

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Maine Source Seafood
CAS LI**

Standard Aquaculture Lease Application
Suspended culture of shellfish
Casco Bay, Yarmouth, Maine

May 26, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Maine Source Seafood applied to the Department of Marine Resources (DMR) for a fifteen-year standard aquaculture lease on 3.47¹ acres southeast of Lanes Island, Casco Bay, in Yarmouth, Maine. The proposal is for the suspended culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*) and northern quahogs (*Mercenaria mercenaria*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on September 14, 2018, and a scoping session was held on January 29, 2019. DMR accepted the final application as complete on September 5, 2019. A public hearing on this application was scheduled for February 9, 2021. Notice of the completed application and public hearing was provided to state and federal agencies, the Town of Yarmouth, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in *The Forecaster* on January 7, and January 28, 2021. Due to the COVID-19 pandemic, and to limit any potential public health risks associated with gathering in groups, DMR elected to conduct the hearing remotely, using a virtual meeting platform.² The public notice for the hearing indicated that the proceeding would be conducted remotely and directed interested persons to contact DMR to sign up to participate in the proceeding.

On January 29, 2021, DMR received an email from a member of the public indicating that the proposed lease site was not marked 30 days in advance of the hearing.³ DMR regulations Chapter 2.15 requires that 'at least 30 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased'. DMR reached out to the applicant after receiving the email, and the applicant indicated they had not remembered to mark the site. As a result, the February 9, 2021 hearing was cancelled, and the hearing was re-scheduled for March 16, 2021. Notice of the cancellation and re-scheduled hearing was provided to anyone who had already registered to participate in the proceeding.⁴ Notice of the rescheduled hearing was also published in *The Forecaster* on February 11, 2021 and was

¹ Applicant originally requested 3.48 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 3.47 acres.

² The Department of Marine Resources uses Microsoft Teams for all virtual conferencing, so this was the platform used for the Maine Source Seafood remote hearing.

³ Email from A. Moeser to DMRAquaculture@maine.gov, F. Drury, M. Nelson and A. Ellis on 1.29.21

⁴ On February 1, 2021, Hearing Officer Erin Wilkinson sent an email to members of the public who had already registered indicating the February 9, 2021 hearing had been cancelled. An additional email was sent by E. Wilkinson on February 9, 2021 indicating the hearing had been rescheduled for March 16, 2021.

shared with state and federal agencies, the Town of Yarmouth, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR’s aquaculture email listserv. Notice of the rescheduled hearing also directed individuals to contact DMR to sign up to participate in the proceeding. No one intervened in this case.

Sworn testimony was given at the March 16, 2021 hearing by the following witnesses:

Name	Affiliation
Jefferson Oranellas and Todd Jagoutz	Maine Source Seafood, applicant
Flora Drury, Cheyenne Adams, and Marcy Nelson	DMR Aquaculture Scientists
Amanda Moeser, Bob Earnest, Chad Coffin, Mike Brown, Chris Stapleton, Todd Molloy, Chris Uraneck ⁵	Members of the public

Colin Greenan, with the United States Army Corps of Engineers (ACOE) also attended the hearing but did not offer testimony. Additional DMR staff and members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson.

The evidentiary record before DMR regarding this lease application includes six exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.⁶

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report
4. Map of European oyster harvest areas
5. Pre-filed exhibits by A. Moeser
6. Pre-filed exhibits by C. Coffin

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On October 8, 2019 DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR 2). The proposed lease site occupies subtidal waters southeast of Lanes Island in Casco Bay, Yarmouth. Lanes Island, located northwest of the proposed site, hosts an undeveloped shoreline, and features a rocky intertidal zone leading to mature forested uplands (SR 2). At low water, mud flats extend from Lanes Island and the Freeport mainland north, while open shoal waters are to the south and east (SR 2). During their visit to the site, DMR staff observed

⁵ Chris Uraneck is a DMR employee but did not participate in the hearing in his capacity as DMR staff but as a member of the public.

⁶ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

the bottom of the site using drop camera transects and found that the bottom of the proposed site is predominately a mud-sand mix with shell hash and occasional cobble (SR 7).

During DMR's visit to the site on October 8, 2019 depths at the proposed site ranged from 3.8 to 4.2 feet, sloping deeper from the northeast corner to the southeast corner (SR 6). Correcting for tidal variations results in depths at the site that range from approximately 10.35 to 10.75 feet at the nearest high tide and 1.96 to 2.36 feet at mean low water (SR 6). According to the site report, the proposed site was observed to remain subtidal at low water during DMR's site visit (SR 6). Figure 1 shows the proposed lease site and surrounding area.

The proposed site is located within Growing Area WI(CA-3) and is currently classified as 'conditionally approved' by the DMR Bureau of Public Health for the harvest of shellfish. This area is subject to a closure following a malfunction or combined sewer overflow event at the Yarmouth Wastewater Treatment Plant.

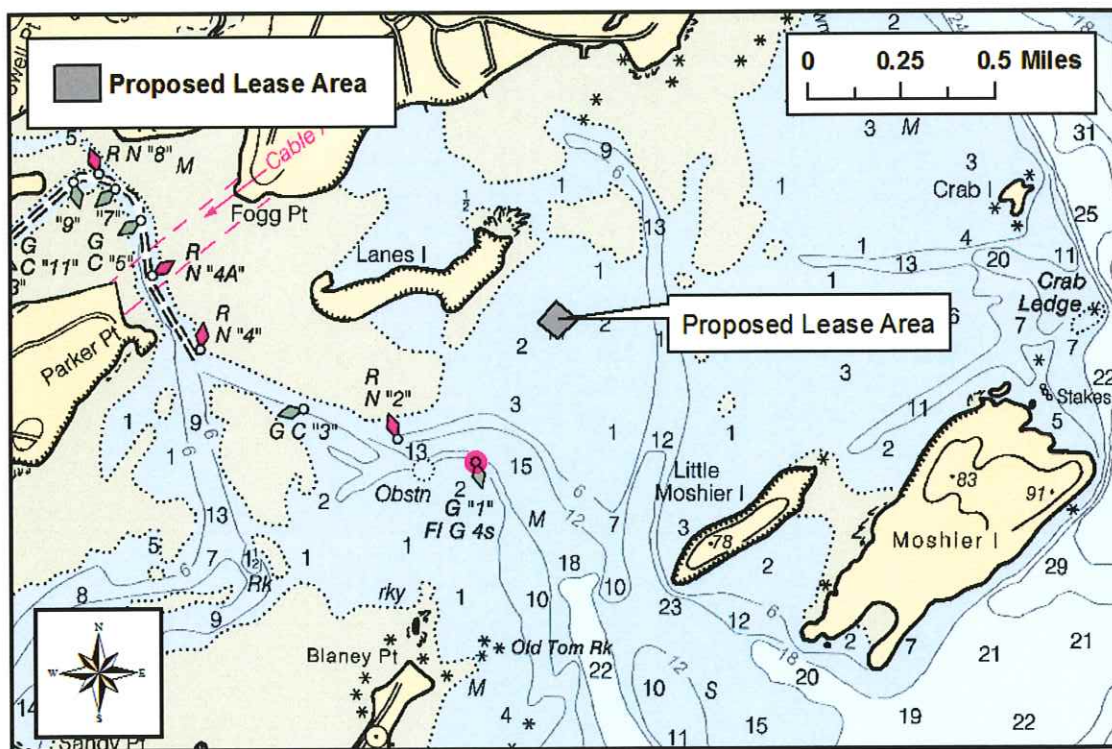


Figure 1: Proposed lease site and surrounding area. Image taken from DMR's site report.

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*), European oysters (*O. edulis*), and northern quahogs (*M. mercenaria*) on the proposed lease site using suspended culture techniques (App 1). The applicant proposes to deploy 10 longlines, each 360 feet in length, with 30 feet of space between each line. Longlines would have up to 50 Oyster Ranch cages or 50 floating mesh bags attached to them, for a total of 500 cages and bags deployed across the site (App 30). According to the gear table provided in the application, there would be a total of 300 oyster cages, and 200 floating mesh bags

used on the site (App 4). In addition, the applicant proposes to deploy up to 20 bottom cages on the site (App 4). According to the applicant's testimony, the bottom cages would be deployed underneath the lines of surface gear, so that the space between rows would remain open and free of gear (T. Jagoutz, testimony). The applicant intends to harvest product by hand, and no power equipment is proposed to be used on the site (App 7, 9). The applicant plans to service the site from a 17' flat bottom skiff, but anticipates purchasing a larger, 25-30' skiff to use on the site in the future (App 8).

In the completed application submitted to DMR (Exhibit 2), the applicant indicated that all gear would be removed from the site during the winter months, and that shellfish would be overwintered at an offsite facility. At the hearing, the applicant testified that they'd like to have some floating bags remain on the site during the winter, so they could harvest and sell product year-round (J. Oranellas and T. Jagoutz, testimony). The applicant did not provide specifics but testified that one line of surface gear would be more than enough, and that no bottom cages would remain. Based on the gear layouts included in the application, one line of gear would be no longer than 360 feet and would hold up to 50 of the proposed cages or bags. In some circumstances, gear changes may be presented and considered at lease hearings, and while the applicants did not provide the specific number of bags that they would like to keep deployed during the winter months, they were clear that it would not need to be more than 1 line of gear, and would only be kept on site when ice is not present. Based upon the applicant's testimony, all other gear would be pulled from the site in December and re-deployed in March or April once weather and water conditions were right (J. Oranellas and T. Jagoutz, testimony). It is the opinion of the Hearing Officer that those attending the hearing understood the changes the applicant was proposing, and the adjustment to winter operations was discussed throughout the proceeding. Because the applicant is not proposing any changes to the type of gear they'd like to use and will still be removing most of the gear from the site, DMR will consider the request to keep one line of floating gear on site during the winter months as part of this decision.

At the hearing, there was some discussion and question about the applicant's plan to culture northern quahogs. Upon questioning, the applicant indicated they plan to focus primarily on culturing oysters, and do not have a specific plan for the culture of quahogs nor immediate intentions to culture them, but included quahogs as part of their application in case they want to culture them in the future (J. Oranellas and T. Jagoutz, testimony). The applicant listed both Mook Sea Farms and Muscongus Bay Aquaculture as a potential source of seed for their operations, and these are DMR approved hatcheries. However, because the applicants have demonstrated that they do not have intentions or a plan for the culture of quahogs, this species will not be considered as part of this decision. Should the applicants wish to culture northern quahogs on the site in the future, they may apply to DMR for a species amendment for the lease.

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner upon determining that the project will not unreasonably

interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration other aquaculture uses of the area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

A. Riparian Access

Lanes Island, which is owned by Maine Coast Heritage Trust, is the only riparian property within 1,000 feet of the proposed site. The island is undeveloped and has two recommended landing sites and campsites available for public use (SR 10). One landing site, on the southwestern end of the island, is a sand beach, while the second is a gravel beach located toward the north of the southeastern shoreline (SR 10). According to DMR's site report, the gravel beach is approximately 880 feet away from the proposed lease, and is supposedly accessible at mean low water, but appears to be surrounded by exposed mud flats during negative tides (SR 10). Given the shallow depths in the area, most vessels using this landing would likely be hand powered or shallow draft skiffs. The distance between the gravel beach and the proposal is likely sufficient to allow for depth appropriate vessels to access Lanes Island unimpeded. The site report did not indicate the distance between the sand beach on the southwestern end of the island and the proposed lease site. It appears that this beach is a greater distance away than the gravel beach, and access to this landing should not be impacted by the proposal.

During the hearing, no testimony was provided from Maine Coast Heritage Trust, or others, indicating that riparian ingress or egress was a concern. Given that the evidence in the site report indicates access to the island should not be impeded by the proposal, there appears to be ample open navigable space around the proposed site, and because the applicant is proposing to have lines of gear that are spaced 30 feet apart which should allow individuals in small vessels to transit between if necessary, access to the island via the gravel beach or other points is not likely to be hindered by the proposed activities.

Based on this evidence, it appears that riparian access will not be prevented or unduly affected by the proposed lease.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

B. Navigation

The proposed site is located southeast of Lanes Island in Casco Bay. A marked navigation channel leading into the Royal River is to the southwest, Cousins Island is located farther to the southwest, and Moshier and Little Moshier Islands are located to the southeast (SR 2). The navigational

channel leading to the Royal River is located approximately 1,475 feet away from the proposed site. The site report indicates that it is likely this channel can experience heavy vessel traffic, but that it is unlikely the proposed site would impede vessel flow if granted (SR 10). The Winslow Park boat ramp and South Freeport Harbor are located to the north of the proposed site, and experience heavy use. The application indicated that boat traffic does transit through the proposed lease site when going between the Royal River channel and the Winslow Park boat ramp (App 13). However, the site report notes that because there are approximately 3,310 feet of navigable water between the proposal and Little Moshier Island to the southeast, vessels travelling to and from the Winslow Park boat ramp would likely be able to navigate around the proposed lease site with little alteration to their course (SR 10).

Multiple individuals testified at the hearing about navigation in and around the proposed lease site. One individual indicated that during the summer months, when access to the Royal River isn't iced over, they would not need to navigate through the proposal, but in the winter when they come and go from South Freeport Harbor, they would typically travel through the proposed lease site, and that they have serious concerns about the applicant's ability to properly mark their site so that it is visible to those navigating in the area (A. Moser, testimony). Another individual testified that it's not about whether there is room to go around the proposal, but whether the proposal is clearly marked so you can see it (T. Molloy, testimony). A recreational user of the area testified that he typically transits through the lease site on his way out to Moshier Island, and that while he could navigate around it, it would make life harder and would displace him (Uranek, testimony).

Maine Source Seafood has proposed to space the longlines 30 feet apart, however, once cages and bags are deployed on the longlines, the available space for navigation between lines of gear is reduced to 24-26 feet. In the winter all but one line of gear would be removed. Given the shallow nature of the site at low tide, many vessels are likely limited from travelling through the proposed site, and those that can transit through the shallow waters would likely be able to navigate within the 24-26 foot space between the lines of gear. While the applicants have also proposed to deploy up to 20 bottom cages on the site, these will be deployed directly underneath the lines of floating bags and cages and should not obstruct navigation between the rows of gear (T. Jagoutz, testimony). According to the site report, the closest point on Lanes Island is approximately 860 feet away from the proposed site (SR 9). In addition, in the summer, when access to the Royal River is not iced over, many individuals that are coming from the river for points beyond the proposal such as Moshier and Little Moshier Islands would likely not have to transit through the proposed area. However, testimony from one individual indicates that when he travels from the Harraseeket River or South Freeport Harbor he travels directly through the lease site to access points such as Moshier and Little Moshier Islands (Uranek, testimony). In the winter, all but one line of gear will be removed and most of the area will be open for navigation, and those that typically transit the area would only need to navigate around one line of gear. In the summer, when gear is deployed on the site, those coming from the Winslow Park boat ramp, South Freeport Harbor, or other points to the north should have ample space between the proposal and Little Moshier Island to navigate around the area without having to transit through the proposed lease site. Those using smaller, depth appropriate vessels,

should be able to navigate between the applicant's lines of gear if they wanted to transit through the proposed lease.

Some of the testimony offered about navigation also referenced the Limited Purpose Aquaculture (LPA) licenses held by shareholders of Maine Source Seafood in the area that may have not been properly marked and expressed concern that the lease site would not be properly marked (Moeser, Molloy, testimony). All lease and license holders must comply with DMR marking requirements, and must follow any state, federal, or local requirements that may also apply. The town of Yarmouth also asks leaseholders to comply with town specific marking requirements, and leaseholders are encouraged to comply with these guidelines if they are not in conflict with any DMR or U.S. Coast Guard marking requirements. As of the lease hearing, DMR was not aware of any LPAs held by individuals associated with Maine Source Seafood that were not currently properly marked. In addition, the applicants intend to relinquish LPAs held by shareholders of Maine Source Seafood if the lease is granted, and Maine Source Seafood would be required to follow all marking requirements for lease sites. A condition related to proper marking will be included on the lease.

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

C. Fishing & Other Uses

Fishing. During their visit to the site, DMR staff observed approximately 15 lobster buoys in the deeper water to the south and southeast of the proposed site (SR 10). The site report did note that given the seasonality of the nearshore lobster fishery in Maine, it is possible that lobster fishing activity occurs closer to the proposed lease site at other times of year than when the site assessment was conducted (SR 10). The application indicated that there has been no active lobster fishing observed within the boundaries of the proposed site since 2016 (App 13), and that most of the lobster fishing activity occurs to the east and south of the site during July, August, and September. The application states typically one lobster boat can be seen in the area each day (App 13). No testimony was offered during the hearing to indicate there is a concern about the proposed lease interfering specifically with lobster fishing in the area.

DMR's site report identified that European oysters were observed in abundance throughout the proposed lease area, and that given the shallow nature of the site, the area would be shallow enough for shellfish harvest by hand, rake, or small drag (SR 11). During the hearing, testimony was received by three individuals who identified as shellfish harvesters or buyers in the area. Mr. Chad Coffin pre-filed copies of shellfish receipts showing sales of oysters harvested between January and April 2018 (Exhibit 6), and in his testimony, Mr. Coffin indicated that the area within and around the proposed lease site is vital to his activities as a shellfish harvester (C. Coffin, testimony). Mr. Coffin indicated that he harvests by hand as well as with a small drag, and that the spacing of the lines proposed by the applicant would not be wide enough to allow him to drag within the proposed lease site while gear is deployed (Coffin, testimony). Similarly, Mr. Mike Brown testified that he is a shellfish harvester in the area, and between

2015-2018 made 144 trips to the area around the proposed lease and losing access to any of the beds would be a concern (Brown, testimony). Mr. Brown testified that he typically harvests by drag from a 32-foot boat, but that he also uses a small skiff if the tide is right to go into shallower water to hand harvest (Brown, testimony). At the hearing, to get clarification about the areas Mr. Brown referenced during his testimony, Ms. Drury pulled up a map of the area and had Mr. Brown describe where he harvests. These areas were marked in red on the map, which was entered into the record as Exhibit 4 and can be seen in Figure 2.

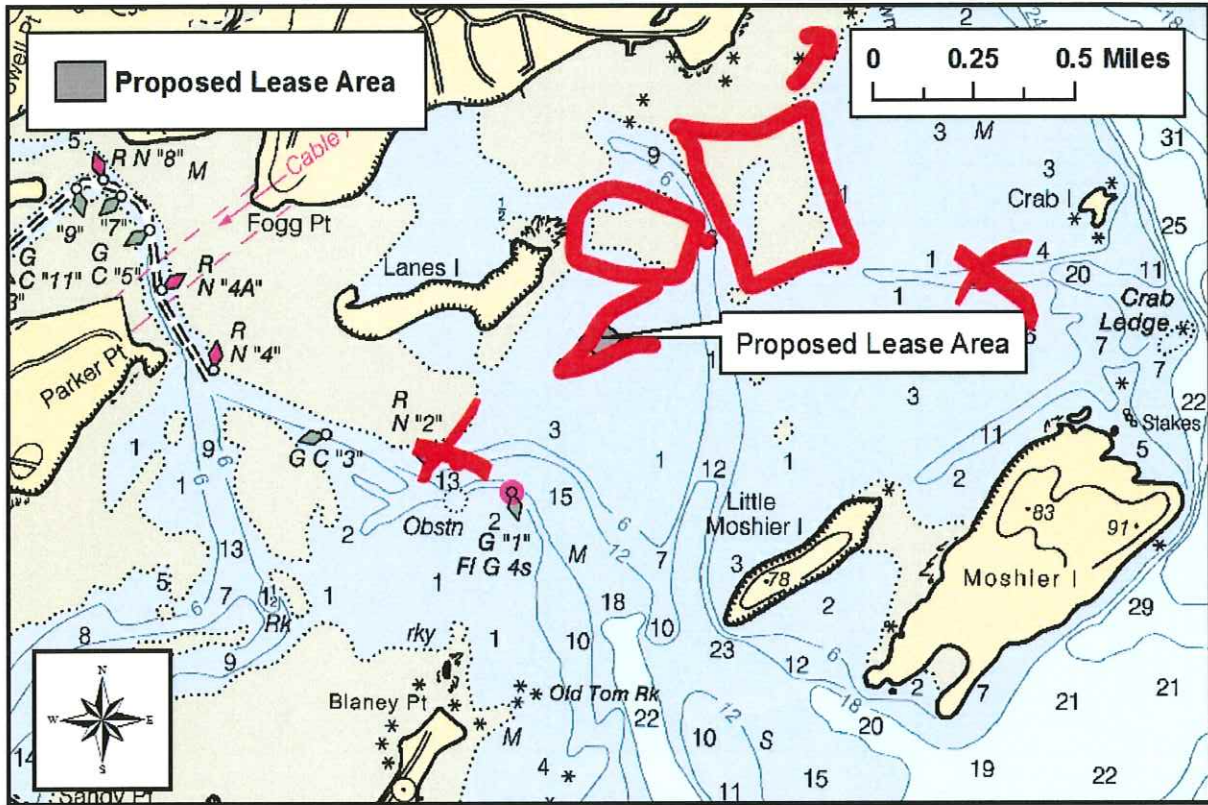


Figure 2: Map showing shellfish beds as described by Mr. Brown during the hearing. Note the red 'X's' on the map are NOT areas where Mr. Brown described harvesting.

According to Mr. Brown’s testimony, and the resulting map, he has harvested from within the boundaries of the proposed lease area, as well as many beds to the north of the proposed site. Chris Stapleton, who identified as a shellfish buyer in the area, indicated he has bought product from 11 fishermen in the area (Stapleton, testimony). Based on the testimony provided at the hearing, it appears that the proposed lease site and surrounding area are important for the commercial harvest of wild European oysters.

The applicants have not requested exclusive use of the proposed site (App 14) and indicated in their testimony that they would welcome other commercial or recreational activities to occur within the site, including the harvest of European oysters (J. Oranellas and T. Jagoutz, testimony). In addition, as mentioned in the navigation section of this document, Maine Source Seafood has proposed to space the

longlines 30 feet apart. The space available for navigation, fishing, or other activities is reduced to 24-26 feet when bags and cages are deployed. The applicants have also proposed to remove most of the gear during the winter months. According to the applicant's testimony, the majority of gear would be pulled in December, and then put back on the site at the end of March or early April, but specific timing would depend on weather and water temperatures (J. Oranellas and T. Jagoutz, testimony). Per DMR regulations Chapter 14.10, the wild harvest of European oysters is permissible only between September 16 and June 14 of each year. Testimony from both Mr. Coffin and Mr. Brown indicate the spacing of 24-26 feet between lines of gear is not wide enough that it would accommodate their harvesting by drag when gear is present. However, their testimony also indicated that most of their activities related to European oyster harvesting occurs between January and April when most of the applicant's gear would be removed from the site. In addition, Mr. Coffin indicated that if the gear were removed in the winter he would be supportive of the lease, as its possible to get in the water and hand harvest during the warmer months like September, but not during the cooler winter months when he would harvest via drag (Coffin, testimony).

At the time of this decision, to DMR's knowledge, no approved hatchery within the state is producing European oyster seed. If the applicant intends to culture this species, they will need to collect wild spat on the lease site or harvest wild European oysters in compliance with Chapter 14.10 season and size limits to then grow to market size within their proposed gear. Because there are established European oyster beds within the proposed lease site, and testimony from fishermen indicate this is an important area for the wild harvest of this species, the culture of European oysters will not be allowed on this lease site. However, because testimony indicated that much of the wild harvest of European oysters could likely co-exist with the proposed lease site, the proposed lease does not appear to interfere with the commercial harvest of this species, especially because most gear will be removed from the site when testimony indicates the majority of the European harvest occurs. The lease will be conditioned that all but one line of surface gear must be removed from the site by December 15th and cannot be redeployed until April 15th each year. 'One line of gear' means one, 360' longline with up to 50 Oyster Ranch cages or floating bags (or some combination of both) attached. All bottom cages must also be removed during the winter. In addition, any moorings deployed on the site, except for those associated with the permitted one line of gear that may remain all year, must also be removed between December 15th and April 15th each year. Requiring that all but one line of surface gear is removed during the winter ensures the area will remain accessible to those wishing to harvest European oysters via drag or other harvest methods. While the harvest of European oysters is allowed outside of the December-April timeframe, the spacing between the lines of gear should accommodate anyone who wants to access the area to hand harvest. By not allowing the culture of European oysters on the site, it ensures the resource remains available for commercial shellfish harvesters.

DMR did not hear from any other commercial fishermen regarding the proposed aquaculture activities. Given the condition described above, the proposed activities should not impede commercial fishing in the area. Mr. Uranek did testify that he recreationally fishes and has caught pogies in the area (Uranek, testimony). However, given that recreational fishing would be feasible within the lease

boundaries, and many species, like pogies, will move in and around the bay, the proposed lease is not likely to unreasonably impact recreational fishing in the area.

Other aquaculture uses: At the time DMR published the site report, in April 2020, there were 2 active leases, 4 pending lease applications (all of which were received after the Maine Source Seafood application), and 20 active Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease site (SR 11). The closest active lease to the proposal is lease CAS M1X, which is authorized for the suspended culture of shellfish. At the closest point, this lease is 4,000 feet from the Maine Source Seafood proposed site and is separated from the proposal by Little Moshier and Moshier Islands (SR 11). Lease site CAS ELM1X is located on the eastern side of Little Moshier Island is approximately 4,100 feet from the proposed site (SR 11).

Of the active LPAs within 1 mile of the proposed site, the closest 4 are all operated by either Jefferson Oranellas or Todd Jagoutz, who are shareholders of Maine Source Seafood. According to the application, no LPAs would be relinquished if the lease is granted, but testimony at the hearing from Mr. Oranellas and Mr. Jagoutz stated they intend to relinquish all their LPAs if the lease is granted. These LPAs included TJAG518, TJAG618, JORA119 and JORA219, which, upon approval of this lease, will not be renewed by the department.

Both Amanda Moeser and Todd Molloy testified at the hearing and have active LPAs or pending lease applications within the immediate area. DMR's site report noted that Ms. Moeser's proposed lease site is approximately 1,700 feet away from the proposal, but this was a measurement to the center point of her proposal. From the edge of the Maine Source Seafood proposal to the closest edge of Ms. Moeser's proposal there is approximately 525 feet (Adams, testimony). DMR considers lease applications in the order they are deemed complete and cannot consider the impact to a lease proposal that was submitted after the current proposal and has not been granted. A hearing on Ms. Moeser's application is due to be scheduled soon. Both Mr. Molloy and Ms. Moeser expressed concerns about the proximity of their activities and the potential for introduction of disease if animals are transferred to the lease site, as well as about the navigation and marking concerns that have been discussed elsewhere in this document. As part of the application review, DMR assesses the source of organisms and considers any biosecurity, or sanitation concerns. The sources listed by the applicant for American oyster seed (Mook Sea Farms and Muscongus Bay Aquaculture) are both approved sources by DMR. As discussed in other sections of this document, the culture of European oysters will not be authorized for this site and given the lack of plan for the culture of northern quahogs, this species will also not be listed on the lease at this time. Should the applicants wish to culture northern quahogs in the future, they will need to apply for a species amendment for the lease.

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. During the site visit on October 8, 2019, DMR staff did not observe other water-related uses of the proposed lease area. During the hearing, some testimony was offered to indicate this area is popular for duck hunting during November, December, and January (Molloy,

testimony). Mr. Molloy indicated that you must be able to see the lease to know it's there, and duck hunting often occurs at night when it may be hard to see. As discussed elsewhere in this document, most of the gear will be removed from the site during the winter months, and the applicant will be required to mark their lease site in accordance with DMR Regulations. The applicant has not requested exclusive use, and testified they welcome other commercial and recreational activities to continue within the site. As such, there should be little to no interference with individuals wishing to access the area for duck hunting.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with fishing, existing aquaculture operations, or other water related uses of the area.

D. Flora & Fauna

Site observations. DMR scientists conducted a drop camera transect of the proposed site on October 8, 2019. The bottom of the proposed site is composed primarily of firm mud and sand with cobble and shell hash (SR 13). The European oyster was the dominant species observed throughout the assessment, along with a colonial tunicate. American oysters and common periwinkles were also observed, although rarely (SR 13).

Eelgrass. In their application, Maine Source Seafood noted that there is an eel grass bed to the southeast of the proposed site, about 1,000 feet away. Data collected by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that there is an eelgrass bed approximately 155 feet south of the proposed lease (SR 14), and the site report notes that there are extensive eelgrass beds mapped farther southwest and to the east of the proposal (SR 14). There have been four historical eelgrass surveys conducted in this area between 1992 and 2013, but only data collected by DMR in 2013 show a small portion of a low-density eelgrass bed within the boundaries of the proposed lease. DMR's site report indicated that no eelgrass was observed during their visit to the site on October 8, 2019 (SR 14). Colin Greenan from the Army Corps of Engineers (ACOE), attended the hearing and asked questions of the applicant, but did not offer any testimony regarding impacts to eelgrass.

Because no eelgrass was observed during DMR's site visits, and the site report and ACOE did not indicate any concern regarding eelgrass, the proposed aquaculture activities should not adversely impact eelgrass within the proposed site.

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located approximately 680 feet from tidal waterfowl and wading bird habitat, and the nearest shorebird habitat is over 1.75 miles away (SR 16). The Department sent a copy of the lease application to MDIFW for their review and comment and MDIFW indicated that "minimal impacts to wildlife are anticipated for this project."⁷

Based on this evidence, it appears that the proposed lease site will not interfere with the ecological functioning of the area.

⁷ CF: Email to C. Burke from R. Settele dated September 17, 2019.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

There are no beaches, parks, docking facilities, or conserved lands owned by the federal, state, or municipal governments within 1,000 feet of the proposed site (SR 17). Lanes Island, which is held in private conservation by Maine Coast Heritage Trust, is within 1,000 feet of the proposed site. As discussed in earlier sections of this decision, access to and use of Lanes Island should not be impeded by the proposed lease. The nearest public facility to the proposed lease site is the Winslow Park boat ramp, which is over 3,300 feet to the north of the proposal. The site report indicates that while some vessel traffic associated with the boat ramp may transit through the proposed lease area, navigation to and from the boat ramp would not be prevented by the proposal (SR 17).

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

The applicant lists American oyster seed stock for this proposed lease site as Mook Sea Farm in Walpole, Maine, and Muscongus Bay Aquaculture, located in Bremen Maine (App 2). These hatcheries are both approved sources by DMR.

Therefore, the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

G. Light

According to the application, no lights would be used on the proposed lease site and no work would occur beyond daylight hours, except for an emergency that required immediate on-site attention (App 9). There was no testimony provided at the hearing to indicate there was concern regarding light associated with the proposed activities.

Therefore, the proposed aquaculture activities will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

According to the application, no power equipment would be used on the site (App 9). The applicant intends to service the site via flat-bottom vessels measuring 17 to 30 feet in length, and that a boat will be on site 2 to 3 times per week during the spring, summer, and fall (App 8). In the winter, the applicants would only be on site for brief periods to harvest product or remove the one line of gear if the area is expected to ice over (Jagoutz, testimony). Based on information provided in the application, the boats will

have standard outboard engines, noise levels are minimal, and when working, the engine is turned off (App 9). At the hearing, there was no testimony offered to indicate there is concern about levels of noise from within the boundaries of the proposed lease site. Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

I. Visual Impact

The applicant plans to deploy Oyster Ranch cages (40" x 36" x 9"), floating mesh bags (24" x 24" x 8") and bottom cages (24" x 24" x 8") (App 4). No support structures are proposed for the site. The gear proposed by the applicant complies with DMR's height and visual impact limitations.

Therefore, the equipment utilized on the proposed lease site will comply with the DMR's visual impact criteria.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. Given the condition limiting what and how much gear may be deployed in the winter and the timing of deployment and removal of other gear, as well as prohibiting the culture of European oysters on the site, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of American oyster seed to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

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

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease to Maine Source Seafood for 3.47 acres, for fifteen years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE


The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072 (7-B).⁸ Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. The following conditions have been imposed on this lease:

1. All but one line of gear must be removed from the site between December 15th and April 15th each year. All moorings, except for those securing the one line of gear that may remain on site, must also be removed from the site during this time.
2. The culture of European oysters (*Ostrea edulis*) is not permitted on the lease site.
3. The lease site must be marked in accordance with U.S. Coast Guard requirements and DMR Rule 2.80.
4. Other public uses that are not inconsistent with the purposes of this lease are permitted within the lease boundaries.

7. REVOCATION OF LEASE

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

Dated: May 26, 2021


Patrick C. Keliher, Commissioner
Department of Marine Resources

⁸ 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."