

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Acadia Aqua Farms, LLC
EAST OP2

Standard Aquaculture Lease Renewal
Bottom culture of shellfish
Eastern Bay, Lamoine

AQUACULTURE LEASE RENEWAL
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Acadia Aqua Farms, LLC applied to the Department of Marine Resources (DMR) to renew the aquaculture lease EASTOP2 for a period of 20 years. The 31.62-acre lease is located in Eastern Bay, Town of Lamoine, Hancock County and is for the cultivation of blue mussels (*Mytilus edulis*) using bottom culture techniques.

This lease was originally granted on April 29, 2004, to Great Eastern Mussel Farms. On January 21, 2009, DMR granted a transfer of the lease from Great Eastern Mussel Farms to Acadia Aqua Farms, LLC. The lease was renewed on October 26, 2014, for a period of ten years.

1. PROCEDURE

DMR deemed the renewal application complete on May 14, 2024. Notice of the 30-day public comment period and opportunity to request a public hearing was published in the *Mount Desert Islander* on May 23, 2024. Notice was also provided to the Town of Lamoine, riparian landowners within 1,000 feet of the site, and other state agencies, and sent to subscribers of DMR's aquaculture email list-serve. The record closed on June 22, 2024. During the comment period, three comments were received, one from the Maine Department of Inland Fisheries & Wildlife (MDIFW) and two from riparian landowners within 1,000 feet of the site.

In accordance with 12 M.R.S.A. § 6072(12), a public hearing on a lease renewal is at DMR's discretion unless five or more requests for a public hearing are received during the

comment period.¹ DMR did not receive any requests for a public hearing. DMR elected not to hold a public hearing on the renewal request.

2. STATUTORY CRITERIA

Aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by DMR's Chapter 2.45 rules, which provide that an aquaculture lease shall be renewed if: the commissioner receives, at least 30 days prior to the expiration of a lease, an application for renewal that includes information on the type and amount of aquaculture to be conducted during the new lease term; 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. Date Application was Received

When issuing a decision on a lease renewal the Commissioner must consider whether the commissioner received the application for renewal at least 30 days prior to the expiration of the lease, and that the application includes information on the type and amount of aquaculture to be conducted during the new lease term. 12 M.R.S.A. §6072(12)(A).

EAST OP2 was set to expire on April 28, 2024. The Department received the application for renewal of EAST OP2 on March 5, 2024, containing all the relevant and required information.

The date the renewal application was received was 54 days before the expiration of the lease.

Therefore, DMR finds that the commissioner received the application for renewal at least 30 days prior to the expiration of the lease, and that the application includes information on the type and amount of aquaculture to be conducted during the new lease term.

B. Compliance with Lease Agreement

¹ A statutory change to 12 M.R.S.A. §6072(12), effective August 2024, increased the number of hearing requests necessary to require a public hearing from five to ten. Because the statutory change took effect after the renewal application was deemed complete, the application was subject to the earlier statutory requirement.

When issuing a decision on a lease renewal the Commissioner must consider whether the lessee has complied with the lease agreement during the term of the lease. 12 M.R.S.A. §6072(12)(B).

The lease agreement requires, in part, that the site must be marked in accordance with Chapter 2.80 of DMR's regulations. Chapter 2.80 specifies that marker buoys must be yellow, where they must be deployed, and how they must be labeled. In October 2024, DMR's Aquaculture Inspection Program conducted an inspection of EAST OP2 and documented issues with some marker buoys including improper colors and labels. DMR also found that some of the marker buoys were outside the lease area. DMR notified the lease holder of the inspection findings and gave them a deadline to address all marking issues. Acadia Aqua Farms, LLC acknowledged receipt of the inspection findings and confirmed that they would take appropriate action to address the marking issues. DMR did not find that the marking issues constituted a violation of the lease agreement, and the lease holder communicated with DMR's Aquaculture Inspection Program to rectify the issues in a timely manner.

During the 30-day comment period, DMR received two comments, one from Steven Kohn and one from Marie Greener.² Mr. Kohn identified himself as a property owner in the vicinity of EAST OP2 and Ms. Greener stated that she is a shorefront owner whose property boundaries are within 1,000 feet of EAST OP2. The comments stated that work on EAST OP2 has begun as early as 4:00 a.m. and that the vessel is noisy. Mr. Kohn and Ms. Greener stated that this is an unreasonable hour to begin work and disturbs their sleep. Both Mr. Kohn and Ms. Greener were under the impression that work was only allowed on the site from 7:00 a.m.-7:00 p.m. Mr. Kohn stated that the requirement to work from 7:00 a.m.-7:00 p.m. was part of the lease agreement.

The lease is authorized for bottom planting only, so there is no gear or equipment permitted on the site. A 60-foot vessel is authorized to seed the site and harvest the site with a drag. The original decision states that the vessel is muffled and DMR found that there would be no unreasonable impacts from noise at the lease boundaries.³ As part of this renewal request and concerns raised, DMR reviewed the original lease application, lease decision and lease agreement.⁴ The original lease holder, Great Eastern Mussel Farms, specified in the application that the vessel would be operated during the day and no operations were expected to occur beyond daylight

² Mr. Kohn submitted his comment, via email, on May 30, 2024. Mr. Kohn copied Ms. Greener on the submission. Ms. Greener submitted her comment on June 17, 2024.

³ Original decision, pgs. 2-3; and 9.

⁴ The original lease application is dated September 24, 2003, the original decision was signed April 29, 2004, and the lease agreement is signed June 28, 2004.

hours.⁵ There are no references to specific operational hours in the original application, decision, or associated lease agreement.

The lease was transferred to Acadia Aqua Farms, LLC on January 21, 2009. The transfer decision did not authorize any operational changes, and the lease agreement did not specify operational hours. The lease was subsequently renewed on October 26, 2014, and no operational changes were authorized. The current lease agreement, executed on February 17, 2015, does not specify operational hours.

A review of the record, including the most recent lease agreement, does not condition or otherwise limit operations to a specific timeframe. The lease agreement does require the holder to comply with Chapter 2.75 of DMR's regulations. In accordance with Chapter 2.75(7), lease holders are required to follow their operational plan, which specifies how the site will be operated (see Chapter 2.05(1)(M)). The final lease application, lease decision, and any subsequent DMR decisions become part of the operational plan. The decision approved the lease operations as set forth in the original application, which specified that vessel use would be during the day, with operations not occurring outside of daylight hours. The transfer and renewal decisions did not change this requirement. Therefore, the holder is required to operate the vessel and conduct operations during daylight hours, which would fluctuate throughout the year based on the tilt of the Earth's axis as it orbits the sun.

Although the leaseholder is not required to operate within specific hours, the comments received do suggest that the holder may, at times, have been operating outside of daylight hours, beginning work as early as 4:00 a.m. DMR will direct the leaseholder to operate the site during daylight hours and take further action if necessary to ensure compliance with the operational plan. However, there are no documented violations of the lease agreement over the prior term.

Therefore, DMR finds that the applicant has complied with the lease agreement during its term.

C. Best Interest of the State of Maine

When issuing a decision on a lease renewal the Commissioner must determine whether renewal of the lease is in the best interest of the State. 12 M.R.S.A. § 6072(12)(C). In determining whether it is in the best interest of the State to renew the lease, DMR takes into consideration, among other things, the potential for conflict with new or existing uses of the area which the

⁵ Original application, pg. 7.

Commissioner determines to be a higher use of the area from the perspective of public interest. Chapter 2 § 2.45(2)(B).

On June 25, 2024, DMR received a comment from MDIFW stating that “minimal impacts to wildlife are anticipated.”⁶ DMR did not receive any other comments specific to this renewal criterion. Based on the record, there is no evidence of conflicts with new or existing uses of the area.

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

D. Aggregate Lease Holdings

The Commissioner may not issue a lease renewal if the renewal will cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres. 12 M.R.S.A. §6072(12)(D), (13-A)(B); Chapter 2.45(3).

According to DMR records, Acadia Aqua Farms, LLC holds the following leases:

Lease Acronym	Acreage
EAST OP2	31.62
BHB GC4	49.84
FLAN WN	14.36
PEN SN3	39.94
EAST HP	40.39
EAST LP	19.76
FREN BI	32.26

The total acreage leased by Acadia Aqua Farms, LLC if this renewal is approved would be 228.16 acres.

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

E. Speculative Purposes

The Commissioner may not issue a lease renewal if the lease is being held for speculative purposes. 12 M.R.S.A. §6072(12)(E). In determining whether the lease is being held for

⁶ Email from E. Robinson (MDIFW) to DMR Aquaculture dated June 25, 2024.

speculative purposes, the Commissioner must consider “whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” Chapter 2, § 2.45(2)(A).

The renewal application states that blue mussels were cultivated on the lease site, year-round, from seed to market size and that the site was used throughout the course of the prior term.⁷ Comments received from property owners in the area, discussed in section 2.A., also indicate that the site is being used. Based on the record, the lessee has conducted aquaculture activities in the lease areas during the previous term.

Therefore, DMR finds that the lease is not being held for speculative purposes.

3. CONCLUSIONS OF LAW

Based on the above findings, DMR concludes that:

- A. The commissioner received the application for renewal at least 30 days prior to the expiration of the lease, and that the application includes information on the type and amount of aquaculture to be conducted during the new lease term.
- B. The lessee has complied with the lease agreement during the term of the lease.
- C. The renewal of the lease is in the best interest of the State.
- D. The renewal of the lease will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres.
- E. The lease is not being held for speculative purposes.

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

4. LEASE CONDITIONS

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A. §6072(7-B). 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 were part of the previous lease:

⁷ Pages 1 and 2 of the final lease renewal application.

1. Navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease;
2. Dragging in the lease area is prohibited by persons other than the leaseholder;
3. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
4. In addition to the required corner markings, the lease boundary shall be marked by buoys every 200 feet;
5. There shall be no activity on the lease site unless all markers are in place;
6. Dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.

Conditions 1 and 6 will remain on the lease. Condition 2 prohibits dragging within the boundaries of the lease area, which governs the use of the site by individuals who are not a party to this lease. Title 12 M.R.S.A. §6073(2) states that it shall be unlawful to interfere with the rights provided in a lease. Therefore, the statute already addresses this issue and condition 2 is removed. Condition 3 is a regulatory requirement and included in the lease agreement, so it is removed. Condition 4 will be modified, so that it does not reiterate existing legal requirements regarding the placement of corner markers. Condition 5 conflicts with the marking requirements in Chapter 2.80 and if the site is not marked then it may be harvested by others with the appropriate licenses. To ensure consistency with the law, and avoid potential harvest conflicts, condition 5 is removed.

The conditions applied to the renewed lease shall be as follows:

1. Navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease.
2. Dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.
3. The lease boundaries shall be marked by buoys every 200 feet.

5. DECISION

The Commissioner grants the application of Acadia Aqua Farms, LLC to renew its aquaculture lease EAST OP2 for a period of 20 years. 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.

6. REVOCATION OF LEASE

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

7. DATE AND SIGNATURE

Dated: 6.10.25



Carl J. Wilson, Commissioner,
Department of Marine Resources

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Acadia Aqua Farms, LLC
EAST OP2**

Aquaculture Lease Renewal Application
Bottom culture of shellfish, Mount Desert Narrows,
Eastern Bay, Lamoine, Hancock County

Docket Number 2014-01-R
October 26, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Acadia Aqua Farms applied to the Department on February 10, 2014 to renew the aquaculture lease, EAST OP2, for a period of ten years to April 28, 2024. The 31.62 acre lease is issued for the bottom culture of blue mussels (*Mytilus edulis*) in Lamoine, Hancock County, Maine. This lease was originally granted to Great Eastern Mussel Farms, Inc. on April 29, 2004 for a period of ten years. The lease was transferred to Acadia Aqua Farms on January 21, 2009 for the 7 years remaining on the original lease term.

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 *Ellsworth American* on June 19, 2014 and again on July 10, 2014. Notice was also published in the *July 2014 Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. No comments and no requests for a hearing on this renewal application were received by the Department during the comment period.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §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 discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding 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 is no evidence of conflicts with other new or existing uses of the area.

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 DMR records, the total lease acreage held by lessee, including this lease, EAST OP2, consisting of 31.62 acres, will not exceed 1,000 acres.

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

D. Speculative purposes

Rule 2.45 provides that in considering whether a lease is being held for speculative purposes, the Department 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 DMR by the lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

THEREFORE, I FIND that the lease is not for speculative purposes.

3. LEASE CONDITIONS

The following conditions are carried over from the original lease and will apply to the renewed lease for all three tracts:

- navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease;
- dragging in the lease area is prohibited by persons other than the leaseholder;
- the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- in addition to the required corner markings, the lease boundary shall be marked by buoys every 200 feet;
- there shall be no activity on the lease site unless all markers are in place; and
- dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.

4. DECISION

The Commissioner of Marine Resources grants the application of Acadia Aqua Farms, LLC to renew its aquaculture lease, EAST OP2, for a period of ten years to April 28, 2024. 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.

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5. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 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: _____

10/26/14

P. C. Keliher

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

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Transfer of Aquaculture Bottom Lease

January 21, 2009

Great Eastern Mussel Farms,
Inc., Transferor, to Acadia Aqua
Farms, LLC, Transferee

Lease EAST OP2

Docket #2008-08T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

On November 12, 2008, the Department of Marine Resources ("DMR") received an application from Great Eastern Mussel Farms, Inc., to transfer to Acadia Aqua Farms, LLC, its 31.62-acre aquaculture lease EAST OP2, located off Old Point in Mount Desert Narrows in Eastern Bay, a portion of the coastal waters of the State of Maine situated in the Town of Lamoine in Hancock County. The lease was originally granted on April 29, 2004, for a period of ten years for the purpose of cultivating blue sea mussels (*Mytilus edulis*) using bottom culture techniques.

The transfer application was accepted as complete on November 19, 2008. Notice of the application and of the 30-day comment period was mailed on December 5, 2008 to all riparian owners, the Town of Lamoine, the general mailing list of interested persons, and the following reviewing agencies: U.S. Army Corps of Engineers, U.S. Coast Guard, National Marine Fisheries Service, Maine Dept. of Inland Fisheries & Wildlife, Maine Dept. of Conservation, and DMR Marine Patrol. Notices of the application and comment period were published in the *Ellsworth American* on December 18, 2008 and January 8, 2009, and in the *Commercial Fisheries News* January, 2009 edition. No comments were received, and no hearing was held.

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) (B) (1) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer if s/he determines that: (A) the change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated; (B) the transfer is not intended to circumvent the preference guidelines for treatment of competing applications; (C) the transfer is not for speculative purposes; and (D) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

A. Effect of Lessee Change on Lease Criteria

The transferee, Acadia Aqua Farms, LLC, was incorporated as a Maine corporation in 2008. It consists of one shareholder, Mattheus J. de Koning, who is the managing member and will conduct the active aquaculture operations. Acadia Aqua Farms holds one other aquaculture

lease, FREN BI, a 32-acre bottom mussel lease located in Frenchman Bay. The company has purchased all five of the leases held by Great Eastern Mussel Farms, Inc. and is in the process of having them transferred to its name by DMR; this is the first of those transfer applications.

Mr. de Koning has extensive experience in mussel aquaculture, as evidenced by his résumé, which was submitted as part of the transfer application, and by DMR's experience in working with him on various lease applications for Great Eastern Mussel Farms and the FREN BI lease, which was recently granted. He is well-acquainted with Maine's aquaculture laws and rules. No changes in the lease operations are planned for this lease site. Nothing in the information before the Department suggests that this transfer will have any effect on the lease criteria.

No comments on the proposed lease transfer have been received from the public or from state or federal agencies.

THEREFORE, I FIND that the change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A).

B. Effect on Preference Guidelines

There are no competing applications for this lease site, so the preference guidelines are not relevant to this application.

THEREFORE, I FIND that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8).

C. Speculative Purposes

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, we are to look to "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 DMR by Great Eastern Mussel Farms, Inc., that aquaculture has been conducted on this lease site.

THEREFORE, I FIND that the lease transfer is not for speculative purposes.

D. Acres Leased by Transferee

The statute and rule require that in order to grant the lease transfer, the Commissioner must find that "the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres". According to DMR records, the total lease acreage held by Acadia Aqua Farms, LLC, with this 31.62-acre lease included, will not exceed 1,000 acres.

THEREFORE, I FIND that the lease transfer will not cause the transferee, Acadia Aqua Farms, LLC, to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

3. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A);
2. The lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8);
3. The lease transfer is not for speculative purposes; and
4. The lease transfer will not cause the transferee, Acadia Aqua Farms, LLC, to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 MRSA §6072 (12-A) (B) (1) and by DMR rule 2.60, a lease transfer may be granted.

4. DECISION

Based on the foregoing, I grant the requested transfer of the aquaculture lease EAST OP2, consisting of 31.62 acres off Old Point in Mount Desert Narrows, Eastern Bay, from Great Eastern Mussel Farms, Inc. to Acadia Aqua Farms, LLC. All provisions of the existing lease shall continue in full force and effect, including the conditions on the lease, as noted below. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A), conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

5. CONDITIONS

Pursuant to 12 MRSA §6072 (7-B), 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 lease. Existing conditions on this lease, which were established when the lease was first issued in 2004 and which continue in effect, are:

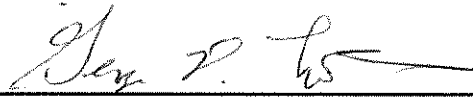
- (1) navigation, lobster and crab fishing, and recreational boating and fishing shall be allowed on the lease;
- (2) dragging in the lease area is prohibited by persons other than the leaseholder;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- (4) in addition to the required corner markings, the lease boundary shall be marked by buoys every 200 feet;
- (5) there shall be no activity on the lease site unless all markers are in place; and

- (6) dragging along the western boundary that is shared by the adjacent lease holder shall be performed parallel to the boundary line.

6. REVOCATION OF LEASE

The Commissioner may commence revocation procedures if it is determined 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: 21 January 2009



George D. Lapointe (Commissioner)
Department of Marine Resources