping session is provided to riparian landowners and the municipality where the proposed site is located. Notice is also published in a newspaper of general circulation in the area where the proposed site is located. DMR also posts notice of scoping sessions on its website and sends notice to subscribers of the aquaculture email list-serve. Finally, DMR also provides electronic notice of scoping sessions to lobster fishermen in the zone where the proposed site is located. Any lobster fishermen that provided DMR with an email address would receive notice of a lease proposal in their respective zone. However, it is the decision of each respective stakeholder if they want to participate in the leasing process.

Application requirements for standard leases, commercial fishing
DMR requires lease applicants to provide a description of observed commercial and recreational fishing activity within the boundaries and vicinity of the proposed site. One commenter felt that this requirement was inadequate and that Marine Patrol Officers (MPOs) should provide this information, not applicants.

In the current process, applicants provide a characterization of observed activities within the boundaries and vicinity of the proposed lease site. Information contained in the application is evaluated by DMR during the site assessment. DMR believes the existing process is appropriate because it asks the applicant to make a reasonable effort to understand the fishing activity in the area. Marine Patrol Officers are available to provide insight or testimony if needed, at the hearing officer's discretion. In addition, the harbormaster can also evaluate and characterize fishing activities within the area. At a public hearing, commercial fishermen can testify to activity within the area. There are several opportunities to ground-truth the information contained in an application. Therefore, requiring MPOs to characterize fishing activities at the time of application is unnecessary.

Proposed modifications to the lease decision criteria
Some commenters proposed making substantive changes to the existing decision criteria. However, DMR's proposed changes to the decision criteria are non-substantive and are only intended to remove redundancies and language that is duplicative of statute or other sections of regulation. The changes proposed by some commenters are beyond the scope and intent of what DMR originally proposed. Therefore, DMR would not consider any substantive changes to the decision criteria without going back out for public comment as it would result in the adopted rule being inconsistent with what was originally proposed.

New lease decision criterion
One commenter suggested adding an additional standard to the existing lease criteria, which would require the commissioner to consider "whether there is a more suitable location in the vicinity of the proposed lease that could accommodate the proposed lease activities and that would interfere less with existing and surrounding uses of the area." DMR's proposed changes to Chapter 2.37 are non-substantive and are only intended to remove redundancies and language that is duplicative of statute or other sections of regulation. The addition of another criterion is beyond the scope and intent of what DMR originally proposed. Therefore, DMR will not consider any substantive changes to the decision criteria as it would result in the adopted rule being inconsistent with what was originally proposed.

More importantly, the proposed criterion is also inconsistent with the overarching statutory obligations

regarding lease decision criteria as listed in 12 MRSA 6072 (7-A). Each of the standards listed in Chapter 2.37 is included under that statute, with Chapter 2.37 further defining how DMR evaluates those criteria as authorized by the statute. Therefore, new proposed criterion of "Other Suitable Locations" would need to be authorized in statute before it could be included in rule.

Changing the lease hearing process
One commenter suggested modifying the leasing process, so that instead of having public hearings some proposals would be considered under a "permit by rule" or "PBR" process. The commenter noted that PBR is utilized by other state agencies including the Maine Department of Environmental Protection (MEDEP). However, 12 M.R.S.A 6072(6) specifies that hearings are an adjudicatory proceeding and shall be held in compliance with the Maine Administrative Procedures Act and additional procedures specified in relevant sections of DMR's statutes. This type of change to the lease hearing process would need to be made in statute. In addition, PBR processes, such as those utilized by MEDEP, are an approval for an activity that requires a permit under the Natural Resources Protection Act (NRPA). Aquaculture activities are exempt from NRPA permitting requirements.

Lengthening the comment period for lease transfers
DMR is proposing to lengthen the public comment period for lease transfers from 14 to 30 days. One commenter objected to increasing the length of time for this public comment period. The extension of this comment period standardizes the length of comment periods across lease types (i.e. experimental) and certain processes tied to the cycle of a lease (i.e. renewals) in order to reduce inconsistencies among lease types and create administrative efficiencies. It also provides the public and interested persons with additional time to provide their feedback on a possible lease transfer.

Limiting lease transfers to family members
One commenter recommended that DMR limit lease transfers to family members of the transferor. This proposed change is beyond the scope and intent of what DMR originally proposed. Therefore, DMR will not consider any changes that limit lease transferees to family.

Reducing lease terms
One commenter suggested reducing the length of a lease term from ten to five years. Terms of leases are established in statute. Standard leases may be granted and renewed for a period of up to twenty years. Limited purpose leases may be granted for a period of three years, and are non-renewable unless they are for scientific purposes. In this proposal, DMR did not recommend modifying the duration of a lease term and will not adopt this suggestion.

Fallowing
One commenter believed DMR was proposing to eliminate its ability to review and approve fallowing plans. However, DMR is removing the language in regulation because it is duplicative of the existing statute, which also allows DMR to consider fallowing plans.

Extending the length of time for DMR to review limited purpose lease proposals
DMR proposed extending the completeness review for limited purpose leases from 20 days to 30 days. One commenter objected to this change. The purpose of the change is to create consistent review periods across each lease type. For example, prior to the proposed change DMR had 30-days to review a standard lease application. This change creates consistency for the agency as it strives to review all applications within 30 days. It is the agency's intent to modify these time frames to be realistic and the

agency intends to remain within them to the maximum extent practicable.

Restricting the number of pending limited purpose lease applications to two
Some commenters objected to restricting the number of limited purpose lease applications, in process, to two. As the aquaculture industry continues to evolve, the number of limited purpose lease applications continue to grow. This rule-change is intended to prevent any one applicant from submitting several limited purpose lease applications, which would result in one applicant occupying the majority of DMR resources. By limiting the number of limited purpose lease applications (in process), DMR will be able ensure resources are distributed more evenly across applications. This proposed change only applies to applications in process and will not affect the number or type of existing leases an applicant may currently hold in total.

Prohibiting the storage of petroleum on limited purpose aquaculture lease sites
One commenter recommended prohibiting the storage of petroleum products on limited purpose aquaculture lease sites as this would protect public waters from oil spills. The intent of the proposed change is to standardize the requirements for petroleum storage across lease types, in part for administrative efficiency. Petroleum can be stored on standard lease sites, provided there is an oil spill and prevention control plan. Limiting the storage of petroleum to standard lease sites only would be arbitrary because both lease types have similar standards of review, monitoring and reporting. Furthermore, the submission and review of oil spill and prevention control plans is intended to protect public waters from oil spills.

Modifications to the definition of discharge and discharge lease requirements
One commenter wanted the Department to add power washing to the definition of "Discharge" under section 2.05 and to take the applicant's intent to conduct power washing into account when determining whether the lease will interfere unreasonably with the surrounding areas. The commenter noted that power washing increases biotic materials in the water column, and that DEP recommends that such leases have benthic monitoring. DMR believes that it does not have the authority to determine what constitutes a discharge as it has no authority under the Clean Water Act. Power washing would be reviewed in consideration of applicable lease decision criteria. DMR may also condition a lease if evidence demonstrates that benthic monitoring is necessary.

Termination of an application without a hearing
One commenter suggested that this section should be struck entirely because it denies an applicant due process. The Department does not intend for this to be the case. 12 M.R.S.A. §6072 (5) requires that an application demonstrate the lease could be granted and the applicant has the financial and technical capabilities to do the proposed activity prior to noticing a public hearing on the proposed lease application. This section is intended to implement that statutory language if the application could not be approved on its face. Should the application meet the statutory requirements, the applicant will always retain the right to go to public hearing, but can choose to terminate if the site review is unfavorable. The proposed change is intended only to provide a mechanism for the applicant to terminate an application prior to hearing if it becomes clear that the application is unlikely to be granted so that time and resources of both the applicant and the Department are not unnecessarily wasted.

Limitation of two pending experimental leases pending at a time
One commenter suggested that the restriction imposed to limit the number of pending experimental

lease applications that could be in process at any one time would be unnecessarily constraining growth in the sector. Given the significant expansion in experimental lease applications in recent years, the Department did intend for this to constrain applicants so that agency resources are not too heavily committed to a limited number of businesses in any given year. The agency intends to seek a fee increase for these applications in the future, and at that time, this restriction will be lifted.

Exception for municipalities to locate proposed sites within the 300:1 dilution zone for remediation
One commenter suggested including an exception for municipalities from proposed siting restrictions, so that a municipality would be able to site a lease within the 300:1 dilution zone around a wastewater treatment plant. The intent of the recommended exception would allow municipalities to conduct remediation activities. As proposed, there is an exception for the culture marine algae or seaweed provided it is not grown for human consumption and the applicant has provided satisfactory evidence to DMR that the site is for remediation purposes only, or there is a plan for destruction or compost.

Prohibition on siting leases within the 300:1 dilution zone
One commenter suggested including an exemption for seed to be grown within the 300:1 dilution zone. The Department believes the public health risks in these small zones are legitimate, and has found relay permits from Prohibited Areas to be generally difficult to enforce. As such, the Department declined to make this a general exception at this time, but notes that such an exception to this restriction could be obtained on a case by case basis by Special License.

Municipal involvement in the leasing process
Some commenters suggested modifying Chapter 2 regulations to give municipalities more authority over the leasing process. Specifically, one commenter recommended changing the regulations to allow municipalities to make zoning decisions to limit maximum lease sizes in residential areas along the coast. Some commenters noted that municipalities should be able to review and approve leases.

Pursuant to statute, DMR has the sole jurisdiction to lease areas in, on and under coastal waters, including the public lands beneath those waters and portions of the intertidal zone. If a lease is granted, DMR enforces applicable state laws and regulations as they relate to the lease site.

However, municipalities are routinely consulted and are invited to participate throughout the leasing and licensing process. Applicable statute and regulations require the following:

- Conduct a pre-application meeting with the harbormaster and other municipal officials and any potential applicant for a standard aquaculture lease, before the application is submitted.
- Notify the municipality directly of any scoping session.
- Send the municipality a copy of any completed lease application.
- 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, and beaches, parks, and docking facilities in proximity to any proposed lease.
- Notify the municipality directly of any public hearing.
- Grant the municipality intervenor status in any lease application case upon request.
- Take testimony under oath at the public hearing from and allow questioning of witnesses by municipal representatives.
- Consider any conditions on the lease recommended by the municipality and provide a written explanation if any of the requested conditions are not included in the lease.

- Notify the municipality when a lease has been granted.
- Require, on all applications for limited-purpose aquaculture licenses (LPAs), the signature of the municipal harbormaster or, if none, another official.
- Require, on LPA applications for sites above the extreme low water mark in a municipality with a municipal shellfish management committee, the signature of the committee chairperson to verify that the proposed LPA will not unreasonably interfere with the activities of the municipal shellfish management program.
- Request comment from the municipality on all applications to renew LPA licenses.
- Notify the municipality of the final status of an LPA application.

Furthermore, DMR cannot issue a standard or limited-purpose (experimental) lease in the intertidal zone of a municipality that has an approved shellfish conservation program, unless the municipal officers consent. Although DMR follows the processes and procedures outlined above, these laws do not compel a municipality to participate. Rather, participation in the leasing and licensing process is at the discretion of the municipality. However, DMR believes that there is ample opportunity for a municipality to participate in the aquaculture leasing and licensing process.

Conflicts of interest

One commenter wanted any public official having jurisdiction over potentially competing public uses to be disqualified from having an entity in which he or she has a pecuniary interest apply for a private commercial lease. The commenter recommended that DMR adopt the following provision: Conflicts of Interest. The applicant shall provide a written statement under penalty of perjury that no public official with jurisdiction over the area in which the proposed lease is situated has a personal pecuniary interest in the application.

The commenter did not provide a clear definition, or explanation of public official. This term could apply to someone who holds a legislative, administrative, or judicial position, whether appointed or elected. As constructed, it seems unfair to require an applicant to assume responsibility for certifying, under penalty of perjury, that any public officials with jurisdiction over the area do not have a personal pecuniary interest in the application.

Furthermore, DMR adjudicates lease proposals, not other public officials. Adopting such a proposed change seems unnecessary.

Extending emergency leasing provisions to limited purpose aquaculture licenses (LPAs)

A commenter suggested extending the emergency aquaculture lease provisions to allow limited purpose aquaculture (LPA) license holders to apply for an emergency lease if they applied for a limited purpose, or standard aquaculture lease during the term of the emergency lease. It was further suggested that an emergency lease be allowed whenever an applicant has applied for a lease. However, DMR's authority to grant an emergency lease, as specified in 12 M.R.S.A. §6072-B(1) is limited to areas currently under a standard or limited purposed aquaculture lease. In addition, 12 M.R.S.A. 6072-B(2)(A) further specifies that an applicant for an emergency lease must hold a standard or limited purpose aquaculture lease. In this instance, statutory provisions would need to be modified to extend these provisions to LPAs in regulation.

Extending emergency lease terms beyond 6 months

A commenter recommended extending the term of an emergency lease to longer than 6 months.

However, 12 M.R.S.A. 6072-B(2)(6) limits the duration of an emergency lease to 6 months. In regulation, the term of an emergency lease is 6 months, which is consistent with the statutory limitation. Therefore, increasing the duration of an emergency lease would need to be changed in statute.

Operational Plans

A commenter suggested that the Operational Plan required should be separate from the lease application, and expressed concern that any changes to the Operational Plan may require a lease amendment. The commenter also questioned when an Operational Plan would be required. Operational Plans will be required for all leases utilizing surface gear, including floats and rafts. The Department's intent was simply to limit the paperwork burden on the lease holder, by allowing the Operational Plan to be addressed by the contents of the lease application to the extent possible. The Department does not intend that all changes to the Operational Plan would require a lease amendment as defined in Section 2.44 of the rule. However, the Department agrees that some modifications to the Operational Plan may be needed over time, and that the applicant would be responsible for ensuring that these modifications were documented and available for inspection in accordance with the requirements regarding an Operational Plan under the National Shellfish Sanitation Program. An applicant is certainly welcome to keep a separate Operational Plan should this be a preferred approach for their business and operations.

One commenter requested that the definition of Operational Plan be expanded to include provisions regarding the control of marine debris and human waste. The National Shellfish Sanitation Program has provisions governing the containment and disposal of human waste. Aquaculturists are subject to the provisions of the National Shellfish Sanitation Program. DMR believes that the proposed site maintenance standards will help contain and minimize marine debris.

Department site review

One commenter noted that the list of documented information governing the site review does not include essential habitats such as eelgrass beds. Although not explicitly listed, DMR and other agencies consider eelgrass and other habitat types as part of their review.

Timing provisions concerning the processing and submission of applications

Some commenters objected to DMR holding applicants to submission deadlines. For example, requiring applicants to provide a completed application within 90 days of DMR sending an incomplete letter. Some applicants do not complete their application in a timely manner. For example, applicants may schedule a scoping session then wait a year or more after the scoping session to submit an application. In some cases, an applicant may submit their application shortly after a scoping session, but fail to respond to incomplete letters in a timely manner.

These types of practices lead to processing delays, which affect other applicants. It also creates situations where potential lease areas are unavailable due to application inactivity. It can also lead to an inefficient use of agency resources.

Applications should be processed in a reasonable amount of time to provide consistency and fairness to all stakeholders. DMR strives to review applications in a timely manner and has made many efforts to reduce the length of time it takes to review and deem an application complete. However, applicants also have a responsibility to satisfy application requirements and respond to agency requests for information and other materials in a timely manner.

Submission of an Environmental Characterization and Baseline in consideration of proposed application completeness deadlines

As proposed, if an applicant has not submitted a complete application within 90 days for the date of the Department's incomplete notice the application will be deemed void. An environmental baseline must be completed between April 1 and November 15, dates inclusive. One commenter indicated that if DMR's incomplete notice is made between November 15 and January 1 it would be impossible for an applicant to satisfy the 90-day timeframe, provided DMR determined the environmental characterization and baseline was inadequate.

Non-discharge applications, which represent most of the proposals received by DMR, are not subject to an environmental baseline. Rather, these proposals are subject to an environmental characterization, which is the applicant's description of the physical and ecological impact the project may have on existing and potential uses of the site. The Department requests that the environmental characterization be conducted between April 1 and November 15 when areas are biologically active. The environmental characterization is later verified in DMR's site assessment.

Only discharge applications (typically finfish farms) are subject to an environmental baseline. As part of the review process, DMR and DEP meet with discharge applicants prior to the submission of an application to discuss the baseline requirements. In most instances, the baseline is agreed upon and conducted prior to the submission of an application. There is a significant amount of planning regarding the environmental baseline in advance of the submission of an application. DMR is unaware of instances where an environmental baseline has been deemed inadequate during the application review process. However, if the scenario described by the commenter were to happen, DMR would work with the discharge applicant so that they could address any deficiencies associated with the environmental baseline without the proposal becoming void.

The commenter also suggested that "existing and potential uses of the site as a result of the operation" be struck from the section pertaining to discharge applications in order to better reflect the intent to protect the public interests for both discharge and non-discharge leases uniformly. The Department agrees that this was the intent of the proposed rule, and will make this change.

Changing the order of a scoping session

Some individuals expressed concerns about the change in order of the scoping session. Prior to the proposed change, scoping sessions were scheduled prior to the submission of an application. Specifically, some commenters thought that the change would increase processing times or add complexity to the process.

Scoping sessions are intended to familiarize the public with the proposal, allow the public an opportunity to provide the applicant with additional local information to inform the development of the proposal and to allow the public to ask the applicant questions about their proposed operations. The expectation was that applicants would come to scoping sessions prepared to share elements of their proposal with members of the public and other stakeholders. After the scoping session, an applicant would submit their application to DMR in a timely manner.

However, in an increasing number of instances, applicants are scheduling scoping sessions without developing the elements of their proposal necessary to conduct a meaningful session. In some

instances, a single applicant may schedule multiple scoping sessions for several sites without developing a proposal. Also, some applicants will schedule scoping sessions, but wait a year or more to apply. These practices circumvent the purpose of the scoping session and create situations where one applicant is utilizing a significant amount of DMR resources without having to first develop the details of their proposal. This diverts resources from other applicants who have taken the time to develop their proposals and have submitted applications.

By requiring the submission of a draft application, prior to scheduling a scoping session, applicants would need to make reasonable efforts to provide information about the proposal. This allows an interested member of the public, riparian or municipality to more fully understand the applicant's proposal. This change is intended to make participation in a scoping session will be more meaningful for all stakeholders. After the scoping session, the applicant would have the opportunity to revise their draft application based on feedback received during the scoping session.

The Department believes that changing the order of a scoping session will help improve processing, because applicants will be required to adequately develop proposals prior to scheduling a scoping session. It may also help the Department better manage application processing as there would be timeframes governing the submission of applications. This change may also help applicants improve their proposals as stakeholders will have sufficient details to provide the applicant with informed feedback.

Lease renewals are still an adjudicatory proceeding
Prior to the proposed change, Chapter 2.45 specified that lease renewals are an adjudicatory proceeding. To clarify, this requirement is already specified in relevant sections of Maine statute. Therefore, DMR is proposing to remove this language from the regulation, but lease renewals will remain an adjudicatory proceeding.

Requiring a second scoping session
The proposed rule specifies that if the location of the proposed lease in the final application materially differs from the location described in the scoping session, DMR may require the applicant to hold another scoping session. Some commenters suggested that DMR clarify what it means by "materially differs" and one commenter recommended developing guidelines for the interpretation of the term. The Department intends to provide written policy guidance to help applicants understand what types of situations might lead to a request for a second scoping session.

However, because there is considerable variability amongst proposals and each location is unique, the issues raised at any scoping session will vary. These factors make it difficult to develop specific guidelines that could be applied to all situations that may arise. As such, each lease application will be considered based on its unique considerations. DMR will evaluate the extent of the proposed location change in consideration of the concerns raised at the scoping session. The intent is not to create additional work for the agency or other stakeholders but to ensure that proposals can be adequately vetted prior to an adjudicatory proceeding.

Second scoping sessions and the acceptance of other applications for the same location
If a second scoping session needed to be held, one commenter objected to the provision that would allow DMR to accept applications for the same location until a second scoping occurred. In this scenario, DMR would have determined that the location of the proposed site materially differed from what was

presented at the scoping session. It would be highly likely that the revised proposal is in a different location from what the applicant originally presented at the scoping session. The commenter is concerned that this would deter applicants from responding to concerns raised at the initial scoping because, should another application come in for the same location, they may have to face a competing application if they ultimately decided to submit the final application for the original site. The Department believe this scenario is unlikely, but finds the concern that this may disincentive responsiveness to public input to be compelling and will strike this provision.

Increase to lease renewal fees
One commenter objected to the $500.00 increase in renewal fees for non-discharge leases. This proposed change would standardize renewal fees across lease types (non-discharge and discharge), as both lease types require a similar level of review at the time of renewal.

Conditions allowing applicants to request an extension for the issuance of a lease decision
One commenter objected to DMR removing language that had previously allowed applicants to agree to a longer decision issuance period after the public hearing. The commenter noted that an applicant may want a longer period to "give them an opportunity to resolve any stakeholder conflicts that may have arisen as a result of the lease application." The scenario described by the commenter is not permitted. The lease process is adjudicatory, so an applicant would not be able to resolve any stakeholder conflicts outside a public process. DMR would need to re-open the record and hold another public hearing. DMR is unaware of applicants asking for extensions regarding the issuance of final decision. DMR will amend this provision as originally proposed.

Chapter 2.15(3)(C) personal notice requirements to federal agencies
This proposed change strikes personal notice to federal agencies, which makes the rule consistent with statute. Lease applications are jointly utilized by DMR and the Army Corps of Engineers (ACOE). The ACOE completes their own review of the proposal in consideration of applicable federal laws and requirements. Removing the personal notification requirements does not change the joint application process. DMR intends to continue to share applications with the ACOE, who is obligated to seek consultation from other federal agencies with relevant jurisdiction. Relevant sections of statute require notice of lease proposals to specific state agencies, and DMR will continue to provide notice to those agencies in accordance with statute.

Chapter 2.20(3)(A) full participation of intervenors
One commenter alleged that DMR was limiting the participation of Maine citizens in aquaculture proceedings. However, this section pertains to the types of participation intervenors may be granted in an aquaculture proceeding. The proposed changes would remove regulatory language related to "full participation," which is duplicative of the Maine Administrative Procedures Act. To clarify, DMR is not attempting to limit intervenor participation, but eliminating duplicative references to relevant sections of statute.

Chapter 2.25 establishment of an agency file
Prior to the proposed change, Chapter 2.25 specified that DMR, upon receipt of an application, must open an agency file. The file includes, in part, all written correspondence from parties and non-parties concerning the application. To clarify, this requirement is duplicative of the Maine Administrative Procedures Act. Therefore, DMR is proposing to remove this language from the regulation, but will continue to maintain an agency file in accordance with applicable law.

Chapter 2.31(1), 2.31(2) evidence
Prior to the proposed change, Chapter 2.31(1) and 2.31(2) specified, in part, the types of admissible evidence and indicated what facts the presiding officer may take official notice of and the procedures governing official notice of facts. To clarify, this requirement duplicative of the Maine Administrative Procedures Act. Therefore, DMR is proposing to remove this language from the regulation, but will continue to adhere to applicable law governing evidence and official notice of facts in administrative proceedings.

Chapter 2.31(9) record
Prior to the proposed change, Chapter 2.31(9) specified, in part, that DMR shall keep a complete record of each aquaculture lease application proceeding. To clarify, this requirement is duplicative of the Maine Administrative Procedures Act. Therefore, DMR is proposing to remove this language from the regulation, but will continue to adhere to applicable law governing the record associated with each lease application proceeding.

Chapter 2.40(3)(A) lease issuance-Registry of Deeds
Prior to this proposed change, lease holders needed to file their lease or memorandum of lease in the Registry of Deeds of in the county where the site is located. One commenter suggested that removing this requirement would have detrimental effects on a lease holder's ability to raise financing. However, this requirement was once a statutory provision that was repealed. DMR is removing this from regulation to be consistent with statute. However, nothing restricts a lease holder from voluntarily filing their lease or memorandum with the Registry of Deeds, if they felt it would help secure financing, or other elements of their operations.

Aquaculture lease site workers
One commenter objected to the language requiring an Aquaculture license holder to "direct and oversee" the work of unlicensed individuals. This language reflects the same language that had historically been used to allow this sort of relationship of a worker operating under the authority of a license holder prior to the creation of the Aquaculture license. The Aquaculture license statute now uses this same terminology. The intent of this language was never to require direct supervision, but rather than the license holder be meaningfully engaged in the role of managing the lease and any individuals who may be working on the lease site. The intent remains the same.

Lease expansion provisions
One commenter asked for clarification about the lease expansion provisions that require the lease to be "reasonably based on the original lease dimensions." This is intended to ensure that the expanded portion of the lease is reasonably proportional to the existing lease dimensions. For example, a rectangular tract could be expanded on one side or two sides, but not have a long line extending out from it as the expanded footprint. Similarly, a multi-tract lease may not expand disproportionally to each tract. For example, a two-tract lease with one 8-acre tract and one 2-acre tract could not increase 25% by having 2.5 acres added onto the 2-acre tract. The 2-acre tract would only be eligible to increase by 25% of that 2-acre tract, or one half an acre.