



STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

JANET T. MILLS  
GOVERNOR

PATRICK C. KELIHER  
COMMISSIONER

October 10, 2023

To Whom It May Concern,

I am writing to provide an update on the Department of Marine Resources' (Department) position regarding proposed and implemented town moratoria on aquaculture leasing and licensing within Maine's coastal waters and some Department efforts currently underway to help municipalities better understand and engage with the Department's leasing and licensing process. This letter contains references to a letter sent to your municipality in August 2022 about moratoria and municipal involvement in the leasing and licensing process. A copy of that August 2022 letter is enclosed for ease of reference.

The Department is aware that some coastal towns are considering or have already imposed moratoria on aquaculture lease or license sites within town boundaries. Please note that the Department will continue to process aquaculture lease and license applications proposed in coastal waters in accordance with 12 M.R.S.A. §6072 et seq. This is because the Department has exclusive jurisdiction, granted in statute, to lease and license state waters for aquaculture (see 12 M.R.S.A. §6072(1)). While municipalities do not have the authority to restrict or limit aquaculture leasing or licensing in, on and under the coastal waters, municipalities may have limited jurisdiction for sites proposed in the intertidal zone if they have an approved municipal shellfish conservation program (in accordance with 12 M.R.S.A. §6671) and elect to develop a municipal shellfish aquaculture ordinance (12 M.R.S.A. §6673).

Although the Department has exclusive jurisdiction to lease and license coastal waters, the process affords municipalities with many opportunities to participate in the evaluation of those sites. The Department understands many towns want to engage with the process but may find it challenging to navigate. Please note that there are several efforts underway to improve communication and participation between the Department and stakeholders. The Department is working on several initiatives to collaborate with municipalities around aquaculture, including a discussion about the leasing and licensing process at the Regional Shellfish Meetings scheduled for November and December at three locations: Brunswick (Nov. 14<sup>th</sup> Curtis Memorial Library, 9am-11am), Bucksport (Dec. 4<sup>th</sup> Bucksport Town Office, 2pm-4pm) and Machias (Nov. 20<sup>th</sup> University of Maine Reynolds Center, 3pm-5pm; <https://www.maine.gov/dmr/meetings>).

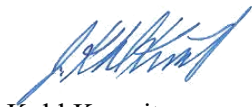
Additionally, the Department is developing an annual training focused on municipal participation in marine resource issues including aquaculture, shellfish management and anadromous fish to begin in the spring of 2024. Finally, the Department is planning to provide information related to the aquaculture leasing and licensing process at the annual Municipal Shellfish Warden Training, the Harbor Master's Association meeting and the Maine Municipal Association Annual Convention. We hope these forums will help to build and improve communication channels between towns and the Department. We welcome and encourage your participation as these events provide an opportunity to learn more about the leasing and licensing process and hear from other stakeholders across the state on these topics.

It is also the Department's hope that these initiatives will help make engagement in the leasing and licensing process more approachable for municipalities. Please note that each lease and license site is processed in accordance with established laws and rules and each site must meet applicable decision criteria to be granted. As an example, enclosed is a copy of the statutory decision criteria for standard leases. The specific criteria vary by the type of lease or license application, but all require an evaluation of how a site may impact uses of an area related to navigation, commercial fishing, riparian ingress/egress, and other respective considerations. The laws and rules governing lease and license

processing recognize the importance of municipal feedback and provide several opportunities for input as they relate to the legal criteria governing each type of site.

As the state agency managing and regulating aquaculture, the Department welcomes opportunities to engage with municipal officials on issues of concern and is happy to address questions regarding our existing application and evaluation process for marine aquaculture leases and licenses. If you have further questions about our process or our upcoming municipal engagement efforts, please feel free to contact Amanda Ellis, Aquaculture Division Director at [Amanda.Ellis@maine.gov](mailto:Amanda.Ellis@maine.gov); 207-624-6573, Lisa White, Aquaculture Program and Outreach Coordinator at [Lisa.C.White@maine.gov](mailto:Lisa.C.White@maine.gov); 207-557-1507 or myself at [Kohl.Kanwit@maine.gov](mailto:Kohl.Kanwit@maine.gov); 207-557-1318.

Sincerely,



Kohl Kanwit  
Director, Bureau of Public Health and Aquaculture

## Aquaculture lease decision criteria

12 M.R.S.A. §6072

### 7-A. Decision.

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 [Note: These rules can be found in Chapter 2.37 of the Department's regulations].

- A. The lease will not unreasonably interfere with the ingress and egress of riparian owners.
  - B. The lease will not unreasonably interfere with navigation.
  - C. The lease 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. The lease 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. The lease 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.
- The Department of Conservation shall maintain a list of conserved lands. The commissioner shall request this information from the Department of Conservation prior to holding a preapplication proceeding.
- G. The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site.
  - 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.



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JANET T. MILLS  
GOVERNOR

PATRICK C. KELIHER  
COMMISSIONER

August 18, 2022

Dear coastal town manager, administrator, or selectboard member,

I am writing to provide some background information regarding the permitting process for marine aquaculture leases and licenses, and to inform your municipality about opportunities to participate in that process.

It has come to the attention of the Maine Department of Marine Resources (Department) that some coastal towns may be considering imposing moratoria on aquaculture siting or ordinances to regulate aquaculture siting within town boundaries. However, the Commissioner of Marine Resources holds exclusive jurisdiction to lease lands in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for scientific research or for aquaculture of marine organisms (12 M.R.S.A. §6072 (1)). Municipalities have limited jurisdiction in the intertidal zone if they have an approved municipal shellfish ordinance (in accordance with 12 M.R.S.A. §6671) and may be authorized to issue municipal aquaculture permits (in accordance with 12 M.R.S.A. §6673), but this does not limit in any way the Commissioner's authority to issue leases and licenses in the coastal waters of the State. If your municipality is considering such moratoria or ordinance development, the Department would greatly appreciate the opportunity to review draft language prior to adoption so that we may provide comment on any jurisdictional concerns.

However, the Department's laws and rules provide several opportunities for the municipality to participate in the leasing process, even prior to a hearing. In fact, these laws and rules provide the municipality with additional opportunities to provide feedback when compared to other stakeholders that may engage with the leasing or licensing process. For example, before an applicant can submit a draft standard lease application, they must hold a pre-application meeting with the Department and municipality. The purpose of this meeting is for the applicant to present their proposed plan and for the municipality and Department staff to provide feedback. After a pre-application meeting, an applicant may submit a draft standard lease proposal to the Department. The draft application details the applicant's proposed operations and is reviewed by Department staff. After staff review the application and find that it is complete, applicants are responsible for holding a scoping session on their draft application. The scoping session is an opportunity for the applicant to present their proposal to the public and other stakeholders, including the municipality, prior to submitting a final application. Notice of scoping sessions is provided to the municipality. After a scoping session, applicants may submit a final lease proposal to the Department. After staff review the application and find that it is complete, notice of the complete application is sent to the municipality. The notice includes a Harbormaster Questionnaire (HMQ) for the Harbormaster or other municipal designee to complete. The HMQ requests local information about how the proposed site may affect navigation, fishing, and other considerations related to the lease decision criteria.

After a final application is deemed complete, Department science staff will visit the site and publish a site report that details their findings, which is one part of the record that the Department considers when evaluating a site. However, this is not the only information that is considered. For leases which require a public hearing, the hearing notice will be provided to the municipality, which includes information on the opportunity to intervene or to provide testimony. A municipality is granted intervenor status upon written request. At a public hearing, municipal officials, members of the public and other stakeholders who register to participate in the proceeding are given the opportunity to present testimony and evidence about the proposed lease site and decision criteria. Applicable testimony and evidence is also taken into consideration when evaluating a site. Although the example described above is specific to the standard lease application process and leases which require a hearing, each type of aquaculture lease or license type provides an opportunity for municipal review and input.

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As the state agency managing and regulating aquaculture, the Department welcomes opportunities to engage with municipal officials on issues of concern, and is happy to address questions regarding our existing application and evaluation process for marine aquaculture leases and licenses. We believe our existing process is robust and provides adequate opportunity for municipal engagement, as well as public participation, to ensure appropriate protection of existing uses. If you have further questions about our process, please feel free to contact me at [Meredith.Mendelson@maine.gov](mailto:Meredith.Mendelson@maine.gov) or 207-624-6553. You may also contact Marcy Nelson, Aquaculture Division Director ([Marcy.Nelson@maine.gov](mailto:Marcy.Nelson@maine.gov)).

Sincerely,



Meredith Mendelson  
Deputy Commissioner