

**STATE OF MAINE****DEPARTMENT OF MARINE RESOURCES**

Standard Aquaculture Lease Application  
 Off Preble Island, Frenchman Bay, Sorrento, Maine  
 Net-pen culture of finfish; suspended culture  
 of shellfish and seaweed

**GreatBay Aquaculture of Maine, LLC****and James West**

Docket # 2009-02  
 Lease FREN PI4  
 May 21, 2009

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

On January 14, 2009, the Department of Marine Resources (“DMR”) received an application from GreatBay Aquaculture of Maine, LLC, a Maine corporation, and James West of Sorrento, Maine, for a standard aquaculture lease on 35.66 acres located in the coastal waters of the State of Maine, southeast of Preble Island in Frenchman Bay, in the Town of Sorrento in Hancock County, for the purpose of cultivating Atlantic cod (*Gadus morhua*), Atlantic halibut (*Hippoglossus hippoglossus*), Blue Sea Mussels (*Mytilus edulis*), Sea Scallops (*Placopecten magellanicus*), and Seaweed (*Laminaria saccharina*, *Porphyra umbilicalis*, *Palmaria palmata*), using net-pen and suspended culture techniques. The application was accepted as complete on February 2, 2009. There were no intervenors. A public hearing on this application was held on May 12, 2009, in Sorrento, 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 Sorrento and the Sorrento Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. They were also posted on DMR’s web site. Notice of the hearing was published in the *Ellsworth American* on April 9 and April 30, 2009 and in the *Commercial Fisheries News* May 2009 edition.

Sworn testimony was given at the hearing by the applicants, represented by George Nardi, Mark Kesselring, and James West; and by DMR’s Aquaculture Environmental Coordinator, Jon Lewis. Mr. Kesselring presented described the proposed project and showed a computer slide presentation. Mr. West testified about his participation in the project. Mr. Lewis presented his site report, including a video presentation showing the sea bottom on the site.

Each witness was available for questioning by the Department, the applicants, and members of the public. The hearing was recorded by DMR. The Hearings Officer was Diantha Robinson.

The evidentiary record before the Department regarding this lease application includes four exhibits introduced at the hearing (see exhibit list below) and the record of testimony at the hearing itself. The evidence from all of these sources is summarized below.<sup>1</sup>

### **LIST OF EXHIBITS**

1. Case file, #2009-02 (cited below as “F”).
2. Application signed and dated January 9, 2009 (cited below as “A” with page number).
3. DMR site report dated April 6, 2009 (cited below as “SR” with page number).
4. Paper copy of GreatBay’s Power Point presentation dated May 12, 2009 (cited below as “PP” with page number).

## **2. DESCRIPTION OF THE PROJECT**

### **A. Site History**

The proposed lease site lies in the northeastern portion of Frenchman Bay, south of Preble Island in the Town of Sorrento. The applicants currently hold two leases within the same footprint as that of the proposed site. James West holds lease FREN PI2, a 35.66-acre suspended lease for blue mussels and sea scallops, which is identical to the proposed site in its size and location (SR2). Mr. West and Great Bay Aquaculture, LLC, of Portsmouth, New Hampshire, also hold a 1.86-acre experimental net-pen and suspended lease for cod, halibut, and mussels, FREN PI3, which lies within the boundaries of Mr. West’s mussel lease. The site was originally used for salmon cultivation and is marked on NOAA charts as “Fish Pens”.

The experiment in raising cod on FREN PI3 has progressed to the point at which more fish pens are needed, hence this application, which proposes to transform Mr. West’s mussel-and-scallop lease site into a net-pen and suspended lease for cod, halibut, mussels, scallops, and seaweed. With the granting of the proposed lease, the experimental lease FREN PI3 will be terminated, and Mr. West will also terminate his lease FREN PI2, but he will remain as a co-lessee of the new site.

The identity of the corporate lessee will also change with the granting of the proposed lease, from Great Bay Aquaculture, LLC of Portsmouth, N.H. (co-lessee of the experimental lease FREN PI3, issued in 2008) to GreatBay Aquaculture of Maine, LLC (co-lessee of the proposed standard lease FREN PI4, to be issued in 2009). The two corporations share a common owner and management, but they are separate limited-liability corporations.

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<sup>1</sup> [NOTE: The reference (Smith/Jones) means testimony of Smith, being questioned by Jones.]

## **B. Proposed Operations**<sup>2</sup>

The applicants propose to continue to grow cod on the lease site, and cod culture is the focus of the application. They will grow halibut if sufficient stocks of cod are not available, and they will eventually culture mussels, scallops, and seaweed, as well (A4). The applicants propose to increase the number of pens from the four authorized in the current experimental lease to a total of ten in a mooring system grid of two rows of five pens each. One of the pens will likely be an Aquapod submersible cage to be tested at the site (PP10); the others will be 70-meter polar circle cages.

The equipment to be used on the site, according to the application, has been commonly used in aquaculture for raising salmon and has “proven reliable to withstanding the weather and sea conditions anticipated at this location.” This equipment is standard in Maine and New Brunswick and meets the Code of Containment of the Maine Aquaculture Association (A14). The applicants “intend to build upon the experience of the salmon aquaculture industry in equipment and techniques and make adaptations as required to suit the variations in rearing cod as opposed to rearing salmon.” They hope this project will be “a leader in developing the best available technology specific to the rearing of cod”, and this is the reason they intend to experiment with the Aquapod cage, which they believe may be “the best cage structure for future cod farms in more exposed locations” (A17).

Mr. West testified that while he has not grown mussels on the site for some time, he plans eventually to resume suspended mussel culture there. Mussels and scallops are authorized species on his current lease, and the applicants wish to continue to have authority to grow them as a potential means of “reducing environmental impacts while increasing profitability” of the project (A4). Mr. Kesselring and Mr. West both testified that the omission of scallops from the application as an authorized species was an oversight and that they wish to have scallops included in the lease (Kesselring/Robinson; West/Robinson).

As an additional part of this potential exploration of multi-trophic aquaculture, the applicants seek authority to culture three species of seaweed. Details of the culture techniques are not complete at present, although Mr. Kesselring testified that some form of suspended culture would be employed (Kesselring/Robinson). GreatBay might seek permission to add other species for suspended or net pen culture at some future time, but there are no plans now for bottom culture on this site (Nardi/Robinson).

The applicants will add an additional 150,000 cod to the lease site in 2009, in addition to the 100,000 cod currently stocked, for a total stock of 250,000 fish (A18). GreatBay and Mr. West believe that the risk of stocking multiple-year classes of fish on the same site is mitigated in this case by the lack of other finfish farms in the area, the low stocking numbers involved, and the

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<sup>2</sup> This description of the proposed operations summarizes information contained in the application and presented at the hearing. DMR relies on this information as indicative of how the applicants intend to operate the project on the lease site.

rigorous biosecurity, fish health testing, and monitoring practices they maintain at the site. They believe that these circumstances and practices will keep the fish health risk “minimal and manageable until such time as the economic viability of cod farming can be proven and further lease sites can be obtained.” They do not intend to continue this practice as a “long-term method of operation” (A3).

Fish will be grown out in pens on the site, with additional pens added gradually as needed. The maximum stocking density is “a cautious limit” of 15kg/M3 for grow-out. Fish in cages approaching the stocking density limit will be sorted, graded, and re-distributed to other cages; this process will also direct slower-growing fish to the live market at 2-3 lbs. Faster-growing fish will be grown on longer for the fresh slaughter market at 6-7 lbs. (A17).

The fish will be fed one to five times per day, less often as they grow larger and the weather changes. Feeding will be done both by hand and with blowers; the applicants will monitor feeding with underwater cameras. Feed will be stored on-site and also be transported to the site daily (A18). A veterinarian will inspect the fish and supervise the use of any antibiotics.

Vessels tending the site will include one 20-ft. boat with an outboard motor and a 15' x 40' steel work barge with a diesel engine. Both vessels will travel daily to the site, transporting personnel, feed, and gear. They will serve as work platforms for various aspects of the operation.

Harvesting will begin in the fall of 2009, when the applicants plan to harvest 50% of the crop for the live market by hand-dipping (possibly pumping) fish into tanks and transporting them to shore for processing. Harvesting will continue once a week, depending on the market. Fresh slaughter will begin in late summer, 2010; fish will be hand-dipped, stunned, cut, and bled on a table at the site, then placed in tanks and transported to shore (A16). If harvest numbers increase, a fish pump might be used instead of hand dipping. A shore processing facility has not yet been identified.

The fish pens will be protected from predators by an extra net suspended from the outside of each pen and by bird nets on top of the pens. A diver will remove dead fish from the pens at least once a week and will inspect the nets. Dead fish will be composted in an approved facility or disposed of in another approved manner. GreatBay will minimize the amount of excess feed on the site to discourage predators. Antifouling coating on nets will reduce biofouling. Nets will be changed once a year and re-treated.

The applicants utilize various local facilities in Sorrento and the surrounding area to reach their boats, convey feed and gear to the site, transfer fish stocks, construct cages, and store feed and equipment (A18).

According to both Mr. Kesselring and Mr. Lewis, the cages presently deployed as part of the experimental lease project are not located within the boundaries specified for that site. According to Mr. Kesselring, an error in calculation occurred when the coordinates for the experimental site were adapted to the positioning program used to set the moorings. In addition,

one of the buoys marking the larger site had apparently been moved, unbeknownst to the applicants. They relied on its location in setting the mooring grid, which compounded the error.

Because the site is located in open water, the error was not apparent until the site was surveyed in the course of preparing this application. At that time, the weather was unsuitable for moving the cages and re-setting the mooring grid; however, that work is now being undertaken, and all pens and gear are in the process of being moved to their proper location (Kesselring/Robinson).

### **C. Site Characteristics**

DMR biologists are well-acquainted with the proposed site, having made site visits there in August, 2001; November, 2007; June, 2008; and March, 2009 in connection with various lease applications and related activities (SR2). Underwater videos of the bottom were obtained in 2001, 2008, and 2009; a SCUBA dive inspection was made in 2001.

According to the site report, the bottom of the site slopes gently downward from north to south. Small burrows of wry-mouth eels occur on the site bottom. Larger burrows, likely of lobsters, occur to the east of the proposed site, near the existing (off-site) pens (SR3). The site is located south of Preble Island. Currents in the area run north-south and are tidally driven. The velocity is low, and the sea floor is composed of very fine sediments; the site report notes that "If the lease were to be granted, the operators of the farm would need to pay strict attention to feeding practices as dispersion from currents under the farm would likely be negligible" (SR3).

Wind velocities at the site are likely to be high, because this site is completely open to the south. The site is not expected to ice over in winter (SR3). Minimum depths at the site are approximately 65 feet, leaving "adequate clearance between the net-pen bottoms and the sea floor" (SR4).

Water quality at the site is classified by DMR as Open/Approved. Toxic algae blooms in the area monitored by DMR in 2008 did not penetrate into Frenchman Bay north of the Bar Harbor Bar, well to the southwest of the site (SR8). Other information about the site is discussed below.

## **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 the 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, docking facilities, or conserved lands 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**

According to both the application and the site report, the nearest land to the site, Preble Island, is well over 1,000 feet away, so there are no issues regarding riparian access to consider in this proceeding (A20, SR6).

**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 proposed lease site is located in the open waters of Frenchman Bay, some 1200 feet south of Preble Island and 2400 ft. southeast of Navigational Bell "SH" (SR8). Water depths between the site and the island range from 20 ft. to 70 ft., according to the application. Approximately 100 pleasure boats per day navigate between the site and Preble Island in summer, generally parallel to shore (A20). The site report notes that while vessel traffic is likely to occur in the vicinity of the site, the water is open, with few hazards, so that the floating gear will probably need to be marked for navigational purposes, particularly at night and in periods of low visibility. The applicants are required to obtain a permit from the U.S. Army Corps of Engineers and to consult the U.S. Coast Guard, Boston, Office of Private Aids to Navigation, for marking requirements.

According to the Sorrento Harbormaster, Mr. Louis Sutherland, the proposed lease will not interfere with navigation in the area, nor with the use of moorings or storm anchorages (F). During the year that the experimental cod-farming project has been in existence at the site, DMR has received no complaints regarding the operation (SR8). No moorings are deployed within the vicinity of the lease site (other than those belonging to the applicants). The nearest moorings are located in Sorrento Harbor, a half-mile northwest of the site. The lease site itself is too deep and exposed for vessel moorings (SR8).

The evidence shows that the proposed operations at this site will not interfere with navigation. There is clearly ample room for vessels to move around the site in its open location in the bay. The mandatory application for marking requirements will ensure that the site is marked as the Coast Guard sees fit to warn mariners of its location.

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

### **C. Fishing & Other Uses**

During three site visits to this location in 2001, 2007, and 2009, DMR staff have never observed fishing activity within the boundaries of the proposed lease site.

In 2001, lobster buoys were observed to the northwest of the site, between Preble I. and the 60-ft. contour line. In 2007, lobster buoys were observed surrounding the site, but not within its boundaries. No fishing activity was observed in the vicinity in March of 2009, although the site report acknowledges that this is not a peak fishing time. The Sorrento Harbormaster noted that the proposed fish farm will not interfere with the “limited lobster and recreational fishing” in the area (SR8). Mr. Lewis testified that it is unlikely that anyone would drag the soft bottom, because there are no harvestable species there (Lewis, testimony).

According to the application, while the site has been leased for mussel culture, it has not been used in recent years, other than for the experimental cod farm, and there is no commercial fishing on the site.

**Exclusivity.** The applicants have requested that dragging be prohibited on the site, to avoid entanglement with the moorings. While they have no objection to other forms of fishing on the site outside of the pens, they stress that for biosecurity reasons, there must be no physical contact with or access to the fish pens without prior authorization from the lessees. Mr. Kesselring testified that GreatBay plans to post signs at the site, indicating that it is a private fish farm (Kesselring/Robinson).

**Other aquaculture leases.** According to the site report, there are currently three other aquaculture leases in the vicinity: FREN SB (1.4 mi. west, suspended culture of mussels); FREN BI (1.7 mi. northwest, bottom culture of mussels); and FLAN WN (1.5 mi. northeast, bottom culture of mussels). The site report concludes that “The proposed activities are unlikely to negatively impact existing aquaculture operations in the area” (SR8).

The evidence, including repeated site visits by the Department over eight years plus the Harbormaster’s statement, as well as information in the application, shows an absence of commercial fishing activity in the area of the site. Other aquaculture leases in the area are all well over a mile distant and will not be affected by this project. The applicants’ request to exclude dragging and to prohibit physical contact with or access to the fish pens are reasonable, given the nature of the project, and these will be included as conditions in the lease<sup>3</sup>. Besides excluding dragging, in order to protect the mooring grid, the use of mobile fishing gear, including, but not limited to, drags, dredges, trawls, and seines will be prohibited. Navigation and other forms of fishing will be permitted on the lease site, outside the mooring grid, but no person or gear will be

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permitted to make physical contact with any equipment or gear on the site or to gain access to the fish on the site without prior authorization from GreatBay Aquaculture of Maine, LLC or its authorized representatives.

The lease must be marked in accordance with DMR Rule 2.80.<sup>4</sup>

**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.

#### **D. Flora & Fauna**

Flora and fauna observed during the 2001 and 2009 site visits were very similar, including sand shrimp, blue mussels (found under the pens), wry-mouth eels, common sea stars, and *Beggiatoa* (found under the pens). According to the site report, the benthic ecology of the area has changed very little since the initial DMR inspection eight years ago (SR5). During the 2009 site visit, both the area beneath the off-site pens and the area of the proposed site were inspected. There was “a light scattering of *Beggiatoa* under the two pens, one of which had been stocked with juvenile cod in the spring of 2008 and the other with larger juveniles in the fall of 2008; the site report concludes that “Overall conditions under the pens appeared to be acceptable” (SR 4).

According to the site report, there are no Essential or Significant Habitats within one-quarter mile of the site (SR8).

The current velocity in the area is low, and the sea floor is composed of very fine sediments; the site report notes that “If the lease were to be granted, the operators of the farm would need to pay strict attention to feeding practices as dispersion from currents under the farm would likely be negligible” (SR 3). Mr. Lewis testified that the bottom of the site is the softest he

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#### <sup>4</sup>**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 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.

has ever seen and that there is very little marine life on the proposed lease site now. He videotaped the bottom under both of the existing (off-site) fish pens and on the site of the proposed lease. His underwater video showed some patches of *Beggiatoa* under the pen with 80,000 fish and some fecal matter under the pen with 20,000 fish, but overall, he testified, the bottom is in relatively good condition under the existing pens (Lewis, testimony). The nature of the bottom in both locations is similar.

Mr. Kesselring said that the low stocking density used by the company is a way to deal with the vulnerability of the site. GreatBay is aware of the potential problem of accumulating material under the pens, which could cause a violation of the standards in the company's MEPDES permit. He noted that there will be adequate space on the site, even with ten pens deployed, so that GreatBay can move the cages to a different position on the site if necessary (Lewis/Kesselring).

The evidence shows that there are no species of flora or fauna on the site or in its vicinity that will be adversely affected to any significant degree by the proposed aquaculture operation. The applicants are clearly aware that the nature of the sea bottom makes it particularly vulnerable to the buildup of debris from their operation, and they will monitor the site as required by their MEPDES permit.

**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 both the application (A20) and the site report (SR6), there are no government-owned beaches, parks, docking facilities, or conserved lands within 1,000 feet of the proposed lease site.

**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 stock for this proposed lease site are as follows: cod will come from Great Bay Aquaculture, LLC, in Portsmouth, New Hampshire; halibut will come from the Center for Cooperative Aquaculture Research (CCAR) in Franklin, Maine; mussels (and presumably scallops) will come from locally-collected spat; and seaweed will be obtained from Maine Coast Sea Vegetables.

**Therefore, I find** that the applicants have demonstrated that there is an available source of stock to be cultured for the lease site.

### **G. Light**

The application says that no lighting will be used at the site, except possibly for navigation, and that there will normally be no work beyond daylight hours (A18). Mr. Kesselring testified at the hearing that, while there are no plans to use light manipulation at the site, if it were to be employed, the lights would be submerged and have no effect on the surrounding area (PP16).

The site report notes the following: “No light sources other than for required navigational aids are proposed at this time. Finfish growing sometimes require[s] the use of underwater husbandry lighting to extend the photoperiod during winter months. The lights are suspended underwater and are projected into the cages to prevent early maturation of fish. Salmon farms sometimes utilize this type of lighting and cod farms in other parts of the world have reported the need to use these lights. These lights would not be projected above the surface and therefore visibility from surrounding areas would be minimal” (SR7).

DMR Rule 2.37 (1) (A) (8) requires applicants to demonstrate that all reasonable measures will be taken to mitigate light impacts from the lease activities. No use of light is planned now as part of the lease operations. Any lighting required for navigation by the U.S. Coast Guard will clearly be a reasonable use of light. Underwater husbandry lights, if used at this site, would have minimal impact on the surrounding area.

**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**

Noise-producing equipment proposed for use at the lease site includes: small boats with outboard motors, a diesel work barge, commercial feed blowers, feed blowers adapted from leaf blowers, a pressure washer, a small generator, and possibly a fish pump (A18). According to the application, all power equipment will be used with manufacturers’ mufflers “installed and maintained” (A18).

The site report notes that “leaf blowers are considered by most to be noisy and some consideration of noise outputs in relation to time of day and in relation to quiet, calm days should be given” (SR7). Mr. Kesselring testified that the leaf-blower-adapted feed blowers have been used on the site for the past year, that they are muffled, and that no complaints have been received. He said that GreatBay will be using commercial blowers as the site expands

(Kesselring/Robinson).

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 equipment will be muffled and maintained as such and will be used during daylight hours only. The site is located well over 1,000 ft. from the nearest land, which should, as the site report suggests (SR7), “minimize noise impacts to adjacent shorefronts”. Noise generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease; nevertheless, the Department encourages the applicants to maintain awareness of the surrounding circumstances when using especially noisy equipment.

**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**

Mr. Kesselring showed photographs of the fish pens now on the site as seen from the water (PP8). The cages and netting are black, and the low profile of the pens, as well as their dark color, reduces their visual impact. No permanent on-site support structures will be used on the lease (A15).

Compensator buoys used in the mooring grid will be yellow. Marking buoys required by DMR and any navigation lighting required by the U.S. Coast Guard should be visible by their nature.

DMR Rule 2.37 (1) (A) (10) requires that equipment colors blend in with the surrounding area and that buoy colors do not compromise safe navigation or conflict with U.S. Coast Guard requirements. The black pens and nets blend with the surroundings. Navigation markings will be reviewed by the Coast Guard. The lease operations as proposed will meet the requirements of the visual impact criteria in DMR Rule 2.37 (1) (A) (10).

**Therefore, I find** that the proposed lease will comply with the visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

#### **4. 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. Navigation will be permitted on the lease site, outside the mooring grid. The lease site shall be marked in accordance with U. S. Coast Guard requirements.

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. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80. The degree of exclusivity requested by the applicants is reasonable, and the use of mobile fishing gear, including, but not limited to, drags, dredges, trawls, and seines will be prohibited. Other forms of fishing will be permitted on the site outside the mooring grid, but physical contact with or access to the fish pens will be prohibited. These restrictions will be included as conditions in the lease.

4. 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. 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. The applicant has demonstrated that there is an available source of Atlantic cod (*Gadus morhua*), Atlantic halibut (*Hippoglossus hippoglossus*), Blue Sea Mussels (*Mytilus edulis*), Sea Scallops (*Placopecten magellanicus*), and Seaweed (*Laminaria saccharina*, *Porphyra umbilicalis*, *Palmaria palmata*) to be cultured for the lease site.

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

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

9. 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 an aquaculture lease set forth in 12 M.R.S.A. §6072.

## **5. DECISION**

Based on the foregoing, the Commissioner grants the requested lease of 35.66 acres to GreatBay Aquaculture of Maine, LLC, a Maine corporation, and James West of Sorrento, Maine, for ten years for the purpose of cultivating Atlantic cod (*Gadus morhua*), Atlantic halibut (*Hippoglossus hippoglossus*), Blue Sea Mussels (*Mytilus edulis*), Sea Scallops (*Placopecten magellanicus*), and Seaweed (*Laminaria saccharina*, *Porphyra umbilicalis*, *Palmaria palmata*) using net pen and suspended culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicants shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$ 25,000.00, conditioned upon their 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)<sup>5</sup> 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. Navigation outside the mooring grid is permitted on the lease site.
3. The use of mobile fishing gear on the lease site, including, but not limited to, drags, dredges, trawls, and seines is prohibited. Other forms of fishing are permitted on the lease site, outside the mooring grid. No person or gear is permitted to make physical contact with any equipment or gear on the site or to gain access to the fish on the site without prior authorization from GreatBay Aquaculture of Maine, LLC or its authorized representatives.

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<sup>5</sup> 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.”

**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: 5/22/09

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