

### **Summary of Comments**

On March 20, 2019, the Department of Marine Resources (DMR) received a certified rulemaking petition from qualified voters of the State of Maine to modify portions of the aquaculture lease regulations. In accordance with 5 M.R.S.A. §8055, DMR considered the proposed rule changes filed by the petitioners. On May 1, 2019, notice of this proposed rulemaking was published by the Secretary of State in the five major daily newspapers as published by the Secretary of State. On April 30, 2019, the rule was posted on the DMR website, and on May 1, 2019, electronic messages were sent to individuals who subscribe to DMR notices. A public hearing on the proposal was held on May 22, 2019 at 5:00pm in Augusta. The deadline for written comments was June 1, 2019.

### **Attendees at May 22, 2019 Public Hearing**

Peter Piconi, Island Institute  
Richard Nelson, Friendship  
Henry W. Barnes, Lobsterman  
Christopher G. McIntire, Lobsterman  
John Powers, Lobsterman  
Jane Waddle, Inn Keeper  
Dave Moody, Lobsterman  
George Prince, Lobsterman  
Dan Devereaux, Mere Point Oyster Company  
James Perry, Lobsterman  
Matthew Perry, Lobsterman  
Kim Ervin Tucker, Maine Lobstering Union (IMLU)  
Rocky Alley, Maine Lobstering Union (IMLU)  
Mike Gaffney, Georgetown  
Peter Vaughn, Maquoit Bay Preservation Group  
Tom Santaguida, Lobsterman  
Kelsey Fenwick, Lobsterman  
Ernie Burgess, Lobsterman  
Crystal Canney, Knight Canney Group  
Michael Breton, Scarborough  
Patrick Lyons, Eaton Peabody  
Donald Holbrook, Brunswick  
Terry Watson, Clam Hunter Seafood  
Sally Atwater  
Dana Morse, Sea Grant  
Dean Ramsey, Brunswick  
Dana McIntire, Lobsterman  
Paul Dobbins, World Wildlife Fund  
Colleen Francke, Summit Point LLC  
Susan Olcott, Brunswick  
Seth Walker, Fisherman  
Andy Ulrickson, Fisherman  
Donny Ulrickson, Fisherman  
John Coffin, Fisherman

Josh Saxton, Fisherman  
Bill Morrell, Property owner  
Bill Mook, Mook Sea Farms

## **Support**

### **Tom Santaguida, comment at public hearing, May 22, 2019**

I have been lobster and crab fishing in Harpswell since 1997 and support the proposed rule change. The petition is a result of two things: poor engagement of applicants with fishing community, and the reaction by lobster fishing community and concern about loss of access to fishing grounds. Both of those circumstances are a result of failure of the State to predict conflict between fisheries and aquaculture and to make proactive efforts to manage those conflicts. Many years ago the conflicts we see today should have been apparent but instead we are reacting today to something that could have been addressed a while ago. This proposal would create formal engagement to identify alternative sites. Applicants rarely reach out to fishing community as suggested by DMR. I have contacted applicants to discuss sites. I have made arrangements to be somewhere and applicants don't show. The system needs repair. I was previously employed by DMR to do technical work and I did lease site report inspections in late 80s. The moratorium is intended to pause the growth of industry so it is thoughtfully and carefully considered.

### **Susan Olcott, comment at public hearing, May 22, 2019 (see also full written comment provided)**

I am a resident of Brunswick and own property adjacent to Mere Point Oyster Company, but make these comments as a professional in marine resource management. New uses of common resources often lead to conflict. I am concerned that growth is too fast. It is critical to look down the road and consider private use of public waters. More consideration is needed before further leases are granted. I support the moratorium on leases over 10 acres. I encourage the State to create a master plan and look at areas where aquaculture is suitable and at what scale. The tourism economy is critical and the heritage and character of Maine coast is important to maintain. I support the proposed language to consider more suitable locations. Areas designated as ecologically important areas are unsuitable for large scale aquaculture leases.

### **Kelsey Fenwick, submitted via email and the public hearing, May 22, 2019**

I am a sternman in Zone F, and I have some concerns about what I am seeing regarding aquaculture in Maine, and its impact on traditional fisheries. I want to state, because I feel this point has been misconstrued greatly- that myself (and the people I work around) are not opposed to aquaculture. I am opposed to the large scale leasing, and transferring of these leased Maine waters, at the discretion of the DMR.

Given the tenfold increase in aquaculture lease applications this past year, I am here to request the DMR to make the petitioned changes regarding the leasing process. Currently, there is not a level playfield for fishermen. The burden of proof falls on the fishermen to prove where and when they fish, relative to a lease site. The applicants should be responsible for communicating and collaborating with commercial fishermen to ensure the proper location is selected. Fishermen should not have to testify in a public hearing and disclose landings information to prove the prospective location is actively used.

Aquaculture site locations and size impact multiple parties:

-Location is of importance for the farmer and the quality of their product -Lease locations impact commercial fishermen (lobstermen, bait fishermen, and other aquaculture farmers) if that location is no longer usable.

-Wildlife populations and habitats are also influenced by lease site locations, because the mere addition of anything changes the surrounding environment.

-Recreational boaters and fishermen, sailors, kayakers, etc. are also impacted due to losing open water areas from large lease sites -Shore front land owners are also impacted by aquaculture lease sites- their valuable, highly taxed properties' views are compromised by surface aquaculture.

It appears the state of Maine is promoting aquaculture over supporting its \$500 million dollar a year lobster fishery. The wholesale distribution network of Maine lobster dealers contributes more than \$1 billion to the States' economy and supports more than 4,000 jobs alone. Our lobster fishery's direct and indirect economic impacts can be felt throughout the state. If we continue to create more obstacles for fishermen, while slowly reducing Maine waters for them to fish, it is entire communities that will suffer.

When the DMR has approved a lease, that area is no longer accessible to those who fish, recreate, or enjoy the area; it becomes property of the aquaculturists. This current trend seems to be displacing a lobsterman, and replacing with an oyster farmer. However, with proper site selection, collaboration, and support from DMR regarding rule making, aquaculture and traditional fisheries can coexist in Maine.

It benefits everyone to have the proposed criteria. DMR, please consider whether there are other locations near a proposed lease site that could accommodate the proposed activities while interfering less with existing and surrounding uses of an area. Maine's commercial fishermen are already facing enough challenges and new restrictions from the Federal level- I hope our state does what it can to protect these fisheries and the thousands of families who rely on the Gulf of Maine to earn a living.

**Mike Breton, Scarborough, comment at public hearing, May 22, 2019**

I am a graduate of Maine Maritime Academy and I have made my entire life's living on the sea as merchant marine and clammer. I see a land grab with leases. People are not being notified about what may be impacting them, which is against the rules. All of a sudden someone is setting up right where you fish. Aquaculture started when lobstermen started fishing. Definition covers more than kelp or mussels or clams. Lobstermen are also farmers, watching out for the lobsters. With \$500M coming into state coffers, those funds provide expenses for fisheries management. We are taking a chance on damaging the system of lobstering, which works well. Growers come in and don't intend to use the leases, they will just sell them to someone else. We need to stop this before it gets out of hand, and it's already out of hand.

**John Powers, Great Island, Harpswell, comment at public hearing, May 22, 2019 (see also full written comment provided)**

I have lobstered since age 18 in Maquoit Bay. It is rich habitat with eelgrass, providing a steady source of income for myself and others. There is a new oyster hatchery being constructed, looking out over pristine environment with fishermen plying their trade in a sustainable fashion. Tourism and lobstering go hand in hand and drive the economic engine. The aquaculture industry is fledgling even though it has been around a long time. Growing oysters in black tubs is antiquated. Sites exclude lobstermen and seiners. Tourists may be able to get around them in kayaks. I reached out to lease applicant with the proposed experimental lease, and was told it was too late in process. If I am unable to influence an experimental lease, how could I influence a standard lease? Lobster rebounds time and again from changing regulations, but we can't continue to fish without access to the bottom. I am asking for a

moratorium on leases over ten acres. The burden of proof needs to be on applicant, lobstermen should not have to defend their turf over and over again. The traditional fisheries are under attack.

**Crystal Canney, Knight Canney Group, comment at public hearing, May 22, 2019 (See also written comments submitted on behalf of multiple individuals).**

I am the contact on the rule-making petition. I am providing letters from across the state from lobstermen concerned about the current aquaculture process. The Lobstermen's Union has supported this petition. There is a range of towns represented by these concerns. I've been asked to read these letters but will provide some highlights: Robert Ingalls: Growing issue with some aquaculture operations. We need better rules and regulations around this process. Bigger projects are more likely to be sold to out of state interests. Brian Cates: Not anti-aquaculture and have applied for a lease. Do not support development at the cost of every other industry. John Drouin: Supports petition. Sonny Beal: big companies seem to be able to do whatever they want and wherever they want. Others: Mussel farm near me was abandoned but has not been cleaned up. Need to balance. Support ten acre limit. Pitting aquaculture against lobstermen. Text from Representative Alley: can't impact lobster negatively. I support finding the right size and location.

**Rocky Alley, Maine Lobstering Union (IMLU), comment at public hearing, May 22, 2019**

I support the petition to limit leases to ten acres or less. We had a hard fight on a site proposed for Jonesport-Beals and the proposal was withdrawn. We are not against aquaculture, but against the ways they go about getting applications verified and approved. A lot of fishermen are here today, on behalf of their jobs. There are a lot of rules and this is another problem. We need to straighten this out for both. We have battled with net pen sites and complain all the time, evidence of dead lobsters, share concerns about the loss of access to area with others in the room. Lobster fishermen should be able to continue to operate. Do the right thing by the right people—lobster fishermen.

**Kim Ervin Tucker, Legal Counsel for Maine Lobstering Union, comment at public hearing, May 22, 2019**

I am joining what Rocky said. I went to scoping for the Cooke expansion with over 100 fishermen. As part of suitable locations, I hope you will consider synergy of existing aquaculture facilities and commercial fishing. Cumulative impacts should be addressed but are not adequately addressed by proposed language. After aquaculturists depart, the bottom is dead from accumulated waste. There is no bond required so there is permanent loss of bottom to fishery. The whale issue is squeezing people in with larger trawl requirements, and now aquaculture is squeezing them. The moratorium needs to be imposed. There should be consideration of large clean up bonds for aquaculture.

**Julie Eaton, Captain from Deer Isle, speaking for Zone C fishermen and for friends from Maquoit Bay, comment at public hearing, May 22, 2019**

There is a huge concern from fishermen, and as others have mentioned, fishermen have a lot coming at them. The guys in Zone C are just learning about aquaculture process and have limited sites in our area, but 40 or more acres is perceived to be ridiculous. Aquaculture needs additional oversight and regulation, and needs to be fair. I am asking you to please support petition.

**Josh Saxton, Commercial fisherman and purse seiner, comment at public hearing, May 22, 2019**

DMR does not make an adequate effort to see if there is conflict with existing uses. Fish and lobsters move, and if not present when site visit is conducted, it doesn't mean they aren't there other times of year. LPAs can be a hobby, as was said at Zone F meeting, and if they abandon gear, it impacts our ability to be fishing and provide bait, it has a broader impact. Not enough insight put into this process. There are plenty of areas not used by existing, proven fisheries.

**Peter Vaughn, Brunswick resident on Mere Point, comment at public hearing, May 22, 2019**

(Written comment provided)

I am a member of Maquoit Bay Preservation Group, who all unequivocally support petition and rule change. The ocean belongs to everyone. I can't imagine why anyone would oppose a process to allow the Department to consider whether another location could better balance competing uses.

**Chris McIntire, Orrs Island, lobsterman and Zone F Council member, comment at public hearing, May 22, 2019**

I support the proposed rule changes and ten acre moratorium on lease sites. The concern is that the Department has not given enough concern to the growth of the aquaculture industry and impact it has had. I was confused when the Zone Council F meeting, DMR offered numbers to show industry wasn't growing but it showed steady growth. The lobster industry is continually coming to Department and saying there is a problem, and Department keeps saying it is steady growth. With regard to the ten acre maximum on leases, the State should support small family farms, and should not want to see large corporate farms. I would like to increase traps but state has said this is what is suitable and sustainable for this fishery. There is no point of saturation for the aquaculture industry. The only way DMR can deny an application is if it unreasonably impacts certain uses. The displacement of an existing industry is unreasonable.

**Ernie Burgess, Chebeague Island, comment at public hearing, May 22, 2019**

This is my 67<sup>th</sup> year on the water. I started at age 10 with my father. I have done just about everything on the water, groundfishing, lobster, etc. I have seen a lot of changes. I have noted that lobster fishermen are peculiar in that they are willing to sacrifice for the sake of their industry. They want to see the fishery go on. I am speaking for younger fishermen. The main objection is not about aquaculture, it's about leasing. When the Commissioner grants a lease, he is changing the public domain into private property. There are no limits on who can get a lease—it can be anyone from anywhere, as long as you meet criteria. I have been displaced by leases from areas I fished for years, including from a lease that showed one of my buoys in a photo submitted by the applicant as part of the lease application process. I'd like to see younger fishermen have the same opportunity that I had as a young man. I want to see people have unimpeded use of the public domain.

**Jane Waddle, Harpswell, comment at public hearing, May 22, 2019**

My husband and brothers are fishermen, my family is a dealer. I support this moratorium.

**George Prince, Harpswell, lobsterman for over 40 years, comment at public hearing, May 22, 2019**

I am not opposed to aquaculture, not a fan of overregulation. 100 acres, 10 acres, even 1 acre is a big footprint for a single person to have control of in the ocean. 1 acre = 43k square feet. Space used by my traps is shared by many others. Gillnetters and seiners can use space above my traps, dragnets can tow nearby.

**William Morrell, submitted via email, May 23, 2019**

I am very much in favor of the development of aquaculture in Maine however I am also in favor of the petition received by the DMR on March 20, 2019 to modify portions of the aquaculture lease regulations. My thoughts on the two provisions in the petition are as follows: New Decision Criteria to Consider other Sites. Although it would require more effort on the part of the Department, getting the best lease sites is critically important. This is especially true for large sites. The ultimate locations need to work for all who use and make their living on the water. A good example of this conflict is playing out

in the Maquoit Bay proposed oyster lease. The lobstermen are up in arms over the potential loss of use of traditional waters from which they derive their income. Can anyone blame them? The residents adjacent to the site are legitimately questioning why it's located closer to the side of the bay that has the most intense residential use, docks and boating activity. There should be a process that produces the best location given the site specifics.

#### Moratorium on Applications Greater than Ten Acres

I was not involved with this petition nor am I a signatory on it. I am very surprised though that the petitioners chose ten acres. Ten acres is over seven football fields in size. In my opinion, that is a very large area. It's hard to imagine that anyone starting an aquaculture site needs to encumber more than ten acres.

#### **Doug Morrell, submitted via email, May 27, 2019**

I am in favor of aquaculture in Maine and I buy oysters from Mere Point Oyster Company, but I am also in favor of the recent petition asking the DMR to revise the outdated lease criteria. I am in favor of both parts. I think it makes sense for the department to consider possible better locations nearby, and I think ten acres is large enough. In fact, if my memory is correct Mere Point Oyster Company told me a while ago that all of their current farmed area combined would add up to a total of one acre.

#### **Mark Wyman, submitted via email, May 31, 2019**

There are 3 main components to successful aquaculture in Maine; business, ecology and society. When these are in harmony a win-win-win balance is created where the industry will thrive. We want Maine aquaculture to succeed and to that extent, all 3 legs must be robust.

- 1) Mainers understand the economies of business and has shown that it knows how to manage public resources.
- 2) We need continuing work on the science of our marine environment and aquaculture engineering, but we have a good base and the potential to become expert.
- 3) The 3<sup>rd</sup> leg is a bit more thorny ... society. We must tackle societal implications. Without it the industry will wallow in controversy and cost, and limp along as a pitfall that businessman and investors will avoid. The industry needs the support of the other users of the marine resource: the lobsterman, commercial fisherman, recreationists, tourists and property owners. Working towards consensus with the social aspects of aquaculture is the path forward to a win-win-win industry. Synergistic collaboration with other users of the public resource promotes excellence. Stubbornly plowing forward with a process that we know is lacking will relegate aquaculture to a pathetic costly burden. Enhancement of the process by energizing the 3<sup>rd</sup> rail is the next step in the creation of world-class aquaculture that will provide serious economic return, complementary ecological health and successful societal benefit.

#### **Hallie Templeton, Friends of the Earth, submitted via email, May 31, 2019**

Thank you for the opportunity to comment on the Maine Department of Marine Resources (DMR) rulemaking proposal to modify portions of its Aquaculture Lease Regulations. We submit these comments on behalf of Friends of the Earth to specifically address the issuance of large-scale marine finfish aquaculture permits in the State.

Friends of the Earth fights to protect our environment and create a healthy and just world by promoting clean energy and solutions to climate change, keeping toxic and risky technologies out of the food we eat and products we use, and protecting marine ecosystems and the people who live and work near them. Friends of the Earth's sustainable aquaculture campaign specifically focuses on highlighting the

dangers of industrial ocean fish farming and supporting sustainable seafood production alternatives. We are nearly 1.7 million members and activists across all 50 states – including over 11,770 in Maine – working to make these visions a reality. We are part of the Friends of the Earth International federation, a network in 74 countries working for social and environmental justice.

We write in support of the recent petition to require agency rulemaking, signed by a critical mass of qualified Maine voters. In short, this petition seeks an immediate moratorium on all pending aquaculture lease applications greater than 10 acres in size while DMR reconsiders its regulations determining where these large-scale facilities can operate, and whether alternative locations or lease boundaries may be more suitable for the State’s public waterways. We specifically support the requested actions as to large-scale marine finfish aquaculture permits.

Marine finfish aquaculture – also known as industrial ocean fish farming – is the mass cultivation of finfish in coastal waterways, in net pens, pods, and cages. These are essentially underwater factory farms in our marine ecosystem, with devastating environmental and socio-economic impacts. As detailed below, these underwater factory farms impose a significant risk to Maine’s public waterways and native wildlife, including direct harm to its seafood harvesters.

Maine’s coastline is home to myriad aquaculture activities, including bivalves (e.g., clams, oysters), plants (kelp, algae), and finfish (most notably, Atlantic salmon). Each type of aquaculture in Maine is different, and the minimal impacts of bivalve and plant aquaculture are dwarfed by those of marine finfish aquaculture. Indeed, plant and bivalve cultivation can be beneficial for the ecosystem when sited and scaled appropriately. These practices do not require any type of feed or medication. Plants and bivalves do not create waste or spread parasites or disease. In fact, these species have the effect of filtering excess nutrients and other toxins, cleaning the water in which they live.<sup>5</sup> On the other end of the aquaculture spectrum, marine finfish aquaculture imposes each of these impacts, causing lasting and unavoidable harm to the marine ecosystem and coastal communities.

### **Industrial ocean fish farming harms the environment, public health, and the economy.**

There is no doubt that marine finfish aquaculture has long-term, significant adverse impacts to Maine’s coastal resources and uses. As detailed below, the impacts are varied and widespread, including significant environmental and socio-economic harms.

Environmental harm: The environmental problems associated with industrial ocean fish farming are extensive. These practices routinely result in a massive number of farmed fish escapes that adversely affect wild fish stocks. As recent as August 2017, one of Cooke Aquaculture’s industrial ocean fish farms in Washington State spilled more than 263,000 farmed Atlantic salmon into Puget Sound. Long after the escape, *many of these non-native, farmed fish continued to thrive and swim free* – some were even documented as far as 100 miles from the farm.

Sadly, rather than attempt to prevent escapes like these from occurring altogether, corporations controlling industrial ocean fish farms can simply incorporate escapes into their business plans and tax filings as losses – this is nothing but a waste of limited government resources and taxpayer dollars. Escaped fish increase competition with wildlife for food, habitat and spawning areas. Reliance on the sterility of farmed fish is *never* 100% guaranteed; consequently, the “long-term consequences of continued farmed salmon escapes and subsequent interbreeding . . . include a loss of genetic diversity.”

Because these facilities confine large, dense populations of finfish, they become a breeding ground for parasites and disease. These fatal biohazards can spread rapidly to wild fish stocks when farmed fish escape, or even when a wild fish swims nearby a facility. The release and spread of pathogens are a dangerous discharge that should be scrutinized by DMR in permitting and siting marine finfish aquaculture facilities. For example, to control sea lice infestation, marine finfish aquaculture facilities administer the chemical emamectin benzoate (marketed as the pharmaceutical SLICE), which has caused “widespread damage to wildlife,” including “substantial, wide-scale reductions” in crabs, lobsters and other crustaceans. Indeed, in Nova Scotia, an 11-year-long study found that lobster catches plummeted as harvesters got closer to marine finfish aquaculture facilities. In addition, the use of antibiotics in marine finfish aquaculture facilities is contributing to the public health crisis of antibiotic resistance. For farmed fish, antibiotics not only leave residues in the farmed seafood, but they also leach into the ocean, contaminating nearby water and marine life. In fact, up to 75% of antibiotics used by the industrial ocean fish farming industry are directly absorbed into the surrounding environment.

Another vital concern is the discharge of excess food, feces, antibiotics, and antifoulants associated with industrial ocean fish farms. Releasing such toxins negatively impacts water quality surrounding the farm and threatens surrounding plants and animals. These underwater factory farms can physically impact the seafloor by creating dead zones, and change marine ecology by attracting predators and other species to congregate around fish cages. These predators – such as birds, seals, and sharks – can easily become entangled in net pens, harassed by acoustic deterrents, and hunted. Indeed, an industrial ocean fish farm caused the death of an endangered monk seal in Hawaii, which was found entangled in the net.

Large populations of farmed fish require an incredible amount of feed. Most industrially farmed finfish, like salmon, are carnivorous and need protein in their feed. This often consists of lower- trophic level “forage fish,” which are at the brink of extinction. Lately, aquaculture facilities are relying more on genetically-engineered ingredients such as corn, soy, and algae as substitute protein sources, which do not naturally exist in a fish’s diet. Use of these ingredients means more environmental degradation and a less nutritious fish for consumers.

Socio-economic harms: Industrial ocean fish farming also takes a toll on society and the economy. Large swaths of marine waters in which industrial fish farms operate are no longer available for commercial and recreational fishing, ship traffic, renewable energy infrastructure, and tourism-related activities. These competing activities, especially tourism, generate significantly more revenue for coastal communities than industrial fish farms. Moreover, these farms are typically owned by mega-corporations that are willing to endanger the ocean and its inhabitants in order to turn a profit.

Large-scale aquaculture leases also lead to greater corporate control of food production, which damages small, family-owned fisheries and associated industries and workers. Massive underwater factory farms produce the highest amount of fish at the lowest cost possible, which places downward pressure on fish prices across-the-board. This reduces the price that most consumers are willing to pay for wild and sustainable seafood products, which impacts the well- being of sustainable seafood producers as well as associated industries and workers. Further, industrial seafood farms threaten the integrity of wild fish populations and ocean ecosystem that are key to the wild-caught fishing industry’s success, and the coastal communities they support.

Cooke Aquaculture – the fifth largest salmon farmer in the world, and the single largest salmon farmer outside of Norway – owns and operates the vast majority of marine aquaculture facilities for Atlantic



salmon in both Washington State and Maine, as well as a growing number of seafood processors, fish smokers, and other sectors of the seafood industry. Washington State officials concluded that Cooke misrepresented vital details surrounding its August 2017 salmon spill. For instance, Cooke initially blamed a recent solar eclipse instead of owning up to improper cleaning and maintenance of the facility. It also under-reported the number of escaped fish, and attempted to purchase tribal nations' silence and cooperation so it could remain active in the State. The catastrophe sparked state-led investigations of Cooke's other facilities in Washington, uncovering significant violations of law and leading to the termination of operating permits. Needless to say, Cooke's Atlantic salmon facilities are now being phased out of Washington State, and we urge Maine to heed caution for its own coastline.

Marine finfish aquaculture facilities also pose a highly hazardous working environment with a high rate of injury, illness, and death for employees. Offshore aquaculture facilities are exposed to severe ocean conditions, including strong wind and wave activity from all directions, short and steep wave patterns, strong currents, seasonal anoxic (oxygen-lacking) conditions that can prevent operators from being able to access their cages, ranging in days to weeks.<sup>14</sup> When operators do access the facilities, they could easily be caught in any of the above conditions, without ready access to first aid or other treatment. Moreover, safeguards put into place at these facilities are often woefully insufficient to properly prevent injury.

A review of occupational hazard reports filed for Cook Aquaculture facilities in Washington State and Maine exemplify the threats that workers often face on aquaculture facilities. Complaints have been made with the Occupational Safety and Health Administration regarding lack of training to utilize heavy equipment, such as forklifts and rigs, and includes poor maintained of such equipment (*e.g.*, forklifts without seatbelts; unprotected runaways).<sup>15</sup> The administrative workplace safety cases filed against Cooke Aquaculture's facilities in Maine include an employee who suffered amputated fingers when trying to access the barge from the fish pen and grabbed a hoist line to help himself up.<sup>16</sup> The serious violation was caused because the facility did not adequately recognize hazards of moving equipment and falls while accessing a barge. Marine finfish aquaculture facilities have a clear pattern of placing workers in unsafe environments, threatening serious injuries and death.

As described above, industrial ocean fish farms inherently harm the environment, society, and the economy – these harms cannot be avoided or minimized. Cooke Aquaculture has reiterated as recently as August 2017 that fish spills will happen, and in massive numbers. Maine's wild fish stocks are threatened with disease, parasites, and increased competition from escaped farmed fish. Untreated waste and other toxins are being directly discharged into Maine's waterways, and facility workers daily face extremely unsafe working conditions.

We urge DMR to consider the above problems associated with marine finfish aquaculture as it undertakes the proposed rulemaking to modify permitting decisions. In its consideration of suitable locations for proposed aquaculture leases, DMR should acknowledge that many of the harms and disruptions caused by marine finfish aquaculture cannot be avoided or mitigated simply through a change of location. The only way to truly protect Maine's coastline, wildlife, and coastal communities is through removing marine finfish aquaculture from its waterways entirely. Thank you for the opportunity to submit these comments.

**215 individuals submitted the following form email during the comment period:**

I was excited to hear that DMR has proposed to change its regulations for permitting large-scale aquaculture facilities. I fully support this important change and encourage DMR to do all it can to formally implement the proposal.

I am extremely concerned that corporations operating marine finfish aquaculture facilities ignore the significant impacts that these factory fish farms could have on the environment and protected species. I do not support the growth of this industry and urge you to take a close look at whether and where large-scale marine finfish aquaculture facilities should operate along our shores.

There are several inherent impacts from the marine finfish aquaculture industry that cannot be mitigated or avoided. No amount of environmental and socio-economic safeguards will sufficiently protect the ocean ecosystem, coastal communities, and consumers. I am disturbed over the impacts this industry is causing to our wild-capture fishing industries and other marine- and coastal-reliant communities. Because of marine finfish aquaculture in Maine, our marine life (and our wild seafood harvesters) are suffering from a degraded ocean ecosystem. Further, permitting massive aquaculture facilities in our waters has privatized our public waterways, preventing access by others.

I urge you to do everything you can to prioritize implementing the proposed rulemaking for large-scale aquaculture facilities, and urge you to remove marine finfish aquaculture operations from our waterways.

**Maquoit Bay LLC, submitted via email, May 31, 2019**

### **1. The Department Can and Should Adopt the Proposed Rule**

The Mere Point Oyster Company (“MPOC”) has submitted comments asserting that the Department lacks the authority to adopt the proposed rule and to make it retroactive to MPOC’s pending application. Both assertions are wrong as a matter of law. MPOC does not suggest that the proposed rule is bad policy, nor could it. The consideration of whether other suitable locations would have a lesser impact on existing or surrounding uses is fundamental to determining whether a particular impact is unreasonable. Such consideration makes common sense, and there is no rational basis to refuse to do so.

Indeed, the consideration of practical alternatives in the surrounding area is required by the very statutes that delegate authority to the Department to grant exclusive private leases of land owned by the State in trust for the public. The Department is statutorily required to “conduct an assessment of the proposed site and surrounding area” and “may grant the lease” only if it meets statutorily identified “conditions as defined by rule.” 12 M.R.S.A. § 6072 (5), (7- A). The Department may not grant a lease unless the applicant demonstrates that the lease “will not unreasonably interfere” with existing and surrounding uses of the area. 12 M.R.S.A. § 6072 (7-A); 13-188, CMR Ch. 2, § 2.37. The Maine Supreme Court has said that when another statute imposed the identical standard of “will not unreasonably interfere” with enumerated uses, then “consideration of practicable alternatives to a proposed project is a factor that should be balanced” by the agency implementing that standard. *Uliano v. Bd. of Env'tl. Prot.*, 2005 ME 88, ¶ 13, 876 A.2d 16, 19–20. So too here. If the “surrounding area” contains a “more suitable location in the vicinity of the proposed lease that could accommodate the proposed lease activities and that would interfere less with existing and surrounding uses of the area,” then, by definition the interference of the proposed site with those uses is “unreasonable.” Ignoring those other suitable locations would be reversible error under the current statutory scheme. What this rule change

would do is simply make explicit what the Department should already be considering based on the express statutory criteria.

Importantly, the case of *Uliano v. Board of Environmental Protection* rejects the very argument advanced here by MPOC. MPOC argues that consideration of “Other Suitable Locations” would “create new leases standards beyond those established by statute” that would exceed the Department’s rulemaking authority. To the contrary, in *Uliano* the Law Court said that interpreting a “no practical alternatives” standard as an “independent, determinative criterion” had no basis in law. *Id.* at ¶ 16. Instead, the Court explained that considering practicable alternatives is a necessary factor inherent to the statutory standard of “will not unreasonably interfere”:

The specific standard at issue in this case is described in [Title 38,] section 480–D(1), which provides that to obtain a permit for a proposed project an applicant must demonstrate that the project “will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.” 38 M.R.S.A. § 480–D(1).

Whether a proposed project's interference with existing uses is reasonable depends on a multiplicity of factors, one of which is the existence of a practicable alternative. A balancing analysis inheres in any reasonableness inquiry. Therefore, the Board's consideration of practicable alternatives to a proposed project is a factor that should be balanced in its section 480–D(1) analysis.

*Id.* ¶ 13 (internal citation omitted). Thus, any failure to adopt the proposed rule and apply such an analysis to all pending applications, including that of MPOC, would be to ignore a necessary factor inherent in the existing statutory scheme.

Indeed, it is ironic that MPOC cites to *Conservation Law Found., Inc. v. State, Dep't of Env'tl. Prot.*, No. CIV.A. AP-98-45, 2000 WL 33675692 (Me. Super. Aug. 4, 2000) in support of its contention, because it actually suggests that it would be reversible error for the Department *not* to adopt the present rule. That Superior Court decision addressed the same “will not unreasonably interfere” standard that the Maine Supreme Court in *Uliano* later said “should” include “consideration of practicable alternatives.” And what the Superior Court in *Conservation Law Found., Inc.* found exceeded the agency’s rulemaking authority, and was arbitrary, capricious and an abuse of discretion, was the agency’s adoption of rules that did not include a project-specific analysis of practical alternatives but instead provided a curtailed review in order to “save DEP money and staff time.” *Id.* at \*8. Thus, if the Department here attempted to rely on such a rationale to avoid adopting the proposed rule, such an action would similarly be held to be arbitrary, capricious and an abuse of discretion.

### **The Department Can and Should Make the Proposed Rule Retroactive to MPOC’s Application**

After misstating the law regarding the agency’s authority to adopt the proposed rule, MPOC next argues that “[e]ven if the Department had the authority to enact such a rule, the rule could not apply retroactively,” again misstating Maine Law. MPOC cites to a case quoting a rule of statutory construction that applies only when an enactment is silent as to whether it applies retroactively. An explicit statement of intent to apply “a provision to pending proceedings, is sufficient to overcome the general rule of [Title 1 M.R.S.] section 302.” *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 21, 856 A.2d 1183, 1191. Indeed, as explained above, under *Uliano* and *Conservation Law Found., Inc.* it may be reversible error for the Department to refuse to consider other suitable locations as a necessary factor in the multiplicity of factors that inheres in the reasonableness standard mandated by the current statutes.

## **The Aquaculture Leasing Statutes Provide an Even More Compelling Case To Consider Other Suitable Locations Than the Statute in *Uliano***

The Department's current practice to look only within the four corners of the lease application appears premised on a situation, not applicable to aquaculture leases, where an applicant has some right, title or interest in a proposed location that is different from its interest in the surrounding area. That is the case under the statute analyzed in *Uliano* that nonetheless required a review of practicable alternatives. That is not the case where both the lease area and the surrounding area are owned by the State in trust for the public. It would make no sense for the State to refuse to consider a more suitable location, and to require the applicant to make a showing that they have picked the one with the fewest impacts on existing uses. No reasonable landlord would abnegate that responsibility, and to do so would violate the public trust principles that constrain the Department's statutory ability to lease this State-owned resource.

Unlike a typical permit application, the applicant for an aquaculture lease is not simply requesting a permit to use land in which it holds any right different than or superior to any member of the public. Instead, the applicant seeks a lease for the commercial cultivation of marine organisms that grants exclusive private commercial use of a public resource. In Maine, subtidal land (land below the mean low tide line) is owned by the State and held in trust for public uses. *McGarvey v. Whittredge*, 2011 ME 97, ¶ 14, 28 A.3d 620, 625. Any restrictions on public uses are construed in favor of the public and such restrictions on public uses are not to be lightly implied. *Norton v. Town of Long Island*, 2005 ME 109, ¶¶32-35 883 A.2d 889, 899-900. Restrictions on the public trust is, at its core, a legislative function. Here, the Legislature has delegated authority to the Department of Marine Resources to restrict these public uses in a very narrow set of circumstances by authorizing the Department to grant exclusive lease rights in certain subtidal lands for the purpose of aquaculture (aquatic farming) of certain marine organisms. See 12 M.R.S.A. § 6072.

The ability to temporarily divest the public of their rights is an awesome responsibility delegated to an executive agency. The Department may do so only if it finds that the proposed lease "will not unreasonably interfere" with certain specified existing and surrounding uses. On land owned by the applicant and not the State, *Uliano* tells us that one of the factors the Department must consider in making that determination is whether there is a practicable alternative. To refuse to consider such a factor in the context of an aquaculture lease on State-owned subtidal land would be to abnegate an inherent responsibility of the State as trustee for all public uses, not the private commercial desires of MPOC and all aquaculture lease applicants.

On land, incompatible land-uses are separated from each other through zoning. In contrast, Maine's oceans are not zoned to designate certain areas as appropriate for industrial scale aquaculture and other areas for commercial fishing, smaller-scale aquaculture or other common public activities like recreational fishing, swimming, boating, or meditative and spiritual contemplation. Consideration of the divestiture of this public trust resource requires DMR to consider all "common public uses" of the site and surrounding areas and put those interests above the private financial interests of applicants or abutters. *Harding v. Comm'r of Marine Res.*, 510 A.2d 533, 537 (Me. 1986); 12 M.R.S.A. § 6072(7-A). Thus, DMR must consider the unique circumstances of each proposed lease location and "surrounding areas" and determine whether the existing public trust and other uses of the area make that site an appropriate area to temporarily divest the public trust in that area through the grant of an aquaculture lease for a term of years. 12 M.R.S.A. § 6072 (5), (7-A). It is impossible for the Department to make such a

determination without considering other practicable alternatives in the vicinity. *See Uliano v. Bd. of Env'tl. Prot.*, 2005 ME 88, ¶ 13, 876 A.2d 16, 19-20.

That is why, here, the Department must adopt the proposed rule and apply it to all pending applications, including MPOC's proposed 40-acre industrial-scale aquaculture facility in Maquoit Bay.

**Andrew Ulrickson, submitted via email, June 1, 2019**

I believe that there should be a moratorium on all pending aquaculture leases pending until something can be done to better work with the lobster fishermen. The lobster fishermen are getting nailed by whale rules in one direction and leases from the other. There needs to be more consideration taken into for a fishery that has been established for decades and that has done its fair share of jumping through hoop. Please take this into consideration.

**Opposed**

**Colleen Francke, comment at public hearing, May 22, 2019 (see also full written comment provided)**

I am a lobsterwoman and owner of Summit Point, a growing aquaculture company helping women in recovery. I am here to speak to the proposed rule on new decision criterion and proposed moratorium. Beginning with the decision criteria, I believe this is unrealistic and would be catastrophic to an already taxed aquaculture program and would open the door to a never-ending cycle of lease displacement. The moratorium would impact my two proposed pending leases. My two leases are specifically designed to be non-exclusive, and would help educate surrounding communities that aquaculture can be developed in a way that does not adversely impact commercial fishing, recreation or landowners. As a year round lobsterwoman, I fear for coastal communities in the face of climate change. We are facing substantial regulatory changes due to right whales. Lobstermen need to diversify into new and sustainable crops. A ten acre kelp farm is not large enough to be economically viable. A ten acre limit would limit growth of a burgeoning economy that has great promise for coastal economy. Not all aquaculture systems are designed the same. Semi-permanent gear should not be treated the same as techniques that have more visible year round impacts and exclusivity. This rule is an inappropriate response to an isolated dispute in Maquoit Bay. The retroactive nature indicates it is a targeted issue and our proposal has been pulled into this bullseye. Aquaculture is not a threat to business as usual but an opportunity. Maine could become a leader in mariculture. I do not support this proposed rule change or the moratorium, or retroactive application of this proposal.

**Bill Mook, Mook Sea Farms, comment at public hearing, May 22, 2019**

I have been in business 35 years on Damariscotta River. Bonds should be required and enforced, I agree with that point raised, and I agree leases should not displace commercial fisheries. My concern with the addition of new criteria is it would subvert the existing pre-application meeting and the scoping sessions. I know some people will do anything to kill a lease and some will not say anything at constructive opportunities in earlier meetings. In terms of a moratorium—we are faced with rapid and profound environmental changes. Aquaculture is regulated under existing laws and regulations and provides an opportunity to diversify the coastal economy without unreasonably impacting other uses, and in some cases can enhance existing uses. What would be precluded by this rule change—we employ 33 people, 25 of whom are FTE, receive health insurance and benefits, and are young, most under 50 with a full range of educational history. We are generating millions of dollars in benefit to the midcoast economy. People entering industry today have the benefit of know-how developed by

companies like mine and can build their businesses faster. Do we build a vibrant new economy while generating high quality seafood? The strength of our industry is in its diversity, wild harvest and growers. The current regulatory framework is up to the task and was developed over many years.

**Peter Piconi, Island Institute, comment at public hearing, May 22, 2019 (See also full written comment provided)**

The existing lease decision criteria provides sufficient consideration for existing uses in statute and Chapter 2 regulations. Adding criteria is not needed because if site interferes, the Commissioner can and should deny a lease. A significant and inappropriate burden would be placed on DMR by this proposal. Retroactive application is not appropriate for applicants who submitted under existing regulations. The Island Institute encourages industries to come together on issues of mutual importance, and stands ready to support and facilitate these conversations.

**Patrick Lyons, Eaton Peabody on behalf of Mere Point Oyster Company, comment at public hearing May 22, 2019 (see also full written comment provided)**

DMR lacks authority to enact review criteria not authorized by the Legislature in statute. Here the DMR can't create new lease criteria the Legislature has been clear in establishing. The current regulations comply and are consistent with criteria established in statute. A court would find this ultra vires and I provide case law to support. Retroactivity is also prohibited by Maine law and violates due process of applicants. DMR also lacks authority to impose a moratorium on leases over 40 acres. Authority must be expressly granted by the Legislature.

**Mike Gaffney, Georgetown, comment at public hearing May 22, 2019**

I am a riparian landowner, recreational lobsterman, boater and oyster farmer. I get the sense that this request to modify the rules is overly weighted on one bad experience but I want to offer an example of how it has worked well in Robinhood Cove. A request was made by ten local clambers for a 20 acre lease. The harbormaster supported it. Many oyster farmers in this cove are fishermen trying to diversify. WE know where fishermen like to put their gear, which is different from where oyster farmers want to put gear. It seemed like there would not be much conflict and there has not been. There was an issue with navigation and DMR responded by reducing size of lease, which is now being shared by ten farmers. It would be more economic burden on them to apply for ten separate leases. The existing process can work and work well. I don't know if has failed in other places, but the nature of fisheries is that they are not essentially in competition and this should be able to be worked out. I think it's problematic for DMR to reassign the area. Not every body of water is right for aquaculture so I just don't see how that would work.

**Fiona de Koning, Acadia Aqua Farms, submitted via email, May 20, 2019**

I would like to take this opportunity to oppose the petition to change the rules pertaining to your decision making criteria for granting aquaculture leases. This petition seems to me to be yet another effort to circumnavigate the leasing process in Maine by landowners who oppose the Mere Point Oyster farm application. The existing process already requires many considerations including existing uses such as fisheries activity and environmental impacts. With our experience from farming in Europe I can testify to the fact that our leasing system here in Maine is rigorous and effective, which is as it should be. This is contrary to what is being asserted by the landowners' opposition group.

The request of a moratorium on any lease above 10 acres, particularly as they are wanting this to work retro actively back to the Mere Point application date, is again another maneuver to raise up a private

property stand point against the policy for our State managed shared waters and uses, following the public trust doctrine here in Maine.

I am afraid that the NIMBY assertions would proliferate and it would make it impossible to find a site that fits all the environmental, logistical, production method and social factors that farmers need to be ecologically responsible, socially sensitive and commercially successful. I would argue that the policy decisions around aquaculture in Maine have been and continue to be, properly debated as can be seen by the focus of the Sea net group as one of the more recent studies for example.

There is no emergency here. The hot button issue has been blown up out of proportion by some landowners who have focused on their personal belief about their property rights, which is their prerogative, but it does not constitute an emergency for policy changes for aquaculture in Maine. Maine has already decided and the conversation will continue in calm and strategic manner as it should.

Our company would not thrive if we were limited now to 10 acres lease sites. It is inefficient in every way I can imagine for seabed culture of shellfish. We have slowly built this small company up so that we were able to entice both of our sons to stay and work full time here on the coast and we need to have sensible policy in order to continue the business into future generations. Thank you for your consideration of this testimony and for the service that you and your staff give to the people of Maine.

**Alex de Koning, Hollander & de Koning Mussel Farms, submitted via email, May 21, 2019**

I would like to take this opportunity to *oppose* the petition to change the rules pertaining to your decision making criteria for granting aquaculture leases. The primary reason I oppose this is because this proposal is yet another attempt at taking an end run around the established rules and regulations with the only goal being to reverse a decision that a rich landowner was not satisfied with. To see the evidence for this look no further than the fact they want to pre-date the change to when the mere point application was in. There is a strong public trust doctrine in Maine and a strong precedent in the Maine Supreme Court that upland views of private property do not constitute a valid reason to reject a lease application. Allowing any individual to change the rules across the entire state just to control the water right in front of their house is quite frankly ridiculous. In addition to this there are already criteria in place that require preferential treatment of existing uses as well as consideration of number and density of aquaculture leases in a given water body.

Requiring the commissioner to suggest other locations that he thinks are more suitable for the lease puts the cart before the horse when it comes to lease site selection. Lease selection is a critical input of the success or failure of any aquaculture business, and many of the reasons that make a lease site good or bad cannot be easily identified or quantified without significant experience in the proposed area, with the proposed species and farming method. As much as the Commissioner is a super star, staying on top of all aquaculture experience for the whole state would be a superhuman task. Resulting in any changes made likely making the farm worse, and inhibiting the slow and steady growth of a sector that has potential to diversify Maine's working water front to be more resilient against changes in the lobster fishery. From my experience working with other aquaculturists, we are all collaborators, and I'm confident none of us would refuse to change the location of our lease without good reason to do so if it was suggested in the scoping session.

When it comes to the moratorium on any leases over 10 acres, this is a blatant attempt to prevent the Mere Point lease from going through which will have significant consequences throughout the state.

Setting an acreage cap on any individual lease only pushes applicants towards applying for many smaller leases, with all the inefficiencies that go along with that and for no real gain to Maine.

**Raenar Flowers, submitted via email, May 22, 2019**

I have a small oyster farm located on the New Meadows River and enjoy being part of Maine Aquaculture and look forward in continuing to do just that. I just recently read over the new rules being propose on aquaculture in Maine and believe this is a bad idea. These new rules will only hurt current farms making operations much more difficult and deter new farmers from getting into the industry. The state of Maine has a great opportunity to capitalize on aquaculture to strengthen our economy and these rules have much more negative impact than positive. Not only would these new rules hurt aquaculture farmers this would put more work on DMR's plate.

**Doug Niven, submitted via email, May 26, 2019**

I am opposed to these rule making changes being submitted. I am a partner in Mere Point Oyster Company and I live on Mere Point overlooking the site where we have applied for an Aquaculture lease. My house has been in our family for three generations. I grew up on the bay, lobstering, clamming, fishing and tuna fishing. I hauled lobster traps around Mere Point (I believe my license number was 8850) during summer vacations from school. Both of my sons have commercial lobster licenses (Tyler #4652 and Cameron #8082) and haul traps to help fund their college education. Unfortunately, I let me license lapse and now, if I wanted to get my license back, I (like so many others) face an arduous process. Aquaculture offers people the opportunity to make a living on the water. In 2015, we (Tyler, Cam and I) started experimenting with Aquaculture. It has been satisfying and rewarding. Last year, we (MPOC) submitted a lease application for an Aquaculture farm in Maquoit Bay, (my front yard) ... this application process has not been easy. We made numerous attempts to reach out to neighbors (my neighbors), stakeholders and lobstermen. Last Spring we asked two lobstermen (John Powers and Tom Santiguida) to arrange a meeting with other concerned lobstermen so that we could discuss our proposal and seek their input. They never responded. Last Summer and Fall, we met with a lot of neighbors. However, two neighbors did not want to meet with us, they were too busy (one purchased his summer home 4 years ago and the other 10 years ago). One of them has invested hundreds of thousand dollars fighting this proposal. He (Paul Dioli) has hired lobbyists, PR Firms, lawyers, specialists and funded an advertising campaign against Aquaculture. Late last year, we organized an 'informative Aquaculture meeting' for the community at the local library. It was extremely well attended ... there was standing room only. We had three experts who volunteered their time to inform the public about Aquaculture. We also organized numerous open houses at our facility last August. Needless to say, we have had numerous meetings with DMR, the neighbors and public. We have hired expert witnesses (eelgrass, sound, visual, navigation, etc...) for our application and have incurred numerous legal fees. The existing process and criteria that DMR has for granting leases is very strenuous and in-depth. The Commissioner is required to consider multiple criteria before granting a lease. Unfortunately, we and the industry have encountered one wealthy landowner who doesn't want to look at an aquaculture farm (NIMBYism). He has managed to 'stir up the pot' by using scare tactics on the commercial fishing sector with lies and misinformation. Lastly, there is no justification for a moratorium on leases greater than 10 acres. Clearly, that request is designed specifically to target our application ... as our opponent has requested that the change be retroactive to our application submission date. Aquaculture has a strong future, PLEASE don't let one wealthy summer resident derail the successful Aquaculture industry! PLEASE, discard these proposed changes.

**Dana Smith, submitted via email, May 27, 2019**



My name is Dana Smith and I have lived and worked on Mere Point for my entire life. I own Smiths Boatyard and Coastal Carpentry. My family and I have spent thousands of hours on the surrounding Bay's either working, recreating, or simply enjoying the vista from my home. My family has been here for generations. I'm writing in opposition to the proposed aquaculture rule changes submitted to DMR by a group calling themselves Save Maquoit Bay. What are they saving Maquoit Bay from? It's obvious what they are trying to save, their own VIEW. Based on the scientific facts, oysters are being used all over the world to help remediate water quality, shoreline buffers, and even for medical purposes. Oyster farming is good for our local bays, our coastal economies, and our dwindling working waterfronts. Lobstering is not nearly as prominent as it was a couple decades ago, and commercial fishing use of the waters is less than it ever has been.

When I heard of this additional attempt of the opposition to stop oyster farm proposal I felt compelled to write a letter in opposition. Any changes to the existing rules that Mere Point Oyster Company had to follow through the hearing process I AM OPPOSED to. I watched and listened through the hearing process and it seemed quite complicated. With expert testimony being given on each of DMR decision criteria, I can't imagine how complicated and expensive this process already is for an oyster farmer applying for a lease. The current DMR decision criteria, covers all the needed basis and is already very complex. I would encourage the DMR to reject these changes in full.

**Jean Herlihy, Tyler Niven, Nicole Niven, Betsy Niven, Cameron Niven, Oliver Smith, Claire Small, and Darcie Couture; submitted via email, May 28, 2019, May 29, 2019, and June 1, 2019:**

I'm contacting you in opposition to the proposed rules pertaining to aquaculture leases for the following reasons:

1. The proposed rule change is another effort by the Mere Point Oyster Company opponents to make an end run around the existing leasing system in attempt to stop the pending forty acre lease application in Maquoit Bay. Under existing laws and rules, the DMR Commissioner is required to consider multiple ecological criteria and competing uses to help ensure the ocean environment and other users are protected. Furthermore, the existing law mandates that "when evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in the area." And that "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.
2. In contrast to the assertions by the opponents, "Save Maquoit Bay", the existing criteria already grant preference to existing uses, especially commercial fishing.
3. The proposed DMR alternative site rule change would create a never-ending loop of 'NIMBY' assertions. Applicants and the DMR could be forced to consider one location after another. In addition, by mandating that DMR considers other alternative locations, applicants may end up forced onto sites that are ill suited for the species or production methods they want to grow and use. Furthermore, the additional requirements of the thin DMR staff will cause a significant fiscal impact. This uncertainty in site selection could result in increased failure rate in the aquaculture industry.
4. There is no justification for a moratorium on leases over 10 acres. That request is designed to specifically target the Mere Point application. This is confirmed by the opponents request that the change be retroactive to that applications submission date. Maine's aquaculture sector has grown slowly, but steadily over the last 20 years adding roughly 220 acres. The size of all aquaculture along

Maine's 5000 miles of coastline can fit within the footprint of the Portland Jet Port. Placing a moratorium on leases over 10 acres may actually force a greater number of smaller leases spread out over a larger area to be submitted. That will increase, not decrease, any potential conflicts with other uses.

For these reasons I would request that the Department consider rejecting these unreasonable changes.

**Savanna Kay, submitted via email, May 28, 2019**

I am contacting you in opposition to the proposed aquaculture rule changes. My name is Savanna Kay, I have grown up on the ocean and I am the daughter of a third-generation lobsterman. I have spent many long hours as my father's stern women. I listen to him talk about the changes he has seen over the years and watch as he struggled to find better fishing grounds in deeper waters. We are witnessing the changes in the ocean environment so many fishermen are not willing to admit. My father has encouraged me to become more involved with aquaculture, as he sees it as the future of our working waterfronts.

I oppose these regulations for many reasons, but none other than the fact that this is an assault on expanding sustainable industry that will help diversify our working waters. The state laws and DMR regulations are already well developed and include criteria that takes into account EVERYTHING from environment to other uses, including lobstering. Establishing a moratorium on all leases over 10 acres will certainly only cause more conflict as farms will continue to space out instead of consolidating, causing more problems with abutters and other users. Having DMR staff determine alternative sites is unreasonable to the farmer applicant and DMR staff. Finally, making the rules retroactive to a lease application in Maquoit Bay, is unjust. It also goes to the heart of the matter, which is the group that is opposing that lease application does not support any aquaculture and their negative PR shows it. I urge you to not support any of these proposed changes.

**Doug Jowett, submitted via email, May 29, 2019**

I am opposed to the subject rule changing which impacts retroactively the application of the Mere Point Oyster Company's good faith application which has already been processed through the regulatory process of your department according to settled law. In all fairness, the Commissioner should rule on the Mere Point Oyster Company's application as the law states. They have met all criteria required. Changing the game mid stream is not proper nor fair.

**Dan Devereaux, submitted via email, May 29, 2019**

I was in attendance at the May 22 public hearing and chose to reserve my right to oppose the proposed regulation changes in writing after listening to the public comments. I'm an active partner in Mere Point Oyster Co. (MPOC) and I also work for the Town of Brunswick as the Harbor Master. I have crossed Maquoit Bay thousands of times professionally and recreationally. I have spent thousands of hours looking out over Maquoit Bay, either from the shoreline during work or from my bay window. MPOC's lease proposal does not, will not, and could not displace lobstermen or their prime fishing grounds. These continued shenanigans by our opposition should be halted immediately, as it is quite obvious they are doing everything they can to try to put MPOC out of business, and hinder the emerging restorative shellfish aquaculture industry. With this said, I STRONGLY oppose the proposed aquaculture rule changes. Since 2015 my sons and I have been experimenting with oyster farming using DMR's Limited Purpose Aquaculture (LPA) licenses. In the summer of 2017 we teamed up with Doug Niven and his two sons and became part of Mere Point Oyster Company. In the fall of 2017 we decided to make an effort to consolidate all the LPA's and expand our oyster farming efforts by applying for an aquaculture lease in

Maquoit Bay. FYI, Maquoit Bay is becoming more and more susceptible to increased nutrient intrusion caused by the continued development in the watershed. Scientifically, adding filter feeding shellfish to help with nutrient uptake makes sense for the health of the bay and our working waters. Our application has generated resistance from a few seasonal abutters, who happen to look out over the proposed farm. We have made attempts to reach out to these landowners, as well as area lobstermen, both refused to talk about the proposal. So what was said at the hearing that lobstermen were not included is false. Last year we sent letters to the residents along Mere Point Rd., inviting them to come discuss our farming efforts, many took us up and are SUPPORTIVE. We coordinated a public aquaculture informational session at the library in efforts to help explain the benefits of oyster farming to our local community and waters. One wealthy couple has hired attorneys, a public relations firm "Save Maquoit Bay", started a social media campaign, and most recently hired a lobbyist. They have spent hundreds of thousands of dollars in advertising to invoke scare tactics, encouraging people to oppose our application and ANY scaled up aquaculture project. When they were not successful through false environmental ad campaigns they resorted to pitting lobstermen against our proposal, again using scare tactics and mistruths. These people are the true reason these rule changes are in front of the Department to consider. Based on my 25 years of familiarity with the laws. State Statues and DMR Rules and Regulations are extremely thorough and include criteria on every aspect of the lease site location, from environment to existing uses. The existing rules put the burden of proof on the applicant to prove to the Commission that the criteria has been met. MPOC's first public hearing was held in October, with extension into November and finally concluded in January 2019. There were many hours of public testimony. As an effort to explain our oyster farming expansion proposal we worked with experts scientist, biologist, visual and sound engineers, all of whom examined our application and offered expert opinions in their related fields. Maine has embraced aquaculture and the Legislature prioritized it for economic development. Focus Maine has also recognized aquaculture as a business development opportunity in which the state has significant strengths and advantages. Maine's aquaculture sector consists of a mix of company sizes, species and production methods. That diversity gives our working waterfront communities strength and resiliency. We need them all to ensure we are able to survive in competitive business and rapidly changing ocean environments. Do not allow a small isolated group of well coordinated NIMBY's destroy these coast wide opportunities. Setting moratoriums on leases over 10 acres, when the existing laws and rules allow up to 100 acres will destroy many opportunities and works to destabilize industry expansion. Bill Mook could not have said it better. Our working waterfront communities face serious challenges in the very near future. Climate change, significant environmental shifts in the marine ecosystems and increased residential development will radically change coastal communities and their economic base over the next 50 years. We should focus our efforts in developing adaptive strategies not asking DMR staff to find alternate lease sites. Farmers select sites based on the water characteristics, not based on who and who can't see the site from their house. Farmers who grow certain species need certain conditions, it's obvious the authors of this rule change are not familiar with aquaculture. Finally making the rules retroactive to cover our application in Maquoit Bay is unjustified and makes it blatantly obvious who coordinated the effort from the petition that may have been gathered under false pretenses to the draft of the proposed rule changes. Do not allow them another opportunity to impact aquaculture more than they already have through their mistruths. DMR and the entire State of Maine has seen how hard they have lobbied against the proposal. Maines lobster sector is facing many challenges: a bait crisis, concerns of marine mammal interactions, license entry allotments, and an aging fleet. DMR should put its limited resources into focusing on these serious challenges and work toward adapting the marine resources to sea level rise, ocean acidification, ocean warming, water quality and tide and current fluctuations. Maine has done an incredible job over the last thirty-five years. The record shows Maine aquaculture is vitally important in helping coastal communities develop resiliency to face many of these challenges so our working waterfronts will

continue thrive for future generations. I urge the Department to reject any and all changes in the regulations.

**Matt Cost, submitted via email, May 29, 2019**

I am writing this letter in support of Mere Point Oyster Company, and the business of oyster farming in Maine as a whole. I have kept up with the repeated attempts by a few residents (many part time) of Brunswick to stir up discontent with a local business bringing money and jobs into the local economy. I would like to emphatically state, as a Brunswick resident, that I am fully behind any endeavor that bolsters the area. It is my understanding that the members of 'Save Maquoit Bay' (a slogan that should read 'Save Our View') have refused to abide by the current rules in which the commissioner carefully examines requests for oyster farms, takes into account other industry on the water, meticulously enforces set-back rules from the shore, and provides an area in which all can live harmoniously. There is no need to change the laws in place, other than a futile effort to preserve the view of a few residents, a view that is barely affected by the distant and low-lying oyster cages. This attempt to overturn the existing laws has dragged on for too long, propagated by the idea of NIMBY. It is my belief that to give in to the a few loud and wealthy voices--the door would be opened for case after case of increasingly belligerent opposition to any use of the bay. So, I would like to say YIMBO (Yes In MY Back Ocean), as a resident of Maine who wants to see the economy grow without adding polluting factories (no, Mere Point Oyster is NOT a floating factory), clear-cutting or forests, or building strip-malls on every corner. As a resident of Brunswick, I welcome the addition of a business that employees young people, creates a product, helps clean the bay, and is all-around good for the environment. I hope you put to bed this opposition to the Mere Point Oyster lease in Maquoit Bay.

**William Floyd, submitted via email, May 29, 2019**

My name is Bill Floyd and I am a resident of Mere Point and I'm also a partner in Mere Point Oyster Company. I'm writing in opposition to the proposed aquaculture rule changes submitted to DMR by a group calling themselves Save Maquoit Bay. Save Maquoit Bay consists of a single wealthy abutting land owner who has hired a PR firm, lawyers and coordinated an opposition to the oyster farm proposal in Maquoit Bay. They have spent what I have estimated to be over \$200,000 of dollars fear mongering lobstermen and the public using false claims of negative environmental impacts to the Bay's ecology to telling local lobstermen oyster farming is taking over the Bay and is in conflict with existing uses. The 28 acres for the Mere Point Oyster company represents less than 1% of the 3200 acres of maquoit bay and less than .001% of Zone F for the lobsterman. It's simple, this entire petition to change the rules is based on well-coordinated falsehoods and to allow fraudulent information to be used to change or establish a rule would be an absolute travesty to the entire aquaculture industry. The existing DMR regulatory process is allowing the responsible expansion of a sustainable waterfront industry that will help Maine's coastal economy move into the future eloquently. My wife's family has owned property on Mere Point for generations. We spend much of our time here and appreciate witnessing the next generation of Mainers making a living on the water through shellfish farming. The working waterfront has always been part of the fabric of waters around Mere Point and the ENTIRE coast for that matter. Let's not allow a wealthy, selfish, and greedy landowner change the direction of our local sustainable farming efforts or the future of the working waterfronts.

**Charles Wallace Jr., submitted via email, May 30, 2019**

I am a registered professional engineer with 51 years of professional engineering practice and with over 45 years of environmental engineering experience. I am a diplomate in the American College of Forensic Examiners, a Member of the Institute of Noise Control Engineering and am affiliated with other professional and civic organizations. I am a lifetime member of the Coastal Conservation Association

having served on the Maine Chapter Board of Directors. I served several terms as a Director of the Brunswick Recreation Commission. And, I was a member of the Mere Point Boat Launch; Citizens Advisory Committee representing permanent Mere Point Residents. In that capacity, I prepared an extensive report on the sound levels expected from the public boat launch. I also assisted the development of the rules and regulations governing the construction and use of that public boat launch.

Most importantly, I am a 50+ year resident of Mere Point Road and have resided at 501 for over forty years with my wife Claire. Claire's family settled the Labbe Farm in 1935. Claire and her siblings were born in the Labbe farmhouse and her 94-year-old mother; Madelaine resided on the former farmland until her demise. Our home is located at the beginning of Mere Point Neck on a portion of the farmland where we raised our children. During my younger years, I dug clams and lobster fished commercially on Maquoit, Mere Point and Quahog Bays.

Many of the people against Mere Point Oyster Company are the same that were against the Mere Point Boat Launch. They tend to be elitist wealthy residents who have adopted Maquoit Bay as their private recreational water park where they jet ski, motor boat, sail boat, swim and historically polluted the adjacent waters with lawn fertilizer, pesticides, herbicides and septage runoff. Their moratorium is a thinly veiled intent to overturn a thriving and growing shellfish aquaculture industry so they can continue their selfish, private, residential and recreational enjoyment of Maquoit Bay at the expense of badly needed aquaculture. Both the fisherman who signed the moratorium petition and the wealthy flatlanders funding and behind the moratorium have had multiple opportunities to participate in the historical process of Aquaculture Licensing and Rulemaking but apparently failed to do so until Mere Point Oyster Company filed for a license pursuant to existing regulations.

The following are my comments on the Shellfish Aquaculture Rulemaking proposed changes:

1. The Maine Legislature essentially established the existing criteria that recognizes the importance of and grants preferences to existing uses, ***especially commercial fishing***. Moratorium proponents would overturn the Will of the Maine people exercised through their elected officials that established Aquaculture as a priority use of the waters of the State of Maine.
2. The existing Aquaculture Leasing System already requires the Commissioner to consider multiple criteria that ensures that other uses and the environment are protected before granting a lease. Furthermore, the existing law mandates that "In evaluating [ proposed] leases, the [DMR] commissioner shall take into consideration the number and density of aquaculture leases in an area..." And that "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..." (§6072 7A and 7B).
3. The proposed rule changes are without technical, scientific or economic merit. This was demonstrated during the public hearing process for the Mere Point Oyster Company and can be seen imbedded in the DMR Records of that proceeding. Particular attention should be given to long time Mere Point resident Libby Butler's Testimony because she squarely places the aquaculture leasing issues and competing uses into perspective. Those spearheading the Petition forget that the bays are common property resources to be enjoyed by all Maine residents and other non-residents. The Bays belong to all citizens of the State of Maine regardless of physical domicile. Petition proponents clearly intend to monopolize that resource

rather than sharing the bays. Manipulating Maine's legislative and legal system by end running the existing leasing system is a travesty that should not go unnoticed.

4. The DMR Commissioner working with the Maine Attorney General should determine whether Petition Signatures were obtained under false pretenses by overzealous and unscrupulous Petition advocates.
5. There is no technical, scientific, economic or political justification for a moratorium on leases over 10 acres. In fact, there already exist leases over 10 acres that have successfully operated alongside other commercial and recreational uses of those waters. That request lays bare what appears to be one of local, parochial, selfish interests designed to specifically target the Mere Point Oyster Company's Lease Application and usurp the delegated authority of the DMR to rule on a legitimate application. What other reason could there be for the Petitioners' request that the future rule changes be retroactive to that applications' submission date?
6. Maine's shellfish aquaculture sector has become successful by growing slowly but steadily over the last 20 years with roughly 600 acres of total leased acreage in active production. (Source: ***Maine Farmed Shellfish Market Analysis Research By The Hale Group, LTD Danvers, MA in Partnership with The Gulf of Maine Research Institute; October 2016***) As noted above, and as part of the existing lease criteria DMR is required to consider the number and density of aquaculture leases in an area. Placing a moratorium on leases over 10 acres flies in the face of this slow but steady growth of this important industry and might actually force a greater number of smaller leases spread out over a larger area to be submitted. That short-sighted approach will increase not decrease any potential conflicts with other uses because there are increasing market forces driving the growth of Maine's shellfish aquaculture sector that will likely continue well into the future as the need and demand for healthy food rich in protein and minerals continues to grow worldwide.
7. The existing rules governing shellfish aquaculture leases can already be periodically reviewed and revised within the existing system of governance without a moratorium on new leases. Rule making and changes can and should grow when experience in the industry legitimately demands modifications. That has been the Maine Way for a very long time and should continue into the future. In my opinion, one example of the need for a revised rulemaking relates to the current qualitative rule governing noise. Qualitative rules governing a quantitative subject matter are fraught with minefields for the regulator and regulated alike. Rather than a Moratorium as envisioned by the Petition Proponents, all parties would be better served by refining existing rules going forward. Adopting a quantitative noise standard such as that administered by the Maine Department of Environmental Protection under the Site Law, Chapter 375.10 would be a more productive and proactive approach to Aquaculture Leasing regulations than the currently proposed, short-sighted moratorium on lease sizes.

With these comments, I respectfully request that DMR deny the Petition for a Moratorium on Lease Sizes and focus valuable and limited staff resources on refining existing rules and regulations as needed going forward.

**Maine Aquaculture Association, submitted via email, May 31, 2019**

On behalf of the Maine Aquaculture Association (MAA), please consider the following comments in Opposition to the proposed Chapter 2 Aquaculture Lease Regulations rulemaking action. The proposed

rule change is in response to a petition clearly orchestrated by the opponent to the Mere Point Oyster Company (MPOC) lease application you currently have pending before you. That petition calls for a rule change to the leasing criteria, a moratorium on leases over 10 acres and for those actions to be retroactive to the date of MPOC lease application submission. The petition is one component of a well-funded, coordinated campaign designed to bring political pressure on you so that you either deny or significantly scale back the MPOC lease application. In fair disclosure MPOC is one of our many members, having said that, our comments on the proposed rule changes represent the views of our broader membership and board of directors.

MAA opposes the proposed rule change on the following basis.

1. The Department does not have the authority to enact new criteria not authorized by the Maine Legislature. Those criteria as laid out in 12 § 6072 sub (7-A) are the product of many years of thoughtful deliberation and discussion by the legislature, the public and the department. The departments current rules comply with the statutory requirements as set out by the legislature. As no “Other Suitable Locations” standard is listed in § 6072 sub (7-A) it is beyond the departments authority to promulgate such a rule.
2. If the Department had authority to promulgate such a rule it would create an administrative nightmare for the department and tie up the state’s leasing system in a never ending loop as applicants and the Department are forced to consider one location after another in response to nimby assertions of a proposed site being inappropriate and requesting an examination of alternate sites. The request for examination of alternatives would occur AFTER an applicant had already expended significant resources and time examining multiple sites to try to pick the site most likely to be permitted, had the least environmental impact, resulted in the lowest social conflict with existing users and that was best for their proposed operation. The alternate site examination would also occur after the department has done their site assessment on the original site. This would lead to a significant waste of staff time and department resources. Finally, by mandating that it is the Commissioner that considers other locations, applicants may end up unintentionally forced on to sites that are ill suited for the species or production methods they want to grow and use. This would inevitably lead to an increased failure rate in the sector and skepticism in the financing community. The proponents of the rule change know this and it is precisely why they are proposing the rule change.
3. The proposed rule is not necessary because the department already considers multiple criteria that ensure other uses and the environment are protected before granting a lease. Furthermore, the existing law mandates that “In evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area....” And that “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...” (my emphasis) (§6072 7A and 7B). In contrast to the petitioner’s assertions, the existing criteria already grant preference to exiting uses, especially commercial fishing.
4. Finally, although the proposed rule does not include a moratorium the petitioners asked for one and that it be retroactive. There is no justification for a moratorium on leases over 10 acres. That request is designed to specifically target the MPOC application. This is confirmed

by the opponents request that the change be retroactive to that applications submission date. The Department has no authority to enact a moratorium on aquaculture leases of ANY size. Nowhere in part 9 of Title 12 or in the Departments regulations does it provide authority to the Department to enact a moratorium That authority can only be given to the department by the legislature. (38 M.R.S.§ 1310-V)

Maine's aquaculture sector has grown slowly but steadily over the last 20 years adding roughly 220 acres. As noted above, as part of the existing lease criteria DMR is required to consider the number and density of aquaculture leases in an area. Placing a moratorium on leases over 10 acres may actually force a greater number of smaller leases spread out over a larger area to be submitted. That will increase not decrease any potential conflicts with other uses.

Thank you for your consideration of these comments and your continued efforts to ensure the rights of ALL marine resource users and Maine citizens are protected and balanced thoughtfully.

**Jesse Devereaux, submitted via email, June 1, 2019**

My name is Jesse Devereaux and I started oyster farming in Middle Bay a few years ago on my own LPA's. I have also harvested shellfish and fished recreationally. I have been fortunate to live near the ocean my entire life. I'm writing today to oppose the recent proposal to change the aquaculture rules. As a young maine resident I enjoy the ability and take a lot of pride farming oysters in the waters along the town I have grown up. They taste great you should try them. The group "save maquoit bay" who led the petition drive has not been honest with their intentions, and these rule change requests are meant to target the lease application in Maquoit Bay. Please reject the proposed changes as they kneecap the future growth of the shellfish aquaculture industry.

**Antonia Small, submitted via email, June 1, 2019**

0.The proposed rule change is another effort by the Mere Point Oyster Company opponents to make an end run around the existing leasing system in attempts to stop the pending 40 acre lease application in Maquoit Bay. Under existing laws and rules the DMR Commissioner is required to consider multiple ecological criteria and competing uses to help ensure the ocean environment and other users are protected. Furthermore, the existing law mandates that "when evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in the area." And that "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.

0.In contrast to the assertions by the opponents "Save Maquoit Bay", the existing criteria already grant preference to existing uses, especially commercial fishing.

0.The proposed DMR alternative site rule change would create a never-ending loop of NIMBY assertions. Applicants and the DMR could be forced to consider one location after another. In addition, by mandating that DMR considers other alternative locations, applicants may end up forced on to sites that are ill suited for the species or production methods they want to grow and use. Furthermore, the additional requirements of the thin DMR staff will cause a significant fiscal impact. This uncertainty in site selection could result in increased failure rate in the aquaculture industry.

0.There is no justification for a moratorium on leases over 10 acres. That request is designed to specifically target the Mere Point application. This is confirmed by the opponents request that the



change be retroactive to that applications submission date. Maine's aquaculture sector has grown slowly but steadily over the last 20 years adding roughly 220 acres. As noted above, as part of the existing lease criteria DMR is required to consider the number and density of aquaculture leases in an area. Placing a moratorium on leases over 10 acres may actually force a greater number of smaller leases spread out over a larger area to be submitted. That will increase not decrease any potential conflicts with other uses.

For these reasons I would request that the Department consider rejected these unreasonable changes. As an LPA owner in Port Clyde I hope that this precedent would quickly move behind us.

**Derek Devereaux, submitted via email, June 1, 2019**

My name is Derek Devereaux and I started oyster farming in Middle Bay a few years ago on my own LPA's. I live, work, and recreate on the Brunswick coastline, and have done so for the majority of my life. I recently attended the May 22nd DMR hearing to change the rules to aquaculture lease process. I did not support any of the rule changes proposed, and strongly disagree with the stance that shellfish aquaculture is displacing lobster grounds. It would be a step backwards in regards to building a diverse and coexisting working waterfront if the DMR was to reduce the size of future leases, set moratoriums, and establish a more stringent criteria. The existing DMR criteria is very thorough, and the steps already make it difficult and place a heavy burden on the applicant. Any additional restrictions could hinder the future development of aquaculture. Lease proposals that truly displace fishermen should not be approved, as is already stated in the current leasing criteria.

**Neither for nor against**

**Richard Nelson, Friendship, comment at public hearing May 22, 2019 (see also written comments provided)**

I have worked on a range of marine and climate issues and promoted aquaculture practices for their remediating benefit on environment and have been supporter of ocean planning efforts. In a perfect world we would have already come together to develop a vision for coastal uses, but we have not been so proactive and are now left to face conflicts as they arise. If fishermen could lease bottom, we would have done so by now. Fishermen have long lived under the construct of the commons and these rules tend toward exclusivity, transferability, and potentially in the future a consolidated industry. Aquaculture is here and hope we can find a way to fit it into Maine environs, spatial and economic, with proactive choices made when all voices are heard.

**Chip Johnson, submitted via email, May 23, 2019**

I am a lobsterman since 1989 and I was present at yesterday evenings hearing. I didn't know many facts about what has been going on, I fish away from shore but many of my friends do fish in these areas that will become off limits to them, basically forever right?

I also made note of the other side comments, and I feel for those who live here and actually employ people from the area and the revenue stays in the State, and they make jobs for residents.

But I gathered at the meeting that these leases can be transferred, and what will no doubt happen is big money will arrive and take money out of the State, in basic terms. It's not necessary to be a resident to apply and own a piece of Maine bottom? Not good. I think aquaculture is fine, but to take property forever should only be allowed by residents, like the lobster licenses.

Also note that the problem started with someone from away, ignoring the cries from long time residents and fishermen on Maquoit bay? That's how most of these guys act in my experience, and that can't be allowed happen. I hope you find the power to figure this part out. Locals have pretty much always worked it out amongst ourselves, but the big money/attitude guys need to know we won't accept this.

From all the controversy obvious yesterday, I think this better be looked at closely and very seriously.

**Mike Gaffney, submitted via email, May 25, 2019**

Thank you for the opportunity to comment on the proposed rule change. Relevant to this discussion, I am an oyster farmer, riparian landowner, recreational lobsterman, recreational fisherman, boater, former commercial fisherman, and interest-based negotiator.

**Ten Acre Limitation**

At the recent public hearing, I heard two arguments for limiting aquaculture leases to 10 acres; 1) that larger leases would be acquired for speculation and then likely be sold to out-of-state corporations, and 2) that aquaculture is crowding in on water/ground used by other fisheries.

The current rule proscribes speculative leasing. A recent lease application in Georgetown was dramatically cut back in size because the applicants stated that they would not be using part of it for many years. As to out-of-state corporations buying up leases, is that even possible? I believe you must be a Maine resident to acquire a lease under the current rules. Has this ever happened?

The current rule also takes into account other fisheries' use of proposed sites. Applicants must report the presence or absence of such fisheries, and that report is reviewed by the harbor master for accuracy. DMR's inspection looks for other fisheries activity, and the public hearing provides fishermen the opportunity to challenge the assertions of applicants and harbor masters.

Clearly, more acreage is being set aside for aquaculture within the state, but is there any evidence that fisheries are losing access to important waters? In my community, oyster farmers prefer water that is rarely, if ever, used by lobstermen (lobstermen prefer structure, rocky bottom, drop-offs and deeper colder water – oyster farmers prefer shallower, warmer water even with very soft silty bottom). Purse seiners are as pelagic as their prey, and although they may have occasionally set their nets in water that is now leased to farmers, they can just as easily catch their baitfish outside of the lease area as the fish move. Is there any evidence that the lobster catch differential from year to year has trended downward as aquaculture has grown? Has it tended downward more in those zones in which have more leases? I suspect that in many instances, aquaculture siting is not entirely a zero-sum game

In my community (Georgetown), a standard lease was recently given to a group of new oyster growers. Their lease is for 14 acres which will be shared by 9 farms. If they were limited to 10 acres, they would have had to apply for two leases doubling their costs (fees, bond), paperwork and meetings.

**DMR to propose alternative siting**

Aquaculture entails a big investment in a specific piece of water. At least for oyster farmers it's all about location, location, location. That is why most growers try out an area (or two or three) with LPAs before applying for a lease. That early testing would be for naught if DMR were to subsequently move them to some other site. I could no more imagine DRM deciding where an oyster farmer should farm, than I could imagine DRM telling a lobsterman where to place his traps.

I do, however, appreciate the frustration fishermen, riparian owners, and recreational boaters feel when they attend these public meetings, voice their concerns and then find, to their amazement, that DMR cannot negotiate with the applicants to move their proposed siting in order to less negatively impact their neighbors – that DMR can only approve, trim back, or deny entirely an applicant's proposed siting. Since most of these neighbors are not negative about aquaculture generally and don't want to entirely block aquaculture in their neighborhood, they are frustrated that there is currently no place in the process for their creative thinking.

So why not add a step to your process that provides for the generation and consideration of creative solutions not considered by the applicants at the time of their initial proposal submission? Before announcing your ruling on the application at hand, ask the applicant if they would like some time to consider modifications/additions to their application based upon discussions with their neighbors. Either offer DMR facilitation support for these discussions (similar to mediation/arbitration) (which would require some training of DMR staff) or offer a list of professional facilitators (also trained specifically for this purpose) which the parties could hire (split the cost). If DMR funded facilitation is offered, the interest-based negotiation could be a required part of the process (as you will find in some litigation settings (e.g. divorce and construction). If facilitation costs were to be borne by the applicant and the contending party(ies), this negotiation step could be optional – the applicant could agree to participate or opt to move straight on to DMR's final decision making. If it is optional, rather than required, why would an applicant agree to do this? Because they are not sure how DMR will rule, and because they would prefer not to alienate their neighbors.

This approach to alternative siting is different from what is being currently proposed in this rule change. Here, DMR would not be offering alternative siting -- that would come only from the output of the negotiation process, if it comes at all.

And if the alternative solution agreed-to involves waters not previously contained in the applicant's initial proposal, that would likely require some back tracking of the process in terms of riparian owner notification, public notification and public hearing, site evaluation by DMR – but hopefully on a faster track than an entirely new application.

DMR still makes the final decision based on the established criteria.

This additional step is designed simply (well, maybe not simply in practice) to improve the chances that the lease proposal DMR rules on, is one which enjoy greater support (or at least less angst) amongst the parties impacted by their decision.

Additionally, the applicant is motivated to do a better job of consulting with interest groups prior to the public meeting because they can anticipate that they will/may be negotiating with them later anyway.

I know a bit about interest-based bargaining (alternative dispute resolution) because I have been researching, teaching, and practicing it for about 40 years as faculty member of Cornell University's School of Industrial and Labor Relations. If this concept is of interest to DMR, I would be willing to volunteer my services in a beta test -- perhaps involving the interest groups in the Maquoket Bay application.

Thanks again for the opportunity to put my oar in the water.

## Department Response to Comments:

The petitioners for this rule-making submitted 3 requests:

- A modification of the regulation to include a new decision criterion, which would require DMR to consider whether there are other locations near a proposed lease site that could accommodate the proposed activities while interfering less with existing and surrounding uses of an area: and
- The application of the proposed rule retroactively, so that it would extend to a pending lease application in Maquoit Bay, and
- A moratorium on all pending lease applications that are greater than ten acres in size.

The Department has considered comments received regarding the change to the decision criteria for the issuance of a lease. This same suggestion was received during the comment period for the Department's recent rule-making for Chapter 2 during the spring of 2019. In response to that comment, the Department stated:

More importantly, the proposed criterion is also inconsistent with the overarching statutory obligations regarding lease decision criteria as listed in 12 MRSA 6072 (7-A). Each of the standards listed in Chapter 2.37 is included under that statute, with Chapter 2.37 further defining how DMR evaluates those criteria as authorized by the statute. Therefore, new proposed criterion of "Other Suitable Locations" would need to be authorized in statute before it could be included in rule.

The Department received comments arguing both that DMR does, and does not, have the statutory authority to implement the proposed rule change. Setting aside its legality, the Department has considered the merits of the proposed rule change and does not believe it would improve the aquaculture leasing process.

Under the existing statutes, the Legislature has created specific criteria against which the Department must evaluate a proposed lease. Applicants have the opportunity to select a site with the various characteristics that are important to their ability to grow the marine organism(s) that are of interest to the applicant and is in other ways suitable to their proposed aquaculture operation. The role of the Department is to evaluate the proposed site against the decision criteria provided in statute and further described in regulation, to ensure that the site does not unreasonably interfere with the listed considerations.

Should a proposed lease site be determined to unreasonably interfere with the one or more of the decision criteria, the Department may deny the granting of the lease, or grant only that portion of the area that was included in the application that meets the criteria specified in law. Either of these options successfully implements the legislative intent of the statute, that the Department evaluate proposals against criteria but not proactively participate in the process of siting a lease. It is not realistic to expect the Department to evaluate all other potential lease sites in an undefined "vicinity" for several reasons, including but not limited to, the resources that would be required to dive on and develop a site report for every possible alternative, and to assess every other possible alternative location and configuration against the statutory criteria. Further, such an exercise could result in the perverse outcome of the selection of a site that does not unreasonably interfere with any existing uses but is

unsuitable for the proposed aquaculture activity. Finally, consideration of alternate lease sites could have impacts on people who previously believed they would not be impacted, thus creating different notice and scoping issues.

The Department has considered the request to impose a moratorium on any lease applications of greater than 10 acres but does not see a basis to do so. The Legislature has limited the size of any single lease to no more than 100 acres. Leases of greater than 10 acres may be appropriate and suitable in some areas and for certain aquaculture activities, just as leases of less than 10 acres would be required in others. The Department can adequately deal with the size of a lease requested under the current lease decision criteria. Lease applications greater than 10 acres have been found to meet the decision criteria and have been granted, and other lease sites have been reduced in size by the Department's lease decision where the proposed sites were found to be unreasonable. Further, a 10-acre limitation on lease size may have the unintended effect of causing applicants to apply for multiple leases, as opposed to one single lease of a size that is suitable to meet their needs. Without further justification, a moratorium on leases of greater than 10 acres is arbitrary, and the Department will not implement such a moratorium.

For these reasons, the Department will not amend the regulation as proposed by the petition. Because the proposed change is not being adopted, the request to apply the change retroactively is also denied.

**The section that follows includes written comments that were submitted during the public hearing.**

## **Rulemaking Petition 5/22-DMR**

Good evening everyone. I'm Richard Nelson from Friendship, and I'm hoping I can add some insights into both the questions in front of us now, and some of the related issues here in Maine. My background is intertwined with these issues in various ways. I've been a lobster fisherman for about 35 years and advocated for our wild fisheries. I've worked on climate issues including serving on Maine's Ocean Acidification Commission, and now the Maine Ocean and Coastal Acidification Partnership, and in doing so, promoted various aquacultural practices for their remediating and beneficial effects on our environment. I've also been a proponent of and been involved with ocean planning, from outreach efforts early on during the Statoil and University of Maine wind energy proposals, to participating in 8 years of regional ocean planning efforts here in the Northeast. Ocean planning for those who are unfamiliar, deals with, among other things, conflicts between ocean users old and new, both spatially and with the oversight of multiple agencies and sets of regulations. If you hadn't known that these conflicts can arise, you probably soon will. In a perfect world we would already have come together to discuss what we want from our shores and bays, what we might give and take, allowing for energy and food production, perhaps holding out a bit for recreation, even inspiration, in its natural state. As you may expect, we have not generally been so proactive about these matters and now will be left facing issues and skirmishes as they arise. Let me interject a story here. I was commenting as one attending a BOEM hearing for the Statoil project in Boothbay, neither happy with the process or the site selection, when someone else stood up and said, "You fishermen are all alike, think you own the whole damn ocean!" Still having the floor I responded after a moments thought, "Don't think for a minute, that if these fishermen who plied their trade for over four hundred years, were required at the time to have leases or deeded rights to where they fished, that they would indeed by now (ostensibly) own the ocean." Remember, this was a lucrative industry of its day, it had its ups and downs and is now doing well, purposely managed at a small boat, owner operated, scale that is well suited to the coastal communities of Maine. A fact that should be well noted, as part of this petition, seeks to alleviate fears of scale with limits on lease size. The other point this story brings up is that fishermen, who have long lived with a cooperative acceptance of the commons as their only spatial rights to fishing, now face uses operating under a whole new set of rules. Rules that tend to exclusivity, transferability, and perhaps a future with clustering or conglomeration of lease sites. And this is not just aquaculture, it's the ocean energy, yacht basins, and even private use of coves or moorings that might restrict traditional uses. We in Maine can't seem to resolve the major issues of having access to all this and face archaic laws governing the intertidal zone. Harvesters or researchers, wild or farmed, beachgoer or environmentalist, no one has direction here, something we and the ecosystem both need. As far as the petition is concerned I'm not suggesting it pass or not. I'll leave that to those closer to its origins and to the regulations themselves. I do know aquaculture is here, as it should be, and I hope that we find a way to fit it into the Maine environs, both spatial and economic. I hope this is accomplished with proactive choices made after all voices are heard. I hope the DMR can guide that process, with assistance from some of the parties gathered here. Thank you

Richard Nelson -Friendship  
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May 22, 2019

Commissioner Patrick Keliher  
Department of Marine Resources  
21 State House Station  
Augusta, ME 04333-0021

**Re: Written comments on petition for rulemaking submitted by  
Crystal Canney for aquaculture lease rules**

Commissioner Keliher,

On behalf of Mere Point Oyster Company, Inc. ("MPOC"), please consider the following comments regarding the rulemaking petition to retroactively modify portions of the aquaculture lease regulations and enact a moratorium on all pending aquaculture lease applications that are greater than ten acres in size.

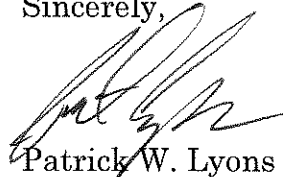
The Department lacks the authority to enact review criteria not authorized by the Maine Legislature. The standard aquaculture lease process is governed by 12 M.R.S. § 6072. The review criteria for evaluating a proposed lease is established in subsection (7-A) in subsections A through H, setting out review criteria for specific standards such as unreasonable interference with riparian owner ingress and egress, navigation, and fishing, among others. Here, the Department cannot create new lease standards beyond those established by statute – the Maine Legislature was clear in limiting the review criteria to those set out in 12 M.R.S. § 6072(7-A). The Department's current regulations comply with this requirement, establishing standards based solely on the statutory criteria set out in § 6072(7-A). *Compare* 12 M.R.S. § 6072(7-A) *with* 13-188 C.M.R. ch. 2, § 2.37. As no "Other Suitable Locations" standard is listed in § 6072(7-A), it is beyond the Department's authority to promulgate such a rule and would be found by a court as void as ultra vires. *See Conservation Law Found., Inc. v. State, Dep't of Envtl. Prot.*, No. CIV.A. AP-98-45, 2000 WL 33675692, at \*5 (Me. Super. Aug. 4, 2000) (rules adopted by an administrative agency that do not adhere to statutorily established review criteria are void as ultra vires); *see also Ms. S. v. Reg'l Sch. Unit 72*, 829 F.3d 95, 108 (1st Cir. 2016) (under 5 M.R.S § 8058 of the Maine Administrative Procedures Act, if a court finds that a state agency's rule exceeds the rule-making authority of the agency, the court must hold the rule invalid).

Even if the Department had the authority to enact such a rule, the rule could not apply retroactively. Maine law holds that “[a]ctions and proceedings pending at the time of the passage, amendment or repeal of an Act or ordinance are not affected thereby.” *MacImage of Maine, LLC v. Androscoggin Cty.*, 2012 ME 44, ¶ 22, 40 A.3d 975 (quoting 1 M.R.S. § 302). Retroactive application of a new review criteria is prohibited by Maine law and violates the due process rights of MPOC and all other applicants with pending aquaculture leases.

Finally, the Department lacks the authority to enact a moratorium on aquaculture lease applications greater than ten acres or otherwise. Nowhere in Part 9 of Title 12 (Marine Resources) or in the Department’s regulations does it provide the authority to enact a moratorium. Such authority must be expressly granted by the Maine Legislature. *See, e.g.*, 38 M.R.S. § 1310-V.

The Department should take no action on the petition to retroactively modify portions of the aquaculture lease regulations or enact a moratorium on all pending aquaculture lease applications greater than ten acres in size – indeed, it lacks the authority to do so.

Sincerely,



Patrick W. Lyons

*Attorney for Mere Point Oyster  
Company, Inc.*



My name is John Powers I live on Great Island in Harpswell  
I grew up on Maquoit bay, started lobstering when I was eighteen.  
Maquoit bay was the logical place to set my traps and the rich fields of eel grass in  
the bay providing habitat for lobster and crab yielded a steady source of income and  
still does to this day.

There is new oyster hatchery facility being built down in Harpswell the facility looks  
out over some of the most pristine islands and scenic vistas you will find anywhere  
in the state. The views are breath taking from the location.

on any given day you can see the commercial lobstermen plying their trade in a  
conventional fashion as they have done,  
practically unchanged harvesting wild caught lobsters in a sustainable fashion.

Yes sustainable

Tourism and lobstering go hand and hand. driving an economic engine in the state  
of maine like none other.

the aquaculture industry although it has been around for quite some time is in  
reality a fledgling industry and growing oysters under black floating tubs and cages  
is antiquated at best.

The typical standard lease takes total control of the site in question usually  
excluding lobstermen and purse sieners from using these waters covered in the  
lease.

oh I've heard that the tourists can kayak around the black floating tubs. why what  
fun.

Now back to the new oyster hatchery

after being informed that two experimental leases were being applied for and seeing  
that one of the spots in particular was in a heavily fished area I arranged a meeting  
and even brought a chart along with me hoping to show the lease applicant the era  
of their ways and offer up a more user friendly site for all involved.

to no avail ,

at the end of the meeting I was told it was to late and the location could not or  
would not be changed..

resulting in a dozen lobstermen moving over and some more black tubs for  
kayakers to paddle around.

NOW if my input could not influence an experimental lease with its less stringent  
application process it would do absolutely nothing for the standard lease  
application and this brings me to why we are here today

I've been lobstering in upper casco bay for over 40 years and in those 40 years a lot of new regulations have been imposed on the lobstermen and yet we rebound every time and continue to prosper

The one thing that the lobstermen need no matter what the rules and regulation are is access to the bottom.

we can not continue to fish in a sustainable manner if we cant put traps down on the bottom and it appears the state regulators are hell bent on making sure that an antiquated industry of growing oysters under floating black tubs should take precedent over a traditional, sustainable, fishery as big as lobstering is.

I'm here today to ask that the lease process for large tract leases be frozen. with a moratorium on 10 acre leases and up including the 40 acre lease in Maquoit bay

The burden of proof of prior usage needs to be on the lease applicant not the men and women who have been using the area traditionally for decades. The lobstermen should not have to defend there turf on every application brought forth

the Department of Marine Resources should be doing that for us.

Im sure we can all work together and come up with a better method but as of now the traditional fisheries are under attack

Don't force us out. Protect our rights instead

No PEACE No LEASE

I am Peter Vaughn. I began to work in Brunswick in 1972 and moved there in 1978. For the last 18 years I have owned a house at 1168 Mere Point Road on Maquoit Bay. I am a member of the **Maquoit Bay Preservation Group**. I can speak for that group in saying that we all unequivocally support the submitted petition and proposed rule change.

No matter who makes rules about its use, the ocean belongs to everyone. Speaking just for myself, I cannot imagine why anyone would oppose a ***“process that allows the department to consider whether nearby locations or different lease boundaries would better balance competing uses”*** of that ocean.

Thank you.

*Women  
A Lobsterwoman And*

My name is Colleen Francke. I am the owner of Summit Point LLC and Salt Sisters Maine. We are a growing kelp farm dedicated to helping women in recovery from substance use disorders located in Falmouth, Maine.

I am here today to give testimony against the petition to modify portions of the aquaculture lease regulations, and the rule changes proposed by the petitioners including a new decision criterion which would require the DMR to consider whether there are other locations near a proposed lease site that could accommodate the proposed activities, as well as the request for the rule to be applied retroactively, and a moratorium on all pending lease applications that are greater than ten acres in size.

-Beginning with the decision criterion which would require the DMR to consider other locations, I believe that this proposal is unrealistic and would be catastrophic to an already taxed aquaculture department. If this new decision criterion was implemented, processing of all future aquaculture applications would be halted. DMR aquaculture staff would be unreasonably overtaxed and it would open the door to a never-ending cycle of lease displacement.

-This proposal's retroactive nature would encompass all currently pending aquaculture leases, including my company's two pending applications. Both of these applications are for the maximum of 100 acres, and if approved, they would become the first large scale kelp farms specifically designed to promote non-exclusive rights to the use of the lease area. These leases would provide numerous employment opportunities, remove tons of nitrogen and carbon from coastal waterways, and help educate surrounding communities that aquaculture can be developed in a manner which does not harm commercial fishing activities nor the rights of recreational boaters or landowners.

-A ten-acre limitation would be extremely detrimental to our farm, as well as Maine's coastal economy. As a year-round commercial lobsterwoman, I have personally seen the decline in this traditional Maine fishery, and fear for the industry's future in Southern Maine. Our rural coastal communities face economic uncertainty as ocean temperatures rise, acidification intensifies, and overfishing depletes the commercially valuable species along our coastlines. We are facing not only bait cutbacks, but significant changes (including potential gear reductions) based on federal measures concerning right whale entanglements.

Aquaculture creates opportunities for local fishermen and lobstermen, like myself, to diversify into new, more sustainable and rehabilitative crops while providing traditional, commercially viable species the habitat and opportunity needed to recover.

That being said, with kelp's current market value, a 10-acre kelp farm is not large enough to be financially sustainable. The acreage of kelp farms must scale in order to become economically viable. A ten-acre limitation, if passed, would keep Maine's kelp aquaculture industry small, and

prohibit the growth of this burgeoning alternative economy that is currently poised to breathe life into the coastal communities reliant upon them.

I will add, that not all aquaculture systems are designed the same. Aquaculture systems such as bottom culture or semi-permanent gear, like those found in marine algae cultivation (and some shellfish production designs), should not be treated the same as aquaculture techniques which use more permanent gear, have more visible (year-round) fixed gear, or ask for exclusive rights to the lease area.

A specific conflict between two parties in Maquoit Bay, has been the impetus of this proposal, which has turned into a statewide issue. The petition and rule changing proposal is an inappropriate response to an isolated dispute, which if passed would eliminate the possibility of any and all future development of this new aquaculture industry. The retroactive nature of this proposal indicates that this is a targeted issue, and our farm and recovery project has now been pulled into the center of this bullseye.

Maine has thus far been at the forefront of aquaculture within the United States and could become an integral contributor if our current research and growth is able to continue. Though globally considered a minor producer, the US is the leading importer of fish and fishery products. According to NOAA, roughly 90 percent of the seafood consumed in the states is imported, half of it produced through aquaculture. This exhibits a significant capacity for economic expansion through new aquaculture species and techniques. Something that this acreage limitation, and new criterion, would halt.

Aquaculture must be framed as a method to revitalize a struggling fishing economy and create employment, not a threat to business as usual. We can encourage this industry's progress and create policy incentivizing growth - or we can continue importing food which our own coastlines could have produced. With proper support, Maine stands to become a leader in sustainable mariculture production. And with demand for seafood increasing, the question is not if more seafood will be produced, but if we will play a role in that production.

I do not support the petition to modify portions of the aquaculture lease regulations, or the rule changes proposed by the petitioners including a new decision criterion, the request for the rules to be applied retroactively, or a moratorium on all pending lease applications greater than ten acres in size. Thank you.

May 31, 2019

**Via Federal Express Overnight Delivery  
and Electronic Mail: [dmr.rulemaking@maine.gov](mailto:dmr.rulemaking@maine.gov)**

Deirdre Gilbert, Director of Marine Policy  
Department of Marine Resources  
21 State House Station  
Augusta, ME 04333-0021

**RE: Written comments on proposed rulemaking – Chapter 2 Aquaculture Lease Regulations**

Ms. Gilbert:

On behalf of Maquoit Bay LLC, please consider the following comments regarding the March 20, 2019 rulemaking petition currently under consideration by the Department.

**1. The Department Can and Should Adopt the Proposed Rule**

The Mere Point Oyster Company (“MPOC”) has submitted comments asserting that the Department lacks the authority to adopt the proposed rule and to make it retroactive to MPOC’s pending application. Both assertions are wrong as a matter of law. MPOC does not suggest that the proposed rule is bad policy, nor could it. The consideration of whether other suitable locations would have a lesser impact on existing or surrounding uses is fundamental to determining whether a particular impact is unreasonable. Such consideration makes common sense, and there is no rational basis to refuse to do so.

Indeed, the consideration of practical alternatives in the surrounding area is required by the very statutes that delegate authority to the Department to grant exclusive private leases of land owned by the State in trust for the public. The Department is statutorily required to “conduct an assessment of the proposed site and surrounding area” and “may grant the lease” only if it meets statutorily identified “conditions as defined by rule.” 12 M.R.S.A. § 6072 (5), (7-A). The Department may not grant a lease unless the applicant demonstrates that the lease “will not unreasonably interfere” with existing and surrounding uses of the area. 12 M.R.S.A. § 6072 (7-A); 13-188, CMR Ch. 2, § 2.37. The Maine Supreme Court has said that when another statute imposed the identical standard of “will not unreasonably interfere” with enumerated uses, then “consideration of practicable alternatives to a proposed project is a factor that should be balanced” by the agency implementing that standard. *Uliano v. Bd. of Env’tl. Prot.*, 2005 ME 88, ¶ 13, 876 A.2d 16, 19–20. So too here. If the “surrounding area” contains a “more suitable location in the vicinity of the proposed lease that could accommodate the proposed lease activities and that would interfere less with existing and surrounding uses of the area,” then, by

definition the interference of the proposed site with those uses is “unreasonable.” Ignoring those other suitable locations would be reversible error under the current statutory scheme. What this rule change would do is simply make explicit what the Department should already be considering based on the express statutory criteria.

Importantly, the case of *Uliano v. Board of Environmental Protection* rejects the very argument advanced here by MPOC. MPOC argues that consideration of “Other Suitable Locations” would “create new leases standards beyond those established by statute” that would exceed the Department’s rulemaking authority. To the contrary, in *Uliano* the Law Court said that interpreting a “no practical alternatives” standard as an “independent, determinative criterion” had no basis in law. *Id.* at ¶ 16. Instead, the Court explained that considering practicable alternatives is a necessary factor inherent to the statutory standard of “will not unreasonably interfere”:

The specific standard at issue in this case is described in [Title 38,] section 480–D(1), which provides that to obtain a permit for a proposed project an applicant must demonstrate that the project “will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.” 38 M.R.S.A. § 480–D(1). Whether a proposed project’s interference with existing uses is reasonable depends on a multiplicity of factors, one of which is the existence of a practicable alternative. A balancing analysis inheres in any reasonableness inquiry. Therefore, the Board’s consideration of practicable alternatives to a proposed project is a factor that should be balanced in its section 480–D(1) analysis.

*Id.* ¶ 13 (internal citation omitted). Thus, any failure to adopt the proposed rule and apply such an analysis to all pending applications, including that of MPOC, would be to ignore a necessary factor inherent in the existing statutory scheme.

Indeed, it is ironic that MPOC cites to *Conservation Law Found., Inc. v. State, Dep’t of Envtl. Prot.*, No. CIV.A. AP-98-45, 2000 WL 33675692 (Me. Super. Aug. 4, 2000) in support of its contention, because it actually suggests that it would be reversible error for the Department *not* to adopt the present rule. That Superior Court decision addressed the same “will not unreasonably interfere” standard that the Maine Supreme Court in *Uliano* later said “should” include “consideration of practicable alternatives.” And what the Superior Court in *Conservation Law Found., Inc.* found exceeded the agency’s rulemaking authority, and was arbitrary, capricious and an abuse of discretion, was the agency’s adoption of rules that did not include a project-specific analysis of practical alternatives but instead provided a curtailed review in order to “save DEP money and staff time.” *Id.* at \*8. Thus, if the Department here attempted to rely on such a rationale to avoid adopting the proposed rule, such an action would similarly be held to be arbitrary, capricious and an abuse of discretion.

## **2. The Department Can and Should Make the Proposed Rule Retroactive to MPOC’s Application**

After misstating the law regarding the agency’s authority to adopt the proposed rule, MPOC next argues that “[e]ven if the Department had the authority to enact such a rule, the rule

could not apply retroactively,” again misstating Maine Law. MPOC cites to a case quoting a rule of statutory construction that applies only when an enactment is silent as to whether it applies retroactively. An explicit statement of intent to apply “a provision to pending proceedings, is sufficient to overcome the general rule of [Title 1 M.R.S.] section 302.” *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 21, 856 A.2d 1183, 1191.

Indeed, as explained above, under *Uliano* and *Conservation Law Found., Inc*, it may be reversible error for the Department to refuse to consider other suitable locations as a necessary factor in the multiplicity of factors that inheres in the reasonableness standard mandated by the current statutes.

### **3. The Aquaculture Leasing Statutes Provide an Even More Compelling Case To Consider Other Suitable Locations Then the Statute in *Uliano***

The Department’s current practice to look only within the four corners of the lease application appears premised on a situation, not applicable to aquaculture leases, where an applicant has some right, title or interest in a proposed location that is different from its interest in the surrounding area. That is the case under the statute analyzed in *Uliano* that nonetheless required a review of practicable alternatives. That is not the case where both the lease area and the surrounding area are owned by the State in trust for the public. It would make no sense for the State to refuse to consider a more suitable location, and to require the applicant to make a showing that they have picked the one with the fewest impacts on existing uses. No reasonable landlord would abnegate that responsibility, and to do so would violate the public trust principles that constrain the Department’s statutory ability to lease this State-owned resource.

Unlike a typical permit application, the applicant for an aquaculture lease is not simply requesting a permit to use land in which it holds any right different than or superior to any member of the public. Instead, the applicant seeks a lease for the commercial cultivation of marine organisms that grants exclusive private commercial use of a public resource. In Maine, subtidal land (land below the mean low tide line) is owned by the State and held in trust for public uses. *McGarvey v. Whittredge*, 2011 ME 97, ¶ 14, 28 A.3d 620, 625. Any restrictions on public uses are construed in favor of the public and such restrictions on public uses are not to be lightly implied. *Norton v. Town of Long Island*, 2005 ME 109, ¶32-35 883 A.2d 889, 899-900. Restrictions on the public trust is, at its core, a legislative function. Here, the Legislature has delegated authority to the Department of Marine Resources to restrict these public uses in a very narrow set of circumstances by authorizing the Department to grant exclusive lease rights in certain subtidal lands for the purpose of aquaculture (aquatic farming) of certain marine organisms. *See* 12 M.R.S.A. § 6072.

The ability to temporarily divest the public of their rights is an awesome responsibility delegated to an executive agency. The Department may do so only if it finds that the proposed lease “will not unreasonably interfere” with certain specified existing and surrounding uses. On land owned by the applicant and not the State, *Uliano* tells us that one of the factors the Department must consider in making that determination is whether there is a practicable alternative. To refuse to consider such a factor in the context of an aquaculture lease on State-



owned subtidal land would be to abnegate an inherent responsibility of the State as trustee for all public uses, not the private commercial desires of MPOC and all aquaculture lease applicants.

On land, incompatible land-uses are separated from each other through zoning. In contrast, Maine's oceans are not zoned to designate certain areas as appropriate for industrial scale aquaculture and other areas for commercial fishing, smaller-scale aquaculture or other common public activities like recreational fishing, swimming, boating, or meditative and spiritual contemplation. Consideration of the divestiture of this public trust resource requires DMR to consider all "common public uses" of the site and surrounding areas and put those interests above the private financial interests of applicants or abutters. *Harding v. Comm'r of Marine Res.*, 510 A.2d 533, 537 (Me. 1986); 12 M.R.S.A. § 6072(7-A). Thus, DMR must consider the unique circumstances of each proposed lease location and "surrounding areas" and determine whether the existing public trust and other uses of the area make that site an appropriate area to temporarily divest the public trust in that area through the grant of an aquaculture lease for a term of years. 12 M.R.S.A. § 6072 (5), (7-A). It is impossible for the Department to make such a determination without considering other practicable alternatives in the vicinity. See *Uliano v. Bd. of Envtl. Prot.*, 2005 ME 88, ¶ 13, 876 A.2d 16, 19-20.

That is why, here, the Department must adopt the proposed rule and apply it to all pending applications, including MPOC's proposed 40-acre industrial-scale aquaculture facility in Maquoit Bay.

Sincerely,

A handwritten signature in black ink, appearing to read "David M. Kallin", written over a horizontal line.

David M. Kallin

Town of Lubec  
Harbor Board  
40 School Street  
Lubec, ME 04652

Date: May 21, 2019

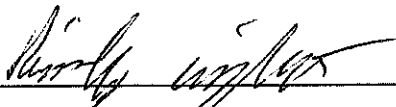
Dear Department of Marine Resources (DMR),

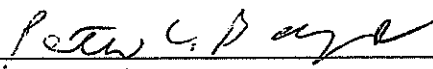
The Lubec Harbor Board is writing in support of the rule changes as proposed. (see below)


**The rule changes proposed by the petitioners include a new decision criterion, which would require DMR to consider whether there are other locations near a proposed lease site that could accommodate the proposed activities while interfering less with existing and surrounding uses of an area. The petitioners request that the proposed rule be applied retroactively, so that it would extend to a pending lease application in Maquoit Bay. In their filing, the petitioners also requested a moratorium on all pending lease applications that are greater than ten acres in size. In accordance with 5 M.R.S.A. §8055, DMR will consider the proposed rule changes filed by the petitioners.**

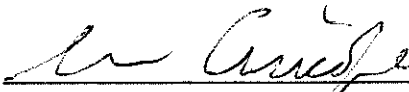
While we were having the discussion about the rule changes proposed two other issues were brought forward. We would ask the DMR to please take the following issues into consideration and consider adding these two issues to the proposed rule change.


1. A lease site must be maintained and used or removed from the owner.
2. Issue a clean bottom certificate with in six months of a lease being removed.

  
Lubec Harbor Board Ricky Wright

  
Lubec Harbor Board Peter Boyce

  
Lubec Harbor Board Greg McConnell

  
Lubec Harbor Board Sean Caricofe

  
Lubec Harbor master Ralph Dennison

05-15-2019

Richard a Whitman  
29 state st.  
Rockland, Maine  
04841

Dear Dept of Marine Resources.

I've seen a lot of changes in the fishing business since my 1<sup>st</sup> ten day trip as an 8yo boy 49 years ago. Fishermen adapt to changes better than most. We should keep the independence in fishing, when we don't we all lose. I believe keeping leases at 10 acres or less is a fantastic way of staying independent. Aquaculture is and should be a focus of Maine's fishing communities and the 10 acre limit keeps this manageable. We don't need to have corporations manage our near coastal fishing areas at all! In keeping these areas to 10 acres or less reduces the resentment with all the people in the communities. Thank you for your time in this matter.

Richard Whitman

Tim Morong  
Phippsburg

Dear Department of Marine Resources,  
My name is Tim Morong I am a commercial lobsterman. I live in Phippsburg Maine and fish in Zone F, the New Meadows River, and have an Area 1 offshore permit.

I have been fishing for 45 years, my son also fishes for lobster and my daughter did when she was in high school and college. I would like to present my views on the oyster boom and aquaculture in general.

I first would like to say I am not against aquaculture in general, but I am extremely concerned in the direction it is going. The regulations and process of obtaining space to set up an operation are quite loose and if not addressed there will be a major impact on Lobstermen that fish in those areas. Already there are pieces of bottom that we can no longer fish due to leases, and I feel it is going to get worse before it will get better or at least level out.

Companies looking to lease large areas will forever take bottom space from a long time tradition and a way of living. No one, myself included, owns the bottom or sections of rivers, and bays and these leases are not good for the future. I said I am not against aquaculture but would be if steps aren't taken to address these issues.

I have attended many meetings and sit on the Zone F advisory council and have heard statistics stating leases have not gone up in the last ten years. That data is very misleading and if those making decisions at DMR or our state don't understand that, it is unacceptable.

Just this week I heard a news story that Senator King supports and encourages aquaculture. I wonder if he has taken the time to really understand the impacts. This is real and the boom of aquaculture needs to be addressed.

I appreciate the time and energy you and your organization is putting forth to address the issues in front of us. Maquoit Bay is a perfect case why there needs to be something done to manage the problems we are facing.

Thank you for listening.

Timothy Morong, concerned lobsterman.

Sonny Beal  
Beals Island, Maine

I've been a commercial lobsterman off of Beals Island for 37 years. As most fishermen in my area I started with my father when I was old enough to put boots on. This was long before aquaculture was being used in the state of Maine. Throughout my fishing years I have seen salmon aquaculture grow in my area in particular, to the point that I have to sail around salmon pens on order to get to my fishing gear. Now I don't fish near them, but I have friends that do. I've heard horror stories of the lobstering collapsing near these pens and people getting their propellers entangled in long pieces of 3/4" floating rope that lays off the pens.

The population of the lobsters move away from the pens due to the mass amounts of excrement from the fish and the toxins they use in their food to feed them. After learning what goes into the food that they feed the fish I will always make sure my fish is wild caught. As far as the ropes go I have no idea why these ropes are floating around like they do. My only theory is that they simply don't take care of the pens and the areas around them. I fish mostly offshore so I sail by the sites almost daily. It's not uncommon to see ends of rope that are cut off just floating in the water. We know where this stuff comes from because they are the only ones using 3/4" mint green float rope. Also there are a couple islands that have actual pens washed up on them that have gotten loose. These pens have been there for years and are a real eye sore. I've even seen loose pens drifting offshore a few times. One I almost hit in thick fog while I was sailing. It didn't show up on radar because the sides were collapsed and it was barely above water.

Now if you don't know what a salmon pen looks like they are usually round about 40 feet in diameter and made of 10" black plastic pipe. When these things go astray I don't have to tell you that they will never decompose and are never retrieved and taken care of.

These big companies seem to be able to do whatever they want wherever they want and it's wrong. When fishermen have to pack up and move an area that they have been fishing for years and their families have been fishing for generations there is something wrong. Big money always seems to find a way to sneek their plan by everyone and get their way and it's wrong. Always has been and always will be. It's time the state and the federal government stand up for the people that live and work here and continue to support the communities they live in.

Thank you.

To: The Department of Marine Resources  
From: Robert Ingalls, Lobstermen, Bucks Harbor

I am writing this letter to you all today because I am unable to attend the hearing around the citizen's petition that I signed. I have been working as a lobsterman for decades. What I have seen Downeast is a growing issue however with some aquaculture operations. There is little respect for lobstermen when it comes to expansion and the process for regulation. Recently, we had an issue at the Mud Hole Channel when a big aquaculture firm wanted to open more salmon pens. The lobstermen voiced their opinion and it eventually did not move forward.

As we watch aquaculture grow, and it is growing and growing fast, we need better rules and regulations around this process. That's why I support an immediate moratorium on aquaculture process of 10 acres or more. Far from here in Bucks Harbor there are two 100-acre kelp leases pending in Casco bay. There is a 40-acre farm application in Maquoit Bay for oysters. The bigger these projects get the more likely they will be sold to out of state corporations and we as lobstermen and Mainers lose that bottom forever with the transferability of those leases. There is no public hearing process when someone wants to transfer a lease it is left to the discretion of the Department of Marine Resources which in hearing after hearing has been promoting aquaculture but not lobstering. The people need a voice, they need to weigh in. One other suggestion I have is to have a second suitable site location - but again at different hearings, DMR has said it's too difficult a process. With something as important as a \$500 million-dollar bolstering industry and Maine's ocean "too difficult" isn't an answer. DMR employees work for the people of Maine and we are asking you to consider this petition and the suggested changes.

Sincerely,  
Robert Ingalls  
Bucks Harbor  
255.3418

Pemberton and Deb Johnson  
Orr's Island

To the Department of Marine Resources,

We could not participate in the hearing tonight even though we wanted to very much due to a medical issue. However, we wanted you to know our sentiments.

Regarding the petition we signed earlier this year, we have become even more determined that the issues addressed in this petition need to be seriously considered by DMR. I am a lobsterman, and so was my father and my grandfather. Over time, we have learned through history that protecting our lobster grounds is an important piece to a thriving lobster industry. We are not concerned about small aquaculture leases - but we are very concerned about aquaculture leases of 10 acres or more. The 40-acre oyster farm in Maquoit Bay is just too big. I speak about that having fished there for pogies and seen the numerous lobster traps that have been in that area for decades. I have read some of the press accounts and they are just flat out wrong and the reporters are being fed propaganda. I recently learned you have 2 one hundred acre leases being requested for Casco Bay. I also learned there is a one hundred acre lease scoping session for. lease in casco bay near Chebeague Island. If these three leases are granted - lobstermen would lose 300 acres of the bottom and that's just those three. Lobstering has been a sustainable fishery for years and now you are tinkering with one of Maine's huge economic drivers. Who knows where aquaculture will go in the future - I urge this committee to seriously consider the petition, slow down and take a breathe.

Sincerely,

Pem & Deb Johnson

Mark Bennett  
P.O. Box 93  
Sorrento, Maine

To the Department of Marine Resources,  
I lobster in Sorrento and for the most part people get along and it works out okay with aquaculture in the area. In Sorrento, there is a kelp farm that is in a muddy area that doesn't cause issues for lobstering. However, I have seen first-hand how big the aquaculture operations are getting by looking at what has happened in Trenton. It's awful to look at. What we need is a process to slow things down - especially with the requests I have learned about regarding 100-acre lease applications off Clapboard island and in Casco Bay. These are large pieces of the ocean. That's why I support this petition that requires DMR to put a moratorium on aquaculture leases 10 acres or more and look for the best possible site in an area when someone applies for an application. These waters are a public resource. Any of us who get a lease to use it should have better regulations around the right place and the right size. As these leases get bigger and bigger it becomes more attractive to out of state corporations. That is something I don't want to see happen to Maine.

Mark  
Bennett



John Drouin  
270 Little Machias Rd.  
Cutler, ME. 04626  
207-259-3949

May 15, 2019

Re: Comments on proposed rule-making..Aquaculture

To Maine Department of Marine Resources;  
Commissioner Patrick Keliher;

My name is John Drouin and I am the Chair of the Zone A Lobster Management Council.

I have also been a lobsterman from Cutler for the past 40 years.

I would like to speak in **favor** of the petition that is before you concerning aquaculture leases.

What is most important to me is the size restriction. I agree with the idea that a lease should start out no larger than 10 acres. A couple years back, Cutler was facing a proposed aquaculture site where the operators were looking to lease 93 acres. A lease of this size would have displaced numerous fisherman and also would have been a navigational hazard. A scoping session was held and the operators did not receive one positive comment.

In my opinion, 10 acres is good to start with. If the operators need more area to expand and **IF** there is enough area adjacent to their existing site, than I feel that they should be able to grow their business. However, if by expanding their acreage of the lease site and that would displace other fishermen, then that is something that I do not agree with. Giving ocean/bottom rights to one while displacing another shouldn't be allowed. I understand it would be much easier for a operation to tend their equipment all at one site, but to move one or several fisherman out of the way to allow another to use the majority of the area shouldn't be allowed.

Thank you for the opportunity to comment on the proposed rule making.

I am sure the Department will take all comments into consideration in making their decision.

Sincerely,

James Wotton  
Friendship

To the Dept. of Marine Resources, I am one of the many commercial fishermen who signed the petition to open up rulemaking around aquaculture leases. I am the sixth generation - all of whom have fished the waters off Friendship. We need a clear direction that balances the traditional fisheries with aquaculture. Right now, what is happening is that one fishery is displacing another and it doesn't make any sense to those of us who make our living off the ocean. The process for site locations needs to change. The burden cannot and should not be on those who have fished the waters for decades but rather on the applicant.

Thank you for your consideration,  
James Wotton

James marsh  
183 falls bridge rd  
Blue hill Maine

Dear department of marine resources.

I am very concerned about new aquaculture farming leases. I live on the first salt pond by the reversing falls in south Blue Hill. There is mussel farms in the second and third ponds. They consist of many blue flotation balls which are a real eyesore. I would hate to have them in first pond. I have a dock and fish the first pond. There is always garbage washing up on our property from the farms. Buoys and rope are a common occurrence.

I also fish Blue Hill Bay. There was mussel farm on the east side of Tinkers Island. They moved up to East side of Long Island. They chose a spot where I fish early spring and do very well. Well did very well. The lease off Tinkers was abandon they were supposed to clean it up. But the lobstering there is problematic. There is still lines under water which catches up gear. I've lost gear there so I do not fish where the lease was. The traps get tangled with whatever is down there. I pull the traps up and get within fifty feet or so from the surface and the hauler slows to a stop. The trap is hooked on something which moves for a bit and then stops. This has happened only where the lease was. I am not the only lobsterman to have problems there.

I have been lobstering since 1993 in Blue Hill Bay. There are many lobstermen Fishing a limited area. I would hate to see more area unfishable. The beauty of the bay is also hurt by the big buoys in a cluster. There is big yellow balls from the farm all over the pristine shoreline of the bay.

Thanks for hearing my concerns.  
James Marsh. (Jay)

Frank Johnson  
602 Foster Point Road  
West Bath, Maine 04530

May 12,2019

To Whom it may concern,

My name is Frank Johnson. I have been a part time commercial Lobster man fishing in zone F over the last thirty plus years. I am concerned about the growing increase of Aquaculture in our inside bays, taking away valuable fishing grounds from where many of us lobster-man have fished for generations.

I know the State of Maine is pushing for more Aquaculture but, they really need to consider the impacts on the lobster man as well. Many of us that fish, what we call, (inside) can't really fish anywhere else, either due to boat size, turf issues, etc. As it is the bait issue we are having is making it difficult enough to keep our heads above water. Losing fishing ground to this increase in Aquaculture is just going to make things worse. I am not against Aquaculture, but, I think the State has to take into consideration some of the impacts involved with Lobster fisherman who have fished these waters for generations and limit the size and numbers of these permits being issued.

I know many of my neighbors who live on the shoreline do not like looking at all these bags floating out in front of there shore line. It is a different point but, it comes back to who has the right to the water rights out in front of someones property. It doesn't effect me directly but it does many of my neighbors. Thank you for listening.

Frank Johnson

Subject: Public hearing by the Maine Department of Marine Resources (DMR), regarding citizen's rulemaking petition. Wednesday, May 22, 2019, Marquardt Building, Augusta, ME, at 5pm.

Reference: "Fishermen want to work with aquaculture farms to find best solution" Commentary in Portland Press Herald, Saturday, April 21, 2019 by Tom Santaguida.

To: Department of Marine Resources

My name is Eric C. Hakanson and my wife, Sandi, and I have lived on the Boothbay peninsula since 2007. We have had the good fortune of living on the Damariscotta River in Boothbay at 60 Fort Island Rd. since 2008.

There is currently significant lobstering, but no active aquaculture, in our area of the River. However, there has been occasional harvesting of rockweed along our shores, Fort Island, and Seal Cove on the Pemaquid peninsula. There has been a dramatic (controlled or uncontrolled?) increase in the amount of oyster farming on the upper Damariscotta River south of Newcastle/Damariscotta.

There doesn't seem to be any conflict at this time; lobstering in the southern six miles of the Damariscotta and oystering in the northern portion. It will be interesting to see if this changes over time. It is very obvious that several shoreline property owners have had their river access negatively impacted by the long rows of oyster strings immediately in front of their properties. Additionally, I am no longer able to access several areas along the Newcastle/Damariscotta shoreline to fish for Stripers. We are not opposed to any aspect of aquaculture, but are all the environmental impacts of this new fishery understood in each area of the Maine Coast? Logic tells me that it will vary greatly between Casco Bay, each of the three major rivers of the mid-coast, Muscongus & Penobscot Bays, and Down East.

I was surprised to learn that DMR allows both transfer and sale of aquaculture leases. Quite the opposite for Lobstermen! How does this create a fair balance in the overall industry? I'm a "what's good for the goose is good for the gander" guy. I guess in this case it's "what's good for the lobster fisherman should be good for the oyster harvester".

My wife and I value and respect our opportunity and obligation to live on the Damariscotta River. We think that the Maine Department of Marine Resources also has an obligation to develop a comprehensive and "fair to all" strategy for the commercial and recreational use of the entire Maine Coast by everyone. Until that well defined and understood strategy is in place, the prudent approach would be a more calculated growth of aquaculture.

Sincerely,

Eric C. Hakanson

60 Fort Island Rd.

Boothbay, Maine 04537

Brian Cates  
Cutler Lobstermen  
Zone A

Dear Department of Marine Resources,  
I am a lobsterman in Cutler and I signed the rulemaking petition you are looking at tonight. I support a moratorium on aquaculture leases of 10 acres or more and I also support DMR finding a second suitable site location to lessen the impact of the leases on fishermen. I am not anti-aquaculture and in fact years ago applied for a salmon farm lease in little Machias Bay. While that project didn't work out, I support the development of aquaculture. I just don't support the development at the cost of every other industry. I urge you to make the changes suggested in petition.

Sincerely,  
Brian Cates

Ben Weed  
Deer Isle, Maine

To the Department of Marine Resources,

Lobstermen are facing a number of challenges this year including herring shortages and the issues of right whale protection. I am hoping that somehow we can figure out the aquaculture issue so we don't add it to a growing list. It seems to me everyone should be able to get along but we also need respect for the traditional fishing grounds that lobstermen have used for generations. That's why I support the petition I signed limiting aquaculture leases to less than 10 acres and finding alternate site locations. There is a way to make this work for everyone. My family's sole income comes from lobstering and our industry deserves to be protected.

Sincerely,  
Ben Weed

5/17/19

Gerard Grondin  
14 Laurence Way  
Falmouth, Me.  
Zone Council F

Dear Department of Marine Resources,  
Unfortunately, a family commitment is keeping me from attending tonight's rulemaking session. I did want to add my thoughts to this process. I am a member of Zone Council F and have been fishing since 1986. I support the petition that brought us together tonight to have this discussion. Particularly, we need a level playing field for lobstermen. Lobstering is a difficult business and we are being squeezed considerably from all directions. I support limiting aquaculture leases to 10 acres or less and I support a process where DMR would have to determine if there is a less invasive site location than the one proposed by the applicant. As we have seen in Maquoit Bay, pitting aquaculture against lobstering is a win for no one. If the process were changed I believe we would have a better opportunity to co-exist instead of compete. Right now, the Maquoit Bay 40-acre oyster farm decision is still pending. I think an appropriate way to handle this situation is to put a moratorium on the project until better rules can be developed. I understand this is a unique situation in terms of the harbor master being part of this project which creates a considerable conflict of interest. I ask the department to think outside the box on this particular project.

Sincerely,



Gerard Grondin



My name is Susan Olcott. I am a resident of Brunswick, Maine. In the interest of full disclosure, I own property adjacent to the lease site currently proposed by Mere Point Oyster Company and also serve as the Chair of Brunswick's Marine Resource Committee. However, I make the comments I am sharing today solely as a concerned individual with expertise in marine science and ocean policy. I spent several years sampling aboard lobster boats while earning my Master's Degree in marine zoology, and nearly ten years working on ocean planning both nationally and more specifically in New England.

As is often the case, when a new use of a common resource emerges, there are challenges in combining this new use with those that already exist. This is the case with aquaculture in Maine. I am concerned that the rules and regulations currently in place are not sufficient to handle the increasing number of lease applications in state waters. Between 2007 and 2017, the number of new LPAs issued has increased by more than 1200% from 16 in 2007 to 195 in 2017 alone. This has resulted in an immense amount of work for the State, which has to decide what leases to approve in what locations and at what scale – all with an incomplete regulatory framework for guiding these decisions.

The potential for a thriving and healthy aquaculture industry in Maine is exciting, but it is critical to look down the road and envision what amount of the State's public waters its citizens are comfortable with being coopted for private use. I believe that the State needs to more fully consider how its citizens use and value its waters before it makes another decision approving or rejecting a lease application. It is for this reason that I would like to express my support for the changes in the DMR's rule-making as outlined in the previously submitted citizen's petition. I support the moratorium on leases larger than 10-acres.

Beyond the 10-acre moratorium, however, I encourage the state to create a master plan that contemplates aquaculture state-wide, and assesses areas where aquaculture is, or is not, suitable, and at what scale. Given that Maine's third highest-valued industry is tourism, a sector that employs over 85,000 people each year, we must be careful not to significantly change the character and heritage that is unique to the Maine coast in such a way that is no longer attractive to those that choose to come to our state.

Additionally, I support the citizens' petition to require the DMR to examine a more suitable location for a proposed lease when appropriate. In the case of the Mere Point Oyster Company application, the scale of this potential lease is inappropriate in an area that Maine has designated as an area of Ecological Significance. The State specifically cited the fact that Maquoit Bay includes a "large undeveloped block" when it made the Ecological Significance designation. The purpose of the Ecologically Significant designation is to "provide momentum to municipalities, land trusts, and regional initiatives focused on strategic approaches to conservation." This designation is not currently referenced in the DMR's regulations as a consideration for locating an aquaculture lease. The DMR should consider an Ecologically Significant designation in a manner similar to that in which IF& W considers an "Essential Habitat" designation, and thereby prevent LPAs from being located in those areas. In short, those areas that Maine

has previously designated as Ecologically Significant are inappropriate for large-scale aquaculture lease sites.

My final comment applies to the opportunities to improve local input in decision-making. I applaud the DMR's recent changes to the lease application process to allow for more time and notification between the pre-application and final application in order to facilitate feedback from the public for the applicant ahead of the final application submission. That gives interested parties more time to understand the application and to potentially suggest changes to the applicant based on their concerns. In the case of the Mere Point application, this may have helped to create some compromises in the lease design and scope. However, I believe that there needs to be a more direct process to include input from those who stand to be impacted by a lease. Because each coastal town already has a Marine Resource Committee, it would be logical to task these bodies with soliciting public input from their town. The Lobster Zone Councils would be another logical source of public input and facilitate notification. As far as specific notifications of those impacted, it is also concerning that the radius of notification is so small. In the case of the Mere Point application, no adjacent property owners were notified because all of the properties were just beyond the required 1000-foot limit. I urge the DMR to extend this range to include all coastal property owners within a half a mile adjacent to a lease site, as many of these are the people who will be making use of the water for commercial or recreational purposes.

Thank you for your consideration of my comments. I applaud the efforts of the DMR to thoughtfully respond to the concerns of the parties involved and am hopeful that we will find a measured and careful way forward that both benefits the state economically and also protects our public interests.



**May 22, 2019**  
**Testimony of the Island Institute**

**Against Rule - making Proposal, Chapter 2 Aquaculture Lease Regulations**

Commissioner Keliher, DMR staff, my name is Peter Piconi, and I am offering this comment against proposed rule making for Chapter 2, Aquaculture Lease Regulations on behalf of the Island Institute.

The Island Institute is a community development organization located in Rockland, Maine, that works to sustain Maine's island and coastal communities and exchanges ideas and experiences to further the sustainability of communities here and elsewhere. Our work is based on our three strategic priorities: strengthening community economies, enhancing education and leadership, and delivering and sharing solutions. We work closely with Maine's 15 year-round island communities, as well as many coastal communities.

North American lobster is the single most valuable species landed in the US and 80% of the catch comes from Maine. Small coastal communities are highly dependent on fisheries – the value of lobster landings for Rockland, Stonington, and Vinalhaven are almost equal to the total combined value of all commercial fish species caught in New Hampshire, Connecticut, and Rhode Island.

Recognizing both the importance of the lobster fishery and the risk that a heavy reliance on a single species poses to coastal communities, we developed our Aquaculture Business Development Program to help coastal and island communities diversify their local economies for a resilient future. Aspiring shellfish and seaweed aquaculturists apply to this program and successful applicants receive intensive, multi-year, one-on-one support as well as group training that helps participants successfully launch strong aquaculture businesses along Maine's coast. We look for applicants who have demonstrated a strong social network in the marine industry and a high amount of practical experience on the water. A program goal is to provide support to responsible individuals so that they may become positive representatives of the aquaculture industry as well as leaders in Maine's marine industry as a whole.

In April, 30 aspiring aquaculturists came to the Island Institute for the kick off of the 4<sup>th</sup> cohort. Since 2016, this program has helped start 22 new aquaculture businesses and supported over 115 individuals considering whether and how to add aquaculture to their existing businesses. Some members of the 2018 cohort are still getting in the water and two members from the 2017 group are transitioning from Limited Purpose Aquaculture licenses to experimental leases.

Many of the program participants have started their businesses with between 1 and 4 LPAs. These are small areas – 20'x20' or roughly the size of a floating dock. In terms of lobster traps, this about the same footprint as 50 good-sized traps placed side by side. For purposes of comparison, the 500 new LPAs over the last decade take up the same amount of physical bottom as the physical traps of about 31 fishermen – or roughly the number of new licenses for the lobster fishery that were issued in 2017.

In terms of revising Chapter 2 regulations to add the consideration of other suitable locations, please consider the following:

- The existing lease decision criteria for siting is thorough and already covers how a lease may interact with surrounding usage and provides more than sufficient protection for both the environment and nearby users. Considerations of interactions with other users are already reflected in both the statutory criteria and Chapter 2 regulations. Adding a consideration about alternatives being more “suitable” or less suitable in the way of other users is not needed because if a site interferes too much with these existing uses, the Commissioner can, and should, deny the lease.
- The regulation does not propose how to define a “more suitable location” or how far away from the proposed site is still “in the vicinity.” The regulation also does not define “interfere less with existing... uses in the area.” Further, the regulation proposes to include uses that are “surrounding uses of the area” which is very vague in terms of both scope of uses that would require consideration and also proximity to the proposed lease. It is the responsibility of the applicant to identify a suitable location for their business. Aquaculture is highly site specific endeavor and applicants must already balance other users, environmental, and regulatory factors with their business operations. Each site may require a slightly different business plan and operational model, to ask the Commissioner to make judgements about whether another site is more suitable and less suitable in the way of other users places a significant and inappropriate burden on the Department.
- In terms of the retroactive nature of the moratorium, the Island Institute believes that it is not appropriate to change the rules for businesses that have already applied under existing regulations.
- In terms of a forward looking moratorium, the Island Institute would question what would be accomplished by such a moratorium. In local zoning ordinance development processes, moratoriums are often used to give the community time to craft regulations to appropriately address an emerging issue. While there are places along the coast with greater levels of conflict between the aquaculture industry and the fishing industry, the Island Institute would encourage these two industries to come together to discuss issues of mutual importance. These conversations are best done outside of the regulatory process and in an industry to industry nature. The Island Institute stands ready to help support or facilitate these conversations.

Thank you for your time and we appreciate the opportunity to have a conversation about these issues.