

APPENDIX F  
DECISION CRITERIA

## DECISION CRITERIA

The following is a listing of decision criteria that different agencies employ when making permitting decisions (found in both statute and regulation). The criteria clearly set forth which uses are considered in making these determinations.

### 1. Aquaculture

In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area.

The proposed activity will not:

- Unreasonably interfere with riparian ingress and egress
  - The commissioner shall examine whether the riparian owners can safely navigate to their shore. The commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. He/she shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.
- Unreasonably interfere with navigation
  - The commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation.
- Unreasonably interfere with fishing or other uses
  - The commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area.
- Unreasonably interfere with significant wildlife habitat and ecologically significant flora and fauna
  - Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the commissioner in this determination.
- Unreasonably interfere with publicly owned beaches, docks, or conserved land
  - The commissioner shall consider the degree to which the lease interferes with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved lands owned by the federal government, the state government or a municipal government.
- Result in an unreasonable impact from noise or lights
- Proposed activity must be in compliance with visual impact criteria

### 2. Submerged Lands

The proposed activity will not:

- Unreasonably interfere with customary or traditional public access ways to or public trust rights in, on or over the intertidal or submerged lands and the waters above those lands

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- Unreasonably interfere with navigation
- Unreasonably interfere with fishing or other existing marine uses  
For consideration of impacts upon commercial fishing industries or infrastructure, the following guidelines shall apply:
  - The use will not result in the loss or unreasonable diminishment of opportunity to economically pursue commercial fishing for the operators of any commercial fishing vessels that will be displaced.
  - The use will not result in a loss of access or unreasonable diminishment of access to existing commercial fishing grounds.
  - The use will not result in a loss or unreasonable reduction of repair and maintenance services essential for commercial fishing operations.
  - The use will not result in a loss of fish buying, processing, or handling facilities that are in operation at the time of the application.
  - The use will not result in a loss or unreasonable diminishment of access to existing commercial fishing facilities.
- Unreasonably diminish the availability of services and facilities necessary for commercial marine activities
- Unreasonably interfere with ingress and egress of riparian owners

3. NRPA

The proposed activity will not:

- Unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses
  - The potential impacts of a proposed activity will be determined by the Department considering the presence of a scenic resource listed in Section 10, the significance of the scenic resource, the existing character of the surrounding area, the expectations of the typical viewer, the extent and intransience of the activity, the project purpose, and the context of the proposed activity. Unreasonable adverse visual impacts are those that are expected to unreasonably interfere with the general public's visual enjoyment and appreciation of a scenic resource, or those that otherwise unreasonably impair the character or quality of such a place.
- Cause unreasonable erosion of soil or sediment, or prevent naturally occurring erosion
- Unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life
- Unreasonably interfere with the natural flow of any surface or subsurface waters
- Lower water quality
- Cause or increase flooding
- Unreasonably interfere with supply or movement of sand to sand dune areas
- Cross a river segment identified in the NRPA as "outstanding" unless no other alternative having less adverse impact on the river exists

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4. Army Corps of Engineers Permit for Structure in Navigable Waterway

- The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest.
- That decision will reflect the national concern for both protection and utilization of important resources.
- The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.
- All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people

5. Shoreland Zoning

The minimum guidelines for piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line of a water body or within a wetland are:

- Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
- The location shall not interfere with existing developed or natural beach areas.
- The facility shall be located so as to minimize adverse effects on fisheries.
- The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.
- No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.
- No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.
- Except in the General Development District and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

6. Essential Habitat

Once an area becomes designated as Essential Habitat, the Maine Endangered Species Act requires that no state agency or municipal government shall permit, license, fund or carry out projects that would significantly alter the habitat or violate protection guidelines adopted for the habitat. In determining whether a project significantly alters or unreasonably harms essential nesting habitat, the following factors will be considered:

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- Magnitude and time of year of noise and human activity generated by the project
- Physical alteration to the landscape
- Destruction of or alteration to key habitat components such as perch trees, roost trees, and foraging areas
- Reduction in the seclusion of the nest site and adjacent shoreland area
- Demonstrated tolerance of the particular eagles to human activity and disturbance
- Reduction in the future suitability of the nest site to bald eagles.