Town of Gouldsboro Moratorium Ordinance – Aquaculture Development

Legal Authority: 30-A M.R.S. §§ 3001, 4356

The TOWN OF GOULDSBORO, MAINE, through its legislative body, adopts the following Moratorium Ordinance:

WHEREAS, an aquaculture development including a land facility and offshore sites has been proposed, the scale and scope of which exceeds the type previously used in the Town; and

WHEREAS, the specific facilities proposed include the development of aquaculture sites on a scale larger than previously achieved in North America, and the proposal includes offshore sites and a land-based facility to be used at least as a processing plant and hatchery; and

WHEREAS, proposed plans for the land facility include expanding, updating, and changing the use of existing structures; and

WHEREAS, the Town's Comprehensive Plan has not been revised since June 2005; and

WHEREAS, the existing Comprehensive Plan and ordinances are inadequate to address the needs and concerns of the Town with respect to aquaculture land facilities of this type and size; and

WHEREAS, the existing Comprehensive Plan and ordinances are inadequate to address the needs and concerns of the Town with respect to offshore aquaculture facilities of this type and size; and

WHEREAS, without appropriate regulation, such facilities and development could pose a threat to the quality of life and the health and safety of Town residents; and

WHEREAS, without appropriate regulation, such facilities and development could cause a shortage or overburdening of public facilities such as water, roads, and public safety; and

WHEREAS, the anticipated impacts from the land-based processing facility are not fully known or explored; and

WHEREAS, the Town needs time to review its Comprehensive Plan and ordinances to develop reasonable provisions governing aquaculture developments and facilities of this scale and type so as to address the concerns cited herein; and

WHEREAS, one of the options available to the Town includes passage of an ordinance with retroactive effect, notwithstanding the provisions of 1 M.R.S. § 302, subject to the restrictions of 30-A M.R.S. § 3007(6); and

WHEREAS, amendments to the Land Use Ordinance, if they are deemed appropriate, require a public hearing and report by the Planning Board, and certification by the Board of Selectmen, and then must be presented for vote at a Town Meeting; and

WHEREAS, in the judgment of the Town, these facts create necessity within the meaning of 30 A M.R.S. § 4356, and require passage of a Moratorium Ordinance as necessary for the preservation of public health, safety, and welfare; and

NOW, THEREFORE, the Town of Gouldsboro hereby ordains this Town of Gouldsboro Moratorium Ordinance – Aquaculture Development be enacted:

I. Authority & Purpose: This Moratorium Ordinance is enacted pursuant to 30-A M.R.S. § 4356 and the Town of Orrington's home rule authority pursuant to the Maine Constitution and 30-A M.R.S. § 3001, for the purposes identified above.

II. Definition: The following definition shall be used in the interpretation and construction of this Moratorium Ordinance:

A. "Aquaculture Development" shall mean commercial facilities located in, on, or under coastal waters or on land and involving the culture of finfish in nets, pens, or other enclosures or the processing or raising of said cultures finfish involving the leasing of area in, on and under the coastal waters that is in excess of 10 acres in lease size, except that this shall not include any portion of any project or operation proposed to be conducted or sited beyond the intertidal zone, as defined by 12 M.R.S. § 6071-A(1), and subject to the exclusive permitting power of the Maine Department of Marine Resources pursuant to 12 M.R.S. §§ 6071 et seq.

III. Moratorium on Aquaculture Development: The Town hereby declares and imposes a moratorium prohibiting the development of any Aquaculture Development within the boundaries of the Town of Gouldsboro. No person or organization shall develop or operation an Aquaculture Development within the Town of Gouldsboro.

IV. Moratorium on Processing Applications: No officer, employee, official, board, or body of the Town of Gouldsboro, including without limitation the Town of Gouldsboro Planning Board, Board of Appeals, or Code Enforcement Officer, shall accept, issue, act upon or approve applications, plans, permits, licenses, certificates and/or fees for any projects, developments, construction or uses for or directly related to the development, construction, siting, or operation of an Aquaculture Development.

V. Severability: Any provisions of the Town's Land Use Ordinance and regulations which are inconsistent or conflicting with the provisions of this Moratorium Ordinance, including, without limitation, the requirements for special use permit review by the Planning Board, and appeals by the Board of Appeals, are hereby suspended in their effect to the extent that they are applicable for the duration of the Moratorium Ordinance hereby ordained, but not otherwise. to the extent any provision of this Moratorium Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Moratorium Ordinance shall remain valid.

VI. Effective Date, Term & Retroactivity:

A. This moratorium shall take effect immediately upon passage by the Town Meeting and extend for the shorter of the following periods: (a) 180 days from date of passage; or (b) immediately upon its repeal by a duly called Town Meeting.

B. This moratorium may be extended for successive 180 day periods by vote of the Select Board as permitted by 30-A M.R.S. § 4356, after notice and hearing, if the Select Board finds that the problem giving rise to the need for the moratorium still exists and that reasonable progress is being made to alleviate it. The moratorium may also by extended at any duly called Town Meeting within the moratorium period and at which an article adopting such an extension and the subsidiary findings required by law passes.

C. Upon its effective date, notwithstanding the provisions of 1 M.R.S. § 302, this Moratorium Ordinance shall be retroactive and applicable, to the maximum extent permitted by law and subject to the severability clause above, to all filed, pending, or future applications and petitions for Aquaculture Development which have not received all necessary permits, licenses, certificates, approvals, and/or fees from the Town of Gouldsboro and all proposed Aquaculture Development that was not fully operational and/or did not have all the required State permits as of September 16, 2021, the date the Moratorium Ordinance was first proposed to the Town of Gouldsboro Select Board.

VII. Enforcement: The Municipal Officers are hereby authorized to institute any and all actions, either legal or equitable, that they deem necessary or appropriate to enforce the provisions of this Moratorium Ordinance. Any violation of this Moratorium Ordinance is subject to an enforcement action under 30-A M.R.S.A. § 4452. Any violation of this Moratorium Ordinance constitutes a nuisance. Each day of violation shall constitute a separate offense. All civil penalties shall inure to the benefit of the Town of Gouldsboro.