

DAVID E. RICE
Natural Resources Protection Act
Removal of Special Condition #5 – South Bristol

RESPONSE TO APPEAL

- Letter dated September 2, 2010 from John A. Rounds and A. Carolyn Pavis-Rounds
- Letter dated October 22, 2010 from John A. Rounds and A. Carolyn Pavis-Rounds

Rec'd 9/15/10
CBentocci

September 2, 2010

Ms. Susan M. Lessard, Chair BEP
(attn: Ms. Terry Hanson)
BOARD OF ENVIRONMENTAL PROTECTION
17 State House Station
Augusta, MAINE 04333-0017

**RE: Appeal in The Matter of: Department Permit denial #L-23698-4E-B-M
David Rice: Application for removal of Special Condition #5 from commercial
dock permit L-23698-4E-A-Z**

Dear Chair Lessard,

We are writing to you as interested parties with regard to the above appeal, having received a letter dated July 29, 2010 from Ms. Beth Callahan. Ms. Callahan attached to her letter a copy of a letter to the Department dated July 27, 2010 from David Etnier, Deputy Commissioner at the Department of Marine Resources (DMR), and it is in response to this letter that we would like to make a number of comments.

This recent letter from the DMR is particularly contentious in that it apparently contradicts its own and previous position on this issue. The DMR now claims in its July 27, 2010 letter that it had "erred" in its previous letter dated August 31, 2009 which had expressed its **disapproval of the removal of Special Condition #5** (no trap storage on the pier) currently being requested by David Rice.

We urge the BEP to request a copy of the first letter dated August 31, 2009 from the DMR to the DEP, which we have been unable to obtain. We also respectfully request **copies of Appendix 7, Appendix 8, Appendix 10 and Appendix 12 which have been submitted as supplemental evidence by Mr. LeBlanc on behalf of David Rice.**

The DMR claims in its latest letter of July 27, 2010 (1) that it did not understand before the DEP's July denial of David Rice's request for the modification of Board Order #L-23698-A-Z that the storage period in question was only from December to March. This notion is, in fact, erroneous, as can be seen clearly in the "Supplemental Information" submitted on behalf of the applicant himself by Mr. Joe LeBlanc on July 2, 2009 and which gives a month by month calendar of trap activity and states explicitly that the applicant "*starts setting trap strings*" during the month of June, to be continued in July for "**the majority of trap strings**" (page 1: "Typical Trap activity": see Attachment #1). **As corroborative evidence of this fact, we are including a photograph (Attachment #2) taken on June 13th, 2010 which shows clearly the pier full of traps, from which, on the day the photograph was taken, a few traps were only starting to be removed after the normal period of winter storage which lasts at least six months, and *not* four months, as the DMR argues.**

The DMR also claims (2) that this storage will not cause any "consequential shading of nearby vegetation." Yet the DMR itself, after visiting the site on July 16, 2007 (i.e., before the license to build the pier was ever granted) had already expressed concern with regard to the shading effect of the pier itself, and had argued in a memorandum dated September 6, 2007 from Commissioner George D. Lapointe (Attachment #3) for a reduction of its width: ***"The width of the proposed pier deck to its height is more than the usually recommended 1:1. Shading and subsequent loss of marine vegetation would likely result."***

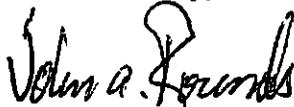
In addition, as the text of the DEP's denial clearly shows, the addition of 600 traps to a 12' wide by 110' long pier will increase the shading effect by approximately 40% (page 2). And such shading, according to a joint report on Maine coastal wetlands by the National Oceanographic Atmospheric Administration and the Department's Division of Environmental Assessment, would have a negative effect on rockweed and macroalgae even in the wintertime (page 6). Indeed, marine researchers at the University of Maine's Darling Marine Center in our own Clarks Cove area have confirmed that benthic diatoms are in fact in the process of regenerating as soon as the days begin to lengthen, as early as mid-January, and that these are essential to the plant and animal growth cycle. It is therefore obvious that to allow trap storage on this pier, even if it were to be limited to the winter months of January, February and March (which, as we have seen, is *not* the case, since in reality the traps are stored until June and the trap strings are not set until then), would increase the negative environmental effects of this pier and significantly harm the natural development of this "*Wetland of Special Significance*" [Chapter 310(4)] in Clarks Cove.

The DMR's third point concerns the question of alternatives to using the pier for the purpose of winter storage. David Rice now claims, and the DMR therefore assumes that there is "no room" on the Edlund property adjacent to the pier itself for the storage of 600 traps over the winter. The fact is that the pier was designed to afford easy access (via a trap chute) to this upland property which is legally available to David Rice for all his lobstering needs. The property itself (see enclosed map, Lot 3, Attachment #4) contains only one fairly modest residence plus a small shed (8 ft. x 10 ft.) located on the NW side of the property between the house and the stone wall which separates Lot 3 from Lot 5 (side "A" on the map photo). This side of the property is approximately 170 ft. long. It is relatively unobstructed for most of its length, the only exception being the 10 ft. long shed already mentioned. Otherwise, the remaining 160 ft. are clear of obstacles and already offer more storage space than is available on the full length of David Rice's pier. **This was, in fact, the location on which David Rice's traps were being stored when they were observed by neighbors at a time during which the outcome of the appeal before the Board as regards the pier license was still pending.** The other long side of the Edlund property (Side "C" on the map) is even longer (over 200 ft.) and totally clear except for the presence on that side of three trees. Altogether the two sides of this property offer considerably more space to store traps than does the whole surface of the 12' x 110' pier. The existence of this notably convenient alternative to storage on the pier renders David Rice's latest proposal to modify his permit to include trap storage on the

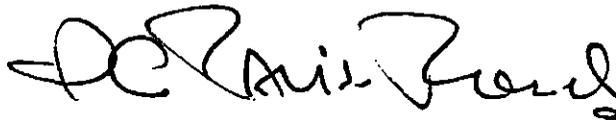
pier totally untenable and the discussion of the supposed necessity of using "multiple alternatives" completely irrelevant.

We therefore urge you to maintain the DEP's position of denying David Rice's request for a modification in his license which would constitute a major increase in the damage already inflicted on the wetlands of Clarks Cove by the construction of this pier. We would also like to add, because for us it is a painful reality all year long, both for us and for our tenants, that the alteration of our scenic and recreational environment by this pier is considerable. The addition of a wall of traps on top of that pier for six months of the year would amplify enormously this destructive aspect and intrusive nature of this pier.. To allow such an exception would be to yield to one man's idea of his "convenience" at the expense of a whole community.

Yours sincerely,



John A. Rounds



Athar C. Pavis-Rounds

Encl:

Attachment #1: David Rice Minor Revision Application Supplemental Information
07-07-09, pages 1-2

~~Attachment #2: photograph of pier dated June 12, 2010~~

Attachment #3: Memorandum from DMR Commissioner George
D. Lapointe dated September 6, 2007 to Ms. Beth Callahan

Attachment #4: Map to scale dated June 24, 2007; Data source: MEGIS,
SB Harbormaster, SVCA UTM 19N NAD83

**Item with strikethrough is
supplemental evidence that
was not admitted to the record.**

ATTACHMENT #1

DAVID E. RICE
South Bristol, Maine
PIER, RAMP & FLOAT SYSTEM

Permit # L-23598-4E-A-M

MINOR REVISION APPLICATION

SUPPLEMENTAL INFORMATION

07-02-09

Typical Trap activity on Pier

- **March - 1st half of month - same as January (minimal to no fishing - maximum trap storage on pier - some repair / maintenance activity on equipment on flat, clean, working surface of pier, all dependent on weather; working with tools and equipment maintained in 8' x 10' equipment shed on pier); 2nd half of month - once weather conditions permit and before the fishing season begins, Applicant begins the routine, early spring work of readying his 600 traps and related gear on the pier, in a location which will be immediately accessible to the Applicant's lobster boat; performing maintenance, repair, and assembly of trap strings and related gear**
- **April - Applicant continues the routine spring work of readying his 600 traps and related gear on the pier, performing maintenance, repair, and assembly of trap strings and related gear**
- **May - same as April**
- **June - part of month - same as April; Applicant, working off pier, may also start setting trap strings to determine if lobsters are beginning to move in closer to shore, and where they are located**
- **July - setting the majority of trap strings; bulk handling of Applicant's traps onto the boat for setting, all in a relatively short period of time, as the season begins in earnest (when the lobsters start to move in from deeper waters) from pier-to boat-to indicated active fishing areas in water; active lobster fishing period; back and forth from pier to boat to water and return; some traps on pier throughout**
- **August - active lobster fishing - some traps on pier throughout; some set trap strings returned to pier for repair & maintenance and/or cleaning and "resting" on pier to improve individual trap fishing-effectiveness**
- **September - same as August**
- **October - same as August**
- **November - part of month; same as August, subject to weather; latter portion of month some trap strings returned to pier as lobsters begin to move off shore and fishing production starts to drop off**
- **December - some limited fishing activity may continue depending on weather and continued presence of some lobsters; bulk trap string removal begins in earnest; setting**

on pier; some limited repair and maintenance of traps and gear on pier before winter commences; trap storage on pier commences (as noted previously, this shoreline adjacent to the Applicant's pier presents a harsh environment during the winter season, with few visitors)

- January - minimal to no fishing - maximum trap storage on pier - some repair / maintenance activity on equipment on flat, clean, working surface of pier, all dependent on weather; working with tools and equipment maintained in 8' x 10' equipment shed on pier
- February - same as January

It should also be noted that the typical fishing sequence described above, can shift by a month +/- from year to year, depending on water temperature, mild or bitter winter, and/or other factors which frequently change, beyond the control of the commercial fisherman.

Finally, there are years when the Damariscotta River has been closed to scallop draggers by DMR, who when permitted, will drag the bottom of the river from Jan 1 through April 15, (typically) or as otherwise permitted. During such dragger-closed years, the Applicant and others may keep a few trap strings in the water, as there is minimal risk of draggers destroying their traps and gear, and lobster prices make it worthwhile to continue to fish for lobsters. During such winters, the Applicant may continue his lobstering activities for all twelve months of the year.

In summary, the pier was designed to meet the functional needs of the Applicant, a commercial fisherman, during up to a nine month period in a typical year. It is reasonable to allow the Applicant the superior advantages of this pier for trap storage during the winter months as well.

ATTACHMENT #3

EXHIBIT K Narrow Pier Width Recommendation

TO: Beth Callahan, Project Manager
Dept. of Environmental Protection (DEP),
Bureau of Land and Water Quality Control

FROM: Department of Marine Resources (DMR)

SUBJECT: REQUEST FOR PROJECT REVIEW,

PROJECT: DEP Application #: L-23697-4E-A-N
Applicant: David B. Rice
Location: South Bristol (Clark Cove, Damascotta River)
Type of Project: Pier, Ramp & Float Replacement & Expansion

The above proposed project has been carefully reviewed and considered by DMR personnel.

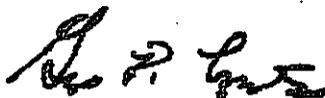
DMR personnel visited the site on July 16, 2007 at 0845 at approximately low water, and again on August 9, 2007 at 1430 at low water.

DMR understands that the applicant is proposing to remove an existing 5 ft. x 30 ft. pile supported pier constructed in the 1950s that had at one time a 3 ft. x 30 ft. ramp and 10 ft. x 15 ft. float that extended approximately 20 ft. beyond MLW. This would be replaced with a 12 ft. x 110 ft. pile supported pier (21, 12 in. dia. piles) that would extend 64 ft. beyond MLW with an east-west orientation and an average deck of ~7 ft. above the intertidal substrate. A 4 ft. x 34 ft. ramp would connect to a 12 ft. x 20 ft. float to provide ~4 ft. of water at MLW according to the permit application. The pier would be accessed by a 6 ft. x 6 ft. platform and a 4 ft. x 14 ft. stairway from the upland. The stairway would be fitted with a trap slide. The applicant also proposes to construct an 8 ft. x 10 ft. x 10 ft. high equipment shed on the pier above Mean High Water (MHW). The applicant stated he does not intend to store lobster bait at this site, and intends to continue to sell his catch at the Gut in South Bristol.

The upland is a small lot with a house located ~50 ft. from the edge of the supratidal bank. The supratidal is ledge outcrop rising ~4 ft. high from MHW with a 4 ft. high vegetated bank above that. The extreme upper intertidal is ledge. Below this the intertidal is ledge/stone/cobble/gravel with ~75% rockweed cover. There is a commercial pier in the cove about 300 ft. to the southeast. A mooring with a sailboat is situated ~75+ ft. from the seaward end of the proposed float. There appeared to be a couple of other moorings, not used recently, further out beyond this first mooring. A mooring with floats for trap storage is located ~200 ft. south of the proposed float. An aquaculture lease, ~15 acres in size, for suspended culture of blue mussels, oysters, hard clams and soft-shell clams is located in the cove ~400 ft. from the end of the proposed float at its closest point. Lobster traps are located outside of the cove.

This project as proposed should not result in any significant adverse impacts to traditional fishing activity, recreation, navigation or riparian access. The width of the proposed pier deck to its height is more than the usually recommended 1:1. Shading and subsequent loss of marine vegetation would likely result.

DMR recommends that consideration be given to further reducing the width of the pier decking, and that if access to the existing mooring with sailboat becomes a problem due to the proposed pier, ramp and float and its use that the applicant bear the cost of moving that mooring to a better location.



GEORGE D. LAPOINTE
COMMISSIONER OF DMR
Date: September 6, 2007

69°34'45"W

69°34'30"W

69°34'15"W

43°56'0"N

43°56'0"N

ATTACHMENT # 4

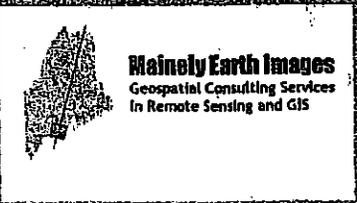
43°55'45"N

43°55'45"N

69°34'45"W

69°34'30"W

69°34'15"W

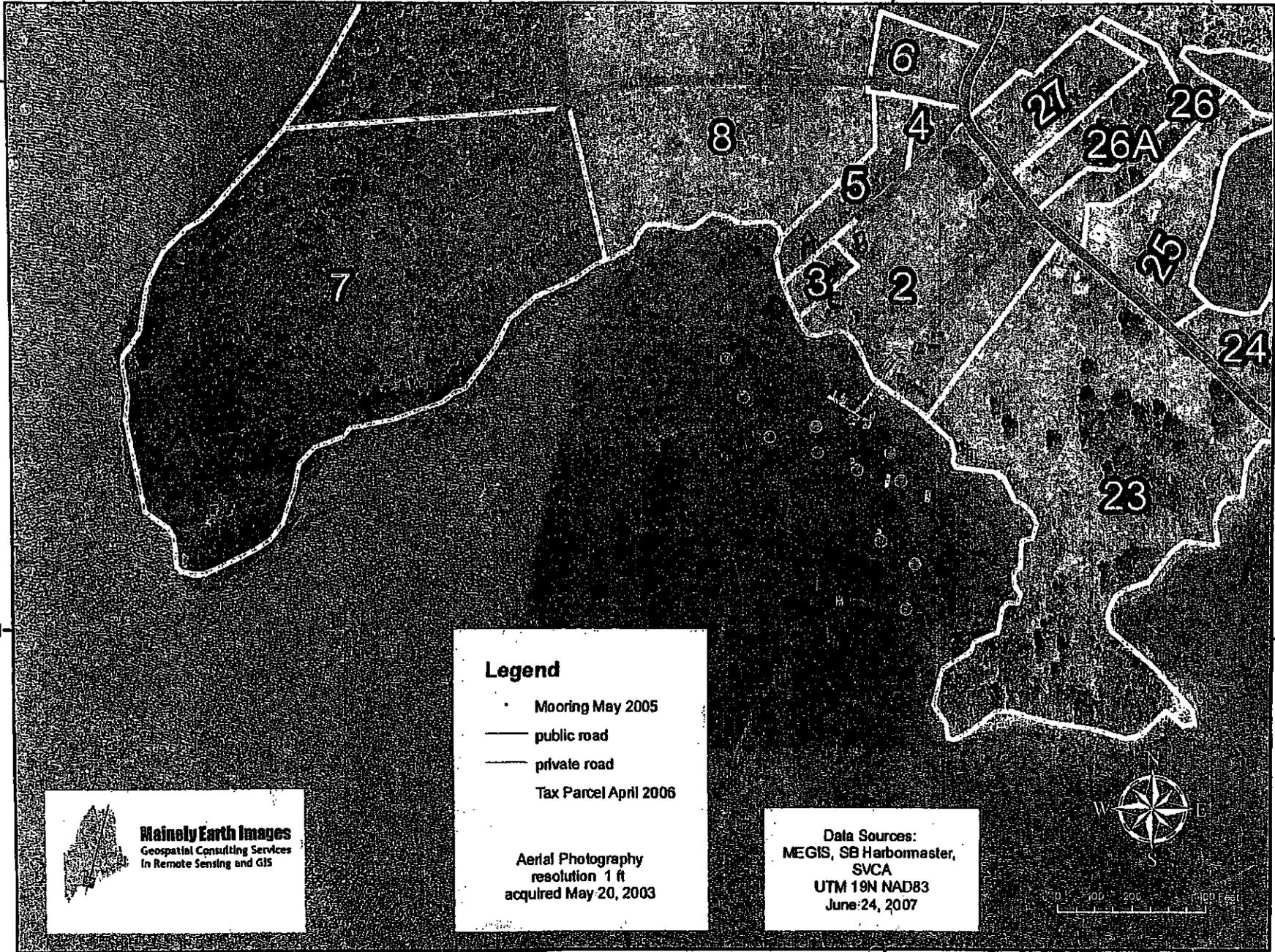
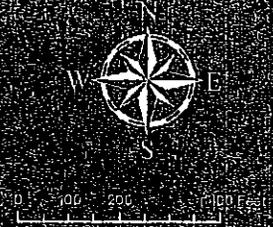


Legend

- Mooring May 2005
- public road
- private road
- Tax Parcel April 2006

Aerial Photography
resolution 1 ft
acquired May 20, 2003

Data Sources:
MEGIS, SB Harbor Master,
SVCA
UTM 19N NAD83
June 24, 2007



7 Orchard Road
Walpole, MAINE 04573

October 22, 2010

Ms. Susan M. Lessard, Chair
Board of Environmental Protection
17 State House Station
Augusta, MAINE 04333-0017

cc. Ms. Cynthia Bertocci
Ms. Terry Hanson

RE: Department Permit Denial#L23698-4E-B-M

Dear Chair Lessard,

We are writing to urgently because we want to be sure that the true duration of trap storage on the pier in question has been fully documented, and because we understand from Ms. Bertocci that no arguments may be submitted to the Board after Wednesday, October 27, 2010 regarding the above referenced appeal.

In October, Ms. Bertocci kindly forwarded to me a copy of the September 16, 2010 letter from the DMR which assumes a trap storage period ending in March, whereas visits to the site in May 2009 by Mr. Ham at DEP Enforcement as well as letters from members of the community, and our own photograph of June 12, 2010 showing 600 traps still on the pier are all **documentary evidence of a trap storage period well beyond early spring.**

By letter of October 7, 2010 the BEP has informed us that this June 12, 2010 photograph is not admissible into the record since it could have been submitted earlier in the licensing process, although I do not see how it could have been submitted earlier than it was, since (1) we were never even informed of the DEP denial and (2) we did not know that the denial was in appeal before August 27, 2010.

If only in the interest of fairness and transparency, it seems to me imperative that this June 12, 2010 photograph be allowed in the record, since the DMR arguments in their letter dated September 16, 2010 (a letter accepted into the record despite its late date) are essentially based on what is an inaccurate portrayal of the duration of the trap storage period.

It is commonly known in South Bristol that the lobster fishing season does not begin until mid to late May at the very earliest — so how could we have known beforehand that the length and not just the existence of trap storage on the pier was important to document?

I want to thank you for your time and effort on this matter and for the help Ms. Bertocci has given us in getting the documents normally sent to all interested parties.

Yours sincerely,

Ms. A. Carolyn Pavis-Rounds

Mr. John A. Rounds