



MAINE SHELLFISH RESTORATION REPORT

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Introduction

Shellfish restoration refers to the process of rebuilding shellfish populations to achieve a range of environmental and economic goals, including habitat creation, improved water quality, and increased food production. Various shellfish restoration methods may be used, depending on the habitat and other factors, such as community needs and resources.¹ Shellfish, defined in Maine as “clams, quahogs, oysters, whole scallops and mussels,” are able to improve water quality and restore ecosystems by filtering water and removing harmful toxins from the environment.² These ecosystem benefits make them a strong option for conducting restoration work in tidal waters. Shellfish restoration projects can also help improve wild harvest populations by enhancing larval production and supporting reef development, which in turn benefit communities and commercial fisheries.³

Shellfish restoration regulations vary by state. In 2014, the Mississippi-Alabama Sea Grant Legal Program and the National Sea Grant Law Center (Law Center), funded by The Nature Conservancy (TNC), conducted a state-by-state review of shellfish restoration permitting for 21 coastal states.⁴ In 2025, the Law Center received funding from TNC to conduct a legal analysis of existing Maine law to understand current barriers to and opportunities for permitting shellfish restoration projects. The State of Maine does not currently have a distinct permitting process for shellfish restoration projects in state waters.

This analysis is intended to inform preliminary discussions within Maine’s regulatory and policy sector about the future development of a restoration-specific permit and any other potential barriers for implementing restoration projects in Maine. As part of this project, the Law Center also reviewed the restoration permitting processes of other coastal states that could serve as models for Maine. Coastal states take a variety of approaches to permitting restoration activities—some are specific to shellfish, while others are broader to allow for a variety of restoration activities in tidal waters. While this report is focused on

¹ Dorothy Leonard and Sandra Macfarlane, *Best Management Practices for Shellfish Restoration*, INTERSTATE SHELLFISH SANITATION CONF. SHELLFISH RESTORATION COMM. 20 (Oct. 1, 2011),

https://www.issc.org/sites/default/files/uploads/publications/final_draft_bmps-01-23-12.pdf. Types of shellfish restoration include repletion, reclamation, enhancement, mitigation, aquaculture, return of native species, and the “elimination of invasive species, diseases, exotics, predators, fouling organisms.” *Id.*

² ME. REV. STAT. tit. 12, § 6001(41); SOAR: *Supporting Oyster Aquaculture and Restoration*, THE NATURE CONSERVANCY, <https://www.nature.org/en-us/what-we-do/our-priorities/provide-food-and-water-sustainably/food-and-water-stories/oyster-covid-relief-restoration/> (last visited Sept. 8, 2025).

³ *Oyster Reef Habitat*, NAT’L OCEAN ATMOSPHERIC ADMIN., <https://www.fisheries.noaa.gov/national/habitat-conservation/oyster-reef-habitat> (last visited Sept. 8, 2025).

⁴ INVENTORY OF SHELLFISH RESTORATION PERMITTING & PROGRAMS IN COASTAL STATES, MS-AL SEA GRANT LEGAL PROGRAM AND NAT’L SEA GRANT L. CTR. (2014), <https://masglp.olemiss.edu/projects/files/tnc-report.pdf>.

shellfish restoration, the findings can be applied to marine restoration work beyond shellfish.

Through this work, the Law Center identified several options that could provide pathways for permitting restoration activities. Currently, the Maine Department of Marine Resources (DMR) has the legal authority to license and lease Maine's coastal waters for aquaculture. Under the current lease options, aquaculture may be authorized for commercial purposes, as well as other uses such as for research and education. DMR authorizes aquaculture through standard leases of up to 100 acres for 20 years, experimental leases of up to 4 acres for 3 years, and Limited-purpose Aquaculture (LPA) licenses for one year. While restoration projects could be pursued using an aquaculture lease, existing laws and rules would be cumbersome for restoration projects. A more promising pathway is permitting under the Natural Resources Protection Act Permit-by-Rule.

Natural Resources Protection Act: Permit-by-Rule

The Natural Resources Protection Act (NRPA), administered by the Maine Department of Environmental Protection (DEP), regulates activities affecting certain state natural resources.⁵ Under NRPA, DEP issues permits for a wide variety of activities that occur in, on, or over protected resources.⁶ A protected resource is defined as “coastal sand dune systems, coastal wetlands, significant wildlife habitat, fragile mountain areas, freshwater wetlands, community public water system primary protection areas, great ponds or rivers, streams or brooks.”⁷ Coastal wetland includes “all tidal and subtidal lands.”⁸

Activities that require a NRPA permit include dredging, draining, filling, constructing or altering permanent structures or wind energy developments.⁹ Additionally, activities affiliated with aquaculture, such as filling wetlands or rebuilding docks, must receive a permit under NRPA, even though the actual aquaculture activity itself is exempt from the requirements.¹⁰

⁵ ME. REV. STAT. tit. 38, §§ 408-A–480-KK.

⁶ *Id.* § 480-C(1).

⁷ *Id.* § 408-B(8).

⁸ *Id.* § 480-B(2)(B).

⁹ *Id.* §§ 480-C(2), (5).

¹⁰ *Id.* § 480-Q(10).

I. Permit-by-Rule

Under Permit-by-Rule (PBR), DEP has pre-approved certain activities that would otherwise require a NRPA permit, when the activity will not have a significant effect on the environment.¹¹ PBR provides a simplified approval process for qualifying projects that does not require them to get an individual NRPA permit. PBR is often applied to activities like shore stabilization, restoration of natural areas, habitat establishment or enhancement, and water quality improvement projects.¹²

To proceed under PBR, applicants must submit notice to DEP 14 days prior to beginning any activity.¹³ The 14-day period starts after DEP receives the notice and fee.¹⁴ Within the notice form, applicants must submit information on (1) the proposed activity site; (2) whether the project also requires a stormwater permit; (3) the scope of the project, including the funding source, and whether it's a federal consistency project within the coastal zone or an "after the fact" project; (4) if the applicant is an individual, municipality, or organization; (5) a summary of the project and location; and (6) which PBR section(s) an applicant is notifying under.¹⁵ By submitting notice to DEP, the applicant is agreeing to commit to and follow the standards in the section under which they are applying.¹⁶ PBR permits are valid for 2 years.¹⁷ The regulations do not specify if PBR can be renewed, but likely it could be if the restoration project is not completed and requires active management or work after 2 years.

Public notice to municipalities and property owners abutting the proposed activity is required 30 days prior to filing notice to DEP.¹⁸ Municipalities may have additional

¹¹ ME. CODE R. § 06-096-305(1).

¹² *Id.*; *Permit By Rule (NRPA)*, DEP'T ENV'T PROT., <https://www.maine.gov/dep/land/permits/pbr/index.html> (last visited Sept. 16, 2025). Shore stabilization projects were recently included in a June 2025 amendment. *Chapter 305: Natural Resources Protection Act Permit by Rule Section 8: Shoreline Stabilization*, DEP'T ENV'T PROT. (Jun. 17, 2025), <https://www.maine.gov/dep/land/permits/pbr/sections/Section-8.pdf>. This suggests that more restoration activities can be explicitly added.

¹³ ME. CODE R. § 06-096-305(1)(B); Dep't Env't Prot., *PBR How To Video*, YOUTUBE 3:10 (Jun. 17, 2025), <https://www.youtube.com/watch?v=mtwsPDQtJyk&t=106s>. DEP is considering changing the effective date to 20 days prior to the start of an activity. See Department Rulemaking Proposal, DEP'T ENV'T PROT., <https://www.maine.gov/dep/rules/index.html#13128941> (last visited Oct. 24, 2025) (under "Major Substantive"). This change however, if approved, is not likely to change the analysis in the report.

¹⁴ *PBR How To Video*, *supra* note 13, at 3:40.

¹⁵ *Id.* at 10:20–15:30.

¹⁶ *Id.* at 5:35.

¹⁷ *Id.* at 16:35–16:38; ME. CODE R. § 06-096-305(1)(D)(2).

¹⁸ ME. CODE R. § 06-096-305(1)(C).

requirements for restoration projects. For example, permitted activities must also comply with any local shoreland zoning ordinances.¹⁹

Some activities authorized under PBR require pre-approval from other natural resources agencies, including the Department of Inland Fisheries and Wildlife, DMR, or the Maine Geological Survey.²⁰ Activities in tidal waters, for example, require DMR approval of the timing of the activity. Such activities include restoration of natural areas, maintenance dredging, as well as the construction or maintenance of intake and outtake pipes, boat ramps, seawalls, or other structures, and utility crossing when they occur in tidal waters or on coastal wetlands.²¹ Applicants looking to do one of these activities under PBR must submit proposals to DMR using the form provided by DEP.²² For any other project, applicants must apply for an individual permit under NRPA. When submitting proposals to DMR, a PBR applicant must submit a map of where the project will take place, a brief summary of the project, and the proposed dates of when the activity will occur.²³ If approved, DMR will return the form to the applicant for submission to DEP.²⁴ If DMR has concerns about the impacts of a project on aquatic species or their habitat, then they can suggest alternative times to do the project.²⁵

Each permissible PBR activity has its own section in the regulations that lay out the standards and requirements for getting the proposed activity approved. A shellfish restoration project would most likely fall under “Habitat Creation or Enhancement and Water Quality Improvement Activities” regulations outlined below.

¹⁹ *Id.* § (13)(A)(3).

²⁰ *See, e.g., Id.* § (3)(B) (stating that in order to submit for PBR under Section 3, DMR must approve of the timing of the activity before notice is submitted to DEP since the project occurs in tidal waters).

²¹ *Id.* §§ 06-096-305(3)–(4), (7), (8-(A)). Other activities listed include dredging. *Request for Approval of Timing of Activity*, DEP’T ENV’T PROT., <https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/DMR%20TOY%20app%2002-20.pdf> (last visited Sept. 19, 2025). Some projects on wetlands fall under a different tiered program that fall outside the scope of this report.

²² *Request for Approval of Timing of Activity*, *supra* note 21.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

a. Habitat Creation or Enhancement and Water Quality Improvement Activities

PBR Section 13 “applies to an alteration in or adjacent to a protected natural resource” to (1) create and enhance habitat for fish or wildlife or (2) improve water quality.²⁶ Types of activities covered under this section includes, but are not limited to, installing fishways, constructing artificial reefs, and the “construction and maintenance of nutrient retention structures” by public natural resources agencies.²⁷ The section also applies to an alteration of the same types of resources by public utilities, Maine Department of Transportation (Maine DOT), owners of federally permitted hydropower projects, conservation groups, or municipalities done “in conjunction with and under the supervision of a public natural resource agency.”²⁸

In order for an applicant to proceed under section 13 of PBR, an applicant must: (1) submit a photo of the site where the proposed activity will be, (2) submit photos of the completed project and area within 20 days of the project’s completion, and (3) receive certification from a public natural resource agency that the proposed project will be done with or under their supervision.²⁹ Additionally, other measures must be taken, when applicable, such as: (1) prevent soil erosion or disruption in the resource, (2) prevent disturbance to any vegetation in the area, (3) not plant any non-native vegetation in wetland areas, (4) that any debris or excavated material is placed outside wetlands and does not wash downstream, and (5) that uncured concrete is not placed into any water.³⁰ These standards most likely will not impact the ability to get approval for shellfish restoration projects, as any project will be in water and require minimal construction or moving of soil.

b. Using PBR for shellfish restoration projects

Under Section 13, a conservation group or municipality could undertake habitat creation or enhancement work in conjunction with or under the supervision of DMR. Shellfish

²⁶ ME. CODE R. § 06-096-305(13)(A); *Chapter 305: Natural Resources Protection Act Permit by Rule Section 13: Habitat Creation or Enhancement and Water Quality Improvement Activities*, DEP’T ENV’T PROT. (Jun. 17, 2025) [hereinafter *Permit by Rule Section 13*], <https://www.maine.gov/dep/land/permits/pbr/sections/Section-13.pdf>.

²⁷ ME. CODE R. § 06-096-305(13)(A); *Permit by Rule Section 13*, *supra* note 26.

²⁸ ME. CODE R. § 06-096-305(13)(A).

²⁹ *Id.* § (13)(B).

³⁰ *Id.* § (13)(C). Other requirements include not using untreated lumber, not using wheeled or tracked equipment in the water, wheeled or tracked equipment can only travel or work on platforms or mats when needed in a vegetated coastal wetland, and “[w]ork below the high water line of a great pond, river, stream or brook shall be done at low water.” *Id.*

restoration is not a listed activity in Section 13, but that list is non-exhaustive. Shellfish restoration activities are arguably similar enough to those listed that involve the construction of artificial reefs to potentially qualify. However, DEP would make the final determination regarding coverage.

Section 13 is not the only PBR section that shellfish restoration could potentially fall under. Section 12, for example, applies to the restoration of natural areas.³¹ However, Section 13, appears to be the better fit as it allows DMR to be involved with restoration activities in tidal waters, even if they are not the lead permitting agency. Additionally, under Section 13, DMR can play a direct role in the process by working with or supervising one of the approved groups on a restoration activity. DMR can also undertake restoration projects on their own under Section 13.

PBR presents an established pathway that DMR already has a role in, and a way that DMR and interested groups can begin shellfish and other restoration projects without having to adapt or amend an existing DMR lease or license. PBR, however does not cover or authorize all activities associated with shellfish restoration techniques—such as placement of cultch (oyster or other shellfish shells) on submerged lands.³² Nor does it cover any additional federal permits from the U.S. Army Corps of Engineers (Corps) a restoration project may need.³³ However, as mentioned below, restoration activities, including shellfish restoration, are already permitted under Nationwide Permit 27 and the Maine General Permit, so any shellfish restoration activity permitted under section 13 of PBR should be able to get the required Corps’ permits.

Federal Regulations

Most shellfish restoration and aquaculture activities in state waters also require permits from the Corps. In order to streamline the permitting process under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, the Corps will often issue Nationwide Permits (NWP). Only activities that have “minimal individual and cumulative

³¹ *Id.* §§ (12), (13). The requirements and standards for restoration of natural areas can be found in section 12. Due to the fact that it is not just applicable to tidal waters, but to other natural resources, some of the standards do not seem applicable to shellfish restoration. *Id.* § (12); *Chapter 305: Natural Resources Protection Act Permit by Rule Section 12: Restoration of Natural Areas*, DEP’T ENV’T PROT. (Jun. 17, 2025), <https://www.maine.gov/dep/land/permits/pbr/sections/Section-12.pdf>. Thus, this section is not covered in the report.

³² For example, a lease may also be needed from the Maine Bureau of Parks and Lands’ Submerged Lands Program if the activity is “below the low water line of a lake, coastal wetland or international boundary water.” ME. CODE R. § 06-096-305(1)(D)(2).

³³ *Permit by Rule Section 13*, *supra* note 26, at 2.

adverse effects on aquatic environment” can be covered by NWP. ³⁴ Restoration activities are covered by NWP 27. ³⁵ Activities permitted under NWP 27 include, but are not limited to, the placement of cultch and “the construction of oyster habitat over unvegetated bottom in tidal waters; [and] shellfish seedings.” ³⁶

The New England District of the Corps has issued state-wide general permits that reduce “duplication in review between the Corps and the state, and expedite the permit review process for applicants.” ³⁷ The state-wide general permits are used in place of the nationwide permits. ³⁸ The Maine General Permit was last reissued in October 2020 and expired on October 14, 2025. The proposed reissuance was released for public comment in June 2025. ³⁹ NWP 27 is incorporated into the Maine General Permit and allows for restoration, enhancement, and habitat establishment activities, including “the restoration and enhancement of shellfish, finfish, and wildlife.” ⁴⁰ Additionally, the general permit specifically allows for “shellfish enhancement measures including but not limited to ‘brushing’, clam pots, boxes, and netting.” ⁴¹ The proposed changes for the reissuance of the general permit do not impact or change the sections on restoration activities. ⁴²

Federal and State Cooperation on Shellfish Management

In 1982, the Interstate Shellfish Sanitation Conference (ISSC) was created to bring together states, federal agencies, and the shellfish industry to create uniform guidelines and practices for shellfish sanitation. ⁴³ The ISSC meets annually to discuss shellfish sanitation

³⁴ *Nationwide Permits*, ARMY CORPS ENG’R SACRAMENTO DIST., <https://www.spk.usace.army.mil/Missions/Regulatory/Permitting/Nationwide-Permits/>.

³⁵ 33 C.F.R. § 330.6; *Nationwide Permit 27: Aquatic Habitat Restoration, Enhancement, and Establishment Activities*, ARMY CORPS ENG’R (Mar. 19, 2017) [hereinafter *Nationwide Permit 27*], <https://www.swf.usace.army.mil/Portals/47/docs/regulatory/Permitting/Nationwide/NWP27.pdf>.

³⁶ *Nationwide Permit 27*, *supra* note 35.

³⁷ *State General Permits*, ARMY CORPS ENG’R (Sept. 7, 2019), <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/>.

³⁸ *Id.*

³⁹ Special Public Notice, U.S. Army Corps Eng’r, Proposed Issuance of the Department of the Army Maine General Permits (June 12, 2025) [hereinafter Proposed Maine General Permit], https://www.nae.usace.army.mil/Portals/74/NAE-2025-00485-20250612-Public_Notice_Maine_Regional_General_Permits_1.pdf.

⁴⁰ *Department of the Army General Permits for the State of Maine*, ARMY CORPS ENG’R (Oct. 14, 2020), <https://www.nae.usace.army.mil/Portals/74/2020-2025-MaineGeneralPermits.pdf>.

⁴¹ *Id.*

⁴² Proposed Maine General Permit, *supra* note 39.

⁴³ *Conference Administration About Us*, INTERSTATE SHELLFISH SANITATION CONF., <https://www.issc.org/conference-administration> (last visited Sept. 10, 2025).

and revise guidance documents. One such document is the shellfish sanitation model ordinance.

The National Shellfish Sanitation Program (NSSP) is a cooperative between the federal government and ISSC states to ensure the safe and sanitary control of shellfish harvested for human consumption.⁴⁴ In order to achieve this goal, NSSP publishes best practices guidelines for the control of shellfish. This guideline, last updated in 2023, provides a model ordinance which member states adopt and enforce; it does not, however, create any binding laws or regulations for the federal Food and Drug Administration to follow.⁴⁵

The model ordinance sets forth a classification scheme for shellfish growing areas based on water contamination levels. The classifications are determined based on a sanitation survey done by the state.⁴⁶ The growing area classifications range from “approved for direct human consumption” (approved open waters) to “prohibited for human consumption” (prohibited closed waters).⁴⁷ Every classification except for “approved” has restrictions on shellfish harvesting.⁴⁸ For example, the harvesting of shellfish is not permitted in prohibited waters except for “depletion, gathering of seed or nursery culture for aquaculture or resource enhancement.”⁴⁹ Whereas, minimal harvesting is allowed in restricted areas either under a special license or if the shellfish gathered is “subjected to a suitable and effective treatment process.”⁵⁰

The model ordinance also does not prohibit states from authorizing shellfish restoration activities in prohibited waters. In the 2023 model ordinance update, the term “resource enhancement” was added in various sections relating to prohibited areas.⁵¹ This addition

⁴⁴ *National Shellfish Sanitation Program (NSSP) Centennial*, FOOD & DRUG ADMIN. (Mar. 25, 2025), <https://www.fda.gov/food/federal-state-local-tribal-and-territorial-cooperative-human-food-programs/national-shellfish-sanitation-program-nssp-centennial>.

⁴⁵ NATIONAL SHELLFISH SANITATION PROGRAM (NSSP), GUIDE FOR THE CONTROL OF MOLLUSCAN SHELLFISH (2023) [hereinafter NSSP MODEL ORDINANCE].

⁴⁶ *Id.* at 284–85.

⁴⁷ *Id.* at 285. The five classifications “are approved, conditionally approved, restricted, conditionally restricted, and prohibited.” *Id.* However, the use of the different classifications, such as the conditional classifications, are optional. *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 8.

⁵⁰ *Id.* at 9.

⁵¹ *Id.* at 54, 287. While resource enhancement is not defined in the model ordinance, some member states have interpreted this to mean the enhancement of “wild resources,” which could include wild populations and habitats. See *2023 NSSP Model Ordinance Changes*, WASH. DEP’T HEALTH (last visited Oct. 1, 2025) (available to download at *Sanitary Control of Shellfish 2023 Model Ordinance Adoption*, WASH. DEP’T HEALTH, <https://doh.wa.gov/community-and-environment/shellfish/rules/sanitary-control-shellfish-2023-model-ordinance-adoption> (last visited Oct. 1, 2025)). These changes in Washington went into effect on April 4, 2025.

could open up an option for member states to permit restoration and enhancement projects in areas that are closed to commercial harvesting. However, the presence of shellfish in prohibited areas can raise the risk of illegal harvesting activity that states must mitigate through oversight and enforcement. Thus, many states are reluctant to allow shellfish harvesting or restoration in closed waters due to the public health concerns over illegal harvesting. States that do choose to permit shellfish restoration in prohibited areas may add additional requirements or may choose to permit these projects under a narrow scope. Mississippi, for example, has developed a restoration and recovery plan, under which specific restoration projects are permitted in prohibited areas.⁵² These restoration projects are limited, one-off projects and are specifically aimed at addressing the impacts on shellfish populations from the *Deepwater Horizon* oil spill and Hurricane Katrina.⁵³ On the other hand, however, other states can be more restrictive and not permit any shellfish activities in prohibited/closed waters, even harvesting of seed to be grown elsewhere or restoration activities.⁵⁴ The decision of how to interpret these restrictions are up to states.

Maine, as part of the ISSC, has incorporated the NSSP model ordinance into state regulation.⁵⁵ As currently written, Maine has not made any changes to the definitions of prohibited or restricted growing areas to explicitly allow for shellfish restoration in these areas. However, Maine, in adopting the model ordinance, has reserved the right to make changes or revise parts of the model ordinance.⁵⁶

States that choose to permit restoration projects in prohibited waters may be guided by the Best Management Practices (BMP) for Shellfish Restoration prepared for the ISSC Shellfish Restoration Committee in 2011.⁵⁷ The BMP was created to provide guidelines and protocols for restoration projects that protect public health, mitigate degraded water quality, and restore diminished shellfish populations. Specifically, the BMP was created to “ensure that shellfish grown in unapproved areas do not reach” markets for human consumption.⁵⁸ The BMP provides specific information and actions that states can take to

⁵² MISSISSIPPI DEP’T MARINE RES, OYSTER RESTORATION AND RECOVERY PLAN (2022).

⁵³ *Id.* at 2. The projects approved by the Mississippi Department of Marine Resources are each described in the plan, and in some cases receive state funding in order to “increase oyster density on the public oyster reefs,” improve habitats and reef resiliency, enhance and expand shellfish aquaculture, and improve water quality (among other goals). *Id.* at 3.

⁵⁴ *Shellfish Restoration and Rehabilitation Policy*, *infra* note 101; *infra* note 108.

⁵⁵ 13-188-094 ME. CODE R. §§ 94.01–94.13.

⁵⁶ *Id.* § 94.03(B). If there is any consistency between the enacted statute and model ordinance, Chapter 94 controls. *Id.* This means that if Maine wanted to change the definition of prohibited growing areas to explicitly allow for restoration activities, they could adopt a new definition, and it would be the controlling definition.

⁵⁷ Leonard & Macfarlane, *supra* note 1, at 1.

⁵⁸ *Id.* The BMP also provides guidelines educational programs on shellfish management. *Id.*

achieve goals and includes suggestions for how to address common concerns, such as enforcement.⁵⁹

Existing Maine Aquaculture Permitting Pathways

Potentially, shellfish restoration projects may not require a lease to plant oyster directly on the bottom of submerged lands.⁶⁰ However, conducting restoration work without a lease is not desirable and not a great option to pursue because it would not provide protection from unpermitted harvesting or protect the project proponents from liability if shellfish from a closed area ended up affecting human health. So, it is likely best for restoration work to be done within an established pathway where DMR can monitor shellfish and protect public health and safety.

Standard Aquaculture Lease

In Maine, a standard lease is needed to use submerged lands and waters for aquaculture.⁶¹ A standard aquaculture lease, can be granted for up to 100 acres for 20 years.⁶² Standard leases can be renewed, amended, or expanded, if certain decision criteria are met.⁶³ A standard aquaculture lease application—containing information on the proposed project such as (1) the proposed lease area location, (2) what species would be cultivated, and (3) the impacts of the project—must be open for public comments and have a public hearing before it can be approved.⁶⁴ After the public hearing, the DMR commissioner will approve the proposed standard lease if it does not unreasonably interfere with (1) “the ingress and egress of riparian owners;” (2) navigation; (3) fishing and public access, use, and enjoyment; (4) wildlife habitat; or (5) does not result in unreasonable noise or light from the lease site; and (6) the applicant shows that “there is an available source of organisms” for

⁵⁹ *Id.* For example, in regard to bootlegging, or taking of restoration shellfish from degraded waters, the BMP suggests that “Enforcement options can include the use of surveillance cameras, employing retired health inspectors, web cams, and on-board GPS systems and incorporating technological equipment used by other law enforcement agents to prevent poaching or catch and arrest those involved in illegal harvesting.” *Id.* at 4.

⁶⁰ Statement is from conversations with DMR personnel. As previously mentioned, a lease from the Bureau of Parks and Lands’ Submerged Lands Program may still be needed. ME. CODE R. § 06-096-305(1)(D)(2).

⁶¹ ME. REV. STAT. tit. 12, § 6083.

⁶² *Standard Aquaculture Lease Application*, DEP’T MARINE RES., <https://www.maine.gov/dmr/aquaculture/applications-and-forms/standard-lease-applications-and-forms> (last visited Sept. 11, 2025); ME. REV. STAT. tit. 12, § 6072(2).

⁶³ ME. REV. STAT. tit. 12, §§ 6072(12)–(12-C).

⁶⁴ *Id.* §§ (4)–(6).

the site.⁶⁵ DMR may place additional conditions on leases that limit aquaculture activities.⁶⁶ Once approved, DMR will monitor leases annually.⁶⁷ If DMR determines that the activities are “substantially injurious” to public health or marine wildlife, or if there are no aquaculture activities occurring under the lease, then they may revoke the lease (commonly referred to as an active use requirement).⁶⁸ Any violation of an approved lease is subject to civil penalties and fines.⁶⁹

While shellfish restoration projects may utilize some aquaculture techniques, such as planting shellfish seed, an aquaculture lease is not a good fit for restoration work. First, aquaculture leases are typically only issued in approved waters, meaning areas with good water quality in order to protect public health.⁷⁰ As part of a lease application, an environmental baseline for the proposed site must be determined, which includes measuring and determining the water quality.⁷¹ Thus, making it unlikely that an aquaculture lease for shellfish restoration would be granted in areas with poor water quality.⁷² Since the goal of shellfish restoration is to restore water quality and wild populations, this lease requirement poses a hurdle for restoration projects, as they typically are needed most in areas with poor water quality. There is some harvesting allowed in prohibited areas for shellstock seeds of certain species, but there are also additional approval and testing required.⁷³

Additionally, aquaculture leases have an active use requirement—meaning the lease can be revoked by DMR if no substantial aquaculture or research activity has been conducted over the course of the lease. In order to remain active, lease holders must maintain and

⁶⁵ *Id.* § (7-A).

⁶⁶ *Id.* § (7-B). Limitations can be applied to protect the existing natural ecosystem, preserve the rights of the lessee, and to “encourage the greatest multiple, compatible uses of the leased area.” *Id.*

⁶⁷ *Id.* § (11).

⁶⁸ *Id.* A public hearing is required before a lease is revoked. *Id.*

⁶⁹ *Id.* § (18).

⁷⁰ 13-188-094 ME. CODE R. § 2.10. Additionally, to even get a lease option, an applicant must show in good faith that the area is suitable for aquaculture and that an applicant is likely to get a lease before the option expires. ME. REV. STAT. tit. 12, § 6083(3) In order to maintain a lease, once granted, DMR must monitor to ensure that the activities are not “substantially injurious to marine organisms or public health.” *Id.* § 6072(11).

⁷¹ 13-188-094 ME. CODE R. § 2.10.

⁷² *Id.* As currently written, aquaculture leases for shellfish are only granted in areas that “meet the criteria for approved, conditionally approved, restricted or conditionally restricted classifications” under NSSP. *Id.* § 2.95. Even for growing areas classified as anything besides “approved,” applicants must contact DMR prior to lease approved. *Standard: Non-Discharge Aquaculture Lease Application*, DEP’T MARINE RES. 10 (Dec. 20, 2024), https://www.maine.gov/dmr/sites/maine.gov.dmr/files/inline-files/STANDARD_Final_application-nondischarge_0.pdf.

⁷³ 13-188-094 ME. CODE R. § 2.95.

follow their operational plan, which outlines how they will use the aquaculture site.⁷⁴ Without any changes or amendments to the regulations, getting and maintaining an aquaculture lease for restoration projects would be difficult because the requirements are geared towards commercial activities.⁷⁵ Once established, there may be minimal activity at a restoration site—compared to commercial sites—which would also make it difficult to stay in compliance with the lease requirements.

Limited-purpose Aquaculture License

A Limited-purpose Aquaculture (LPA) license permits a license holder to place marine organisms on submerged lands without gear or with “approved aquaculture gear.”⁷⁶ Under an LPA license, a license holder may use up to 400 square feet and licenses are renewed annually.⁷⁷ In order to receive an LPA license, an applicant must meet certain criteria including: (1) that the activity doesn’t cause any discharge into waters, (2) that any gear used does not exceed 400 square feet and impede navigation, (3) the activity does not unreasonably interfere with the “ingress and egress of riparian owners,” fishing, or public use or access, (4) the activity and marine organisms do not pose a risk to public health, (5) that the applicant does not have more than 4 active LPA licenses, and (6) that they have received consent from any riparian owners for any part of the activity that takes place above the mean low-water mark.⁷⁸ There are also some prohibitions that LPA license holders must follow, including that LPAs will not be issued in prohibited growing areas for shellfish or in areas that have been deemed as essential habitats by the Maine Department of Inland Fisheries and Wildlife.⁷⁹

⁷⁴ 13-188-002 ME. CODE R. §§ 2.05, 2.75.

⁷⁵ ME. REV. STAT. tit. 12, §§ 6072(11). Additionally, restoration projects could potentially run the risk of civil penalties brought them against for abandoned equipment or stock. *Id.* § 6086(1). Abandoned aquaculture equipment or stock is any gear (i.e. “rafts, pens, barges, skiffs, nets,” etc.) or stock (including shellfish) that has been left without any intention of removing them. *Id.* Since restoration projects typically require leaving gear and organisms in the waters for prolonged periods in order to restore habitats, DMR would likely have to give written permission in leases and license exempting them from the abandonment requirements.

⁷⁶ ME. REV. STAT. tit. 12, § 6072-C(2).

⁷⁷ *Limited Purpose Aquaculture (LPA) License Application*, DEP’T MARINE RES., <https://www.maine.gov/dmr/aquaculture/applications-and-forms/limited-purpose-aquaculture-lpa-license-applications-and-forms> (last visited Sept. 15, 2025).

⁷⁸ ME. REV. STAT. tit. 12, § 6072-C(2-A); 13-188-094 ME. CODE R § 2.90.

⁷⁹ 13-188-094 ME. CODE R § 2.90. Like under a standard aquaculture lease, an exception is made for shellfish seed harvesting and culture. *Id.* Additionally, seed from an LPA site “in a prohibited, restricted, or conditionally restricted area can be moved only to another aquaculture lease or license site and must comply with the maximum seed size limited” as defined in the regulations. *Id.*

Similar to the standard lease, the LPA license would not be a feasible pathway for permitting restoration activities. First, as mentioned, LPA licenses for shellfish cannot be issued in prohibited or restricted growing areas, except for the culture of seed. Further, the license's limited time frame (1 year) and size restrictions (400 square feet) would not match the scope and scale of most restoration projects.

Commercial or Scientific Research Experimental Lease

An experimental lease specifically for commercial aquaculture research and development or for scientific research, permits a lease holder to do small scale aquaculture for a limited period.⁸⁰ An experimental lease can be granted by DMR to construct and operate “nets, pens or other enclosures or for the suspended culture of” finfish or other marine organisms in coastal waters.⁸¹ Experimental leases can be granted for up to 3 years and for no more than 4 acres.⁸²

After receiving an application, the DMR commissioner must hold a public hearing and public comment period.⁸³ The commissioner will also review the application to ensure that the proposed activity (1) does not interfere with the ingress and egress of any nearby riparian owners, (2) does not interfere with navigation, fishing, or any other public use and enjoyment of the area, (3) does not interfere with the ecosystem in a way that would prevent other leases from being granted in the area “to support existing ecologically significant flora and fauna,” and (4) that there is enough of the organism available to use at the site.⁸⁴ DMR may also add additional conditions and limitations to the lease.⁸⁵

Commercial and scientific experimental leases are monitored annually.⁸⁶ If DMR determines that the activity is harmful to marine organisms, that the lease has been violated, or that “no substantial aquaculture or research” activities are taking place, then the lease may be revoked.⁸⁷ Violations of either type of lease will result in a civil penalty of

⁸⁰ *Experimental Aquaculture Lease Application*, DEP'T MARINE RES., <https://www.maine.gov/dmr/aquaculture/applications-and-forms/experimental-limited-purpose-lease-applications-and-forms> (last visited Sept. 15, 2025); ME. REV. STAT. tit. 12, § 6072-A.

⁸¹ ME. REV. STAT. tit. 12, § 6072-A(1)–(2).

⁸² *Id.* § (3)–(4).

⁸³ *Id.* § (5)–(6).

⁸⁴ *Id.* § (13).

⁸⁵ *Id.* § (15).

⁸⁶ *Id.* § (21).

⁸⁷ *Id.* § (22).

up to \$100 per violation.⁸⁸ Commercial experimental leases cannot be renewed, however, they can be converted into a standard aquaculture lease.⁸⁹ An experimental commercial lease would likely pose the same difficulties for restoration as a standard lease or LPA licenses. Specifically, an experimental commercial lease would likely not be granted for restoration activities in prohibited areas and the time and size limits are not aligned with scope and scale of restoration projects.

Experimental leases for scientific purposes can be renewed as long as research continues to be conducted at the site.⁹⁰ A scientific experimental lease could potentially be a pathway for restoration projects since the lease can be renewed indefinitely. However, in order to maintain a scientific experimental lease, project proponents would need to conduct legitimate scientific activity on the site, which may not be feasible for all restoration projects. If DMR determined that scientific research was not being conducted, then there is a potential that the lease could be revoked. Additionally, since restoration projects can take a while to achieve the intended goal, it may be difficult for lease holders to show annually that substantial research is occurring or to create the required new plans each year for the site.

Municipal Shellfish Programs

Municipalities may establish and run shellfish conservation programs, with approval from DMR.⁹¹ Interested municipalities may adopt shellfish conservation ordinances under certain criteria established by DMR.⁹² Municipalities that have an approved shellfish conservation program then co-manage shellfish with DMR. Under a shellfish conservation program ordinance can: (1) limit who can take or possess shellfish, (2) protect shellfish from predators, (3) limit what areas are open for shellfish farming or “dragging of mussels” and (4) establish size limits for harvesting or possessing shellfish.⁹³ Any municipality that

⁸⁸ *Id.* § (24).

⁸⁹ *Id.* §§ (19), (20-A). An experimental lease converted to a standard lease can only be for the same operation and area. *Id.*

⁹⁰ *Id.* § (18-A). Leaseholders wishing to renew a scientific experimental lease must submit annual reports on their research and their research plans for the upcoming year. *Id.* § (17-A)–(C-1).

⁹¹ ME. REV. STAT. tit. 12, § 6671.

⁹² 13-188-007 ME. CODE R § 7.10.

⁹³ ME. REV. STAT. tit. 12, § 6671(3). Other states allow municipalities to have the ability to take the lead on permitting and promoting restoration projects. For instance, in North Carolina, since the legislature banned the disposal of oyster shells into landfills, many municipalities have started collecting them to use to restore ecosystems. N.C. GEN. STAT. § 130A-309.10(l); *Oyster Shells*, DEP’T ENV’T QUALITY, <https://www.deq.nc.gov/about/divisions/environmental-assistance-and-customer-service/recycling/general-recycling-information/special-recyclables/oyster-shells> (last visited Sept. 24,

has a shellfish conservation program must also prepare and adopt a management plan with DMR that: (1) states the goals and objectives of the program and (2) describes how the municipality will achieve these goals.⁹⁴ Once approved, municipalities may issue commercial harvesting permits.⁹⁵ However, if the municipality wants to open or close an area, “possess seed regardless of source (wild or hatchery),” or transport shellfish from a prohibited or restricted area, they must receive a permit from DMR.⁹⁶ While municipal shellfish conservation programs allow municipalities to permit some activities, it does not give them full control over shellfish management.

Additionally, if a municipality has a shellfish conservation program, then an aquaculture applicant can get a standard shellfish aquaculture permit for within the intertidal zone from the municipality.⁹⁷ The power to run these programs is granted from DMR and municipalities must follow the same requirements as DMR when they review and permit licenses under this section.⁹⁸ This program does not affect DMR’s ability to permit restoration projects or in any way limit their ability to authorize aquaculture projects in the intertidal zone.⁹⁹ However, for others looking to do restoration projects in the intertidal zone, this could mean that they need to meet the municipality’s additional requirements or conditions in order to get a permit.

While DMR may authorize interested municipalities to run shellfish conservation programs and grant commercial permits, DMR still largely maintains authority over shellfish management in tidal waters. Potentially, DMR could establish the ability for municipalities to permit shellfish restoration projects within conservation programs, but the power would still have to come from DMR, who can then delegate it to municipalities. This option would allow municipalities to have control over restoration projects, but DMR would still need to

2025). The North Carolina Coastal Federation currently works with municipalities to collect oyster shells and place them back into waters in order to restore wild populations and rebuild reefs. *Oyster Shell Recycling Toolkit*, N.C. COASTAL FED’N, <https://www.nccoast.org/resource/oyster-shell-recycling-toolkit/> (last visited Sept. 25, 2025).

⁹⁴ 13-188-007 ME. CODE R § 7.20(1). These plans must be accepted by DMR prior to the approval of the ordinance. *Id.*

⁹⁵ *Id.* §§ 7.40, 7.70(2). Applications for internal mussel harvesting permits must still be submitted to DMR, who then forwards them to the municipality to recommend approval or not. *Id.* § 7.70(2).

⁹⁶ *Id.* § 7.50(2). For example, harvesting, sampling or surveying of shellfish within a closed area is only allowed with written approval from the DMR commissioner. *Id.* § 7.50(2)(F). Once permission is granted, there are specific requirements to transport shellfish from these areas that the municipality must follow. *Id.* § 7.50(2)(G).

⁹⁷ ME. REV. STAT. tit. 12, § 6673.

⁹⁸ *Id.* §§ 6673(1)–(2).

⁹⁹ *Id.* § 6673.

maintain some level of oversight and approval of projects under these programs in order to ensure that they work within the regulatory requirements.

There is no perfect fit for restoration work under one of the existing aquaculture permits, however, Maine could adapt one of these leases or licenses to create a pathway towards permitting restoration projects. As illustrated by the case comparisons below, there are a variety of ways Maine can use existing permits to regulate shellfish restoration in a way that works within their existing regulatory authority. Unlike PBR, adapting an existing aquaculture license or lease pathway would allow DMR to have full authority over the permitting and monitoring process for restoration projects in tidal waters. DMR, as the state expert and lead regulatory authority over tidal waters, could then choose how to best permit and regulate restoration projects with municipalities and other interested partners.

State Restoration Comparison

Other states with general and shellfish-specific restoration permits can serve as models for Maine as it considers regulatory reform. These permits and programs vary in how projects are approved and the requirements for them, if any. Some have established restoration programs that cover a wide variety of restoration activities—not just ones in coastal waters—using existing permits and licenses, while others are working to streamline the permitting process in order to make it easier and faster for projects to receive all the necessary permits to operate.¹⁰⁰ There is no one pathway for states to follow. Rather, it is up to the state permitting agency and legislature to determine the best fit in order to facilitate the restoration and protection of ecosystems.

I. Using existing licenses

Instead of creating new permits or pathways, some states have decided to use existing shellfish permits as a pathway to permit restoration activities. This approach involves adapting existing permits to be used for restoration activities, either on its own or by creating new restoration specific requirements.

¹⁰⁰ These potentially include permits at the state, local, and federal level—or some combination of the three.

a. Connecticut

Like Maine, Connecticut has adopted the NSSP model ordinance.¹⁰¹ The Department of Agriculture, Bureau of Aquaculture uses this ordinance to, in part, monitor the shoreline and water quality, and to ensure that there are no “negative public health impacts.”¹⁰² Additionally, the Bureau will permit shellfish restoration and enhancement projects in natural oyster seed beds in order to restore the habitat and wild population.¹⁰³ In order to do a habitat restoration project, an application must be submitted to the Bureau if they wish to plant more than 1,500 bushels/acre.¹⁰⁴ However, for 1,500 bushel or less per acre, only a normal harvest license is needed.¹⁰⁵

All restoration and enhancement projects must be approved by the Bureau prior to work beginning. Additionally, a scientific/resource assessment license is required for restoration projects.¹⁰⁶ A restoration or enhancement project must also receive any relevant approval and/or permits from the Department of Energy and Environmental Program (DEEP) or Corps—i.e., if the project needs a structure or cage placed in the water.¹⁰⁷ However, the Bureau most likely will not approve of restoration and enhancement projects in prohibited waters, in order to protect public health.¹⁰⁸

¹⁰¹ CONN. GEN. STATE. § 26-192c; *Shellfish Restoration and Rehabilitation Policy*, DEP’T AGRIC., <https://portal.ct.gov/doag/aquaculture1/aquaculture/policy-for-shellfish-enhancement-and-restoration> (last visited Sept. 25, 2025).

¹⁰² *Shellfish Restoration and Rehabilitation Policy*, *supra* note 101.

¹⁰³ *Id.* Permitting for restoration activities are, however, unlikely to permit these activities in prohibited areas—areas where cultivation is restricted due to poor water quality and the potential impacts on public health. *Id.* Restoration in prohibited areas will likely only be permitted for “restoration of designated State Natural Oyster Seed Beds or direct benefit to the shellfish industry.” *Id.*

¹⁰⁴ *Oyster Habitat Restoration Application*, DEP’T AGRIC., <https://portal.ct.gov/-/media/doag/aquaculture/shell-recovery/oyster-habitat-restoration-application.pdf> (last visited Sept. 25, 2025).

¹⁰⁵ *Id.*

¹⁰⁶ A GUIDE TO MARINE AQUACULTURE PERMITTING IN CONNECTICUT, JOINT AGENCY AQUACULTURE PERMITTING WORK GROUP 13–14 (2024) [hereinafter MARINE AQUACULTURE GUIDE], <https://portal.ct.gov/-/media/doag/aquaculture/aquaculture-permitting-and-guidance/2024-marine-aquaculture-permitting-guide.pdf?rev=3b9f3409812a40f685edb950b9d5105a&hash=436F1D4480963429952553FEF4D9A9ED>; *Application for Scientific/Resource Assessment License*, DEP’T AGRIC., <https://test-cd.ct.gov/-/media/doag/pdf/sciencepdf.pdf> (last visited Sept. 25, 2025).

¹⁰⁷ *Shellfish Restoration and Rehabilitation Policy*, *supra* note 101; CONN. GEN. STAT. § 26-192c.

¹⁰⁸ *Shellfish Restoration and Rehabilitation Policy*, *supra* note 101. There is an exception for “restoration of designated State Natural Seed Beds or direct benefit to the shellfish industry.” *Id.*

b. Maryland

In 2023, Maryland began a pilot program to establish restorative aquaculture around the state. Under the program, The Maryland Legislature directed the Department of Natural Resources to design a system to provide financial incentives to existing aquaculture leaseholders in order to encourage them to undertake restorative aquaculture methods.¹⁰⁹ The program intends to incentivize leaseholders by (1) providing financial incentives via state, federal, or private funds; and (2) permit leaseholders who participate in the program to meet the active use, and other requirements of their lease by planting shellfish seeds.¹¹⁰ The pilot program is in effect until 2029. The Department is directed to establish regulations for this program but have not yet done so.¹¹¹

c. New York

The Department of Environmental Conservation facilitates shellfish population growth and water quality improvement under their Restore New York Shellfish Program.¹¹² Under the program, the Department has established shellfish sanctuaries, including around Long Island that are “stocked with juvenile and adult shellfish.”¹¹³ In order to participate in the restore shellfish program, including the Long Island project, an applicant must either obtain a Marine Hatchery Permit or a On/Off Bottom Culture Permit.¹¹⁴ The scope of these permits are very broad. For example, under the On/Off Bottom Culture Permit, on bottom culture is defined as “the raising, breeding, growing or planting of marine plant or animal life on, or in, any natural underwater lands of the State.”¹¹⁵ Additionally, the department has the discretion to place additional limitations or conditions on the permit, as necessary to protect public health and the shellfish population.¹¹⁶ While these permits are the same ones used for commercial cultivation and harvest, they only allow for restoration activities

¹⁰⁹ MD. CODE ANN. NAT. RES. § 4-11A-24(c).

¹¹⁰ *Id.* §§ (e)–(f).

¹¹¹ *Id.* Due to how new the program is, the Maryland program is not included in the comparison table below.

¹¹² *Restore New York Shellfish*, DEP’T ENV’T CONSERV., <https://dec.ny.gov/things-to-do/shellfishing/restoration> (last visited Sept. 22, 2025). The program is run by the New York Shellfish Restoration Council as part of the New York Shellfish Restoration Plan. *New York Shellfish Restoration Council Meeting*, DEP’T ENV’T CONSERVATION (Jan. 17, 2023), https://extapps.dec.ny.gov/docs/fish_marine_pdf/dmrsrjanpnt.pdf.

¹¹³ *Id.* The Long Island Shellfish Restoration project includes 5 established “sanctuary sites” around the area where DEP works with local partners, Universities, and municipalities to restore and monitor the water quality and shellfish population. *Id.*

¹¹⁴ *Id.*; N.Y. COMP. CODES R & REGS. tit 6, §§ 48.2–48.8. Federal and local permits are also required, when applicable.

¹¹⁵ N.Y. COMP. CODES R & REGS. tit 6, § 48.1(f).

¹¹⁶ *Id.* § 48.3; N.Y. ENV’T CONSERV. LAW § 13-0316.

in specific sites and the department has discretion when accepting permit applications to place additional conditions on where and what activities can occur, especially when projects occur in restricted or closed waters.¹¹⁷

II. Creating a new streamlined license

Another option that some states are exploring is creating a new permit that streamlines multiple permits into a single application. The goal of these permits is to cut back on costs and barriers for permitting restoration activities, while still ensuring that these activities comply with all applicable regulations and requirements. Since some of these permit programs are still in the beginning stages, it is unclear how successful they will be.

a. California

In 2024, California passed the Restoration Management Permit Act (RMPA) which streamlines and accelerates the permit process for restoration projects by consolidating 5 permits under the Department of Fish and Wildlife into one.¹¹⁸ The RMPA was passed to help achieve California's 30x30 goal to conserve at least 30% of the state's resources by 2030.¹¹⁹ Under RMPA, activities that restore "native fish, wildlife, plants, or their habitat and propagation" and that will benefit the conservation of fish, wildlife, or plants are permitted when they involve resources under the Department's jurisdiction.¹²⁰ Applicants will still need to get any other required state or federal permits necessary for their proposed activity.¹²¹ The Department of Fish and Wildlife began piloting this permit in January 2025. The first restoration project was permitted in April 2025 to restore Little Butano Creek in Northern California.¹²²

¹¹⁷ N.Y. COMP. CODES R & REGS. tit 6, § 48.3; *Restore New York Shellfish*, *supra* note 112.

¹¹⁸ *Restoration Management Permit (RMP)*, DEP'T FISH AND WILDLIFE, <https://wildlife.ca.gov/Conservation/Cutting-Green-Tape/RMP> (last visited Sept. 22, 2025). The five permits relate to the take of protected species and rare plants, take of other species, and the authorization to impact streams, lakes, and rivers projected under the Lake or Streambed Alteration Agreement. *Id.*; CAL. FISH & GAME CODE § 1672.

¹¹⁹ *Restoration Management Permit (RMP)*, *supra* note 118.

¹²⁰ CAL. FISH & GAME CODE §§ 1671(b), (d)(1).

¹²¹ *Id.* § 1673(a). For restoration activities in coastal waters, any proposed project, such as shellfish restoration, would likely be applicable under NWP 27 and would easily get federal approval.

¹²² *CDFW: Cutting the Green Tape Update: A New and Improved Restoration Management Permit; Little Butano Creek Fish Passage and Habitat Enhancement; Regulatory Strategies to Advance Restoration; and more...*, MAVEN'S NOTEBOOK (Apr. 15, 2025), <https://mavensnotebook.com/2025/04/15/cdfw-cutting-the-green-tape-update-a-new-and-improved-restoration-management-permit-little-butano-creek-fish-passage->

b. Washington

The Department of Natural Resources and Department of Fish and Wildlife work together to run an oyster pilot program in the Puget Sound on currently “nonproductive oyster reserve land” and in Willapa Bay aimed at restoring the oyster population and ecosystem.¹²³ The Department of Fish and Wildlife first began trying to restore oyster habitat in the Puget Sound in the 1990s. In 2011, the Department received funding from the National Ocean and Atmosphere Administration, Tribes, and public interest groups, to work on a multi-year oyster restoration project to restore over 100 acres of oyster habitat.¹²⁴ The goal was to complete this project by 2020.¹²⁵ In order to take part in this pilot program, or to do aquaculture, a lease to use state-owned tidelands is needed from the Department of Natural Resources, along with any other required local, state, and federal permits.¹²⁶ There does not appear to be any specific permit for the oyster restoration areas.

Additionally, in 2021, the Washington Legislature passed HB 1382, which authorized the Department of Fish and Wildlife to pilot a new habitat restoration program that would streamline state and local permitting for projects “that benefit freshwater, estuarine, or marine fish, or their habitat.”¹²⁷ Projects must fall into one of 13 categories that align with one of the federal or state funded programs.¹²⁸ Projects approved under this program are not a part of the state environmental review requirements and are not required to get any other state or local permit, but still must receive any relevant federal permits.¹²⁹ Projects, like shellfish restoration, that take place on state owned tidelands and submerged lands

[and-habitat-enhancement-regulatory-strategies-to-advance-restoration-and-more/](#) (explaining the project and how much funding it received from the state).

¹²³ WASH. REV. CODE § 77.60.150(1).

¹²⁴ *NOAA Supports for Puget Sound Shellfish: Native Oyster, Abalone & a Healthy Marine Habitat*, NAT’L OCEANIC & ATMOSPHERIC ADMIN. (Dec. 2011), <https://media.fisheries.noaa.gov/dam-migration/pugetsoundsellfishfactsheet120711.pdf>.

¹²⁵ *Id.*

¹²⁶ WASH. REV. CODE §§ 77.60.150(3), 79.135.300; *Aquaculture*, *infra* note 135.

¹²⁷ H.B 1382, 67th Leg., 2021 Reg. Sess. (Wa. 2021); *Habitat Recover Program*, DEP’T FISH & WILDLIFE, <https://wdfw.wa.gov/licenses/environmental/hpa/types/pilot#review> (last visited Sept. 23, 2025). Applications were due by June 5, 2025, and the program expired June 30, 2025. However, the Legislature could reauthorize or permanently adopt it if they wanted too.

¹²⁸ *Habitat Recover Program*, *supra* note 127; *Advancing Habitat Restoration in Washington: Lessons From the Habitat Recovery Pilot Program*, ENV’T POL’Y INNOVATION CTR., https://static1.squarespace.com/static/611cc20b78b5f677dad664ab/t/67d2f8f58aedd540e910d863/1741879542866/HRPP+Factsheet_Advancing+Habitat+Restoration+in+Washington_+Lessons+from+the+Habitat+Recovery+Pilot+Program.pdf (last visited Sept. 24, 2025).

¹²⁹ *Habitat Recover Program*, *supra* note 127; ENV’T POL’Y INNOVATION CTR, *supra* note 128. This also removes the requirement of paying any local or other state fees that would normally apply, removing a financial barrier for potential projects. ENV’T POL’Y INNOVATION CTR, *supra* note 128.

must still get authorization from the Department of Natural Resources before submitting an application for this program.¹³⁰

Below is a chart comparing a few key elements of each of these programs.

¹³⁰ *Habitat Recover Program*, *supra* note 127; ENV'T POL'Y INNOVATION CTR, *supra* note 128. Authorization for these types of projects in state-owned tidelands required a joint permit from the Department of Natural Resources and Corps to be approved and submitted prior to applying for the restoration program. *Habitat Recover Program*, *supra* note 127; *JARPA Form*, *infra* note 137. However, if the program was fully adopted, one of the suggestions is to fully integrate aquatic lands into the application process by making it a joint submission to the Department of Natural Resources and the Department of Fish and Wildlife. ENV'T POL'Y INNOVATION CTR, *supra* note 128. The Department of Natural Resources has their own aquatic lands habitat restoration program for groups looking to restore aquatic habitats through activities such as “removing bulkheads, constructing engineered log hams, [and] planting eelgrass.” *Aquatic Lands Habitat Restoration Program*, DEP'T NATURAL RES., <https://dnr.wa.gov/aquatics/aquatic-lands-restoration-team/aquatic-lands-habitat-restoration-program> (last visited Sept. 24, 2025). However, the program is site specific and interested groups need to reach out to their local restoration manager for information on the program. *Id.*

State	Specific permit required?	Lead permitting agency different from marine resource agency	Time limit?	Funding available to applicants for their approved project?	Fee to apply	Enforcement mentioned in regulation?	Just shellfish or other restoration activities covered.
California:	Yes	Yes	No, applicant sets end date	No	No application fee	No	Covers all restoration activities on public lands, coastal and fresh waters

Connecticut	No, need to also submit an application and receive a license from DEEP	No	No	No	No ¹³¹	Yes ¹³²	Shellfish specific
New York	No, regular shellfish permit is needed for specific restoration areas	No	1 year	No	\$100/permit ¹³³	No	Shellfish specific
Washington: Habitat Recovery Program	Yes, must be approved for restoration program	Yes	Yes, up to 5 years ¹³⁴	Yes	No	No	Covers restoration projects in all waterways

¹³¹ MARINE AQUACULTURE GUIDE, *supra* note 106, at 13–14.

¹³² CONN. GEN. STAT. § 26-192g. Penalties for violating regulations can be found at CONN. GEN. STAT. § 26-192f.

¹³³ N.Y. ENV'T CONSERV. LAW § 13-0316(1). State agencies are not required to pay a fee. *Id.*

¹³⁴ *Habitat Recovery Pilot Program*, GOVERNOR'S OFF. REGUL. INNOVATION & ASSISTANCE (May 15, 2025), https://www.oria.wa.gov/site/alias__oria/mid__12357/403/handbook-entry?ItemID=276.

Washington: Oyster Reserve	No, regular aquatic land lease	No	Yes	No ¹³⁵	\$25 ¹³⁶	Yes, up to \$10,000 and/or 5 years in prison for any false statements in application ¹³⁷	Shellfish specific (prohibits geoduck)
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¹³⁵ While funds for those interested in doing a restoration project may not be available, funds from aquaculture leases are used by the Department of Natural Resources to manage and restore state-owned tidelands. *Aquaculture*, DEP'T NAT. RES., <https://dnr.wa.gov/aquatics/shellfish/aquaculture> (last visited Oct. 2, 2025).

¹³⁶ *Joint Aquatic Resources Permit Attachment E: Aquatic Use Authorization on Department of Natural Resources (DNR)-managed Aquatic Lands*, WASH. (Oct. 2016), https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/JARPA-Documents/JARPA%20Attachment%20E.pdf.

¹³⁷ *Washington State Joint Aquatic Resources Permit Application (JARPA) Form*, WASH. (Dec. 2023) [hereinafter *JARPA Form*], https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/JARPA-Documents/JARPA.pdf.

Conclusion

There are multiple ways Maine can facilitate shellfish restoration in state waters. One available option that conservation groups and municipalities could pursue is authorization under NPRA Permit-by-Rule. While DMR is not the lead agency approving projects under PBR, as a public natural resource agency it (1) approves the timing of proposed projects in tidal waters and (2) can either do restoration work on its own or work with or supervise certain parties in doing restoration projects. This means that DMR or other qualified interested parties, such as municipalities or conservation groups, can start to propose and implement restoration projects in tidal waters now.

If Maine wanted DMR to have more direct oversight over restoration projects in tidal waters, another option would be to adapt an existing aquaculture lease or license in some way to include restoration projects. All the existing state aquaculture permits as they are currently authorized in law and regulation have limited scopes or other provisions that could make it difficult to permit restoration projects. However, other states have worked within their regulatory powers to use existing aquaculture licenses to create a pathway for restoration work—often by identifying specific areas where restoration work would be allowed under a regular commercial license and imposing additional conditions to address concerns such as illegal harvesting and human health. Either route would give DMR more control over what restoration projects are permitted as well as control over when and where restoration projects occur, compared to PBR.

Both options have their strengths and drawbacks. Maine agencies, stakeholders, and municipalities can determine which pathway works best for them and how much control they want DMR to have over the permitting process. If the goal is simply to start doing shellfish restoration projects as soon as possible, PBR presents the most immediate path towards that goal because it is an established program with a streamlined permitting process. However, if the goal is to create a brand-new pathway, Maine can look to other states to see how to adapt existing licenses or create new licenses to permit restoration projects in state waters.