

Basis Statement

Chapter 2 Aquaculture Lease and LPA License Regulations, Updates

The amendments to Chapter 2 include the following:

- 1) update the form of application fee payments now acceptable (no application fee changes were proposed);
- 2) reduces the rent for the first two years for certain leases;
- 3) removes outdated language regarding discharge type leases;
- 4) implements greater flexibility in the format of the LPA license applications and decision documents;
- 5) requires a municipal signature when an LPA is located in the intertidal area of a municipality with a shellfish program;
- 6) eliminates the prohibition on LPA's between extreme low and mean low water marks in municipalities with shellfish committees;
- 7) adds scallops to the approved species list for LPA's and gear descriptions for scallop culture; 8) adds a new section on aquaculture lease site workers operating under the authority of a shellfish license holder, statute citations have been added for clarification;
- 9) updates notice provisions; and
- 10) corrects references throughout the chapter that have been repealed or revised.

During the comment period three additional corrections to outdated or improper citations were found and have been added in Chapter 2.45 (1) Lease Renewal, Chapter 2.40(6) Lease Issuance, Other Licenses; and Chapter 2.64(10)(G) Experimental Aquaculture, Lease Actions Required of Leaseholder. See regulation text.

Item 7 above, which adds scallops (*Placopectin magellanicus*) to the LPA authorized shellfish species list, a sentence has been added to Chapter 2.90(2)(A) Species, for clarification regarding the term shellfish to include scallops for the purpose of this section. This is considered necessary as the word "shellfish" appears many times in Chapter 2.90, however the definition of "shellfish" in the 12 M.R.S.A. §6001 (41) does not include scallops. Instead of adding the word scallop wherever the term shellfish is used throughout Chapter 2.90 clarification was added such that the terms "shellfish" and "seed" throughout Chapter 2.90 also include scallops (*Placopectin magellanicus*). See regulation text.

Summary of Comments

Chapter2 Aquaculture Lease and LPA License Regulations, Updates

A public hearing was held March 16, 2009 at the Department of Marine Resources in West Boothbay Harbor. One person from the public attended the hearing and two written comments were received.

Hearing attendees: Dana Morse, UM Sea Grant, Darling Marine Center, Walpole
DMR personnel: Diantha Robinson & L. Churchill

Written comments and Department responses:

RE: Chapter 2.90(2)(F)(2) Gear description

Mike Nichols, Lamoine

I am writing to comment on: Ch. 2.90(2)(F)(2) Gear description, sections (b), (e), (h) and (i); and Ch. 2.90(4) Authorized Shellfish Species [which] Adds scallops to the approved species for culture on an LPA license site.

What I am commenting on is whether or not a scallop grow out system using plastic mesh trays deployed on the sea bottom either singly or in cages holding multiple trays is allowable by these rules or needs to be added to these rules, or is allowable by some other rules. I am going to include some attachments [the photos and diagrams are available upon request] showing the types of systems I am referring too. Dana Morse at the Maine Sea Grant Extension Service is working with this type of system currently and worked with a gentleman named Thomas Pottle who a few years back started a bottom culture scallop project in Cobscook Bay as well. Dana's email address is dana.morse@maine.edu. Dana is very knowledgeable about this type of system as he participated in a scallop aquaculture study that sent him and a few

others to Japan to study the aquaculture techniques being used there. Tomorrow I will send you some attachments about the Thomas Pottle project.

Dana Morse, UM Sea Grant, Darling Marine Center, Walpole

I'm writing to ask for clarification, both for my own question, and one received from Mike today.

Assuming that the addition of scallops to the list of LPA-acceptable species goes through -

Will scallops be allowed to be held in the gear already allowed in the LPA language, such as a bottom rack? I looked back at 2008 LPA application, and approved gear includes "Type of gear to be used (upweller, raft, spat collector, tray racks, overwintering cages, soft bags, floating trays, or lantern nets)".

Mike had a question about a specific type of bottom rack, called an AquaTray, but my assumption is that this specific gear is included under the broader category of 'bottom rack,' since it sits on the bottom, and the units stack one upon the other. Is my assumption correct?

I can provide photos and other descriptive information on AquaTrays, if necessary.

Department response:

Upon review of Chapter 2.90(2)(F)(2) Gear description, the rules regarding what is allowed and what is not state: "Aquaculture gear, other than the list of equipment described in this section, may not be used. The descriptions are generalizations of the physical appearance, purpose and uses of each type of gear and are not a substitute for a project specific description with the dimensions of the gear to be used on site." The scallop gear descriptions provided by Dana Morse and Mike Nichols fit the generic descriptions already included in the paragraphs for gear description and therefore it is considered unnecessary to duplicate the equipment for the grow out of scallops.

*This review of the gear description uncovered that the term "shellfish" as defined in 12 M.R.S.A. §6001 (41) does not include scallops, which appears many times in Chapter 2.90. Whereas the scallop gear descriptions fit the shellfish gear descriptions, but the definition of shellfish technically does not include scallops (*Placopectin magellanicus*), Chapter 2.90 needed to be clarified. Instead of adding the word scallop to wherever the term shellfish is used throughout Chapter 2.90, such as for every paragraph in the gear description section, a clarification was added to the authorized species list that the terms "shellfish" and "seed" throughout Chapter 2.90 includes scallops (*Placopectin magellanicus*).*

The Maine Aquaculture Association, Sebastian Belle, Executive Director, Hallowell

Chapter 2.10.2 Application Fees

MAA opposes the existing and proposed fee structure. Historically when they were originally proposed we were neither in support nor in opposition to the proposed fee changes. We took this neutral stance because although we supported the Department's attempts to realign its funding sources, MAA believed the proposal presented significant barriers to entry for owner/operators and did not recognize aquaculture's contribution to the State's general fund.

Recent economic reviews estimate the annual economic impact of aquaculture in Maine to be between \$45-130 million, with a farm gate value of between \$57-58 million. Aquaculture is a net revenue generator for State government generating a \$9.25 million excess over the state's cost of administering the sector as estimated by the Department of Marine Resources. We recognize that some portion of this net revenue goes to local taxes (we estimate approximately \$850,000) and that most goes to the general fund. As a percent of landed values, no other marine resource user group pays as high a user fee. Our estimates are that compared to other marine resource users, our user fees are 4-10 times higher. It is also important to note that out of approximately 162 DMR staff, the second most valuable "fishery" in terms of landed value has only 2 general fund staff dedicated to it. Given our contribution to the state, state government funds, and relative size of our "fishery", the DMR should use more general funds and staff to administer and support our sector.

We recognize that the Department has many obligations and may consider itself constrained from reassigning existing resources due to historical precedent, existing staff expertise and certain political pressures. We would however like to encourage the Department to review their current programs and priorities and seriously consider reassigning existing resources.

These are hard economic times for both constituents and the departments that manage them. MAA has consistently supported the Department in its budget requests before the Appropriations Committee. In addition, we supported significant increases to our license and permits fees and dramatic increases in the rents we pay to the state for our leased acreage. The aquaculture sector is very diverse and our members range from larger companies that operate in a number of jurisdictions to small owner/operators. Our concern is particularly for our smaller owner/operators. For these operators, the \$1,500 and \$2,000 application fees are a significant barrier to entry. MAA would like to encourage the DMR to consider reducing application fees for shellfish operators in particular below the \$1,500 level. We would like to emphasize that unlike virtually all other DMR constituencies, there is significant opportunity to expand our sector and through this generate more resources for the agency. Key to the realization of that potential is the accelerated entry of new aquaculture entrepreneurs. Given lower entry fees, streamlined permitting and a supportive regulatory climate, MAA believes it is entirely possible to facilitate the formation of hundreds of owner/operator aquaculture firms. We view the current fiscal crisis as a short-term problem that can be overcome by expanding the number and diversity of operations in our sector. Relative to traditional fisheries, we are not resource constrained and we would like to encourage the Department to think of any short-term costs they incur as an investment in their future constituency base. We are concerned that unless the Department acts decisively to encourage new entrants and foster the expansion of our sector, the opportunities for the Department to support working waterfronts and increase its own political base will be lost.

Department response:

There were no fee changes proposed in Ch. 2.10(2). The older fee changes that are proposed to be struck are now out of date and therefore would be removed simply to clean up the text. The other proposal is to accept more forms of payment, such as personal checks, which would be a convenience for applicants. The comments to change the fee structure would be substantively different from the proposed regulations in this section and require either separate rulemaking and or legislation and belongs in a forum separate from technical changes.

Chapter 2.43 - Lease Rental Fee

MAA appreciates the DMR's efforts to scale lease fees as new operations start up. This is a good way to help address some of the concerns expressed above and reduce barriers to entry for small owner/operators. MAA opposes the sunset provision on this clause and requests that the Department remove it in order to help new entrants. There does not appear to be any substantive justification for the sunset provision so it should not be proposed.

Department response:

The proposed amendments would reduce the rent for the first two years of the lease term for certain leases in order to encourage wild mussel draggers to transition to aquaculture where possible, in accordance with 12 MRSA §6072(9):

*9. Rents. After consulting with the Director of the Bureau of Parks and Lands, the commissioner shall determine the rent that must be paid under each lease. The rent must represent a fair value based upon the use of and any structures in the leased area, but in no instance may the rental fee be set at less than \$50 an acre or more than \$100 an acre. The commissioner has the discretion to increase the rental fees for categories of leases. These changes may take effect over the term of a lease. **The commissioner also may discount a portion of the rental fee during the first 2 years of operation of a new lease.** This discounted rate may not be less than \$50 an acre.*

As stated in the statute the discounted portion may only be applied during the first two years of operation. Therefore the "sunset" provides compliance with the statute. This comment would require legislation.

Chapter 2.90 - Limited Purpose Aquaculture License

MAA supports the clarification and expansion of this section. We have two comments.

2.90(2)(F)(i) Scallop ear hangers

Add the following language. "...shells to suspended line. Each line typically has multiple individual scallops attached by ear hangers."

Department response:

The clarification to this type of gear is considered appropriate and is not considered a substantive change to the intent of the proposed rule. See regulation text for this addition.

2.90(4) Authorized Shellfish Species

Add Bay scallops (*Agropectin irradians*). This species has been permitted for use/import in Maine. There are very limited, seasonal opportunities to culture them, but there is a very profitable market for them. We should try to find a way to make this possible

Department response:

*Only the giant sea scallop, Sea scallop (*Placopecten magellanicus*), was proposed in this rulemaking. Whereas the Bay scallop (*Agropectin irradians*), was not proposed adding it at this would be considered a substantive change as this species would come with its own set of disease and public health issues that were not covered in the development of this rulemaking.*

Chapter 2.92 Aquaculture lease site workers operating under the authority of a shellfish license holder

There appears to be an inconsistency between this section as written and the additional information section of the rule introduction. The additional information section 2.92 contains the following language "...Pursuant to 12 MRSA 6406 however, a crew member whose shellfish harvester license has been suspended will be ineligible to work on a shellfish aquaculture site under this provision." There does not appear to be any language however in the proposed language under 2.92 that makes this clear. Furthermore, if this is the intent of the Department, what is the functional intent here? Why prohibit someone who has lost their shellfish harvester license from getting a job and a lease site? MAA recognizes that if a shellfish harvester has lost their license it is for cause and the DMR has carefully considered and fairly weighed the merits of their case. Furthermore, there should not be a system that rewards an individual for any actions that have caused them to lose their license. Having said that, if a individual has already paid the price of losing their ability to harvest for themselves, why preclude their ability to get an hourly job working for someone else. In terms of enforcement, the requirement for the leaseholder and license holder to keep track of the dates on which the individual worked would provide an enforceable paper trail to determine whether an individual was violating this provision.

Department response:

The prohibition on working after license suspension is contained in 12 M.R.S.A. §6406(A & E) and cannot be changed by this rulemaking.

The described "inconsistency" is not inconsistent, rather statute 12 M.R.S.A. §6406 that prohibits the suspended license holder from the activity was not repeated in the proposed regulations. To clarify the regulations and not repeat the statute in it's entirety citations have been added to the title line for reference. See regulation text.

DEPARTMENT OF MARINE RESOURCES

CHAPTER 2 AQUACULTURE LEASE REGULATIONS

2.10 Application Requirements for Standard Leases

- 2. Fee. An application shall not be considered complete unless a non-refundable application fee has been paid ~~in cash or by certified check~~. 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, 2005:	\$500	\$1,000
Effective January 1, 2006:	\$1,000	\$1,500
Effective January 1, 2007:	\$1,500	\$2,000

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 ~~forward~~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, ~~lease application and chart describing the lease area~~ 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.

2.37(1) Decision

- B. Conditions

(Note: second paragraph only)

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 finally approved unless the Commissioner has received certification from the Department of Environmental Protection (DEP) that the project will not violate the standards ascribed to the receiving waters classification, 38 M.R.S.A. §465-B and DEP has issued any required National Pollution Discharge Elimination System Permit governing the discharge of pollutants pursuant to section 402 of the Clean Water Act and 38 MRSA §413.~~ The Commissioner may require environmental monitoring of a lease site (see Chapter 2.40(7)) and may establish any reasonable requirements to mitigate interference, including but not limited to restrictions on:

- (1) specific stocking limits, feeding requirements, husbandry techniques and harvesting methods;
- (2) the size and shape of gear, nets, or enclosures;
- (3) the deployment and placement of gear; and
- (4) the timing of various project operations.

2.40 Lease Issuance

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 or 15-2415, 21 and 23 in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.

2.43 Lease Rental Fee

Rental shall be payable hereunder as follows:

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.

2.45 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 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.

2.64 Experimental Aquaculture 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 ~~forward~~ 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.

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 ~~on~~ of the manner and time within which comments ~~may be~~ 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.

A. Notice of Public Hearing. *[Note: no change to this paragraph proposed.]*

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

7. Decision.

- 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. ~~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.~~ 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).

2.64 Experimental Aquaculture Lease

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

- 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 ~~15-20~~15, 21 and 23 established in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.

2.90 Limited-purpose aquaculture (LPA) license

1. LPA License

D. *(Note: second paragraph only)*

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

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

2.90 Limited-purpose aquaculture (LPA) license

2. Application requirements

D. Required Signatures

(3) 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.

~~(3)~~(4) *(Note: No other proposed changes to this paragraph than renumbering.)*

2.90 Limited-purpose aquaculture (LPA) license

2. Application requirements

F. Site Plans

(2) Gear description

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

A shellfish raft is similar to a floating dock utilized as a working platform from which seed shellfish are suspended or contained by some form of device in which the shellfish are reared to a market size product. The raft may also be used as a work site to seed, sort, clean or harvest product and perform maintenance on the culture devices. A typical blue mussel raft is a floating square frame with beams spaced every foot spanning the raft width from which numerous ropes or dropper lines are suspended but do not touch the seafloor, to inhibit predators climbing up the ropes to eat the mussels. Seed mussels are attached to dropper lines mechanically or by hand with a biodegradable cotton mesh and prevented from slipping off the lines by the placement of 6-inch pegs every foot or so. The vertical profile of an unseeded raft ranges from 2.5 feet above the water surface to roughly a

1-foot elevation when seed mussels are attached. A shellfish raft can be a solid platform from which shellfish tray racks and or mesh bags containing shellfish are suspended beneath the raft in the water. The suspended devices would be accessed through openings similar to a trap door in the surface of the float. Predator nets are commonly suspended with weights for adequate tension and have large diagonal mesh openings of at least four (4) inches. Dropper lines may be used to collect mussel spat from the water column when they attach to the lines. ~~For purposes of this regulation the use of specialized spat collection devices or gillnet material placed in onion bags are not included.~~

(e) Lantern nets and pearl nets

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

(h) Scallop spat collector bags

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

(i) Scallop ear hangers

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

2.90 Limited-purpose aquaculture (LPA) license

3. Site Limitations

B. 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 below the mean low water mark pursuant to 12 M.R.S.A. §6072-C(2) ~~and below the extreme low water mark in towns that have a DMR approved Municipal Shellfish Program (MSP) that stipulates its jurisdiction extends to extreme low water.~~

2.90 Limited-purpose aquaculture (LPA) license

3. Site Limitations

C. DMR Water Quality Program Closure Areas

(3) Exemption for shellfish less than 25mm in size.

An LPA license site that rears or contains only shellfish 25mm or less in size may be located within prohibited areas pursuant to DMR regulations Chapter 2.95(1)(A)(4). All movement of cultured shellfish from a license site under this exemption must be conducted pursuant to DMR regulations in Chapter 2.95 and 21, which govern the relaying or movement of shellfish from these areas to areas suitable for harvesting.

2.90 Limited-purpose aquaculture (LPA) license

4. Authorized Shellfish Species

An LPA license may be issued only for the cultivation of the following shellfish species: Blue Mussel (*Mytilus edulis*), Hard Clam / quahog (*Mercenaria mercenaria*), Hen Clam (*Spisula solidissima*), American or Eastern oyster (*Crassostrea virginica*), European Oysters (*Ostrea edulis*), Sea scallop (*Placopecten magellanicus*) and the Soft shelled clam (*Mya arenaria*).

Notwithstanding 12 M.R.S.A. §6001 (41), for purposes of Chapter 2.90, the terms "shellfish" and "seed" include sea scallops (*Placopecten magellanicus*).

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

1. 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 MRSA §6601 (2-A);
- B. A mussel hand-raking license pursuant to 12 MRSA §6745 (2-A); or
- C. A mussel boat license pursuant to §6746 (2-A).

Such unlicensed individuals shall keep a copy of the appropriate 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 licenses, 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

- 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:-
<http://www.maine.gov/dmr/crd/forms/shellfish%20import%20application%202004.pdf>;
 - (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)(~~BC~~)(3) and 2.05(~~40~~)(1)(~~J~~).
 - (e) Inspection: The Commissioner and his/her agents may inspect the lease site, seed, operations, and business records of seed permit holders.