



## **MAINE DEPARTMENT OF MARINE RESOURCES**

*Aquaculture Administrator, 21 State House Station, Augusta, ME 04333-0021 (207) 624-6567*

### **DMR AQUACULTURE LEASE ADMINISTRATIVE PROCESS**

#### **STANDARD LEASE (UP TO 100 ACRES, UP TO 10 YEARS)**

#### **I. Pre-Application Process**

- Prior to submitting an application, the applicant is required to attend a pre-application meeting with DMR staff and the harbormaster and/or a municipal officer of the municipality in which the proposed lease is located.
- Following the meeting, and before submitting the application, the applicant is required to hold a public scoping session, which is an informal public meeting in which the applicant will describe the proposal and members of the public can ask questions and voice concerns.
- The Department provides 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 to interested governmental agencies.
- The applicant publishes a notice in a newspaper at least ten days prior to the scoping session.

#### **II. Application submission**

- Application fees: No Discharge leases = \$1,500. Discharge leases = \$2,000.
- When submitted, an application is reviewed for completeness.
- If not complete, it is sent back with a letter explaining the missing information that is needed.
- If complete, the process begins.

#### **III. Application Complete**

- Once an application is complete, DMR notifies the applicant.
- A copy of the completed application is sent for review to the municipality, the municipal harbormaster, the U.S. Army Corps of Engineers, Maine Dept. of Inland Fisheries & Wildlife (IF&W), other state and federal agencies, and riparian landowners (waterfront landowners within 1,000 ft. of the proposed lease site).
- Finfish applications are also reviewed by DMR's Bureau of Sea Run Fisheries and the Maine Dept. of Environmental Protection.
- The municipal harbormaster also receives a questionnaire which asks for information regarding navigation and existing uses of the area.
- The application is posted on DMR's website. Copies are also sent to those on DMR's mailing list who have requested them.

#### **IV. Department Site Review**

- DMR biologists conduct a site visit for each standard application.

- During the site visit, they check the site coordinates, dive the site and make a video recording of the dive, and make other visual observations regarding uses of the area, riparian access, and navigation.
- They draft a site report which includes the information obtained during the site visit and other information they gather from the local harbormaster, DMR's water quality division, and IF&W.
- The site report includes information regarding each of the decision criteria (see XIV below).

## **V. Hearing Scheduled**

- When a hearing is scheduled, DMR notifies the applicant, riparian landowners, the municipality, and the Army Corps of Engineers.
- On average, a hearing is scheduled approximately 3 months in advance.
- Hearings are scheduled in the evenings, unless the Department finds that the hearing will be lengthy; then hearings may be scheduled in daytime or on successive evenings.

## **VI. Intervenor Requests**

- Those seeking to become intervenors, or legal parties, in the hearing process must apply for intervenor status at least 10 days prior to the hearing.
- The department will grant intervenor status to those who demonstrate that they will be directly and substantially affected by the granting of a lease.
- A municipality is automatically granted intervenor status upon request.
- The only difference between an intervenor and a member of the public is that, as a legal party, an intervenor is copied on all communications between the department and the applicant, and an intervenor receives a copy of the proposed decision and has 10 days to comment on the decision before it is sent to the commissioner for final decision.

## **VII. Hearing Notice**

- In addition to the notices mentioned above, at least 30 days prior to the hearing, DMR sends hearing notices, along with a copy of the application and site report, to the municipality, the riparian landowners, interested agencies and DMR's mailing list.
- Notices are placed in a newspaper of general circulation in the lease area at least 30 days and at least 10 days prior to the hearing.
- Notice is also placed in *Commercial Fisheries News*.

## **VIII. Hearing**

- The hearing is a formal adjudicatory hearing run by the aquaculture hearings officer. All witnesses are sworn to tell the truth, the hearing is recorded and may later be transcribed.
- Order of testimony: applicant, DMR, other agencies or municipalities, intervenors, public.
- After testifying directly, each witness is available for questioning.
- Order of questions: the hearing officer and DMR staff (may also ask questions at any time), the applicant, other agencies or municipalities, intervenors, public.
- The record closes at the end of the hearing, unless the hearing officer determines it is necessary to keep the record open.

## **IX. Decision**

- The hearing officer will write a proposed decision that is sent out to all legal parties (applicant and intervenors).

- The parties have ten days to comment on the proposed decision.
- The proposed decision and any comments submitted are forwarded to the commissioner for his final decision.
- The rules provide that the department has 120 days from the date of the hearing to issue a final decision.
- Decision criteria: the criteria that must be satisfied for a lease to be issued are contained in both statute and rule and appear at the end of this outline.

## **EXPERIMENTAL LEASE PROCESS**

Experimental leases are available for up to 4 acres for a 3-year term; the application fee is \$100. Experimental leases for commercial experiments are non-renewable; experimental leases for scientific research can be renewed for subsequent 3-year terms. The experimental lease process differs from that for standard (10-year) leases in the following ways:

- The process begins when the application is submitted to the Department. There is no pre-application meeting or scoping session in advance of applying. The Department may hold a scoping session after it receives the application if it believes that would be useful in eliciting information from the public.
- Experimental leases are advertised for a 30-day public comment period once they are deemed to be complete.
- Site visits are conducted on experimental lease site. Dive inspections and underwater video of the bottom are not required but may be conducted at DMR's option.
- A public hearing may be held at the Department's option. If the Department receives 5 or more written requests for a public hearing during the 30-day comment period, it must hold a hearing.
- The lease criteria regarding conserved lands, light, noise, and visual impact do not apply to experimental leases. Lease decisions are due in 60 days after a hearing or the end of the comment period.
- Experimental leases with no structure and no discharge do not require any bond or escrow account.

### **X. Lease is Granted**

- If a lease is granted a lessee shall:
- Record the lease in the registry of deeds.
- Publish a notice in the newspaper.
- Submit an annual report to the department.
- Establish an escrow or secure a performance bond in accordance with the following:
 

1. No structure, no discharge	\$500 standard lease; no bond for experimental lease with no structure or discharge (i.e., bottom planting)
2. No structure, discharge	\$500
3. Structure ≤ 400 sq. ft., no discharge	\$1,500
4. Structure >400 sq. ft., no discharge	\$5,000
5. Structure, discharge	\$25,000
- Pay an annual lease rental fee of \$100 per acre.

### **XI. Lease Renewal**

- At least 90 days prior to the expiration date of the lease, a leaseholder must file an application for renewal with the department; otherwise, the lease will expire.

- The application must include a nonrefundable application fee of \$1,000 for non-discharge leases and \$1,500 for discharge leases.
- Notice of the renewal application and 30-day comment period is sent to riparians, the municipality, relevant agencies, and those on DMR's mailing list. The comment period is advertised in the local paper.
- During the comment period, comments may be submitted and a hearing requested.
- A hearing is optional unless the department receives 5 or more requests.
- Criteria for renewal:
  1. Lessee has complied with the lease agreement during term of lease.
  2. Renewal of the lease is in the best interest of the state.
  3. Renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres.
  4. The lease is not being held for speculative purposes.

## **XII. Transfer**

- A lease may be transferred to another person for the remainder of the lease term if certain conditions are met.
- Notice of the renewal application and 14-day comment period is sent to riparians, the municipality, relevant agencies, and those on DMR's mailing list. The comment period is advertised in the local paper.
- Comments may be submitted during the comment period and will be considered in deciding whether to renew the lease. Hearings are not held on transfer applications.
- Criteria for transfer:
  1. The change in lessee does not violate any of the decision criteria.
  2. The transfer is not intended to circumvent the intent of the section on preferences for the granting of leases.
  3. The transfer will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres.
  4. The transfer is not for speculative purposes
- Payment of the transfer fee is required before the Department executes the transferred lease. The fee is \$2,500 for non-discharge leases and \$5,000 for discharge leases.

## **XIII. Enforcement**

- Leaseholders who fail to comply with the lease terms may have their lease revoked.
- There are also civil penalties for non-compliance with DMR statutes or regulations.
- If the department receives a complaint, either someone from the DMR aquaculture staff will look into the problem and try to resolve it, or they will get Marine Patrol involved. If the issue cannot be resolved amicably, then civil penalties and/or revocation may ensue.
- Marine Patrol makes routine inspections of aquaculture lease sites.

## **XIV. Decision Criteria**

- **STATUTORY** (Title 12 M.R.S.A. § 6072): In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area and may grant the lease if the proposed lease meets the following conditions as defined by rule.

A. Will not unreasonably interfere with the ingress and egress of riparian owners;

B. Will not unreasonably interfere with navigation;

C. Will not unreasonably interfere with fishing or other uses of the area. For the purposes of this paragraph, "fishing" includes public access to a redeemable shellfish resource, as defined by the department, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years;

D. Will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna;

E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site;

F. Does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, "conserved lands" means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property;

G. Will not result in unreasonable impact from noise or light at the boundaries of the lease site; and

H. Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

- **REGULATORY** (DMR Regulations, Chapter 2.37):

(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. Any surface structures that could be within 50' of a restricted channel at low tide must be marked with retro reflective tape and a radar reflector.

(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 the ability of the area 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 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.