

§6072-A. Limited-purpose lease for commercial or scientific research

1. Authority. The commissioner may issue a limited-purpose lease for areas in, on and under the coastal waters, including the public lands beneath those waters and portions of the intertidal zone, for commercial aquaculture research and development or for scientific research. The commissioner or the deputy commissioner acting on the commissioner's behalf may authorize in writing qualified professional department staff to issue a final decision and sign a lease document on an application for a limited-purpose lease. A decision issued by department staff pursuant to this subsection is a final agency action with respect to that lease application.

A. [PL 2013, c. 509, §3 (RP).]

B. [PL 2013, c. 509, §3 (RP).]
[PL 2013, c. 509, §3 (AMD).]

2. Suspended culture. A person issued a limited-purpose lease under this section may construct or operate in the coastal waters of the State a facility for the culture of finfish in nets, pens or other enclosures or for the suspended culture of any other marine organism.
[PL 1997, c. 231, §6 (NEW).]

3. Limit on duration. A limited-purpose lease may not be issued for a period greater than 3 years.
[PL 1997, c. 231, §6 (NEW).]

4. Size limitation. A limited-purpose lease may not be issued for an area in excess of 4 acres.
[PL 2009, c. 229, §4 (AMD).]

5. Notice of application. Upon determining that an application is complete, the commissioner shall provide notice of a limited-purpose lease application to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The applicant shall provide the names and addresses of known riparian landowners within 1,000 feet of the proposed location of the lease. The names and addresses must be taken from the current property tax roster on file at the local municipal office or with the Department of Administrative and Financial Services, Bureau of Revenue Services for an unorganized territory. The commissioner shall publish a summary of the application in a newspaper of general circulation in the area proposed for a limited-purpose lease. The commissioner may require the applicant to reimburse the department for costs incurred by the department in providing public notice under this subsection. A person may provide, within 30 days of receipt of notice or within 30 days of publication of a limited-purpose lease summary, to the commissioner comments on the proposed limited-purpose lease.
[PL 2021, c. 52, §10 (AMD).]

6. Public hearing. The commissioner may hold a public hearing on the proposed limited-purpose lease. The commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment periods provided in subsection 5.
[PL 1997, c. 231, §6 (NEW).]

7. Notice of public hearing. The commissioner shall provide notice of a public hearing to owners of riparian land within 1,000 feet of the proposed location of the lease and to the municipal officers of the municipality in which the limited-purpose lease activity would take place. The commissioner shall publish notice of a public hearing in a newspaper of general circulation in the area proposed for a limited-purpose lease at least 30 days before the hearing. The commissioner may require the applicant to reimburse the department for costs incurred by the department in providing public notice under this subsection.
[PL 2021, c. 52, §11 (AMD).]

8. Rules; general and lease application. The commissioner may adopt rules to implement the provisions of this section. Within 180 days of the effective date of this section, the commissioner shall adopt rules regarding a limited-purpose lease application. The rules must require an applicant to, at a minimum, meet the requirements of section 6072, subsection 2, paragraph E and section 6072, subsection 4, paragraphs A, B, C, E, F, G and J. The rules must also require an applicant to provide to the department proof of access to the lease area. If access will be across riparian land, the applicant shall provide to the department the written permission of every riparian owner whose land will be used to access the lease area. The commissioner may adopt rules to add or delete authorization for the holder of an aquaculture lease that is held only for scientific research purposes to grow specific species and to use specific gear on the lease site. A change in authorization is not an adjudicatory proceeding. The rules must provide for notice of proposed changes in gear authorization to the public, riparian landowners and the municipality in which the lease is located and an opportunity to submit written comments on the proposal. Authorization to add species or gear must be consistent with the findings made under subsection 13 when the lease was approved.

[PL 2021, c. 168, §1 (AMD).]

9. Application information. A person who applies for a lease in an area for which that person has been issued an emergency aquaculture lease under section 6072-B may submit any information utilized in applying for an emergency aquaculture lease to meet the application requirements of this section. If the commissioner determines the information is not valid or relevant to a lease application under this section, the commissioner must require a person to submit additional information.

[PL 1997, c. 231, §6 (NEW).]

10. Assessment of proposed activities. Within 180 days of the effective date of this section, the commissioner shall by rule establish a method for conducting an assessment of the proposed limited-purpose lease site and surrounding area to determine the possible effects of the proposed limited-purpose lease activity on commercially and ecologically significant flora and fauna and conflicts with traditional fisheries. The rules must establish levels of assessment appropriate to the scale or potential environmental risk posed by a proposed limited-purpose lease activity. The rules must provide a method for establishing a baseline to monitor the environmental effects of a limited-purpose lease activity.

[PL 1997, c. 231, §6 (NEW).]

11. Municipal approval. In any municipality with a shellfish conservation program under section 6671, the commissioner may not issue a limited-purpose lease under this section for the intertidal zone within the municipality without the consent of the municipal officers.

[PL 1997, c. 231, §6 (NEW).]

12. Preference. If more than one person applies to lease an area, preference must be given as follows:

A. First, to the department; [PL 1997, c. 231, §6 (NEW).]

B. Second, to the riparian owner of the intertidal zone in which the leased area is located; [PL 1997, c. 231, §6 (NEW).]

C. Third, to a person who fishes commercially and who has traditionally fished in or near the proposed lease area; and [PL 1997, c. 231, §6 (NEW).]

D. Fourth, to the riparian owner within 100 feet of leased coastal waters. [PL 1997, c. 231, §6 (NEW).]

[PL 1997, c. 231, §6 (NEW).]

13. Decision. The commissioner may grant a lease if a proposed project:

A. Will not unreasonably interfere with the ingress and egress of riparian owners; [PL 1997, c. 231, §6 (NEW).]

- B. Will not unreasonably interfere with navigation; [PL 1997, c. 231, §6 (NEW).]
- C. Will not unreasonably interfere with fishing or other uses of the area taking into consideration the number and density of aquaculture leases in an area; [PL 1997, c. 231, §6 (NEW).]
- D. Will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; [PL 1997, c. 231, §6 (NEW).]
- E. The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; and [PL 1997, c. 231, §6 (NEW).]
- F. The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally owned, state-owned or federally owned beaches and parks or municipally owned, state-owned or federally owned docking facilities. [PL 1997, c. 231, §6 (NEW).]

The commissioner may by rule develop criteria for an applicant to meet the terms of this subsection. [PL 1997, c. 231, §6 (NEW).]

14. Fee. The commissioner shall by rule determine the rental fee for a limited-purpose lease. [PL 1997, c. 231, §6 (NEW).]

15. 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. [PL 2003, c. 660, Pt. A, §15 (AMD).]

16. Statement of rights conveyed. The commissioner shall include the following statement in a lease issued under this section: "A limited-purpose lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease." [PL 1997, c. 231, §6 (NEW).]

17. Actions required of lease holder. [PL 2003, c. 247, §12 (RP).]

17-A. Notification of granted leases. After the granting of a limited-purpose lease:

A. The department shall notify all riparian owners, intervenors and the municipality in which the lease is located that a lease has been granted. The notice must include a description of the area and how a copy of the lease may be obtained; [PL 2003, c. 247, §13 (NEW).]

B. The lessee shall mark the leased area in a manner prescribed by the commissioner; [PL 2009, c. 240, §9 (AMD).]

C. Until October 1, 2023, the lessee shall annually submit to the commissioner a report for the past year on results of the 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 before October 1, 2023 are confidential records for the purposes of Title 1, section 402, subsection 3, paragraph A; [PL 2023, c. 207, §6 (AMD).]

C-1. The holder of a limited-purpose lease for scientific research shall annually submit to the commissioner a report for the past year on results of the scientific research undertaken at the lease site and a plan for the coming year. Upon written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located; and [PL 2023, c. 207, §6 (NEW).]

D. Until October 1, 2023, the lessee shall annually submit to the department a seeding and harvesting report for the past year and a seeding and harvesting plan for the coming year. Upon

written request, the commissioner shall provide a copy of the report to the municipality or municipalities in which or adjacent to which the lease is located. The seeding and harvesting reports submitted by a lessee under this paragraph before October 1, 2023 are considered confidential statistics for the purposes of section 6173. [PL 2023, c. 207, §6 (AMD).]

[PL 2023, c. 207, §6 (AMD).]

18. Scientific lease renewal. A limited-purpose lease for scientific research may be renewed. A scientific research lease renewal is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4, but a public hearing is not mandatory unless it is requested in writing by 25 or more persons. The commissioner may review multiple leases concurrently during the lease renewal process. The commissioner shall renew a limited-purpose lease for scientific research unless the commissioner finds that:

A. The lease holder has not complied with the terms of the limited-purpose lease; [PL 1997, c. 231, §6 (NEW).]

B. Research has not been conducted during the term of the lease; or [PL 1997, c. 231, §6 (NEW).]

C. It is not in the best interest of the State to renew the limited-purpose lease. [PL 1997, c. 231, §6 (NEW).]

[PL 2011, c. 93, §5 (AMD).]

19. Commercial lease not renewable. A limited-purpose lease for commercial aquaculture research and development may not be renewed.

[PL 1997, c. 231, §6 (NEW).]

20. Extension of commercial lease. If a person who holds a limited-purpose lease for commercial aquaculture research and development submits an application under section 6072 for that lease area or a portion of that area before the expiration of that limited-purpose lease, and if the commissioner's decision under section 6072 occurs after the expiration of that limited-purpose lease, the lease remains in effect until the commissioner makes a decision. If the commissioner grants that person a lease under section 6072, that person's limited-purpose lease remains in effect until the effective date of the lease issued under section 6072. If the commissioner denies that person a lease under section 6072, that person's limited-purpose lease remains in effect until 30 days after the commissioner's decision.

[PL 2011, c. 93, §6 (AMD).]

21. Monitoring lease.

[PL 2003, c. 247, §14 (RP).]

22. Monitoring and revocation of leases. The department shall monitor a lease under this section on an annual basis. If aquaculture has been conducted in a manner substantially injurious to marine organisms, if no substantial aquaculture or research has been conducted over the course of the lease or if any condition of the lease has been violated, the commissioner may initiate revocation proceedings and revoke the lease. The department shall hold a hearing with public notice prior to revoking any lease. A lease revocation is an adjudicatory proceeding under Title 5, chapter 375, subchapter 4.

[PL 2003, c. 247, §15 (NEW).]

23. Restitution. A person who cuts any lines or marker buoys or intentionally damages approved aquaculture gear commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged. In addition, the court shall:

A. Order that person to pay to the owner of the approved aquaculture gear that was cut or damaged an amount equal to twice the replacement value of the gear that was damaged or lost as a result of the cutting or damaging action; and [PL 2005, c. 92, §4 (NEW).]

B. Direct that person to provide the commissioner, upon making full payments as ordered by the court, proof of that payment. [PL 2005, c. 92, §4 (NEW).]

[PL 2005, c. 92, §4 (NEW).]

24. Violation. A person who violates a condition of a lease under this section commits a civil violation for which a fine of not less than \$100 for each violation may be adjudged.

[PL 2013, c. 509, §5 (NEW).]

Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [PL 1997, c. 231, §6 (NEW).]

SECTION HISTORY

PL 1997, c. 231, §6 (NEW). PL 2001, c. 122, §1 (AMD). PL 2003, c. 247, §§9-15 (AMD). PL 2003, c. 660, §A15 (AMD). PL 2005, c. 92, §4 (AMD). PL 2009, c. 229, §4 (AMD). PL 2009, c. 240, §§9-11 (AMD). PL 2011, c. 93, §§5, 6 (AMD). PL 2013, c. 301, §§2, 3 (AMD). PL 2013, c. 509, §§3-5 (AMD). PL 2013, c. 512, §2 (AMD). PL 2021, c. 52, §§10-12 (AMD). PL 2021, c. 168, §1 (AMD). PL 2023, c. 207, §6 (AMD).

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