

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Glidden Point Oyster Co., Inc.

Lease DAM DL2

Bottom Culture of Oysters, Dodge Lower
Cove, Damariscotta River, Edgecomb

June 16, 2020

**AQUACULTURE LEASE RENEWAL, LEASE DAM DL2
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Glidden Point Oyster Co., Inc. applied to the Department of Marine Resources (“the Department”) to renew the aquaculture lease DAM DL2 for a period of 20 years to November 8, 2039. The 8.22-acre lease is issued for bottom culture of American oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) located in Dodge Lower Cove, in the Damariscotta River, in the Town of Edgecomb, in Lincoln County, Maine. This lease was initially issued on November 9, 2009. DMR accepted the renewal application as complete on November 22, 2019.

1. PROCEDURE

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Lincoln County News* on December 5, 2019. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. Three comments were received by the Department on this application during the comment period, but there were no requests for a hearing.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

A. Compliance with lease

The review of the records of this lease indicates that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection conducted by the Department. There have been no complaints regarding this lease.

Therefore, I find that the applicant has complied with the lease agreement during its term.

B. Best interest of the State of Maine

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There were three public comments received during the comment period. The comments submitted raised general concerns regarding navigational issues based on the number of current aquaculture leases in the Damariscotta River. The comments stated that recreational uses of the river, such as sailing of small craft, were being constrained due to the extent of suspended gear aquaculture.

This lease is issued for bottom culture only and has no suspended gear within the lease boundaries. In addition, it does not restrict other uses within the lease boundaries, except for bivalve shellfish harvesting. Therefore, the concerns

raised do not pertain to this lease site, and the renewal of the lease is not in conflict with an existing use.

Therefore, I find that it is in the best interests of the State of Maine to renew this lease.

C. Aggregate lease holdings

According to Department records, the lessee holds the following leases: DAM JP (2.29 acres), DAM WP (10.54 acres), DAM JP2 (7.75 acres), and DAM DL2 (8.22 acres). These sites total 28.8 acres.

Therefore, I find that the renewal of this lease will not cause the lessee to lease more than 1,000 acres.

D. Speculative purposes

Chapter 2.45(2)(A) of the Department's rules provide that in determining whether a renewal is being conducted for speculative purposes, the Commissioner must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." It is clear from annual reports filed with the Department by the lessee and by the Department's annual inspections that aquaculture has been conducted on this lease site.

Therefore, I find that the lease is not being held for speculative purposes.

3. LEASE CONDITIONS

The following conditions were applied to the lease by the original decision:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Dragging and bivalve shellfish harvesting on the site are prohibited by anyone other than the leaseholder or its authorized agents.

4. DECISION


The Commissioner of Marine Resources grants the application of Glidden Point Oyster Co., Inc. to renew aquaculture lease DAM DL2 for a period of 20 years,

to November 8, 2039. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072(11) that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: 6/16/20



**Patrick C. Keliher, Commissioner,
Department of Marine Resources**

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Glidden Point Oyster Co., Inc.
Docket # 2009-11

Standard Aquaculture Lease Application
Bottom Culture of Oysters
Dodge Lower Cove, Damariscotta River, Edgecomb

Lease DAM DL2

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

On May 19, 2009, the Department of Marine Resources (“DMR”) received an application from Glidden Point Oyster Co., Inc., for a standard aquaculture lease on 5 acres (later determined in the site report to be 8.22 acres) located in the coastal waters of the State of Maine, at the northern end of Dodge Lower Cove in the Damariscotta River, in the Town of Edgecomb in Lincoln County, for the purpose of cultivating American/Eastern Oysters (*Crassostrea virginica*) and Belon/European Oysters (*Ostrea edulis*) using bottom culture techniques. The application was accepted as complete on July 13, 2009. A public hearing on this application was held on September 22, 2009, in Newcastle, Maine.

1. THE PROCEEDINGS

Notices of the hearing and copies of the application and DMR site report were sent to numerous state and federal agencies for their review, as well as to a number of educational institutions, aquaculture and environmental organizations, the Town of Edgecomb and the Edgecomb Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the *Lincoln County News* on August 20 and September 10, 2009 and in the *Commercial Fisheries News* September, 2009 edition.

Sworn testimony was given at the hearing by the applicant, represented by Barbara Scully, its President and sole shareholder. Mr. Lewis presented his site report. The only other attendee was Mr. Paul Bryant, the Harbormaster for the Towns of Newcastle and Damariscotta. The very brief hearing was recorded by DMR. The Hearings Officer was Diantha Robinson.

The evidentiary record before the Department regarding this lease application includes three exhibits introduced at the hearing (see exhibit list below) and the record of testimony at the hearing. The Edgecomb Harbormaster did not return the questionnaire sent to him by the Department. The evidence from all of these sources is summarized below.¹²

The applicant submitted comments on the proposed decision, as provided by DMR rules Chapter 2.35 (1), objecting only to the Department’s refusal to restrict recreational fishing on the lease site. The comments included a description of past conflicts with recreational fishermen and arguments in support

¹ NOTE: The reference (Smith/Jones) means testimony of Smith, being questioned by Jones.

of the restriction. The Department has considered these comments and concludes that the information they contain, even if it had been given as sworn testimony at the hearing, does not alter our determination that such restrictions are neither necessary nor appropriate for the protection of divers on the lease site, for the reasons given in Section 3 (C) below.

List of Exhibits

1. Case file, #2009-11.
2. Application signed and dated May 18, 2009.
3. DMR site report dated August 5, 2009.

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to grow American/Eastern Oysters (*Crassostrea virginica*) and Belon/European Oysters (*Ostrea edulis*) on the lease site. According to the application (p. 4), seed oysters will be planted on the bottom throughout the season, from April through December, scattered by hand from a boat or by SCUBA divers.

Harvest will be conducted primarily by diving during the months when weather and ice conditions permit, on average for two to four days each week. Some dragging may be done if necessary for harvest. Culling, sorting, and washing of harvested oysters may be conducted on work rafts on the site or aboard the harvesting boat. No other processing will be done on the site, and no “antifouling agents, feed or antibiotics will be used on the site”, nor will predator control equipment or chemicals be used.

The only gear on the lease site will be the required corner marker buoys and some additional temporary markers. “Target annual production will be 500,000 – 600,000 oysters. Target stocking density will be approximately 6 oysters/sq. foot, recognizing that some areas of the lease may be unsuitable for seeding and/or allowing for fallowing” (Application, p. 4).

B. Site Characteristics

The proposed lease site is located in the northern part of Dodge Lower Cove, on the western side of the Damariscotta River. Water depths at the site at mean low tide range from 10 to 20 feet (Site Report, p. 5). The bottom is ledge interspersed with areas of rocks and firm mud with shell hash. The mean tidal range is 9.5 feet (Application, p. 4). The eastern portion of the site is deeper, and the western, near-shore portion is shallower (Site Report, p. 2). Currents at the site run north-south, depending on the tidal stage. According to the Site Report, “Currents are likely to be complex in the area as ledge outcroppings will alter current flows within the proposed lease boundaries” (Site Report, p. 3).

The site is not expected to ice over heavily in winter, but the Site Report notes (p. 7) that the marker buoys might be moved by ice and need to be reset in spring. According to DMR's Water Quality and PSP Monitoring programs, the water around the site is classified as open/approved for the harvest of shellfish, and the site has been "relatively clean" in terms of organisms causing paralytic shellfish poisoning (Site Report, p. 7).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of DMR if s/he determines that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration and number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments. 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; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

A. Riparian Access

No moorings were noted within the proposed lease boundaries at the time of the site visit (Site Report, p. 6). One mooring is located near the lease, approximately 200 feet south of the northern boundary of the proposed lease site and 60 feet west of the western boundary; it is associated with a dock located farther to the southwest, on the shore. The site report notes that "As a bottom lease the aquaculture activities should not interfere with the use of this mooring, however during diver operations vessel access to and from this mooring could be problematic" (p. 6). The Report recommends that the potential for interference be discussed at the hearing; however, no riparians appeared at the hearing or submitted comments. Ms. Scully testified that she had spoken with the owner of the dock and mooring (Karin Crawford) and resolved Ms. Crawford's concerns (Scully, testimony). The site report states that "With 60 feet between the mooring and the western boundary of the proposed lease there should be adequate room to use the mooring under all conditions" (Site Report, p. 6).

The evidence shows that access to the Crawford dock and mooring should be adequate, even when work is being conducted on the lease site. The lease site is far enough away from the shore itself that activity on the site will not interfere with ingress and egress by other riparian owners. There is ample space for additional moorings and docks between the site and the shore to the west. No permanent gear, other than boundary marker buoys, will be deployed on the lease site, so except for work boats and floats temporarily used on the site, there will be nothing to interfere with transit of vessels across the site.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The main navigational channel in the Damariscotta River is approximately 1,000 feet to the east, so most vessel traffic is expected to stay well to the east of the proposed lease site (Site Report, p. 5). As noted above, there will be no permanent gear on the site to hinder the passage of vessels. The application notes that while recreational boaters occasionally traverse the proposed site during summer, most stay to the east in the channel, as do commercial vessels (Application, p. 6).

It is clear from this evidence that the aquaculture operations on the lease site will not interfere with navigation in the vicinity.

The lease site must be marked in accordance with the United State's Coast Guard's Private Aids to Navigation (PATON) standards and requirements.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

C. Fishing & Other Uses

At the time of the DMR site visit, one lobster trap buoy was observed within the proposed lease boundaries, and 30-40 more buoys were noted to the south and southeast of the site in deeper water along the 20-30 foot depth contour (Site Report, p. 4). According to the application, lobster and crab fishing "pose no conflict with proposed activities" (Application, p. 6).

The only fishery that may occasionally conflict with the proposed lease activities is recreational fishing for striped bass, which occurs throughout the Damariscotta River during the warmer portion of the year. At the time of the site visit, a vessel engaged in recreational striper fishing was observed about 1,500 ft. south of the proposed site, at the south end of Dodge Lower Cove (Site Report, p. 4). The site report notes:

The proposed lease area has many ledges that rise up to five feet into the water column and range between 5 and 20 feet long. Striped bass almost certainly would utilize these ledges as shelter and holding areas in tidally driven currents.

The proposal is for bottom culture only. If granted, gear other than corner marker buoys, would not be permitted on the lease. Infrequent and temporary hindrances to recreational fishing may occur during harvest activities when divers or drags are in the water and need to be avoided. (Site Report, p. 4)

Exclusive Use. The applicant has requested exclusive use of the lease area with respect to several potentially competing uses. The commissioner of DMR is authorized by Title 12 MRSA §6072(7-B) to grant some degree of exclusive use of the lease site. That section provides:

The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.

Similar authority is conferred by 12 MRSA §6073 (1): “Such leases shall be exclusive for the species and to the extent provided by the commissioner in the lease.”

Thus, the commissioner can limit the use of the site by both the aquaculturist and other users, in order to (1) encourage as many other compatible uses of the lease site as possible, while (2) protecting the ecology of the site and (3) providing enough protection for the aquaculture activities so the lessee can carry out the project. All of the conditions requested by the applicant involve restricting other uses of the lease site in order to protect the aquaculture project. In deciding whether to establish any of these conditions, the Department must determine the extent to which the other uses are compatible with the aquaculture project, to what degree they may need to be restricted in order that the project can be conducted, whether the aquaculture project itself should be limited to enable the compatible uses to continue, and the extent of DMR’s authority to restrict the other uses.

First, Ms Scully requests a prohibition on dragging and bivalve shellfish harvesting by anyone other than the leaseholder. These activities would directly harm the oyster crop, and thus they are completely incompatible with the purpose of this lease. No evidence was presented to show that prohibiting these activities on the lease site will significantly affect any existing fishery. DMR has jurisdiction over both activities, and they will be prohibited on the lease site.

Second, the applicant asks that recreational fishing be “prohibited during times that would conflict with lease activities, such as seeding and harvesting” (Application, p. 6). Although this statement presumes that conflict could occur, the only evidence of such conflict is the statement in the site report quoted above, to the effect that an “infrequent and temporary” hindrance to recreational fishing may occur when “divers or drags are in the water and need to be avoided” (Site Report, p. 4).

The site report’s statement assumes that when the two activities compete for use of the waters of the lease site, it is recreational fishing that must defer to aquaculture. The statute, however, allows the commissioner to establish “conditions that govern the use of the leased area and limitations on the aquaculture activities”, so that both aquaculture and any competing uses can be conditioned and limited to accommodate each other, as long as there is sufficient exclusivity for the aquaculture project to be carried out. This law clearly aims to encourage compatible uses to continue in the leased area, as long as the aquaculture project is not frustrated.

Recreational fishing is not inimical to oysters or to the aquaculture activities *per se*, as dragging is. The most likely conflict between recreational fishing and this aquaculture operation would occur when the fishermen are pursuing their prey in an area of the lease site where divers or dragging equipment are in the water. The site report describes these situations as “infrequent and temporary”. No other evidence was presented to show that recreational fishing activities are incompatible with the

bottom culture of oysters or that a limitation on recreational fishing is necessary to enable the applicant to “carry out the lease purpose”. Compared to the brief and transitory nature of recreational fishing, in fact, lobster and crab fishing appear to have much greater potential to interfere with oystering activity, yet the application states that these activities pose no conflict with the aquaculture project.

Moreover, all vessels, whatever their purpose, are required to maintain a safe distance from divers in the water, whether or not they are on a lease site,³ so there is no apparent reason to single out recreational fishing vessels for limitation. Laws and rules on safe boating practices likewise apply to all users of the river, on and off of lease sites.⁴ In the absence of evidence to the contrary, the Department must presume that the applicant and any recreational fishermen or other users of the lease area will abide by the laws on safe boating and precautions around divers in the water and that they will conduct their respective uses of the lease site safely and respectfully. Such mutual accommodation enables the people most directly involved to ensure that conflict between their uses is mitigated as much as possible, avoiding the necessity for the Department either to construct a system of limitations and conditions or to exclude one use in favor of another.

To prohibit recreational fishing “during times that would conflict with lease activities”, as the applicant requests, would, in effect, allow her to regulate recreational fishing activity on the lease site, since she determines what lease activities occur, when and where on the site they occur and, presumably, whether recreational fishing would conflict with them. Given the laws cited above that govern safe operation of all vessels in all circumstances, including those likely to occur on the lease site, and without clearer evidence of the nature and extent of any conflict between this proposed lease operation and recreational fishing, the Department is not willing to impose such a broad condition on a competing but essentially compatible fishery.

Finally, Ms Scully requests that no moorings or piers be installed within the lease boundaries (Application, p. 6). The Department does not necessarily possess unilateral legal authority to prohibit

³ According to DMR Aquaculture Environmental Coordinator and Dive master, Jon Lewis, “There is no prescribed distance – it is a “safe distance” in Maine....some will interpret that as 100’ but Marine Patrol says safe distance. A tending boat might fly a blue and white alpha dive flag that means it is “restricted in its ability to maneuver” and a diver might carry the red and white flag.” E-mail to Diantha Robinson, 14 Oct. 2009 (copy in case file, Exhibit 1).

See also: **12 MRSA § 6956. Diver's down flag required**

A person licensed to harvest a marine species by hand must display a diver's down flag when using a self-contained underwater breathing apparatus to harvest that species. For the purposes of this section, “diver's down flag” means the [International Code Flag “A”](#) as defined in navigation rules adopted by the United States Coast Guard. A person who violates this section commits a civil violation for which a forfeiture of not less than \$100 and not more than \$500 may be adjudged.

⁴ **38 MRSA § 281. Speed restrictions** Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State at a speed greater than is reasonable and proper, having due regard for traffic, proximity to wharves, docks, moorings or shores, and for any other conditions then existing, shall be guilty of a Class E Crime.

38 MRSA § 282. Endangering persons or property Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State in a manner which endangers any person or property shall be guilty of a Class E crime.

38 MRSA § 283. Operating recklessly Whoever operates any watercraft, vessel, water skis, surfboard, similar device or motorboat, however propelled, upon the tidewaters of any municipality or upon any of the offshore waters within the jurisdiction of this State recklessly shall be guilty of a Class E crime.

moorings and piers on the lease site, although it cooperates with the other entities that have varying degrees of such authority.

The Town of Edgecomb, through its harbor master, determines where moorings may be placed, under authority granted to municipalities by 38 MRSA §3⁵. Piers and docks in navigable waters of the United States are under the jurisdiction of the U. S. Army Corps of Engineers, the Maine Submerged Lands Program (for structures on subtidal lands in coastal waters of the state), and/or the municipal planning and zoning authority. Both the Army Corps and the Submerged Lands Program consider the interests of aquaculture leaseholders, riparian landowners, and the public in reviewing pier applications.⁶

Other Aquaculture Leases and Licenses. Shellfish aquaculture, primarily of oysters, occurs throughout the Damariscotta River. The nearest aquaculture lease sites, both of which are for the bottom culture of oysters, are DAM DP, located approximately 950 ft. to the northeast of the proposed site, and DAM DL, held by the applicant and located approximately 1050 ft. to the southwest of the proposed site. LPA license site GRI-07 (a small amount of floating oyster gear) is contained within the boundaries of lease DAM DP (Site Report, p. 5). Ms Scully testified at the hearing that if the proposed lease is granted, she will terminate the lease site DAM DL.

These other aquaculture sites are sufficiently far away that they are unlikely to be affected by a bottom oyster lease in this location.

There is no evidence that the proposed aquaculture project will interfere unreasonably with fishing or other activities conducted in the area of the proposed lease site.

The lease must be marked in accordance with DMR Rule 2.80.⁷

⁵ 38 MRSA §3 states, in part:

Municipalities may not charge mooring fees for and do not have jurisdiction over the siting or specifications of structural moorings used to secure aquaculture equipment within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A, or 6072-B.

Municipalities have jurisdiction over boat and vessel moorings within the boundaries of a lease site when that site's lease is issued pursuant to Title 12, section 6072, 6072-A or 6072-B. A municipality may not charge a mooring fee for a boat or vessel within the boundaries of a lease that is inconsistent with that municipality's other mooring fees for commercial vessels.

⁶ See emails to Diantha Robinson from Dan Prichard of the Submerged Lands Program and LeeAnn Neal of the U.S. Army Corps of Engineers in the Case File, Exhibit 1.

⁷ **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, provided that dragging and bivalve shellfish harvesting on the lease site are prohibited by anyone other than the leaseholder or its authorized agents.

D. Flora & Fauna

During the site visit, DMR biologists conducted SCUBA dives and videotaped the bottom of the proposed lease site. Various species were identified on the site. Brown benthic diatoms abounded, while European oyster (*Ostrea edulis*), horseshoe crabs (*Limulus polyphemus*), sand shrimp (*Crangon septemspinosa*), and quahogs (*Mercenaria mercenaria*) were common. Green crabs (*Carcinus maenus*), hermit crabs (*Pagurus sp.*), and red crabs (*Cancer sp.*) were occasionally noted, as were rockweed (*Fucus sp.*), common sea star (*Asterias sp.*), blood star (*Henricia sp.*), and an unidentified red seaweed (Site Report, p.4). According to the site report, there are no Essential Habitats for endangered and threatened species and no “islands considered significant habitats for seabird nesting” within one-quarter mile of the site (Site Report, p. 8).

The site report also notes that:

An invasive colonial tunicate [*Didemnum cf. lahillei*] was observed on most rocky substrates. This is an invasive species whose increase has been noted in the midcoast area over the last 5-7 years. If any structures or oysters that are in the waters of the Damariscotta River are to be transferred to any other waterbody, they should be thoroughly washed before they are moved. The organism looks like pancake batter and appears to smother the substrate on which it is located. (Site Report, p. 4)

The proposed lease activities would consist of planting oyster seed on the bottom and harvesting the oysters, primarily by diving or occasionally by dragging. Dive harvesting is the most benign of shellfish harvest methods and is a common harvest method in the Damariscotta River. Drag harvesting for oysters and other species is also commonly practiced on bottom sites. It appears from the evidence that this bottom lease will not interfere to any significant extent with the marine life that now exists there.

boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

As to the Site Report's recommendation that all gear and shellfish from the site be washed before they are moved, Ms Scully testified that the oysters are all washed after harvest and before being moved off the site. Her gear is used in the Damariscotta River and is not moved to other water bodies.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

According to information provided by the State Planning Office in the normal course of reviewing this application and contained in the case file (Exhibit 1), the proposed lease site is located more than 1,293 feet south of the Dodge Point Preserve, the nearest government-owned conserved land in the vicinity. The Preserve is thus beyond the 1,000-ft. range that the Department is required to consider.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

The application indicates that the sources of seed stock for this proposed lease site are Marshall Point Sea Farm in Port Clyde and the Pemaquid Oyster Company in Waldoboro. The applicant testified that although the Marshall Point facility is presently closed, she believes that it is likely to be reorganized and to reopen, and that in any event ample stock is available from Pemaquid Oyster Co.

Therefore, I find that the applicant has demonstrated that there is an available source of American/Eastern Oysters (*Crassostrea virginica*) and Belon/European Oysters (*Ostrea edulis*) to be cultured for the lease site.

G. Light

Regarding light at the site, the application states: "No lights will be used on the site. No work on the site will occur beyond daylight hours unless there is an unforeseen emergency" (Application, p. 4).

Should light be required at the site, the applicant must comply with the provisions of DMR Rule 2.37 (1) (A) (8), which requires that "all reasonable measures will be taken to mitigate light impacts from the lease activities" and specifically requires that spotlights or floodlights be "directed only at the work area to be illuminated and must be the minimum needed for safe operations". That being the case, any light generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease.

Therefore, I find that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The application describes potential noise at the site as follows:

“Small boats with outboard motors will be used for planting and harvesting. Occasionally a local lobster boat may be hired to provide additional assistance when necessary. A small 1-5 hp pump may be used to wash down harvested oysters. Boats may be coming and going from the site daily during daylight hours. The wash down pump may be used 0 – 5 days per week, only during harvesting, for a duration of 0.5 – 2 hours. All viable options will be utilized to keep noise to a minimum” (Application, p. 4).

DMR Rule 2.37 (1) (A) (9) requires applicants to “demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.” It provides that “All motorized equipment used during routine operation at an aquaculture facility must be designed or mitigated to reduce the sound level produced to the maximum extent practical.”

The noise-generating activities described in the application are consistent with those on other aquaculture leases in the river and with boating activity on the river in general. It appears from the evidence that the applicant will use “all viable options” to minimize noise. Any remaining noise generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease.

Therefore, I find that the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease.

I. Visual Impact

As noted in the site report (p. 7), no gear or structures will be installed on the lease site, so aside from boundary marker buoys and sporadic work activity on the site, there will be no visible indication that a lease exists on the site. As the site report states, “there will be no unreasonable visual impact”.

Therefore, I find that the proposed lease will comply with the visual impact criteria contained in DMR Regulation 3.37 (1) (A) (10).

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. Riparian Access. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

2. Navigation. The aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site shall be marked in accordance with U. S. Coast Guard requirements.

3. Fishing and Other Uses. 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, and provided that dragging and bivalve shellfish harvesting on the lease site are prohibited by anyone other than the leaseholder or its authorized agents.

4. Flora and Fauna. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

5. Public Use & Enjoyment. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

6. Source of Stock. The applicant has demonstrated that there is an available source of American/Eastern Oysters (*Crassostrea virginica*) and Belon/European Oysters (*Ostrea edulis*) to be cultured for the lease site.

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

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

9. Visual Impact. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of a standard aquaculture lease set forth in 12 M.R.S.A. §6072 and DMR Rule Chapter 2.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of 8.22 acres to Glidden Point Oyster Co., Inc., for ten years for the purpose of cultivating American/Eastern Oysters (*Crassostrea virginica*) and Belon/European Oysters (*Ostrea edulis*), using bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$500.00, conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. 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, pursuant to 12 MRSA §6072 (7-B).⁸ 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 lease.

The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.

2. Dragging and bivalve shellfish harvesting on the site are prohibited by anyone other than the leaseholder or its authorized agents.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures if s/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 is not being observed, the Commissioner may revoke the aquaculture lease.

Dated: 11/9/09

/s/George Lapointe
George D. Lapointe (Commissioner)
Department of Marine Resources

⁸ 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."