

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Eric Peters

DAM NP

Application for Change in Gear Authorization
Damariscotta River, Damariscotta

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Eric Peters applied to the Department of Marine Resources (DMR) to change the gear authorization for the existing standard lease DAM NP, located in the Damariscotta River in the Town of Damariscotta, Lincoln County.

1. Proceedings

The amendment application was received by DMR on November 21, 2024. The application was deemed complete by DMR on February 21, 2025. Notice of the complete application and the 14-day public comment period were provided to other state agencies, riparian landowners whose shoreline property boundaries are within 1,000 feet of the lease site, the Town of Damariscotta and its Harbormaster, and others on DMR's email listserv. The comment period ended on March 20, 2025. The administrative record before DMR regarding this lease amendment application includes the materials listed below.

List of Materials

| Description | Date | Citation |
|--|-------------------|-----------------|
| Original lease application for DAM NP | July 29, 2004 | AR-1 |
| DMR Site Report for DAM NP | April 6, 2005 | AR-2 |
| Original lease decision for DAM NP | July 5, 2005 | AR-3 |
| Lease renewal decision for DAM NP | May 28, 2015 | AR-4 |
| Complete amendment application | February 21, 2025 | AR-5 |
| Harbormaster Questionnaire | March 13, 2025 | AR-6 |
| Comment from the Maine Department of Inland Fisheries and Wildlife | March 19, 2025 | AR-7 |

2. Description of Original Decision and the Proposed Amendment

A. Original Lease Decision

DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the original decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by DAM NP met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (AR-3). Accordingly, the 2.55-acre standard lease DAM NP was granted to Eric Peters on July 5, 2005 (AR-3). On May 28, 2015, the lease was renewed for a ten-year term to July 4, 2025 (AR-4).

Eric Peters filed this amendment application on November 21, 2024, and the application was deemed complete on February 21, 2025. Therefore, the amendment application was received and deemed complete prior to the lease expiring on July 4, 2025. According to DMR records, Eric Peters also filed a renewal application for DAM NP on May 7, 2025, before the lease expired on July 4, 2025. In accordance with 12 M.R.S.A. §6072(12), Eric Peters is allowed to continue operating DAM NP, while DMR processes the renewal request as the application was received prior to the expiration of the lease. DMR is processing the amendment application first as it was received prior to the renewal application and the expiration of DAM NP.

The original decision provided authorization to cultivate American/eastern oysters (*Crassostrea virginica*), and European oysters (*Ostrea edulis*), using suspended and bottom culture techniques (AR-3). The culture techniques authorized in the original decision include the deployment of up to 900 floating bags secured on 18 long lines located in the northern half-acre of the site (AR-3, 2). The floating bags serve as a nursery for oyster seed and when the oysters reach the appropriate size, they are planted, along the bottom of the site, for further growth until harvest for market (AR-3, 2). From December through February, the floating gear is submerged during the winter months (AR-2, 7).¹

¹ The Site Report also notes gear may be removed from the site during the winter months. However, based on the amendment application, it is more likely that gear is submerged in place during the winter months.

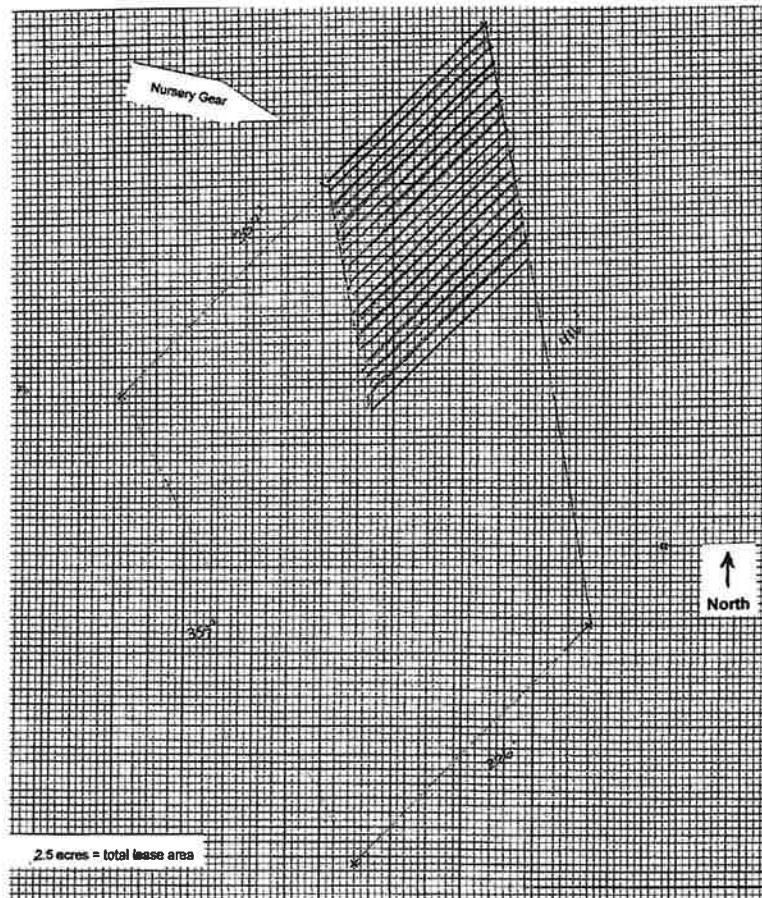


Figure 1: Approved layout of DAM NP from the original application (AR-1). The shaded polygon in the northernmost corner of the site depicts the location of the floating gear. The remainder of the site is approved for bottom planting only.

The lease site is also approved for the following powered equipment:

| Type | Description | Months of Operation/Frequency of Use |
|-----------------|--|--|
| Pressure washer | Utilizes highly pressurized water to clean harvested oysters | May be used during harvest periods (April through November). |

Table 1: Powered equipment authorized for the site (AR-3, 2 and AR-1, 2).

The original decision also authorized a 12' x 8' work platform, located to the south of the area containing floating bags (AR-3, 2).

In accordance with 12 M.R.S.A § 6072 (7-B), the Commissioner established the following conditions governing the use of DAM NP (AR-3, 10 and AR-4, 3):

1. Navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease.
2. Harvest of oysters shall be by SCUBA diver only.
3. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.
4. The leaseholder shall perform all gear work off-bottom, except for the initial set-up and maintenance of mooring systems.
5. No more than 500,000 oysters shall be planted on the bottom of the lease site per year.
6. Other public uses that are not inconsistent with the purpose of the lease are permitted.²

B. Proposed Amendment

The leaseholder is requesting to add 375 oyster grow cages, which would each contain six floating bags for a total of 2,250 additional bags (AR-5, 5). The oyster grow cages and associated bags would float at the surface of the water from March through November and then would be submerged to the bottom of the site for over-wintering (AR-5, 5). Up to 25 oyster grow cages would be deployed on each of 15 long lines (AR-5, 10). The amendment application does not propose additional long lines or any associated changes to what was previously authorized for long lines. The original lease authorized 18 long lines deployed in the northern half acre of the site (AR-3, 2 and Figure 1).

3. Statutory Criteria and Findings of Fact

Approval of standard aquaculture lease amendments is governed by 12 M.R.S.A. § 6072 (13)(G) and Chapter 2.44 of DMR regulations.³ The statute and regulations provide that the Commissioner may grant amendments for the use of specific gear or the growth of specific species, and for operational modifications resulting from the change(s), on an existing lease site provided the lease amendment does not violate any of the lease issuance criteria, the lease amendment is consistent with the Commissioner's findings on the underlying lease application and does not materially alter them, and the lease amendment does not change or violate any of the conditions set forth in the original lease.

² This condition appears to have been added at the time the lease was renewed on May 28, 2015, as it is in the renewal decision, but not in the original decision.

³ 13-188 C.M.R. ch. 2, § 2.44.

A. Floating Gear

The leaseholder is requesting to add 375 oyster grow cages, which would each contain six floating bags for a total of 2,250 additional bags. The oyster grow cages would be deployed on up to 15 long lines. The oyster grow cages would be on the surface of the water from March through November and then submerged to the bottom of the site for overwintering. The original decision authorized 900 floating bags deployed on up to 18 long lines in the northern half-acre of the site. The remainder of the site is authorized for bottom planting only (no gear). The gear proposed in the amendment is very similar to what is currently authorized, except the oyster grow cages provide additional capacity for bags. However, based on renderings in the amendment application (see Figure 2) it appears that in addition to requesting additional gear, the leaseholder may also propose to change the layout of existing gear, so that it would be deployed throughout the entirety of DAM NP. Changing the layout of the existing gear raises considerations about consistency with the Commissioner's findings on the underlying lease application.

Layout Plan DAMNP

2.55 Acres

Growout cages

25 Oyster Growout cages per line

15 rows of lines spaced approximately 20' apart

Each line would contain a maximum of 25 cages
Spaced 8' apart (375 cages Total)

The outside anchors have 20' scope
From anchor to the 1st cage

NW

NE

44.0267833°
69.5387833°

SE

44.02540°
69.323120°

SW

44.024850°
69.5390833°

NW

44.0259333°
69.539650°

SWO

NE

SE

SW

NW

SWO

NE

SE

SW

interfere with navigation and other uses were based on limiting the deployment of floating gear to the northern half-acre of the site while all other areas remained gear-free (AR-3, 7).

The amendment application requires the lease holder to include a ‘Layout Plan’, which includes the placement of existing and new gear on the site with the lease corners labeled (AR-5, 5). The Layout Plan included with the application includes a written description that reads “Layout Plan DAM NP, 2.55 acres, Growout Cages” (AR-5, 10, Figure 2). Additionally, a drawing of DAM NP included on the tax map, appears to depict gear distributed throughout the lease site (AR-5, 13A). Given the type of information that is required to be included in the Layout Plan and how DAM NP is depicted, including in other drawings throughout the application, it appears that the applicant proposes to change the layout of gear such that existing long lines would be deployed throughout the lease site and the additional gear would be secured to the existing long lines.

Additionally, written descriptions of the proposed changes do not include additional long lines, and the application states that the amendment would not alter existing operations, other than to allow for more efficient time management and reduced biofouling (AR-5, 5 and 6). Since no additional long lines are proposed, the additional gear would need to be secured to current long lines which are only authorized to be deployed in the northern half-acre of the site. Changing the authorized layout of existing long lines would be considered a change to the existing operations, because the placement of long lines and associated floating gear is currently limited to a specific area within the site. If the lease holder intended to seek an amendment that would allow either the addition of long lines or relocation of long lines outside of the northern half-acre of the lease, those requested changes should have been described in the amendment application.

To ensure consistency with the Commissioner’s findings on the underlying lease application and resolve any ambiguity about the location of the additional gear, if the amendment is approved, the oyster grow cages and associated bags may only be deployed on the existing long lines, which are only authorized to be deployed in the northern half acre of DAM NP consistent with the existing lease terms and the findings of the original decision. In other words, the number and allowable location of long lines remains unchanged.

The Harbormaster Questionnaire for the lease amendment application states that recreational vessels navigate in the area, and moorings and docks are present within the vicinity (AR-6). Kayaking and swimming also occur near the lease (AR-6). However, the Harbormaster Questionnaire did not raise any concerns about the amendment request (AR-6). It appears that many of the uses documented in the original decision, which was issued in 2005, have continued to occur in the area. The Maine Department of Inland Fisheries and Wildlife (IFW) stated that the lease is not located in any of their jurisdictional resources and minimal impacts to wildlife are anticipated (AR-7). DMR did not receive any other comments concerning the proposed amendment request.

DMR reviewed the amendment request to determine whether it would change or violate any of the existing lease conditions. There is a condition that requires the lease holder to perform all gear work off-bottom, except for the initial set-up and maintenance of mooring systems. Based on the original decision, this condition was suggested by William Mook, who owned Mook Sea Farms which operated a lease site 300 feet from Eric Peters' proposal (AR-3, 5 and 6).⁴ William Mook was concerned that Eric Peters' proposed operations could stir up sediment, which may resettle on a site held by Mook Sea Farms and harm the oysters (AR-3, 6). To address William Mook's concern, Eric Peters agreed to only tend the gear from a vessel or by swimming and a condition was added accordingly (AR-3, 3). The amendment application does not propose any operational changes to gear tending that would result in a violation of this condition. The proposed addition of oyster grow cages to the previously approved long lines does not violate or change any other conditions.

Therefore, the proposed additional oyster grow cages and associated floating bags, when deployed on the previously authorized long lines in the northern half acre authorized for floating gear, do not violate any of the lease issuance criteria, they are consistent with the Commissioner's findings on the underlying lease application and do not materially alter them, and do not change or violate any of the conditions set forth in the original lease.

4. CONCLUSIONS OF LAW

Based on the above findings, DMR concludes that:

- a. The proposed lease amendment, as clarified in this decision, does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A);
- b. The proposed lease amendment, as clarified in this decision, is consistent with the Commissioner's findings on the underlying lease application and does not materially alter them;
- c. The proposed lease amendment, as clarified in this decision, does not change or violate any of the conditions set forth in the original lease.

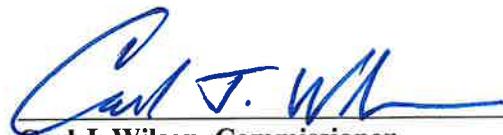
Accordingly, the evidence in the record supports the conclusion that the proposed lease amendment, as clarified in this decision, meets the requirements for the granting of a lease amendment set forth in 12 M.R.S.A. § 6072 and in DMR Rule Chapter 2.44.

⁴ The site William Mook was referring to is likely DAM EL3, which is ~300 feet to the south of DAM NP. Since the decision for DAM NP was issued, DMR is aware that William Mook no longer owns Mook Sea Farms.

5. DECISION

Based on the foregoing, the Commissioner grants the amendment request for DAM NP from Eric Peters to add 375 oyster grow cages, which would each contain six floating bags for a total of 2,250 bags deployed on existing long lines. The oyster grow cages are in addition to the existing 900 floating bags as previously authorized in the original decision.

Dated: 1-26-2026



Carl J. Wilson
Commissioner
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Aquaculture Lease Renewal Application
bottom and suspended culture of
American and European oysters,
north of Hall Point, Damariscotta River,
Damariscotta

Lessee: Eric Peters
Lease: DAM NP
Docket # 2015-04-R
May 28, 2015

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Eric Peters applied to the Department to renew aquaculture lease DAM NP for a period of ten years to July 4, 2025. The 2.55-acre lease is issued for bottom and suspended culture of American and European oysters on a site located north of Hall Point, Damariscotta River, Damariscotta, Lincoln County, Maine. This lease was initially issued on July 5, 2005 and there have been no transfers or amendments to the lease since it was issued.

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 March 26, 2015 and the April edition of the *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 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. §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 lessee holds the following leases: DAM HI4 (1.99 acres) and DAM PPN (1.89 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 being held for speculative purposes.

3. LEASE CONDITIONS: The following conditions are carried over from the original lease and will apply to the renewed lease:

- A. navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease;
- B. harvest of oysters shall be by SCUBA diver only;
- C. the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- D. the leaseholder shall perform all gear work off-bottom, except for the initial set-up and maintenance of mooring systems; and
- E. no more than 500,000 oysters shall be planted on the bottom of the lease site per year.

F. Other public uses that are not inconsistent with the purposes of the lease are permitted.

4. DECISION:

The Commissioner of Marine Resources grants the application of Eric Peters to renew his aquaculture lease DAM NP for a period of ten years, to July 4, 2025. 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) 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:

5/28/18

A handwritten signature in blue ink, appearing to read "PCK", is written over a blue horizontal line.

Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

**IN THE MATTER OF THE APPLICATION OF ERIC PETERS FOR AN AQUACULTURE LEASE LOCATED IN THE DAMARISCOTTA RIVER, DAMARISCOTTA, LINCOLN COUNTY, MAINE) FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

On July 29, 2004 Eric Peters of Nobleboro, Maine applied for an aquaculture lease totaling 1.5 acres in the coastal waters of the State of Maine, located in the Damariscotta River in Damariscotta, Lincoln County, Maine. The applicant requested the lease for a term of ten (10) years for the purpose of cultivating American oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*), using suspended and bottom culture techniques. The application was accepted as complete on August 13, 2004 and amended on November 2, 2004 to increase the requested acreage to 2.5 acres. A public hearing on this application was held on May 16, 2005 at 6:00 p.m. in Damariscotta. Intervenor status was granted to William Mook of Mook Sea Farms.

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

Evidence Introduced Concerning the Nature
and Impact of the Proposed Lease

The evidentiary record before the Department regarding this lease application includes the Department file (Exhibit 1), including the application (Exhibit 2) and the Department site report (Exhibit 3), and the record of the May 16, 2005 public hearing. At the public hearing, testimony was given by the applicant, Eric Peters, the Department's Aquaculture Environmental Coordinator, Jon Lewis, Intervenor William Mook, and two members of the public.

According to the application and the testimony by the applicant, the proposed aquaculture lease is sought to raise American oysters and European oysters on a lease site totaling 2.5 acres for a term of ten (10) years. The applicant confirmed that the coordinates in the Department's site report are the correct coordinates for the lease site and the lease acreage is therefore 2.55 acres. According to the application, the proposed lease activities would consist of growing oysters in floating ADPI bags and then planting them directly on the bottom for grow-out. There would be a maximum of 900 floating bags, on 18 long lines located in the northern ½ acre of the proposed lease site. A 12' x 8' work platform would also be located on the site, south of the floating bags.

According to the application, activities on the lease site would consist of stocking nursery bags from May through August. When the oysters are large enough for planting, they would be transferred to the bottom for approximately two to three years of growth. The applicant testified that approximately 500,000 seed oysters would be planted per year at a density of approximately 20-25 oysters per square foot. When market size, the oysters would be harvested by SCUBA diver. Boat traffic to and from the site would occur daily for monitoring, maintenance and other activities from May to November. The applicant testified that the oysters would be rinsed with a pressure washer during harvesting. The washer would run for five to ten minutes at a time during harvesting. A box would be placed over the pump to suppress the noise. According to the application, the applicant does not plan to use lighting at

the lease site. Additionally, according to the application, all seed shellfish would be obtained from Muscongus Bay Aquaculture in Bremen, Maine.

In response to concerns expressed by the intervenor, William Mook, the applicant agreed to three lease conditions. First, he testified that he would perform all gear work off-bottom, except for the initial set-up and maintenance of anchor systems. In other words, he would tend gear either from a vessel or by swimming in the water, but would not walk around on the lease bottom. Second, the applicant agreed to a condition that limits the harvest method to SCUBA diver only. Third, the applicant testified that he would plant a maximum of 500,000 seed oysters per year on the lease site.

In accordance with Department regulations, Chapter 2.10(3), the applicant provided an environmental characterization of the proposed lease area. According to the application, the river bottom at the proposed lease site is composed of sand and mud. The water depths are estimated to be 4 feet at mean low water and 16 feet at mean high water. Local fauna observed at the proposed site include crabs and oysters. The current flow is estimated to be less than .5 meters/sec. and flows in a north/south direction. Additionally, according to the application, the proposed lease site does not fall within an Essential Habitat.

According to the application, riparian land would not be used to access the site and there are no known uses of the proposed site by riparian owners. The applicant testified that he frequently passes the proposed lease area and has never observed commercial or recreational fishing on the proposed lease site. There are clam beds located west of the proposed lease site. According to the application, the proposed lease site is located just south of the channel, where the majority of the boat traffic occurs.

The Department's Aquaculture Environmental Coordinator (AEC) conducted site visits at the proposed lease area on September 1, 2004 and March 22, 2005. During the first site visit, a diver survey, utilizing an underwater video camera, was performed. During the second site visit, the minor relocation of the site was confirmed by navigating to the corners using the coordinates provided in the amended application. The AEC created a site report summarizing

the information obtained during the site visits and provided testimony regarding the site report at the public hearing.

According to the report and the AEC's testimony, the proposed site is located in the Damariscotta River, in water depths ranging from approximately 2.4 to 9.4 feet at low water and 12.9 to 19.9 feet at high water. The bottom topography of the proposed lease site consists of a mixture of rock, cobble and hard-packed sand and gravel. According to the AEC's report, currents are tidally driven in a northeast/southwest direction depending on tidal stage. According to the AEC's report, flora and fauna observed at the site include a common occurrence of hermit crabs, rock crabs and common periwinkle; and an occasional occurrence of horseshoe crabs, brushy red-weed, kelp and knotted wrack. An invasive colonial tunicate was also observed on most rocky substrates. The AEC testified regarding the number of shellfish aquaculture leases in the Damariscotta River. He stated that there has been no indication of a decrease in growth rates in the shellfish grown in the river. He noted that there is no easy answer to question of "how much is too much?", but that he has no indication that we have reached that point in the Damariscotta River. According to the AEC's report the proposed lease is located in an area classified as open/approved for the harvest of shellfish by the Department's Water Quality Division. Additionally, the proposed lease site is not located within an Essential or Significant Wildlife Habitat.

According to the AEC, the proposed site is located approximately 626 feet from the western shore of the river, close to a mooring field in the upper Damariscotta River. During the first site visit, 18 boat moorings were observed to the north and east of the proposed site. The closest mooring was located approximately 100 feet to the east of the eastern boundary of the proposed site. According to the AEC, the proposed activities are not expected to interfere with mooring access.

According to the AEC's report, no commercial or recreational fishing was observed within the boundaries of the proposed lease site during the site visits. Due to shallow water depths, lobster and crab fishing are likely limited in the area of the proposed lease.

Recreational fishing for striped bass is likely to occur in the area surrounding the proposed lease site. Clams and worms are harvested from the mudflats located west of the proposed site, however, the proposed lease activities would not impact the use of the mudflats. There are twelve aquaculture lease sites and one limited purposed aquaculture license located within one nautical mile of the proposed site.

Additionally, according to the AEC, the proposed lease site is located along the western boundary of the primary navigation channel, which is utilized by the majority of vessel traffic. Traffic outside of the main channel at low water is limited to small, shallow-draft vessels and operators with local knowledge of the area. There is a minimum of 350 feet of navigable waters between the eastern boundary of the proposed lease site and the eastern boundary of the channel and a minimum of 600 feet between the western boundary of the proposed lease site and the nearest point of land. The AEC noted in his report that the dimensions of the floating gear on the lease site at full production would be approximately 150 feet by 30 feet. The remainder of the proposed site would be used for bottom culture and thus open to vessel traffic.

Paul Bryant, the Damariscotta Harbormaster, provided written comments. Mr. Bryant indicated that the proposed lease site would not interfere with navigation or riparian access; that there are no permitted moorings within the lease boundaries; that there are no storm anchorages within the proposed lease area; that there is limited recreational fishing in the proposed lease area; that the proposed moorings have been proven trustworthy in the river; and that there are no local, state or federally owned beaches, parks or docking facilities within 1,000 feet of the proposed lease site. He noted that the proposed lease area is very close to an area that was occupied by aquaculture gear in the past and that gear did not pose a noticeable hardship for anyone he is aware of.

Intervenor, William Mook testified in support of the application, but did voice concerns regarding the potential impact on his aquaculture lease location downriver from the proposed site. Mr. Mook is the president of Mook Sea Farm, which operates aquaculture leases in the Damariscotta River, one of which is approximately 100 yards from the proposed site. Mr. Mook

testified that he has two main concerns regarding the proposed lease activities. First, he is concerned about the potential for suspended particulate matter from the proposed lease site to travel to his site and negatively impact his oysters. He testified that in the southwest portion of the proposed lease site, outside the AEC's dive track, the bottom is soft and he was able to insert a pvc pipe more than a foot into the sediment. According to Mr. Mook, dragging or other disruptive harvesting methods could cause suspended particulate matter to travel down river and potentially onto his lease site. He testified that there is a network of dendritic channels which, on low ebbing tides, channel water from the proposed lease site toward his lease site.¹ He testified that this could impact his oysters by filling market oysters with silt or by transmitting juvenile oyster disease. In order to alleviate his concerns, Mr. Mook requested that a condition be placed on the lease that limits harvesting methods to SCUBA diver only. The applicant agreed to this condition.

Mr. Mook's second concern is regarding the potential for disease when overcrowded oysters become stressed. According to Mr. Mook, if too many oysters are planted on the site, overcrowding would result in stressed oysters, which could result in disease. He requested that a condition be placed on the lease that would limit the planting density to 500,000 oysters per acre. The applicant agreed to a condition that limits him to planting 500,000 oysters per year.

Two members of the public testified regarding the proposed activities. A riparian landowner testified that the application is inaccurate in that it fails to recognize the existing uses of the area. He testified that there is growing use from down town to Little Point of kayaks, canoes, day-sailers, and water skiers. He requested that this lease be the last one granted in the Damariscotta River. A local resident and biologist testified that the density of oysters in the river is too high and will have a devastating effect when disease hits. He also testified that the

¹ Mr. Mook submitted a document which depicts the results of a water flow experiment performed by the applicant. The applicant placed water balloons in the river near the proposed lease site and traced their tracks by recording location coordinates using a GPS. The applicant provided the coordinates to Mr. Mook, who plotted the points on a chart. The majority of the balloon tracks flowed north and east of Mr. Mook's lease site. In one instance, the coordinates show the balloon crossed directly through the site. However, the applicant testified that this was not the case and he must have recorded that balloon's location incorrectly.

proposed lease increases the number of areas you have to sail around. He requested the lease be denied.

Findings of Fact

The proposed lease is located near a mooring field on the upper Damariscotta River, approximately 350 feet from the eastern boundary of the main navigation channel and 600 feet from the nearest point of land to the west. There are approximately 18 boat moorings to the north and east of the proposed site. The closest mooring is approximately 100 feet to the east of the proposed site. No use of riparian land was requested or required. Based on this evidence, I find that the lease will not unreasonably interfere with the ingress and egress of riparian owners.

The proposed lease is located adjacent to the western boundary of the primary navigation channel in water depths ranging from approximately 2.4 to 9.4 feet at low water and 12.9 to 19.9 feet at high water. The majority of vessel traffic utilizes the main channel. Traffic outside of the main channel at low water is limited to small, shallow-draft vessels and operators with local knowledge of the area. There is a minimum of 350 feet of navigable waters between the eastern boundary of the proposed lease site and the eastern boundary of the channel and a minimum of 600 feet between the western boundary of the proposed lease site and the nearest point of land. Additionally, the dimensions of the floating gear on the lease site at full production would be approximately 150 feet by 30 feet. The remainder of the proposed site would be used for bottom culture and thus open to vessel traffic. Thus, there is sufficient open water surrounding the lease site in which to navigate. Based on the foregoing, I find that the proposed lease will not unreasonably interfere with navigation.

Fishing in the area of the proposed lease site consists of limited recreational fishing for striped bass. Other uses of the area include kayaking, sailing, canoeing and water skiing. The proposed lease site will consist of a maximum of 450 square feet of floating gear. The remainder of the lease site will be used for bottom planting and thus will remain open for fishing and for use by kayaks, canoes, and sailboats. The nearest existing aquaculture lease is

located approximately 100 yards south of the proposed site and is operated by the intervenor, William Mook. The applicant has agreed to three conditions on the lease that would reduce the potential impact of his activities upon Mr. Mook's lease site, including harvest by diver only, tending gear off bottom, and planting only 500,000 oysters per year. The area of the proposed lease is classified as "open" for the harvest of shellfish. Based on this evidence, I find that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Existing flora and fauna observed at the proposed site consists of hermit crabs, rock crabs, common periwinkles, horseshoe crabs, brushy red-weed, kelp and knotted wrack. The bottom topography of the proposed lease site consists of a mixture of rock, cobble and hard-packed sand, with softer sediments in the southwest portion of the lease site. Currents are tidally driven in a northeast/southwest direction depending on tidal stage. There has been no indication of a decrease in growth rates in the shellfish grown in the river due to the number of leases located in the river. Thus, there are sufficient nutrients to support the marine organisms in the river. The proposed lease site is not located within an Essential or Significant Wildlife Habitat. Based on this evidence, I find that the proposed activities will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

All seed shellfish will be obtained from the hatcheries of Muscongus Bay Aquaculture in Bremen, Maine. Based on this evidence, I find that there is an available source of American oysters and European oysters.

The proposed lease site is not located within 1,000 feet of any public beaches, parks, docking facilities, or conserved land. Based on this evidence, I find that the proposed lease site activities will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency.

A pressure washer would be used on the lease site to rinse the oysters during harvesting. The washer would run for five to ten minutes at a time. A box would be placed over

the pump to suppress the noise. Additionally, lighting will not be used at the lease site. I find that the proposed lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

Conclusions of Law

Based on the above findings, taking into consideration the number and density of aquaculture leases in the area, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner;
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation;
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area;
4. The aquaculture activities proposed for this site will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna;
5. The applicant has demonstrated that there is an available source of American oysters and European oysters to be cultured for the lease site; and
6. The aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved land owned by the Federal Government, the State Government, or a municipal governmental agency; and
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise or lights at the boundaries of the lease site.

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

Decision

Based on the foregoing, the Commissioner grants the applicant's requested aquaculture lease of 2.55 acres from the date of this decision for the purpose of cultivating American oysters (*Crassostrea virginica*) and 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 applicants shall post a bond or establish an escrow in the amount of \$5,000

conditioned upon their performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Conditions to be Imposed on Lease

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

The following conditions are placed on this lease:

- (1) navigation, lobster fishing and recreational boating and fishing shall be allowed on the open areas of the lease;
- (2) harvest of oysters shall be by SCUBA diver only;
- (3) the lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- (4) the leaseholder shall perform all gear work off-bottom, except for the initial set-up and maintenance of mooring systems; and
- (5) no more than 500,000 oysters shall be planted on the bottom of the lease site per year.

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

Dated: 5 July 2005



George D. Lapointe (Commissioner)
Department of Marine Resources