

Belfast Harbor Committee comments on the proposed aquaculture ordinance
February 2023

Comments regarding Aquaculture in Belfast from the Belfast Harbor Committee

One of the core tenants of the Belfast Harbor Committee is to support and maintain a vibrant and healthy working waterfront.

Historically, Belfast has thrived because of its working waterfront, including shipbuilding and fishing. After decades of decline, the shipbuilding and service industry has made a strong comeback, and is an important source of jobs and revenue.

Now, even as warming Gulf of Maine waters are driving great changes in distribution of wild fish, lobsters, and shellfish populations, aquaculture, in it's many forms, offers a path to a resurgence in commercial fishing activity. This activity will not only bring jobs and revenue, but critically, provide a needed source of food: high quality locally derived protein.

A working waterfront supports the local economy of Belfast not only by the direct revenue of its businesses, but also by the downstream revenue generated by suppliers and supporting activities.

A working waterfront helps to maintain and support the fishery traditions and heritage of the coast of Maine. The working waterfront of Belfast also adds value to the experience of anyone who visits Belfast.

The commerce generated by working waterfront is used in the evaluation process by federal agencies when allocating funds to build infrastructure projects to protect our harbor. Income generated by marina and pleasure boaters has not been directly considered to be of value in their calculations. Without a healthy working waterfront, Belfast may not have appropriate funds to build infrastructure(breakwaters, etc.) in order to protect the entirety of the harbor's assets.

The Belfast Harbor Committee views aquaculture as one of many important aspects of maintaining a healthy working waterfront in the City of Belfast. The challenge is to foster positive growth while maintaining the character of modern Belfast, and minimizing negative impacts.

We are before you today to express our concern with the proposed language of proposed Sec. 82-511 Standards for Marine and Freshwater Aquaculture Operations in Intertidal Areas or that are connected by a structure to shore. Freshwater aquaculture should be covered under a different discussion and not included in this proposal.

First, we would like to provide some background to the meaning of aquaculture as it is an umbrella term for a variety of activities. Aquaculture refers to propagating various species of

finfish, seaweeds and shellfish both in the ocean and on land. Each of these forms of aquaculture require varying conditions, require varying types of support, and can affect their surroundings in various ways. These different types of aquaculture operations can be conducted during varying seasons and require varying amounts of space. Aquaculture carries many different meanings for all types of people.

With regards to aquaculture within Belfast Bay's marine environment and intertidal areas:

*Aquaculture can be conducted in locations in Belfast waters where it will not interfere with fishing, fowling and navigation. These locations are approved through an extensive application process through DMR, ACOE and, where applicable, DEP. In this application process the harbor master participates by providing a recommendation based on their local knowledge and expertise.

*Aspects of aquaculture include not only the water area used to grow the product, but facilities for loading and unloading of gear, storage of boats, fueling boats and off loading seafood products. The activities are defined on the lease or limited purpose aquaculture license (LPA).

Here are specific responses to the draft #2 dated 2/15/23
of Section 82-511 to the Belfast City Planner and City Manager from the
Belfast Harbor Committee

Introduction:

Freshwater aquaculture is not related to this ordinance and should be considered in a separate discussion and ordinance.

The Belfast Harbor Committee is concerned that the proposed ordinance regarding aquaculture in its entirety is lacking definition of types of activity, and unfairly limiting activity that is also under the jurisdiction of several state and federal authorities. Additionally, supporting structures for aquaculture that would require permitting through state and federal authorities would also, by their nature of being connected to shore or extending over a water body or wetland, be required to receive a permit under the existing City of Belfast's Shoreland Ordinance, Chapter 82 of the City's Code as well as through Maine State Department of Environmental Protection.

Much of the proposed ordinance, section 82-511, is redundant with the City of Belfast Shoreland Ordinance, specifically Sec. 82-204, labeled, "Piers, docks or other structures projecting into or over a water body or wetland." In addition to the coverage within the city's ordinance, much of the issues that the proposed section 82-511 addresses are already considered and evaluated

as part of the permitting process with the State of Maine's Department of Marine Resources(DMR), the State of Maine's Department of Environmental Protection(DEP), and United States Army Corps of Engineers(ACOE).

To be clear, there is already redundancy between the existing city shoreland ordinance and the previously mentioned state and federal authorities. In addition to the redundancy that already exists, there is also considerable input by the City of Belfast's harbor master to all of the state and federal permitting processes. Likewise, during the permitting process through the City of Belfast Shoreland Ordinance, Sec. 82-204, the planning board is to consider a recommendation provided by the City's Harbor Committee.

In an attempt to be thorough in the Harbor Committee's explanation, we will provide comment to each of the subsections within Sec. 82-511 which has been modified to specifically cover the intertidal areas and operations that are connected to a structure that is connected to shore. With this specific focus in mind, please consider the following comments for the Draft written 2/15/23:

- a) Subsection (a), as written, requires that **"the aquaculture activity does not involve the growing or propagation of harvestable finfish that are reared and harvested entirely in marine waters."**

The Harbor Committee would recommend the council remove this subsection from the proposed ordinance due to the lack of city jurisdiction over regulating specific species that are reared and harvested entirely within marine waters. If the finfish are reared entirely in marine waters, they are not in the intertidal zone. If the location of this proposed lease or LPA were in fact in intertidal waters, the proposed site would not be viable as the fish would perish when exposed to air while out of water for periods of time during low tide. Additionally, if the proposed finfish aquaculture lease site was in marine waters, but connected to shore, what is the nature of that connection? If there is a structure that is part of a dock, pier or similar structure connected to shore, this structure would be covered by the existing shoreland ordinance and have to be approved through the process and criteria described in Section 82-204. Likewise, if it were a new structure, it would need permitting by the State of Maine's Department of Environmental Protection. The marine portion of a proposed operation would also have to be approved by the State of Maine's Department of Marine Resources and United States Army Corps of Engineers. The committee also expresses concern for the ordinance to isolate or discriminate against a single species within our city's ordinance if proposed activity or operation meets all of the criteria for the decision making process by multiple state and federal agencies?

- b) Originally, this section stated that there was a prohibition of any aquaculture within the areas of the Inner Harbor or the Bridge Harbor. This subsection has already been **removed entirely as the city does not have jurisdiction over aquaculture activities in subtidal areas, areas of Belfast Bay or Belfast Harbor below the low tide mark.** The Harbor Committee appreciates the acknowledgement of our previous feedback as we saw this subsection as unnecessary and a potential overstep of the city's municipal authority.

- c) Subsection (c) addresses the **“concern of the proposed aquaculture lease or LPA impacting or impeding locally or federally designated navigational channels.”**

The Harbor Committee recommends that the council remove this subsection as there are not navigable channels with federal or local designations that exist within the intertidal zone within Belfast Harbor. Furthermore, any proposed structure that is connected to land would undergo the permitting process with the approval criteria within Section 82-204 of the City of Belfast code, specifically addressing the standards described in subsection a(5) whereby the proposed facility “shall not encroach into, interfere with, or pose a hazard to navigation channels, and shall not extend within 25 feet of the established channels of Belfast Harbor.” Also, as part of the shoreland structure permitting process, as outlined in subsection c of Sec. 82-204, “The Belfast Harbor Committee, as stipulated in section 82-54(5), shall provide a recommendation to the Planning Board regarding the standards identified in this section.” In addition, Subsection a(10) also addresses navigation standards.

Provided that there is no structure that is part of the proposed lease or LPA, there would not be the need to go through the permitting process with the planning board. The navigability standards to which this subsection addresses are applicable to the decision process with the State’s DMR and US ACOE. Both take into consideration the City of Belfast harbormaster’s recommendations and their local insight as to the potential impact a specific proposed aquaculture operation would have on navigation, not limited to designated channels. The potential for space conflict or impact on navigable channels is critical to each agency’s decision process. To be more specific, this particular subsection of 82-511 is covered within the decision section of the State’s aquaculture lease law, Chapter 605, subchapter 2, section 6072, subsection 7-A (B), “The lease will not unreasonably interfere with navigation.” The law that determines the DMR’s decision also covers additional impacts on navigability in subsection 7-A(A), that “the lease will not unreasonably interfere with ingress or egress of riparian owners.”

- d) Subsection (d) of 82-511 addresses **“the potential impact of a proposed aquaculture lease or LPA on existing moorings that are active when the permit application is submitted.”**

The Harbor Committee recommends that this section should also be removed with similar reasoning to subsection c of Sec. 82-511 where the existing permitting process already addresses this potential conflict. Most notably, Sec. 82-204 subsection a(1) of Belfast’s city code addresses the standard that the proposed structure “shall not displace or eliminate existing mooring and berthing areas, both public and private, for the commercial and recreational uses in Belfast harbor.” In addition, if there were not a proposed structure connected to shore and therefore the shoreland permit would not required, the impact of existing moorings is considered as part of the decision process for DMR and ACOE, referring to the previously stated subsections 7-A(A) and 7-A(B) of Chapter 605, subchapter 2 of State of Maine legislature. Additionally, for a lease approval, there is additional protections in subsection 7-A(F), stating that “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 observed lands.” **Again, it is the city harbor master’s duty to state the local impact the proposed lease or LPA would**

have on ingress and egress, navigation and public use, all of which would include existing moorings.

- e) Subsection e of 82-511 specifically addresses **“the requirement of the aquaculture operation to be governed by Sec. 82-204 that has been previously mentioned with regard to any new structure proposed within the shoreland zone of the City of Belfast.”**

The Harbor Committee recommends removing subsection e as it is redundant to existing City of Belfast ordinance.

- f) Subsection f of 82-511 addresses **“the desire for the Planning Board to control the size of and require the approval of a moored float that would be located in intertidal waters.”**

The Harbor Committee recommends the removal of subsection f based on similar reasoning for the removal of subsection e. Similar to the structures covered in subsection e, the moored floats referred to in subsection f would also be required to go through the existing approval process for moored floats in the City of Belfast, requiring a recommendation by the Harbor Committee for approval. These floats are subject to the same standards in Sec. 82-204, mentioned earlier. The addition of a moored float in intertidal waters also requires permitting by DEP which takes into consideration the input from the harbor master. Additionally, because this subsection specifically covers a moored float within the intertidal zone, it is worth mentioning that the DEP rarely approves any structure, such as a moored float, that rests on the exposed bottom of an intertidal zone, as it is quite detrimental to the localized environment beneath the float.

- g) Subsection g addresses **“the need for the aquaculture operation to be marked to minimize conflicts with navigation.”**

The Harbor Committee recommends to the council that this subsection be removed on the grounds that it is redundant and unnecessary. If the aquaculture lease or LPA is a structure connected to shore, it would be governed already by the standards in Sec. 82-204 subsection (a)(10) which states that the structure “shall display appropriate warning lights to aid in navigation and public safety.” This type of requirement would also be considered as part of the permitting approval process of all state and federal agencies involved with the permit. In addition, if the proposed aquaculture lease or LPA were not attached to a structure connected to the shoreland, the DMR has specific requirements to mark aquaculture lease or LPA sites and ultimately defers to the United States Coast Guard to provide guidance on navigable aids.

- h) Subsection h and i address **“the need for the proposed aquaculture lease or LPA to limit its impact on water quality, wildlife and habitat.”**

The Harbor Committee suggests to the council to remove this subsection as it is redundant to the permitting process with DMR and ACOE. Chapter 605, subchapter 2, section 6072, subsection 7-A(D), of state law states as part of their criteria of aquaculture lease approval, that “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.” As part of their lease evaluation process, DMR does site visits and completes their own analysis of a proposed project to determine if there will be detrimental impact to the surrounding environment. The City of Belfast would not appear to be equipped in the same manner as DMR to provide this type of analysis and would ultimately rely on the provided analysis of DMR for a decision. In the most recent draft of this section 82-511 subsections h and i both “strongly consider” the findings from the DMR when rendering its own findings. It would seem unnecessary to duplicate the need to use the same analysis for the same decision by a less qualified body. If the city were to require scientific analysis, in addition to the environmental analysis provided by DMR, it could potentially cause more confusion and trouble than the Planning Board intends and potentially expose the city to legal challenges on the quest to find a definitive finding on an indefinite subject.

- i) See subsection h with reference to subsection i
- j) Subsection j requires that **“the applicant for a proposed aquaculture lease or LPA to provide evidence to the Planning Board that it can obtain any and all permits required from the DMR and other state agencies.”**

The Harbor Committee agrees that having the appropriate state permits is necessary in order for the aquaculture operation to function. The Harbor Committee does not see a role for the Planning Board in this process. The applicant only receives the permit from DMR after the DMR has consulted with the Belfast harbor master regarding appropriateness of permit location. This would be in specific reference to the aquaculture lease or LPA decision. ***The Harbor Committee would recommend removing this subsection from Sec. 82-511. Without a municipally run shellfish conservation program, Belfast yields authority of aquaculture lease decision within the intertidal zone to DMR.***

Regardless of the DMR's permitting, if a structure connected to land was part of the proposed activity, the City of Belfast's Planning Board would be making a determination on the aquaculture related structure connected to land that already has standards in place, found in Sec. 82-204. If the City of Belfast's Planning Board were making a determination of that sort, Maine's DEP would also be involved with their process as well.

- k) Subsection k **“requires that the proposed aquaculture lease or LPA to provide evidence to the Planning Board that it can obtain the right, title, and interest to use any respective property from any owner of riparian property rights that are included in the proposed leased area.”**

The Harbor Committee agrees that this is a necessary step for an individual looking to build a structure on any proposed property that is within a proposed lease or LPA site.

In summary, the Belfast Harbor Committee recommends that the above mentioned proposed aquaculture ordinance not be accepted because it addresses issues that are already covered by existing City of Belfast ordinances and it attempts to regulate certain activities that are beyond the jurisdiction of the City of Belfast.

The recommendation of the Belfast Harbor Committee is to reject the addition of Sec. 82-511 to the City of Belfast ordinance for aquaculture in intertidal areas and structures connected to shore.

Any structure in the intertidal zone or connected to shore is already addressed in our existing approval process as stated in existing ordinances of the City of Belfast.

Below the intertidal zone, the City of Belfast has no jurisdiction. The City of Belfast cannot limit aquaculture in Belfast Bay because Belfast Bay is beyond the intertidal zone .

Additional comments by the Belfast Harbor Committee members:

I(Andrew) might actually recommend that if the city were intent on regulating intertidal aquaculture, that the city should start a municipal shellfish conservation program. I'm not sure if we have anything to conserve, as the intertidal area within Belfast Bay is closed to harvesting shellfish, but that would at least give the city a way and the right to control intertidal aquaculture. Brunswick has a committee made up of harvesters, non harvesters and one recreational harvester. They then have a brief section on regulating intertidal lease applications that have been submitted to DMR. This type of stuff is new to me, but seems more applicable to a coastal area that has shellfish harvesting to protect - Belfast does not have this. It might simply be a point of compromise. Or maybe we highlight that given that the bay and harbor are a restricted area, one wouldn't be allow to grow- out shellfish to harvestable size and would be limited to only rearing seed or non-consumable seaweed.

(Jerry B) Establishing oyster reefs strategically in the intertidal zone has proven to be effective in dampening storm driven waves and controlling coastal erosion. I have seen examples in the Florida Panhandle region.

The Belfast Harbor Committee is available to meet with the reviewers of this document upon request. It is our hope that this has addressed any concerns or questions regarding aquaculture in Belfast.

Belfast Harbor Committee

Dan Miller, JB Turner, Bob Winslow, Jerry Brand, Andrew Peters and Joanne Moesswilde,
Chair.