

DEPARTMENT OF MARINE RESOURCES

Chapter 29.10 Reporting of Seaweed Harvesting and seaweed buyer's surcharge rules: See Chapter 8.20(C) Landings Program

Chapter 8.01 Definitions

- A. Except as modified, the definitions contained in 12 M.R.S.A. §6001 shall apply to this Chapter, in addition to the following;
1. "Dealer License" means Seaweed, Wholesale, Retail, Marine Worm or Elver dealer license as defined in §6803-A, §6851, §6852, §6853 and §6864.

Chapter 8.10 Primary Buyer Permit Reporting

- A. Primary Buyers shall report all transactions pertaining to buying any marine organism directly from harvesters on a trip level basis. The following data elements shall be reported to the DMR on approved paper forms or through approved electronic reporting mechanisms:
1. Dealer name (as it appears on the dealer license) & license number
 2. Designate negative report period if no transactions purchased from harvesters.
 3. Date purchased/ & date landed
 4. Harvester identification & vessel identification
 5. Species
 6. Amount
 7. Grade & market category
 8. Gear type (fishing method)
 9. Disposition
 10. Port landed
 11. Indicate if catch was carried
 12. Ex-vessel value (monthly average)
 13. Signature written or electronic
- B. All data sent to DMR shall be legible, coherent and conform to DMR specified standards.
- C. Additional data elements and requirements for specific fisheries:
5. Seaweed:
Prior to January 30th each year, persons licensed pursuant to 12 M.R.S. §6803-A (seaweed buyer's license), who purchased more than 10 wet tons in the previous calendar year directly from permitted seaweed harvesters, shall pay a surcharge of \$1.50 per wet ton. The surcharge is payable to Department of Marine Resources, mailing address, DMR Licensing Division, attn: seaweed surcharge, SHS 21, Augusta, Maine 04333-0021.

8.20 Harvester Reporting

- C. Seaweed (previously Chapter 29.10)
Each seaweed harvester required to be licensed under 12 MRSA §6803 must report harvesting activity for all seaweed species on forms supplied by the Department. Records must be kept on a daily basis, and the report must be mailed to the Department monthly. Reports for each month's activity shall be mailed to the Department within 10 days of the end of the month. The report must include the following information for each day that harvesting occurs:
1. Name, permit number and phone number of licensed harvester;
 2. Date(s) harvested;
 3. Harvest area (sector # - where applicable, bay, cove, river, ledge and or island);
 4. County and town (use town codes provided, per instructions);
 5. Harvesting methods (hand, knife, rake, mechanical, diver);
 6. Total harvest time (number of hours);
 7. Seaweed species; and
 8. Pounds landed (wet).

Basis Statement

Chapter 29 Seaweed and Chapter 8 Landings Program – amend for Seaweed Buyer's surcharge rules

These regulations establish an annual seaweed buyer's surcharge of \$1.50 per wet ton to be paid by persons who hold a seaweed buyer's license, in accordance with [12 M.R.S. §6803-A and B](#) and [P.L. 2009 Chapter 283](#). The surcharge is applicable state wide to persons who purchase more than 10 wet tons annually directly from seaweed harvesters who hold a seaweed permit pursuant to [12 M.R.S. §6803](#) and are required to hold a seaweed buyer's license in accordance with 12 M.R.S. §6803-A.

The area described as sectors, where applicable, has been added to the seaweed harvester reporting requirements in accordance with [12 M.R.S. §6803-C, sub-section 9](#). References are also updated in Chapters 8 and 29.

Summary of Comments

Chapter 29 Seaweed and Chapter 8 Landings Program – amend for Seaweed Buyer's surcharge rules

Public hearings were held in Machias and West Boothbay Harbor on November 16 and 17th, 2009, respectively. A summary of the hearing and written comments pertaining to the proposed rules with the Department's responses are listed followed by the individual written comments.

Hearing Attendees - Machias:

Sharon Mack, Bangor Daily News, Machias
Lee J. Hudson, President - Maine Seaweed Council, Hancock
Alan Brooks, Associate Director - Downeast Coastal Conservancy, Lubec
Katherine Cassidy, 5 Free St., Machias
Frank Cassidy, 5 Free St., Machias
DMR: Pete Thayer, L. Churchill

Hearing Attendees – West Boothbay Harbor:

David E. Myslabodski, Great SeaVegetables Consulting, Rockland
Susan Domizi, Source Maine, Brunswick
Gavin A. Hood, Source Maine, Brunswick
George Seaver, Ocean Organics, Waldoboro
Robert Morse, President - Atlantic Laboratories, Inc., Waldoboro
DMR: David Etnier, Lt. Cornish, Pete Thayer, L. Churchill

Written comments were received from:

Alan Brooks, Downeast Coastal Conservancy, Lubec (copy rec'd at hearing)
Robert Morse, Atlantic Laboratories, Inc., Waldoboro (copy rec'd at hearing)
Frederick Gralenski, Pembroke
Carl & Heather Ross, Calais and Pembroke
James Buehner, Trescott
Kipp Quinby, Sedgwick
Julie Keene, Trescott TWP
Rex Hunter, Acadian Seaplants Ltd, Pennfield, NB
Robin Hadlock Seeley, Ph.D, Marine ecologist, Cornell Univ., Ithica, NY & Appledore Is., ME

Summarized comments and responses:

1. The amount of the surcharge

Support for the \$1.50 or reduced to \$1.00 buyer's surcharge comes from industry members with the added point that if \$1.00 were applied to a dehydrated product the amount would be over \$5.50 per ton. This contrasts to landowners and or conservationists who request up to the maximum allowable surcharge of \$5.00 per wet ton as they are concerned that the \$1.50/wet ton surcharge amount is insufficient to cover the cost of an independent monitor and the before and after research and or monitoring. The burden of these costs should be on the industry not the taxpayer.

Commenter's wanted to know how the Department arrived at proposing \$1.50, could this be changed up or down; and what is the Department's projected revenue in this matter?

Response:

*The initial surcharge amount and its projected revenue are based on the consideration of several factors. The value of the commodity, the rockweed *Ascophyllum nodosum*, the dockside price to the harvester or vessel price is approximately \$43-44 per wet ton. We also know that similar assessments are conducted in other jurisdictions. It is logical to look at the Canadian seaweed management surcharge of ~ \$1.00 per metric tonne (in Canadian dollars), and almost equal to the US dollar at this time (\$1.50 USD ~ \$1.58 CA dollar). Yes, fairness to the industry, as with all fisheries, has a place in the consideration of fees as well as our obligations to the public in general; and the agency is aware a sufficient amount needs to be added to the dedicated seaweed fund to accomplish the new 3rd party verification requirements per 12 M.R.S. [§6803-C\(9\)](#). Although not noted in any comments this fund also receives revenues generated annually by the seaweed license fees in accordance with 12 M.R.S. [§6803\(4\)](#) Seaweed permit, Disposition of fees and [§6803-A\(4\)](#) Seaweed Buyers license, disposition of fees. The amount from harvester license fees has been ~\$5,000/year; and the 5 buyer's license sold this year to date totals \$1,300. If the 2008 landings of 5550 metric tonnes is multiplied by \$1.50 this would equal \$8,350. Adding these three amounts together would be ~\$14,650 to date.*

At this time the \$1.50 amount seems a reasonable amount to assess at this time given that there are currently only 5 companies who have purchased the seaweed buyers permit and that there exists some confusion surrounding the interpretation as to whom this applies. Also, as with all new programs, a cautious approach is considered prudent. Placing the entire assessment funding on 5 companies would not be an equitable way to proceed and it is the Department's position that the \$1.50 is a reasonable starting amount that may be increased if found necessary in the future.

2. Who pays the surcharge?

This rule should apply to all seaweeds not just the rockweed *Ascophyllum nodosum*; clarify if this is the only species this applies to.

As written anyone just harvesting doesn't have to report or pay the surcharge.

Except for personal use all harvesting of seaweed in whatever form to be use such as wet, dry, processed, directly sold wet, dried and sold, should be subject to the surcharge.

Response:

As written the regulation would apply to persons licensed pursuant to [12 M.R.S. §6803-A](#), Seaweed buyer's license. The statutory definition of "seaweed" under [12 M.R.S. §6001\(38-A\)](#) means all marine algae.

*Therefore these regulations apply to all seaweeds, not only the rockweed *Ascophyllum nodosum*.*

Regarding reporting requirements it should be noted that all harvesters are already required to report monthly seaweed harvest in accordance with the DMR Landings Program (Chapter 8).

Regarding the applicability of the rule to different forms of harvested seaweeds such as dried or processed forms, the authorizing statutes [12 M.R.S. §6803-A](#) and [§6803-B](#) are specifically written to apply only to wet weights purchased annually when more than 10 wet tons. To use a conversion or to apply the rule to other forms of seaweeds or other segments of the industry the statutes would require a statutory amendment.

3. Would the money collected from the surcharge be placed in a dedicated fund for seaweed?

Response:

In accordance with [12 M.R.S. §6803-B](#) Seaweed buyer's surcharge, the monies must be deposited in the Seaweed Management Fund established under [12 M.R.S. §6806](#), which is a dedicated, nonlapsing fund.

4. Could the revenues collected from the surcharge be used for promotional and or research purposes for seaweed?

Response:

In accordance with [12 M.R.S. §6806](#) Seaweed Management Fund, sub-section 2, Permissible uses, includes research, management and enforcement. Therefore the funds may not be used for promotional purposes.

5. Explain or clarify how the statute applies coast wide and not only in Cobscook Bay.

Response:

The statutes 12 M.R.S. [§6803-A](#) and [§6803-B](#) are not specific to a specific location; compared to [§6803-C](#), which does state that statute applies to Cobscook Bay.

6. Questions about [LD 345 \(P.L. 283\)](#)

Response:

Specific questions pertaining to the development and intention behind LD 345 need to be directed to the legislators or sponsors of that bill. This rulemaking does not have the authority to address any changes in the law or direct knowledge of individual's intent in the development process.

Individual summarized comments:

Lee Hudson, Maine Seaweed Council, President, Hancock

We are in favor of the \$1.50 per wet ton amount with a disclaimer because of the wording, the way the seaweed buyer's license ended up being worded; that a lot of the wet tons of rockweed specifically that are only landed in the State of Maine are exempt from the surcharge. Unfortunately there isn't anything we can do about that. Hopefully in the future that will be, a seaweed buyer's license rules will be reconsidered, which would capture a greater amount of the seaweed landings and increase the annual surcharge total.

I wanted to speak in favor of the change under Ch. 8.20 Harvester Reporting, the sector number. The Maine seaweed council has been in support of and encouraging the Department to recognize the sectoring system that we implemented about 5 years ago to help encourage better seaweed management.

The other piece goes back to the future potential restructuring of the seaweed buyer's license because this, although the original LD 345 as well as the current or the new statutes that came from that they used the term seaweed very loosely. The intention in them appears to be specifically rockweed. So there are other seaweeds harvested in the State of Maine that that got caught up by accident in this and I have a hard time with the idea that we're going to take all of the seaweed management fund that was established years ago and spend all that money on rockweed. There is an awful lot of research that has been done on rockweed and much less research that's been done on some of the other seaweeds. To include the sea vegetables, the *laminaria's*, *saccharina's*, to lump them in and charge a surcharge and then to use that money specifically for rockweed just doesn't seem right. Maybe we need to look at calling all of this rockweed and exempt out the sea-vege folk.

Susan Domizi, Source Maine, Brunswick (seaweed processor)

My feeling is that the people of Maine own, through public trust rights, the entire macro algae resource. And as I've felt for many years any entity taking some of this resource with the possible exception of an individual using only for their own personal non-commercial use, any other entity should be putting something back for the people, for the State, for the resource. I think that the seaweed buyer's surcharge is an attempt in that direction which I welcome. But I feel as currently crafted and so my comments are mixed, as currently crafted it has left some perplexing loopholes. We as a processor have our employees, for whom we pay workmen's compensation, Maine withholding taxes, etc., our employees going out and harvest this resource, bring it back, and we process it and it ultimately goes in to finished goods. We do not at any step buy it from anyone. As carefully as I've attempted to read the rules, we are not obligated under this rule to participate in any way in a surcharge. I think that anyone taking this resource however it is used, wet, dry, processed, directly sold wet, dried and sold, however it is used should be subjected to a surcharge.

As a member of the Maine Seaweed Council it is my memory, please understand I'm in Medicare so..., however it is my memory that \$1.00 per wet ton was the figure that we had talked about, not \$1.50. I would suggest that we walk before we try to run. I would prefer to see it start at a \$1.00. In the dehydration process that is going to translate to over \$5.50 per ton with the seaweeds that we work with.

I've had question, I've had some people say that they think this applies only to *Ascophylum*, to rockweed, and I think it should apply to all the species of seaweed. We need crafting so that a Japanese company couldn't come in with their ship, have all the appropriate licenses and supplementals and harvest 10's of thousands of pounds with their own employees and sail off without owing anything to the people of the State of Maine. I'd like to see that loop hole closed.

Gavin Hood, Source Maine, Brunswick (seaweed processor)

I want to reiterate something Susan said. I understand at the [hearing] last night it was stated that the Maine Seaweed Council supports the \$1.50 and that is not true. Susan mentions the \$1.00 but I wanted to put it on record that the Seaweed Council itself had voted on \$1.00; to say that we're accepting or in favor of the \$1.50 is incorrect. I'm in favor of what this whole direction we're going but, I think \$1.50 is too much because of the way it translates to dry pounds. It needs to be revisited. At this point if you only have seaweed buyers doing it anybody who is harvesting for themselves doesn't have to report it, doesn't have to pay. It is an unfair balance all the way around.

Robert Morse, Pres. Of Atlantic Laboratories, Inc., Waldoboro and Managing director of North American Kelp, (rockweed processor)

[I will use the written comment and documentation as notes and add to it.]

[Our] company is approximately 38 years old. I'm in favor of the surcharge. The \$1.50 to me is agreeable. I did vote as a Council member. I am also a member of the Maine Seaweed Council. I'm speaking tonight as president of Atlantic Laboratories and a member of the Maine Seaweed Council.

The \$1.50 is ok as far as I'm concerned. I believe if we had some kelp people in here and they have a 10:1 conversion, wet to dry, that that would figure out to \$15.00 a ton. So it would vary from processor to processor.

I'm a little confused; I have other comments on how we got here, and I have comments on the stance of the DMR as far as what they say the intertidal zone seaweed is and who owns it. So I'm going to address some of those factors.

The bill that this appeared in was LD 345, a concept bill submitted by Senator Raye from Eastport. It was to do with emergency legislation on rockweed harvesting in Cobscook Bay. A concept bill was new to me, I'm not a big legislative person but it had nothing in the bill. It allowed the Marine Resource Committee to craft a bill to meet someone's needs. But in the process it had a hearing. The bill for the surcharge or the buyer's license, the first I saw of it was when it was passed by the Legislature. So this bill had no input from the industry or a harvester. I think that makes for poor legislation and as Susan has pointed out ... I don't know how many of these have been sold as [of] our last Seaweed Council meeting in September there were only 3 licenses sold. I think one person that has one probably is in the same situation as Susan and doesn't actually require a license, as they are actually growing their own seaweed. I think by having a process that we're supposed to have in this state where a representative or a senator actually puts the bill in, that's how it is under our constitution, and then you have the right to a hearing for the bill, then you have a right to lobby your legislators or to either say yes or no on the bill, I believe that process is being circumvented and I believe if that process was followed we might have been able as an industry, I don't think you're going to see any opposition on form our industry to try to build up a research fund and to do this but the process should definitely be more open and have input in so we can get a bill that meets[.] I don't know who wrote the bill. I don't know what the purpose of the bill is. Nobody is here that probably, [and] this is not the type of hearing where I can ask somebody but I would like to know what the purpose of the bill is and does that bill meet the purposes of what the person who wrote the bill want. From my point of view it misses most of the industry, as far as the numbers go, as Susan pointed out. If you buy dry seaweed it misses it, if you happen to own your own harvesting crew or whatever it misses it. I would say in the future that I would like to see these bills at least be brought to the attention of the license holders and now since we're also a buyer's license we may be make comments on this or work with the Department. We certainly want to work with the Department. We're not adverse to that at all. But we seem to be getting shut out and I don't think that is good practice. And what is it doing in a bill that is emergency legislation for Cobscook Bay? What does a buyer's bill have to do with an emergency for Cobscook Bay? That's why most of the council members thought it only included Cobscook Bay and then we had communication with the Department and it was cleared up that no, it is for all seaweeds for the coast of Maine.

The other part is and George Seaver will speak to, is under the law of the fund, the regulation of the research seaweed fund, there is a requirement that says that the research to be selected by the Department have some communication with the license holders. Over the past few years I know we haven't had a lot of money in the fund. But we're usually notified after the research has been picked. In the last instance it was the Suffolk University test. Which I'm not sure is completely done yet for Cobscook Bay in 2008 on rockweed harvesting. I think in the future it would be nice if that section, in my letter it states the section, and says that the Commissioner seek input from license holders. [12 MRS §6806(3), Appendix E] I certainly hope that the buyers license holder, which in my case will be paying quite a bit more than any individual harvesting license will be, that maybe we can get that communication going before the research is done. It is up to the Commissioner to pick it but at least we can have input, which we seem to get very spottily if at all over the past few years. The part I like about the bill is as long as the legislature doesn't sweep the money out of it is that we are building a fund that will help in these short budget times to manage the industry. That is a big positive in my book.

[Regarding public trust doctrine] these two books are highly recommended for the library.... It is a very hot topic in a lot of states right now:

- 1) *Putting the Public Trust Doctrine to Work, Second Edition, The application of the Public Trust Doctrine to the Management of Lands, Waters and Living Resources of the Coastal States.* June 1997. Prepared by Coastal States Organization, Inc., David C. Slade, esq., R. Kerry Kehoe, Esq., Jane K Stahl, Esq., and Thomas Ouellette.
- 2) *The Public Trust Doctrine in Motion, Evolution of the Doctrine 1997 – 2008.* David C. Slade. 2008 [ISBN: 978-0-615-24111-1]

George Seaver, Ocean Organics (processor), Waldoboro

We make liquid fertilizers that have seaweed extract in them.

Is there a projection as to what the revenues will be? If so, do you know what it is? [Pete Thayer: We don't know exactly what the landings are going to be. When we were looking at the dollar (per wet ton amount) we threw a number out, for instance 5,000 tons, which is a straight calculation to \$5,000. If it is \$1.50 then it's \$7,500. That's from the surcharge itself; and as you know the licenses (added into it) there are roughly \$5,000 a year. Also, the cost of the buyer license goes in as well. There's only a couple so far. It's yet to play out how many there will typically be.)

The reason I ask is where my comment would be. To the extent I have understood the subtleties of this that money would be used for research or potentially enforcement? [P. Thayer: Or management, that's how it is written in the law.]

That part of it that might be used for research, I get involved in my own job, I'm not sure what you mean by research but I assume it ranges from ecology sorts of research, impact of harvesting sorts of research on one extreme to

specific impacts, although I guess you can't prove negatives, I'm speculating on research projects might be. To the extent that the DMR, if I understand the mandate, is to make good use of the resource, [to] promote the commercial value of the resource, I'd like to [suggest] the possibility that at some point your research could be on utilization of the products made from the different plants. Said simply, there's research projects I'd love to have help with that we do in agricultural applications. Or other ways to make the *Ascophyllum* an even more appreciated resource and more value added opportunities like economic development effort.

David Myslabodski, Great SeaVegetables, Rockland

I provide consulting services to the seaweed industry, to my company Great SeaVegetables, for [the past] 19 years in Maine. I'm also a member of the Maine Seaweed Council. Several people already have said ahead of me, I see as a positive step that we will have some money that is ear-marked for enforcement management and research. As part of the Maine Seaweed Council I trust Gavin's memory that we are talking about \$1.00 a ton. My comments would be my understanding the way it was crafted, the bill has huge loopholes. Somehow, as Susan mentioned, every that extracts any and all seaweed out of the waters of the State of Maine should pay with the exception of your individual use, of which you don't need a license. So we are aware there are a lot of loopholes that should be shut down.

I don't see the point of the people that they buy dry that they shouldn't pay. There are good numbers on how to convert each commercial species from dry to wet. You will see all the statistics in fisheries are based the reporting on wet regardless of the end use or the way they are bought. This is just for making statistics compatible to each other. So everybody should pay. That all seems fair.

The point that George mentioned, I haven't thought about it until he mentioned it, that it would be good to have some sort of promotional activities. Because we are, I wouldn't say we are the black sheep of the seaweed industry. We are the little brother of the fisheries industry in Maine. Almost nobody knows that we exist, what we do with the product and we have had the case like a crisis had to happen to the lobster industry. So people in Maine would walk up to you and say what can we do with a lobster? On a smaller scale but something should be done with the resources of the State of Maine, specifically the seaweed. Because we have lots of resources and we use very little of them so somehow we should use more and they are right here, we don't have to bring them from somewhere else. We could get more, a classic example, to up the value in Maine. Not just export to other places.

Robert Morse, continued

I applaud the legislature on 345 for taking the bull by the horns and actually management the intertidal seaweed zone, which seem to have been in dispute over the last few years. I don't know what would happen tomorrow if I called the Department up and asked "Who owns the intertidal zone?" But I would think by now that the Department should be recognizing some of the laws that are on the books. I would like to read the statute under Title 1, Chapter 1, of the Sovereignty and Jurisdiction clause; Section [3]2-A, Offshore waters and submerged land; [in his Appendix A]. *Harvesting: The State of Maine declares that it owns and shall control the harvesting of the living resources of the seas adjoining the coastline for a distance of 200 miles or to the furthest edge of the Continental shelf, which ever is greater, subject only to the boundary with Canada. Control over the harvesting of these living resources shall be by licenses or permits issued by the Department of Marine Resources.* You will see the citation below that it was new in 1973. I did a little legal research and this was actually passed originally back in 1820 in the separation of Maine from Massachusetts. In 1973 I approached Spencer Appollonio, former Commissioner, at that time, and I asked if that was the year we changed between Sea and Shore Fisheries and to Department of Marine Resources? He said yes. It was Sea and Shore Fisheries when I started in 1971. In fact the Sea and Shore Fisheries had a marketing department with 5 people working there. With these basic sovereignty clauses this is one of the first things that the state passed under Title 1 Chapter 1 that it ought to be quite clear that seaweed is definitely a public trust right resource. If we go through the rest of the information I [provided] you will see how the statues have come down from there. Where they describe the verb fish is the take or attempt to take a marine organism. The definition of a marine organism meets seaweeds. There is never any mention of intertidal zone versus the ocean.

I also go back to the 200 mile limit. It seems like holding up a cross to Dracula when you're in the Marine Resource Committee when you talk about 200 miles. But if we're looking at an economic problem here in the state that probably won't go away very fast we're looking at all our kids leaving, with no jobs, what better way for an economic develop is to take our marine resources back to the 200 mile limit. Actually get our processing going here in Maine rather than let it all go to New Bedford and Massachusetts. This could be a really big plus to the future of Maine to reinvigorate the sovereignty clause. I would like to have the Department to either explain why, what would happen tomorrow if I would call up and they tell me they don't know who owns the resource. I've been told this by a number of people for a while. I've never done it. Maybe I'll try it tomorrow and I'll probably end up talking to Peter... Anyway I think it is time for the Department to stand up and be for the resource. Since the legislature is, they can't regulate a private resource in the marine field. They're regulating property that is clearly under the sovereignty clause under the ownership of the people. It is time to move forward. It is 2010 next year and we're still messing around with who owns the intertidal zone seaweed. I think it is a disaster to raise funds for the company. As a result we're getting people coming and taking seaweed, taking it across the borders and processing it in foreign countries. It is happening. If it can be taken away because it is a private landowner thing [then] that has to be cleared up. If it takes a court case to clear it up I guess that is what we'll end up

doing. We certainly don't want to waste resources that way. Particularly at this time of the juncture of the economic conditions.

Frederick Gralenski, Pembroke

I do hope DMR will put the surcharge on harvesting seaweed at the maximum allowed (\$5.00/ton). Even with this surcharge it amounts to a pretty small amount of funds available for

Carl & Heather Ross, Calais and Pembroke

We are land owners in Pembroke Maine with several thousand feet of shorefront. We feel that proper studies dealing with rockweed are needed to protect the ecology of the bay. Monitoring of the rockweed and studying the effects of extensive sea harvesting and harvesters requires considerable funds to manage all the activities related to the rockweed research.

We would like to see the maximum surcharge of \$5.00 per ton in order to fund proper monitoring, research and enforcement which is required by law in order to protect the rockweed harvesting in Maine.

The local harvester, namely Acadian Seaplants Limited, has not shown interest in honoring restrictive areas which are in no-cut zones. We feel that more research on rockweed cutting, monitoring of the harvest, enforcement of the laws and regulations and management activities can be maintained by proposing the maximum funding permitted by law.

Please consider the maximum surcharge of \$5.00 per ton for the rockweed harvesting.

James Buehner, Trescott

Adequate funding to research the impacts of commercial seaweed harvesting in Cobscook Bay is desperately needed in order to safeguard the integrity and productivity of its unique and invaluable ecosystem. I urge the department to adopt measures that would levy a seaweed buyer's surcharge of at least \$5.00 per ton to ensure basic research funding and adequate enforcement and monitoring monies. Given the level of recent harvests, this would provide about \$25,000 for research and enforcement, according to researcher Robin Hadlock Seeley. A bare minimum sum, indeed. Rockweed harvesting must be carefully controlled and limited to ensure the health of the Cobscook ecosystem. I urge you to be extremely careful that harvesting pressure does not compromise our fecund treasure.

Kipp Quinby, Sedgwick

As a commercially licensed fisherman, biologist, and coastal resident, I would like to urge the committee to consider assessing the maximum fee allowed--a very modest \$5/ton--to seaweed dealers to help fund some of the activities related to ensuring a low impact seaweed harvest.

Research on the ecology of the Gulf of Maine and similar systems suggest that Ascophyllum very probably plays a vital, though largely unexplored, role in our coastal system. While there has been a great deal of scientific and conservation attention lately to the importance of eel grass beds, we have mostly ignored the predominant biological structure of our coastline with its vast capacity for providing shelter, nutrients, and unknown potential as a nursery habitat for other economically critical species like lobster.

The other fisheries in which I participate help through substantial fees to pay for the research and enforcement costs associated with them. To assess such as cursory fee of \$1.50/ton on an industry that could affect so many other fisheries seems out of line with current DMR policy for industry funding. Please consider implementing a higher surcharge that would provide a more substantive contribution from dealers toward the costs of their industry.

Alan Brooks, Downeast Coastal Conservancy, Lubec (copy read at hearing)

My name is Alan Brooks. I am a resident of Lubec. I am testifying this evening as Associate Director of the Downeast Coastal Conservancy, a nonprofit conservation organization with headquarters in Machias. I was, until recently, Executive Director of the Quoddy Regional Land Trust, which in August of this year merged with the neighboring Great Auk Land Trust to form the Downeast Coastal Conservancy, a regional land trust serving all of Washington County from the coast in to Route 9. For your information, the Downeast Coastal Conservancy has agreed to maintain the "no-harvest" landowner registry initiated by Quoddy Regional Land Trust, which is referred to in Section 4 of LD345, An Act to Regulate the Rockweed Harvest in Cobscook Bay, as well as to continue QRLT's advocacy regarding the need for appropriate management of Cobscook Bay's rockweed resources.

LD345's requirement for the creation of a seaweed buyer's surcharge, to be deposited in the Seaweed Management Fund, is now embedded in statute at Title 12, Section 6803-B. DMR's proposed rules would set this surcharge at \$1.50/wet ton. We believe that \$1.50 is far too low, and that the surcharge should be set at or near the maximum of \$5 per wet ton as allowed under the law. Unless the surcharge is significantly greater than the proposed \$1.50, the amount collected through the seaweed buyer's surcharge will be completely inadequate to carry out the research, management (including the mandated third party monitoring for the Cobscook Bay Rockweed Management Area), and enforcement activities specified for the fund, even for Cobscook Bay, let alone the rest of the Maine coast.

Historical Maine seaweed landings, available from the DMR website, stood at 5,550.79 metric tons in 2008, the highest landing* for seaweed since data has been recorded. 2009 tonnage may well be less, given weather problems early in the season and, more importantly, the significant amount of acreage represented by Cobscook Bay conservation lands

that are now permanently off-limits to harvesting, as well as by the lands contained in the no-harvest registry, which harvesters have been instructed to avoid.

Assuming, for now, the optimistic figure of 5,550 metric tons per year, at \$1.50 per wet ton the seaweed buyer's surcharge would total \$8,325 per year. How far would this go in paying for research, management, monitoring and enforcement? Not very.

Let's look at research. According to estimates provided by Robin Hadlock Seeley, who has received similar grants for scientific work and who has confirmed with other marine scientists the likely costs of appropriate rockweed research projects, even a small-scale project involving a before-and-after survey of the impact of harvesting on rockweed and associated organisms, carried out by trained personnel over more than one season, if conducted at standard rates, is likely to cost in the range of \$30-\$40,000. At the proposed DMR rate of \$1.50 per wet ton, it would take 4 to 5 years for enough money to accrue to the Seaweed Management Fund to pay for even one such project. And this doesn't even consider the needs of the fund to pay for management and enforcement -including required monitoring of the harvest to ensure compliance with the laws.

I would be interested in knowing if DMR arrived at its surcharge rate by budgeting the costs of the required activities, or whether it simply picked a number that would be easy for the industry to live with? If the former, it would be helpful to see the proposed budget, since it's hard to imagine how it could show any meaningful amount of annual pay-out from the fund. If the latter, it should recognize that its obligations here are to the seaweed resource, and not to the buyers.

Let's assume the plan is to accumulate funds over a number of years - realistically, I would guess 8-10 years - before being able to conduct significant research, management and enforcement. What will that mean? At the very least, it will mean that Maine's seaweed resource - including the rockweed in Cobscook Bay - is under enormous risk during these years. It will also mean that, since essential research will have to be postponed so long, the chance to establish pre-harvest baseline conditions and to measure progressive changes to the Cobscook Bay ecosystem resulting from harvest will be slim to none. We need the research, as well as the enforcement and monitoring, now, not 10 years from now.

At \$5.00 per wet ton and an annual average harvest of 5,550 tons, the Seaweed Management Fund would accrue close to \$28,000 per year. Even this isn't much to pay for the activities the fund is meant to support, but it would allow research to begin within a relatively few years with some funds used for monitoring and enforcement. While far from ideal, it does represent a reasonable shot at getting the work done that needs to be done soon. If, after a period of time, there is general agreement that the rate can be reduced because the needed research is complete and on-going management and enforcement costs are low, then DMR should propose to reduce the amount. But, today, it should use the tools the legislature gave it to set a surcharge rate at or near the maximum, not at a level that is, truth to tell, not much better than nothing.

* see next page

HISTORICAL MAINE SEAWEED LANDINGS								
YEAR	SPECIES	METRIC TONS	POUNDS	POUNDS(millions)	VALUE	VALUE(millions)	PRICE/LB	
1964	SEaweEDS, COMBINED	1131.71	2,495 ,000	2.4950	\$43 ,663	\$0. 04	\$0.02	
1965	SEaweEDS, COMBINED	1313.15	2,895 ,000	2.8950	\$50 ,663	\$0. 05	\$0.02	
1966	SEaweEDS, COMBINED	1106.77	2,440 ,000	2.4400	\$45 ,002	\$0. 05	\$0.02	
1967	SEaweEDS, COMBINED	1442.43	3,180 ,000	3.1800	\$55 ,650	\$0. 06	\$0.02	
1968	SEaweEDS, COMBINED	2313.32	5,100 ,000	5.1000	\$153 ,000	\$0. 15	\$0.03	
1970	SEaweEDS, COMBINED	1150.99	2,537 ,500	2.5375	\$76 ,125	\$0.08	\$0.03	
1971	SEaweEDS, COMBINED	213.19	470 ,000	0.4700	\$14 ,100	\$0. 01	\$0.03	
1972	SEaweEDS, COMBINED	147.42	325 ,000	0.3250	\$8 ,938	\$0. 01	\$0.03	
1973	SEaweEDS, COMBINED	386.46	852 ,000	0.8520	\$26 ,900	\$0. 03	\$0.03	
1974	SEaweEDS, COMBINED	1241.03	2,736 ,000	2.7360	\$109 ,440	\$0. 11	\$0.04	
1975	SEaweEDS, COMBINED	1056.87	2,330 ,000	2.3300	\$93 ,200	\$0. 09	\$0.04	
1976	SEaweEDS, COMBINED	1814.37	4,000 ,000	4.0000	\$160 ,000	\$0. 16	\$0.04	
1977	SEaweEDS, COMBINED	938.68	2,069 ,440	2.0694	\$109 ,378	\$0. 11	\$0.05	
1978	SEaweEDS, COMBINED	551.53	1,215 ,924	1.2159	\$85 ,899	\$0. 09	\$0.07	
1979	SEaweEDS, COMBINED	403.70	890 ,000	0.8900	\$51 ,400	\$0.05	\$0.06	
1980	SEaweEDS, COMBINED	458.13	1,010 ,000	1.0100	\$60 ,600	\$0. 06	\$0.06	
1981	SEaweEDS, COMBINED	254.01	560 ,000	0.5600	\$35 ,000	\$0. 04	\$0.06	
1989	SEaweEDS, COMBINED	2976.88	6,562 ,884	6.5629	\$328 ,144	\$0. 33	\$0.05	
1990	SEaweEDS, COMBINED	65.55	144 ,517	0.1445	\$10 ,679	\$0. ,01	\$0.07	
1991	SEaweEDS, COMBINED	1983.63	4,373 ,161	4.3732	\$799 ,528	\$0. 80	\$0.18	
1992	SEaweEDS, COMBINED	337.20	743 ,402	0.7434	\$53 ,047	\$0. ,05	\$0.07	
1993	SEaweEDS, COMBINED	359.99	793 ,639	0.7936	\$101 ,321	\$0. 10	\$0.13	
1994	SEaweEDS, COMBINED	334.67	737 ,827	0.7378	\$80 ,259	\$0. ,08	\$0.11	
1995	SEaweEDS, COMBINED	239.76	528 ,587	0.5286	\$88 ,471	\$0. ,09	\$0.17	
1996	SEaweEDS, COMBINED	261.78	577 ,130	0.5771	\$133 ,918	\$0. ,13	\$0.23	
1997	SEaweEDS, COMBINED	563.45	1,242 ,204	1.2422	\$227 ,234	\$0. ,23	\$0.18	
1998	SEaweEDS, COMBINED	703.13	1,550 ,133	1.5501	\$194 ,698	\$0. ,19	\$0.13	
1999	SEaweEDS, COMBINED	80.95	178 ,470	0.1785	\$70 ,868	\$0. ,07	\$0.40	
2000	SEaweEDS, COMBINED	59.49	131 ,147	0.1311	\$84 ,384	\$0. ,08	\$0.64	
2001	SEaweEDS, COMBINED	2262.76	4,988 ,520	4.9885	\$220 ,046	\$0. ,22	\$0.04	
2002	SEaweEDS, COMBINED	2630.27	5,798 ,742	5.7987	\$177 ,857	\$0. ,18	\$0.03	
2003	SEaweEDS, COMBINED	1620.15	3,571 ,811	3.5718	\$189 ,974	\$0. ,19	\$0.05	
2004	SEaweEDS, COMBINED	1606.63	3,542 ,001	3.5420	\$202 ,485	\$0. ,20	\$0.06	
2005	SEaweEDS, COMBINED	2159.36	4,760 ,572	4.7606	\$207 ,184	\$0. ,21	\$0.04	
2006	SEaweEDS, COMBINED	3415.92	7,530 ,814	7.5308	\$242 ,826	\$0. ,24	\$0.03	
2007	SEaweEDS, COMBINED	3229.33	7,119 ,435	7.1194	\$258 ,166	\$0. 26	\$0.04	
2008	SEaweEDS, COMBINED	5550.79	12,237 ,384	12.2374	\$366 ,950	\$0. ,37	\$0.03	

Last updated 8/3/09
2008 data are preliminary

Robert Morse, Atlantic Laboratories, Inc., Waldoboro (copy rec'd at hearing)

Bill LD 345, An Act to Regulate the Rockweed Harvest in Cobscook Bay, passed earlier this year, introduced, among other items, the requirement for a seaweed buyer's license and an associated seaweed buyer's surcharge for each wet ton of seaweed purchased. I, as the president of Atlantic Laboratories and a member of the Maine Seaweed Council support the pending regulation of a buyer's license surcharge of \$1.50 per ton on all seaweed bought in the State of Maine. This support is given with the understanding that the collected surcharges will be deposited in a dedicated fund, and that all reasonable efforts will be made by the commissioner to consult with seaweed buyers in the disbursement of the funds.

That being said, I do have some issues with the LD 345 as a whole, and the current stance taken by the State of Maine, and the Maine Department of Marine Resources, on intertidal ownership.

LD 345 was a bill brought to bear as an emergency measure to regulate the harvest of rockweed in Cobscook Bay. All aspects of the bill, pertaining to the direct regulation of rockweed in Cobscook Bay (Sections 2 thru 4), were discussed during a number of hearings, and generally accepted by all parties involved.

However, there is some concern over the inclusion of Section 1 of LD 345. This portion of the bill was not openly offered to the interested parties, nor was any part of this included legislation discussed in any of the hearings held previous to the passing of this bill. Section 1 of LD 345 establishes the requirement of a buyer's license, related fees, and penalties for violations. It is unclear what any of Section 1 has to do with the attempt to bring control over an emergency situation concerning rockweed harvesting in Cobscook Bay.

Section 1 of LD 345 appears to be a separate piece of legislation that the Maine Department of Marine Resources had been looking to implement. It also appears that the Maine D.M.R. saw LD 345 as an easy way to get the legislation passed. While none of the included items in Section 1 are overly stressing to seaweed buyers, there is a serious concern with its inclusion. Why were there no hearings regarding Section 1? Why was the Maine Seaweed Council not given the opportunity to speak on this issue.

One might also wonder as to what the purpose of Section 1 really is. It is not clear what the requirement of a buyer's license does for the continued health of the resource. Is this simply an effort to bring seaweed buyers into the landings program as a primary buyer? Is the requirement of a buyer's license simply about creating revenue? The language of "a person who purchases more than ten wet tons annually" seems to exclude other types of seaweed that is normally dried by the harvester and sold to the buyer as a dry product.

It should be clear by now that the seaweed resource is indeed property of the people of Maine, as per the Public Trust Doctrine, and not the private property of the upland land owner. Case law has shown that the intertidal zone is a

public trust right in all aspects concerning "navigation, fishing, and fowling." The State of Maine's statute (Title 12, §6001, 17) states the definition of the verb "fish" is

"to take or attempt to take any marine organism by any method or means "

Seaweed is clearly a "marine organism" as defined in the State of Maine's statute (MRS Title 12, §6001,27) by *"...any animal, plant, or other life that inhabits waters below the head of tide. "*

Furthermore, the State of Maine's sovereignty clause (MRS Title 1, Ch. 1, §2., 2-A) states that

"The State of Maine declares that it owns and shall control the harvesting of the living resources of the seas adjoining the coastline for a distance of 200 miles or to the furthest edge of the Continental Shelf, whichever is greater, subject only to the boundary with Canada. Control over the harvesting of these living resources shall be by licenses or permits issued by the Maine Department of Marine Resources.

Seaweed is clearly a "living resource of the sea".

In addition, the State of Maine's sovereignty clause (MRS Title 1, Ch. 1, §3) states that

"The ownership of the waters and submerged land enumerated or described in section 2 shall be in this State unless it shall be with respect to any given parcel or area, in any other person or entity by virtue of a valid and effective instrument of conveyance or by operation of law. "

Based on these facts, I, as the president of Atlantic Laboratories and a member of the Maine Seaweed Council think it is imperative for the Maine Department of Marine Resources to publicly take a stand on the ownership of marine resources in the intertidal zone. If the Maine D.M.R. cannot take a stand on this issue, then the Department is effectively saying that they have no power to regulate these resources.

There appears to be a lack of knowledge in Maine's legislature concerning the Public Trust Doctrine. For instance, the bill LD 345 would appear to violate the Public Trust Doctrine in a couple of ways.

First, the act of sectioning off the seaweed resource, and awarding the rights to fish, therein, to certain individuals, contradicts the idea that all Maine fisheries are to be open fisheries.

Secondly, there seems to be no authority by the Maine State Legislature to close approximately 42% of Cobscook Bay from harvesting simply because upland landowners put their land into conservation. Nowhere in Public Trust Doctrine is it suggested that the Maine State legislature has the ability to extend a landowners conservation privileges to an intertidal resource owned by the people of Maine. The intertidal resources are not for the private landowners to conserve, but are for the State of Maine to conserve for the benefit of its people. MRS Title 12, Ch. 601 §6001-9 states that *"Conservation means providing for the development and wise utilization of the state's marine resources, protecting the ultimate supply for present and future generations, preventing waste and implementing sound management programs "*.

If the Maine State Legislature believes that 17% of the rockweed resource can be sustainably harvested, as would be implied by its inclusion in LD 345, without undue stress on the resource or the environment, then that 17% should apply to all of the public's resource. If the Maine State Legislature does not believe in the 17% figure, then it should not have been introduced into statute in the first place.

Therefore, I think it would be in the best interest of the Maine Department of Marine resources to have everybody within their ranks take a course in the Public Trust Doctrine. We further recommend that someone in the Department read Attorney David Slade's two books (Putting The Public Trust Doctrine To Work, 1997 and The Public Trust Doctrine In Motion, 2008), and his white paper, which was prepared by the Maine Seaweed Council, on intertidal zone seaweed ownership. The Maine D.M.R. could then be in the position to help guide the Joint Standing Legislative Committee on Public Trust Doctrine matters concerning the State's marine resources.

Julie Keene, Trescott TWP

I am writing this letter to say that I believe that the proposed seaweed buyer's surcharge of \$1.50 per wet ton to be paid by persons who hold a seaweed buyer's license is way to low. How could this amount of money cover all the costs that need to be covered?

- A. Someone needs to be hired as an independent monitor
- B. Research needs to be conducted before areas are harvested
- C. Research needs to be conducted after areas are harvested

The state is broke and there is no money now to cover what needs to be done in all of our valuable fisheries. To allow someone to remove the very habitat that we and the ocean depends on to the tune of \$1.50 per wet ton is ridiculous!

I hope that what ever number the DMR is able to come up with will cover the costs of research and monitoring and that the monies collected are placed exclusively in a fund dedicated to seaweed.

Rex Hunter, Acadian Seaplants Ltd, Pennfield, NB

Acadian Seaplants Ltd respectfully request that the proposed annual seaweed buyer's surcharge of \$1.50 per wet ton be reduced to \$1.00 per wet ton to enable the company to continue to invest in the Maine Rockweed Fishery.

Robin Hadlock Seeley, Ph.D, Marine ecologist, Cornell Univ., Ithica, NY & Appledore Is., ME

I'm writing with comments on DMR's Notice of Rule-Making Proposal: Seaweed Buyer's Surcharge (chapter 29.10). DMR's proposed rule would establish an annual seaweed buyer's surcharge of \$1.50 per wet ton to be paid by persons who hold a seaweed buyer's license in accordance with 12 M.R.S. 6803-A and B and P.L. 2009 chapter 283.

Summary of my comments: The proposed surcharge of \$1.50 per wet ton is too low to fund the activities required/permitted by law. The surcharge should be the \$5.00 per wet ton allowed by law in order to adequately fund the three activities of the Department of Marine Resources related to seaweed: research, management, enforcement.

Explanation:

I. Assuming the 2008 seaweed landings of ~5500 tons are repeated in future years and generate funds via the surcharge, the revenue provided by the surcharge would be $5500 * 1.50 = \$8,250$.

Caveats:

A) probably future landings (because of the Cobscook Bay Rockweed Management Area law) will be less than they were in 2008 (when that law was not in effect).

B) I understand that some seaweed landings are not "purchased" because the harvesters are employees of a company, so landings from these companies would not be included in the landings that generate the surcharge revenue.

For both of these reasons, 5500 tons will not be a number on which to base surcharge revenue in 2009 and beyond – in 2009 and beyond there may be many fewer tons than (the 2008 landings figure of) 5500 tons.

And if the surcharge is set very low (proposed \$1.50), the revenue generated will also be very low (less than \$8,250).

A realistic number for a two year, small scale research project (two field seasons; one to two scientists) is about \$35-40,000 (range quoted by other marine scientists in Maine I consulted). An amount of \$8250 would barely fund even one short season of research, let alone fund the other activities of enforcement and management.

II. The activities that are to be funded by the seaweed buyer surcharge, as I understand it from a Nov. 3 email to me from David Etnier, Deputy Commissioner of DMR, are found in Title 12, sec. 6806:

Title 12 §6806. Seaweed Management Fund

1. Fund established. The Seaweed Management Fund, referred to in this section as the "fund," is established as a dedicated, nonlapsing fund.

2. Permissible uses. The commissioner shall use the fund in accordance with a plan required under subsection 3 to research and manage the State's seaweed resources and to enforce the laws and rules related to seaweed. [my emphasis]

I have often heard and understood (at public meetings and in conversation with DMR staff and others) that given the past, current and future anticipated financial strains in Maine state government, DMR did not and does not have the necessary funds to adequately research, manage and enforce commercial seaweed cutting activity.

With the current opportunity to set the seaweed buyer surcharge at a rate that will better fund these three activities (research, management and enforcement), DMR has an opportunity to transfer costs of any extra seaweed-related activity to the industry and not Maine taxpayers. If DMR chooses to keep the \$1.50 surcharge that it has proposed, then the choice will have been made to inadequately fund research, management and enforcement.

I sincerely appreciate the efforts that DMR has made to date to fund seaweed research, management and enforcement in hard financial times. Please don't bypass this opportunity to fund your efforts in these activities by setting the surcharge at an adequate level (\$5.00/ wet ton).