

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

IN THE MATTER OF THE APPLICATION OF JOE)
LARRABEE FOR AN AQUACULTURE LEASE) FINDINGS OF FACT,
LOCATED IN BELFAST BAY, NORTHPORT, WALDO) CONCLUSIONS OF LAW
COUNTY, MAINE) AND DECISION

On September 2, 2003 Joe Larrabee of Belfast, Maine applied for an aquaculture lease totaling 8 acres in the coastal waters of the State of Maine, located in Belfast Bay in Northport, Waldo County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques. The application was accepted as complete on September 30, 2003. A public hearing on this application was held on February 19, 2004 at 1:00 p.m. in Northport. Intervenor status was granted to the Town of Northport, represented by Selectman John Burgess, and Northport residents Todd Park Merolla, Joseph Krulis, and William Sumner.

Approval of aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of the Department of Marine Resources (DMR) if it is determined that the project will not unreasonably interfere with the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration the number and density of aquaculture leases; significant wildlife habitat and marine habitat or the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna; or the use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site and that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

**Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease**

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the February 19, 2004 public hearing. At the public hearing, testimony was given by the applicant, the Department's Aquaculture Environmental Coordinator, Jon Lewis, Shawn Mahaney from the U.S. Army Corps of Engineers, the intervenors, and six members of the public.

According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise blue mussels. The applicant requested a lease site totaling 8 acres and a lease term of ten (10) years. The applicant testified that he requested 8 acres in order to allow room to rotate the rafts if necessary. He stated that if rotation would not be necessary, he would only need 6 acres to conduct the proposed lease activities. The applicant testified that he currently operates a 2-acre experimental aquaculture lease in the proposed lease area. The proposed lease site is an extension of that area to the east.

The proposed lease activities would be conducted in the same manner as under the experimental lease and would consist of growing mussels on ropes suspended from 40' x 40' rafts. There would be 400 to 450 45-foot long dropper ropes suspended from each raft. Each rope would have a plastic peg every foot and would have a plastic, cement-filled weight case on the bottom. The applicant has three rafts on the experimental lease and proposes to expand to six rafts on the proposed lease site. The rafts would be moored in two rows of three rafts each. According to the application, each cluster of three rafts would be secured by a six-point mooring system. Each mooring would consist of either a four-ton granite block or a 750-kilogram plow anchor. The applicant testified that he uses this mooring system on the experimental lease site and the rafts do not move.

According to the application, seed mussels would be obtained from a commercial seed collector such as Tight Rope Seafarm or would be collected from the ropes on the lease site.

The seed would be attached to the ropes using a socking machine that wraps biodegradable cotton around the seed and the rope. Harvesting occurs approximately one year after seeding and consists of hauling the ropes with a crane and basket, then washing, separating and grading the mussels. A typical day's harvest is approximately 1/10 of the raft and yields approximately 100 bushels. The applicant testified that he has contracted with the harvest vessel owned by Great Eastern Mussel Farms, *Mumbles*, to harvest on the experimental lease and would continue to use *Mumbles* to harvest on the proposed lease. He stated that the barge is on the site for harvest approximately 1-2 weeks in the winter months. When questioned regarding loud music that is played on the barge, the applicant stated that he would have the music turned off. According to the applicant, seeding would take place in the spring and there wouldn't be a lot of activity on the site during the summer months, except for repair work, if necessary. According to the application, the applicant does not plan to use lighting at the lease site, other than navigational lighting. The proposed lease site would be accessed by boat from public facilities in Belfast Harbor. The applicant testified that he routinely monitors the lease site from the shore, using binoculars.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to this characterization, the bottom of the proposed lease site consists of soft mud sediments. The water depths are estimated to range from 53 feet to 67 feet at mean low water. The current flow is estimated to be less than 30 cm/sec. and flows in a north/south direction. According to the application, local fauna observed at the proposed lease site include rock crabs, mud shrimp and sea scallops. The applicant testified that he chose this location because it is open to the harvest of shellfish, as opposed to much of the surrounding waters that are closed due to water quality.

The applicant testified regarding damage to the rafts that occurred over the winter. He testified that he lost 8 planks and 7 floats from three rafts, due to winter storms and rough seas. The planks were empty and did not have ropes attached. He stated that it took 2½ months to repair the rafts because the boat he hired to do the work was being repaired. The applicant

testified that he did not see any urgency this winter to repair the rafts, but if it occurred in the summer or it was an emergency he would repair the rafts right away.

According to the application, the proposed lease site is located over 1,300 feet from shore, and therefore there are no shorefront property owners within 1,000 feet of the site. Thus, according to the application, the proposed lease is sufficiently far offshore so as not to interfere with riparian ingress and egress.

According to the application, the proposed lease site is located 4,400 feet to the west of the main navigational channel. Recreational boaters proceeding up or down the bay are able to pass on either side of the site. According to the application, approximately 15 – 20 vessels pass within 500 feet of the site per day in the summer. The applicant testified that he has radar reflectors inside the corner buoys on the experimental lease and also has blinking lights at the site to aid navigators. The applicant made a record of how the experimental lease site shows up on radar, and provided the record with the application. According to the record of observation, the conditions were cloudy and overcast with 1 nautical mile visibility and sea conditions were approximately 3 feet with winds of 25 knots. According to the record made by the applicant, the lease site showed up on radar approximately 1¼ miles away. The applicant testified that he has monitored activity near the rafts and, other than one boat that became caught up in the mooring lines, he has not observed anyone come close to the rafts. With regard to the one incident, the applicant testified that a boat headed to Castine became caught up on the rafts. He stated that he went out to the lease site with a diver and untangled the boat. The applicant also testified that he has spoken with many people on the water near the rafts and in Belfast, as well as fishermen and tugboat operators, and they do not have a problem navigating around the rafts. The applicant provided a letter from Maineport Towboats with the application. The letter states that the mussel rafts on the experimental lease have not affected navigation of their vessels, and that the rafts are appropriately lighted, visible on radar and easily avoided. The applicant also provided a letter from Lobster Zone D, District 11 Representative Kenneth Wyman with the application. According to Mr. Wyman, he has spoken

with several fishermen who work around the mussel rafts on the experimental lease and has found no concerns navigating around the rafts, for there is ample room for safe passage.

The applicant testified that lobster fishing occurs on both sides of the proposed lease site. He stated that 4 lobstermen fish on the experimental lease site, as close to the rafts as possible. According to the application, recreational fishing, crabbing and lobster fishing would be permitted on the proposed lease site.

The applicant provided testimony regarding his relationship with Great Eastern Mussel Farms. He stated that he leased his rafts from Gem Mara Farms, and has agreed to sell his mussels to Great Eastern Mussel Farms to pay off his loan. He stated that he could go to a bank to borrow money to buy the rafts, but he chose to finance the rafts through Gem Mara. He also testified that he used \$10,000 of his own money for seed and escrow to start up the experimental lease.

The Department's Aquaculture Environmental Coordinator (AEC) and his assistant conducted a site visit at the proposed lease area on November 11, 2003. During the site visit, a diver survey, utilizing an underwater video camera, was performed. The AEC created a site report summarizing the information obtained during the site visit and provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed site is located in Belfast Bay in water depths ranging from approximately 48.7 to 49.5 feet at low water and 59.3 to 60.1 feet at high water. The bottom topography of the proposed lease site is relatively flat and consists of a deep covering of soft mud. According to the AEC's report, currents are tidally driven in a north/south direction. However, during the site review there was a very large fresh water lens being carried out of the bay (southward) while the tide was flooding (northward). According to the AEC, this counter-current phenomenon should have little impact on or by the proposed lease operations. Local fauna observed during the site visit include shrimp, crabs and sea stars. One lobster was also observed. According to the AEC's report, the diversity of the epibenthos generally increased under the mussel rafts, due to mussel drop-off. The AEC

testified, however, that the drop-off is limited and he has no ecological concerns for the amount of impact he observed under the rafts. Therefore, the AEC testified that there would be no need to rotate the rafts to allow for bottom recovery. According to the AEC's report the proposed lease is located in an area classified as open for the harvest of shellfish by the Department's Water Quality Division. Additionally, the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, no moorings were observed within the boundaries of the lease area during the site visit. There were several moorings observed to west of the lease site, along the western shore of the bay. The nearest mooring observed during the site visit was located 1,191 feet from the proposed lease site. The AEC noted in his report that there may be other moorings in the area that were removed for the winter, but that the proposed lease site is located in an exposed, deep-water location that is unlikely to support the placement of moorings. There is a minimum of 600 feet of water with depths greater than 30 feet between the proposed lease site and shore. According to the AEC, this is sufficient distance and water depth for access to moorings.

According to the AEC's report, no commercial or recreational fishing was observed within the boundaries of the proposed lease site during the site visit. One string of approximately 10 lobster buoys was observed to the east of the proposed lease site, along the 60-foot contour line. The AEC noted in his report that lobster and crab fishing are expected to be heavier and further inshore during the summer and fall. Additionally, recreational striped bass fishing is expected to occur along the shore. According to the AEC's report, the Department did not receive any complaints from fishing interests regarding the applicant's experimental lease activities. The nearest aquaculture lease site is located 9.3 miles to the east of the proposed site.

Additionally, according to the AEC, the proposed activities will not interfere with navigation in the area. The proposed lease site is located 1,190 feet from the western shore of the bay, 4,310 feet from the main navigational channel, and 10,030 feet from Islesboro.

According to the AEC, most vessel traffic, especially tankers and barges, are likely to remain in the deeper navigational channel. The AEC testified that the area of the proposed lease is a probable course for local boat traffic. The amount and depth of water between the proposed lease site and shore, according to the AEC, is sufficient for local boat traffic. The AEC noted in his report that the Department had received comments from Northport residents that the existing and proposed lease activities pose a hazard to navigation. According to the AEC, there appears to be ample room for safe navigation around the mussel rafts. He testified that in clear weather the rafts should be easily avoided and it is during the clear weather that local knowledge should be acquired in order to avoid the rafts in foul weather. At night, according to the AEC, the rafts should be visible with adequate, properly placed lighting. The AEC noted that he defers to the U.S. Coast Guard for marking requirements, as that is the agency responsible for private aids to navigation. The AEC stated that a person in the area for the first time in poor visibility, with no local knowledge, should be prepared for any number of potential obstructions in the water, such as logs, kayakers or a vessel adrift. The AEC testified that he spoke with the U.S. Coast Guard's Private Aids to Navigation office in Boston and was told that the lease site would be added to the Notice to Mariners, therefore providing notice to those in the area for the first time. Thus, according to the AEC, the proposed lease activities would not pose a navigational hazard to the prudent mariner. The AEC testified regarding the vessel that became caught up on the mooring lines at the experimental lease site. He stated that he spoke to the Belfast Harbormaster and was told that a 42' Grand Banks from Florida, in restricted visibility, got caught up on a mooring line. The applicant responded and freed the vessel. The vessel went on to the Mt Desert area and returned to Belfast, reporting no mechanical damage.

Shawn Mahaney from the U.S. Army Corps of Engineers testified that the proposed lease has been reviewed by the National Marine Fisheries Service, the U.S. Fish and Wildlife Service and the Army Corps. He stated that there are no objections to the project from the agencies. Mr. Mahaney testified that the Army Corps is the federal agency responsible for navigation and the Coast Guard is the federal agency responsible for navigational marking.

According to Mr. Mahaney, the proposed lease does not pose a navigational hazard because it is located in open water and not a navigational channel. Mr. Mahaney testified that, worst case, the proposed lease may be an inconvenience, but not a hazard.

Northport Harbormaster Mike Brown submitted written comments regarding the proposed lease. Mr. Brown stated that he finds no unreasonable impediment to navigation as to the experimental lease or to the proposed expansion of the lease by three additional rafts. He noted that there have been many letters opposing the lease, the majority from summer residents of the Northport Village Corporation "Bayside." Mr. Brown stated that since the mussel rafts were placed on the experimental lease, there have been no collisions with the rafts reported to him. He has checked with commercial users of the waters in the area and there have been no complaints. According to Mr. Brown, local mariners are familiar with the site and mariners unfamiliar with the site rarely enter the area at night, and, if so, use radar. Mr. Brown stated that he finds the experimental lease conspicuous by its easily identifiable corner radar buoys and other large yellow buoys. According to Mr. Brown, there is sufficient room east and west of the site in which to navigate around the rafts. Additionally, he stated that the proposed lease is compatible with commercial fishing opportunities in the bay.

Intervenor Todd Park Merolla testified that he is a Northport resident and a sailor. He testified that the uses of the area of the proposed lease consist of lobster fishing, commercial boat traffic, recreational sailing, swimming, kayaking, canoeing, boating, racing, and water-skiing. Mr. Merolla testified that he owns waterfront property and has observed the use of the proposed lease area. Photographs introduced by Mr. Merolla include a picture of a tugboat towing a barge past the lease site, in between the site and the shore; pictures of the harvest barge at the lease site; and pictures of boats sailing past the mussel rafts.¹ Mr. Merolla testified regarding an experience he had when returning from Camden to Northport in dark,

¹ Mr. Merolla also testified regarding damage to the rafts he observed from the shore and introduced photographs of the rafts from January and December 2003. Additionally, Mr. Krulis testified that he observed 2 floatation tanks break free of the rafts. The record contains no evidence that the conditions of the rafts and supporting equipment have caused interference in the area with navigation, riparian access or other uses of the area.

choppy conditions. He testified that he made it safely to his mooring, but did not see the lease site on the way to the mooring. He stated that he did not collide with the rafts, but was concerned because he could not see them. He testified that his mooring is approximately 1,000 feet from the proposed lease site. He also stated that, although he was aware of the location of the rafts, he did not plot their location on his GPS in advance for use in foul weather.

Intervenor William Sumner testified that he is a summer resident of Northport and has observed a lot of traffic, both recreational and commercial, inside and outside of the mussel rafts on the experimental lease site. He stated that the music coming from the barge is too loud and requested that it be turned off. He noted that there are mariners of all skills in the bay all summer. Mr. Sumner testified that his mooring may be the closest to the proposed lease site, and guessed that it is approximately 500 feet from the lease site. According to Mr. Sumner, there may be one mooring approximately 100 feet closer to the rafts than his mooring. He stated that his mooring was not removed for the winter.

Intervenor Joseph Krulis also provided testimony regarding the proposed lease. He testified that the area of the proposed lease is very busy, and is used by sailboats, schooners and power boats with water-skiers.

Selectman John Burgess testified on behalf of the Town of Northport. He stated that the proposed lease site is in the wrong location, because it is a heavily trafficked leisure boating area. He also testified that the demand for boat moorings is rising, and that the mussel rafts would prevent lucrative boat moorings from being placed in that area.

Six members of the public also provided testimony at the hearing. Captain Galen Plummer, a Northport resident, testified against the proposed lease. He testified that he is concerned for small craft safety. He testified that he owns shorefront property and estimated that approximately 50-60 boats go by his house on the weekend. Captain Plummer presented a chart depicting the tracks that boaters use in the area of the proposed lease. According to Captain Plummer, the lease site presents an obstruction to the normal tracks used by boaters going to and from Belfast and Bayside and is a serious hazard to navigation. He testified that

the markings currently used on the experimental lease site are inadequate, particularly in reduced visibility. Additionally, he noted that the majority of small craft do not have radar. He testified that on one occasion he came within 100 feet of the rafts before he saw them. Captain Plummer further testified that if a person knows the rafts are there, they would likely get around them, but an unaware seaman could get into trouble in foul weather.

Three other residents of Northport testified in opposition to the proposed lease. They testified that the lease is an obstruction in the middle of a lot of boat traffic and that the current markings are inadequate.

Bill Haverty, Commodore of the Northport Yacht Club, provided testimony on behalf of the yacht club. He testified that the yacht club feels that the experimental lease is a detriment to the existing use of the area as well as a substantial navigational hazard. According to Mr. Haverty, the yacht club has held weekly sailboat races in the area for over 50 years. Additionally, the yacht club sponsors a Round-Islesboro race every September. Mr. Haverty testified that the race participants are made well aware of the location of the mussel rafts and that none of the race participants have reported any incidents with the rafts. Additionally, when questioned as to the impact of the lease on the races, Mr. Haverty stated that the rafts are in the middle of the course and the boats sail around the rafts. He also stated that races are not held in poor visibility.

The Department received a letter from the Northport Harbor Committee, stating that there are substantial concerns with the proposed lease. They stated that the rafts are very likely to be heavily damaged in their location. According to the Harbor Committee, the location of the rafts represents an unreasonable interference with safe navigation and restricts fishable bottom to local lobstermen.

The Department received many written comments from members of the public regarding the proposed lease. The majority of the comments were from residents of Northport expressing a concern for navigation in the area. The comments remarked generally that the existing

experimental lease is a hazard to navigation. Other than references to the 42' Grand Banks incident, no entanglements with the lease site were reported.²

Findings of Fact

The proposed lease is located in Belfast Bay, approximately 1,190 feet from the nearest point of land on the western shore of the bay. Access to the proposed lease would be by boat from the public facilities in Belfast Harbor. There are no moorings located within the proposed lease site. There is a mooring field located to the west of the proposed lease site, along the western shore. The nearest mooring observed in November was 1,191 feet from the proposed lease site. Mr. Sumner's mooring was not removed for the winter and there is only one mooring closer to the site than Mr. Sumner's, by approximately 100 feet. Therefore, the closest mooring is at least 1,000 feet from the proposed lease site. Within the 1,190 feet between the proposed site and the shore, there is a minimum of 600 feet of water with depths greater than 30 feet. The lease activities will not interfere with access to the moorings, as there is sufficient distance and water depth to navigate around the proposed lease site in order to access the moorings. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located in water depths of approximately 48.7 to 49.5 feet at low

² Attorney Sally Mills, representing Intervenors Merolla, Krulis and Sumner, also provided testimony. She asserted that the true applicant is Great Eastern Mussel Farms, due to its relationship with the applicant. According to Ms. Mills, the applicant is a contract farmer and thus a de facto employee of Great Eastern Mussel Farms. Alternatively, she states that it is a partnership and the application should have been submitted jointly. In reaching these conclusions, Ms. Mills relied on an article in *Working Waterfront* that discusses Great Eastern Mussel Farms' mussel raft culture program. Mark Peterson of Great Eastern Mussel Farms testified that Ms. Mills is incorrect in her conclusions regarding the relationship between Great Eastern mussel Farms and the applicant. He stated that Great Eastern Mussel Farms only purchases mussels from the applicant. According to Mr. Peterson, Gem Mara Farms leased the rafts to the applicant and Aquaculture Harvesters operates the harvest barge. Both companies are wholly owned by Great Eastern Mussel Farms. In order to pay off the rafts, the applicant has agreed to sell his mussels to Great Eastern Mussel Farms. Based on the evidence presented by Ms. Mills and Mr. Peterson, I do not find that Mr. Larrabee is either a de-facto employee or partner Great Eastern Mussel Farms. Mr. Larrabee is independent of Great Eastern Mussel Farms in that he is solely responsible for the lease and makes all decisions relating to the lease activities. For the experimental lease, Mr. Larrabee established an escrow account for the lease, he purchased mussel rafts and mussel seed, and he seeded, monitored and maintained the rafts. He made a business decision regarding how the rafts would be purchased and paid for. His arrangement with Great Eastern Mussel Farms regarding the rafts does not create an employer / employee relationship or partnership. Therefore, the lease application is appropriately only in the name of Joe Larrabee.

water and 59.3 to 60.1 feet at high water, and 1,190 feet from the nearest point on the western shore of the bay, 4,310 feet to the west of the main navigation channel, and 10,030 feet to the west of Islesboro. The proposed lease site is not located within a marked navigational channel. The lease site would be marked, at a minimum, with radar reflectors in the corner buoys and blinking lights. The marker buoys are visible on radar. Navigation in the immediate area of the lease consists of local commercial and recreational boaters traversing to and from Belfast and Bayside. The larger tankers and barges travel in the navigational channel. The area of the proposed lease is heavily trafficked in the summer months with recreational boaters. The applicant has operated an experimental lease in the proposed lease area, with three mussel rafts, for the past two summers. In that time, one boat from Florida, in foul weather, became tangled in the mooring lines. The applicant acted promptly and freed the vessel. All other vessels in the two summers of operation have been able to navigate around the rafts, including a towboat that was photographed sailing between the rafts and the shore. There is ample distance and water depth on all sides of the proposed lease in which to navigate. Those unfamiliar with the area will be notified of the location through the Notice to Mariners. The navigational aids required by the Coast Guard should be adequate to alert all mariners of the location of the rafts. In order to ensure that navigational markings are adequate, the applicant is required to consult with the Coast Guard. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of lobster fishing in the general area of the rafts. Lobster fishing is permitted and occurs on the experimental lease and would be permitted on the proposed lease. The representative of Lobster Zone D did not object to the proposed lease. Recreational fishing for striped bass is expected to occur along the shore. There is sufficient distance between the shore and the proposed lease site to allow access for fishing. The nearest existing aquaculture lease is located 9.3 miles from the proposed lease. The area of the proposed lease is classified as open for the harvest of shellfish. Other uses of the area include canoeing, kayaking, swimming and sailboat racing. Those participating in

sailboat races are made aware of the location of the lease site. The proposed site is located in the middle of the course and the boaters sail around the rafts. The experimental lease has been in operation for two summers and the races have taken place without incident. I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consist of lobster, shrimp, crabs, sea scallops and sea stars. The bottom topography of the proposed lease site is relatively flat and consists of a deep covering of soft mud. Currents are tidally driven in a north/south direction and are estimated to be less than 30 cm/sec. Biological diversity is generally increased under the mussel rafts on the experimental lease site, due to mussel drop-off. However, the drop-off is limited and there is no ecological concern for the amount of impact observed under the rafts. Therefore the applicant would not need to rotate the rafts to allow for bottom recovery. There are no Essential or Significant Wildlife Habitats located within the proposed lease site. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All seed mussels will be obtained from a commercial seed collector such as Tight Rope Seafarm or will be collected from the ropes on the lease site. Based on this evidence, I find that there is an available source of blue mussels.

The proposed lease site is not located within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of any municipally, state, or federally owned beaches, parks, or docking facilities.

Equipment used at the site would consist of a vessel to seed the ropes and a barge to harvest the mussels. The harvesting barge would be on the lease site approximately 1-2 weeks in the winter months. When harvesting the mussels on the experimental lease site, loud music on the barge was heard from the shore. The applicant agreed that, when the barge is used on

the proposed lease site, the music will be turned off. Lighting will not be used at the lease site, other than for navigation. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site, as long as the music on the barge is turned off.

Finally, because the applicant will not have to rotate the mussel rafts, only 6 acres is necessary to carry out the proposed lease activities. Therefore, I find that the lease area shall be 6 acres, all within the proposed area of 8 acres. The northwest and southwest corners shall remain the same and two acres shall be removed from the eastern side, thus shifting the eastern corners. The following shall define the boundaries of the 6-acre lease: STARTING at the point Latitude 44°22'17.40"N, Longitude 68°57'04.44"W (datum NAD83/WGS84), and point of beginning; thence 81.65° True, a distance of 375 feet to the northeast corner (44°22'17.94"N, 68°56'59.33"W); thence 171.41° True, a distance of 700.53 feet to the southeast corner (44°22'11.10"N, 68°56'57.89"W); thence 261.65° True, a distance of 375 feet to the southwest corner (44°22'10.56"N, 68°57'03.00"W); thence 351.41° True, a distance of 700.33 feet to the northwest corner and point of beginning.

Conclusions of Law

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of blue mussels;
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of municipally, state or federally owned beaches, parks, or docking facilities; and

7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Accordingly, the evidence in the record supports a finding that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 6 acres from the date of this decision for the purpose of cultivating blue mussels (*Mytilus edulis*) using suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$50.00 per acre per year. The applicant shall post a bond or establish an escrow in the amount of \$5,000 conditioned upon his performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

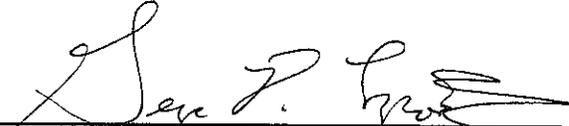
The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Conditions are designed to encourage the greatest multiple, compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the aquaculture law.

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed in the open areas of the lease; and
- (2) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80. The applicant shall consult with the Coast Guard to ensure that the navigational markings are adequate for this location.

The Commissioner may commence revocation procedures if he determines that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law are not being observed, the Commissioner may revoke the aquaculture lease.

Dated: 2 June 2004


George D. Lapointe (Commissioner)
Department of Marine Resources