

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Lessee:** Erin Gott

**Acronym:** WEB WH

Standard Aquaculture Lease Application

Bottom and culture of oysters

August 20, 2018

Webhannet River, Wells

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

Erin Gott applied to the Department of Marine Resources (DMR) for a ten-year standard aquaculture lease comprised of five tracts totaling 1.86 acres.<sup>1</sup> The proposed site is located in the Webhannet River, in the Town of Wells, York County, Maine and is for the cultivation of American oysters (*Crassostrea virginica*) using bottom and suspended culture techniques. DMR accepted the application as complete on December 18, 2017. A public hearing on this application was held on August 16, 2018 at the Wells Town Hall in Wells, Maine. No one intervened in this case.

**1. THE PROCEEDINGS**

Notice of the hearing, copies of the application and DMR site report were provided to state and federal agencies for their review, the Town of Wells, riparian landowners within 1,000 feet of the proposed site, and subscribers of the Department's Aquaculture email listserv. Notice of the hearing was published in the *York County Coast Star* on July 13 and 27, 2018; and August 6, 2018. Notice was also published in the August 2018 edition of the *Commercial Fisheries News*.

Sworn testimony was given at the hearing by Erin Gott; Marcy Nelson, DMR Aquaculture Scientist; Jonathan Carter, Wells Town Manager; and Everett Leach, Wells Shellfish Warden. The applicant described the proposed project, Ms. Nelson described the site visit, and Mr. Carter and Mr. Leach testified in favor of the proposal. LeAnn Neal and Jana Jacobson with the United States Army Corps of Engineers attended the hearing, but did not offer testimony.

The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis. The evidentiary record before the Department regarding this lease application includes three exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.<sup>2</sup>

**LIST OF EXHIBITS<sup>3</sup>**

1. Case file
2. Application

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<sup>1</sup> Applicant originally requested 3 acres. The Department verified the coordinates and determined the site is 1.86 acres.

<sup>2</sup> In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.

<sup>3</sup> Exhibits 1, 2, and 3 are cited below as: Case file – "CF"; Application – "App", site report – "SR". Other exhibits are cited by number.

3. DMR site report

**2. DESCRIPTION OF THE PROJECT**

**A. Site Characteristics**

On April 27, 2018 DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease. The proposed lease site occupies subtidal waters in the Webhannet River. Proposed Tracts 1-4 are located to the south of Wells Harbor and Tract 5 is located to the north of Wells Harbor (SR 2). The uplands near each of the proposed Tracts is predominately marshland (SR 2). Most of the area surrounding the proposed site is encompassed by the Rachel Carson National Wildlife Refuge (SR 2). Commercial and residential buildings are visible from each of the proposed Tracts (SR 2). Per the site report “Wells Beach, an area densely populated with residential homes, is located beyond the National Wildlife Refuge to the east of proposed Tracts 1-4” (SR 2). Table 1 below provides a summary of each Tract including acreage, bottom characteristics, and approximated mean low water (MLW) depths.

Tract	Acreage	Bottom Characteristics	Water Depth at MLW
1	.17 Acres	Sand and Gravel	.06-5.06 feet as measured from the corners of the proposed Tract.
2	.15 Acres	Sand and Gravel	.96-3.96 feet as measured from the center of the proposed Tract.
3	.18 Acres	Sand	2.56 feet as measured from the center of the proposed Tract
4	.20 Acres	Sand	.56-2.26 feet as measured from the center of the proposed Tract.
5	1.16 Acres	Firm Mud and Sand	See footnote <sup>4</sup>

**Table 1:** Illustrating the acreage, bottom characteristics, and water depths (MLW) of each proposed tract. Information consolidated from the site report.

<sup>4</sup> After the site visit was conducted, the applicant submitted revised coordinates for Tract 5, so that the entirety of the Tract is subtidal. Depths for Tract 5 have been omitted, because they were not collected after the revision was made. See page 2 of the site report for additional details.

The proposed lease is an area currently classified by the Department's Water Quality Classification program as "Conditionally Approved" for the harvest of shellfish (SR 18). Tracts 1-4 are in Pollution Area Section D, which is closed for the harvest of shellfish from May 1-December 31 (SR 18). Tract 5 is in Pollution Area Section C, which is closed for the harvest of shellfish from May 1-November 30 (SR 18). The application indicates that harvest will not occur until the applicable closures are lifted (App 6).

### **B. Site History**

The applicant holds three Limited Purposed Aquaculture Licenses (LPAs) and his wife Paige Gott holds four LPAs within one mile of the proposed lease site (SR 11, App 8).<sup>5</sup> All LPAs are for the suspended culture of American/eastern oysters (*C. virginica*). Since their respective issuance, the LPAs have been renewed each year and the Department has not received any complaints regarding the operation of any of these licenses. The applicant plans to terminate the LPAs if the lease is granted (App 8).

### **C. Proposed Operations**

The purpose of the proposed lease is to help consolidate and expand existing aquaculture operations, which are currently LPAs (App 10). Tracts 1-4 will be for suspended culture and will each contain two longlines that hold twenty cages (App 1B). Tract 5 will be utilized for suspended and bottom culture (App 1B). A 420-foot x 20-foot section of Tract 5, will be used to deploy 120 floating bags, which are secured to three longlines (SR 10). The remaining area of Tract 5 will be used for bottom culture (SR 10, App 1B). The applicant anticipates working on the proposed site three to four days each week during the summer and one to two days a week during the winter (App 5). To control fouling, the cages will be flipped and the oysters will be tumbled by hand each month (App 6). The applicant will use an outboard boat to tend to the proposed site (App 5). Other than the boat, no other powered equipment will be used on the site (App 6).

## **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 the number and density of aquaculture leases in an 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

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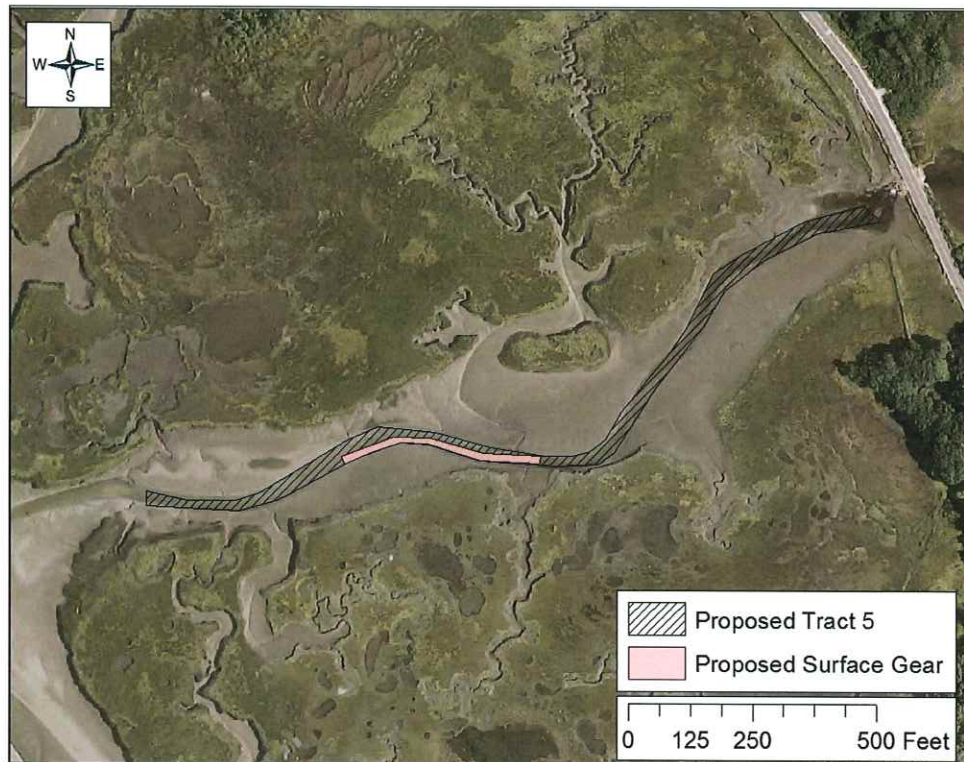
<sup>5</sup> Erin Gott LPAs: GOT212, GOT313, and EGOT517; Paige Gott LPAs: PGOT116, PGOT216, PGOT316, and PGOT416.

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. Navigation**

All Tracts are located over 1,700 feet from Wells Harbor, which is used by commercial and recreational boaters (SR 9). The site report notes “due to this distance navigation in and out of Wells Harbor, along with navigation within the Harbor, will not be impacted by the proposed lease” (SR 9). Tracts 1-4, located to the south of Wells Harbor, are each less than 30 feet wide and less than 355 feet in length (SR 9). The Tracts are situated along the subtidal banks of the river, leaving ~ 55 feet of area for depth appropriate vessels to navigate (SR 9).

Tract 5 is located to the north of Wells Harbor and would occupy a 1,700-foot section of the river (SR 10). Most the Tract would be used for bottom culture, so “it is unlikely that navigation will be impacted by the portion of Tract 5 proposed for bottom culture because no gear other than marker buoys would be present” (SR 10). As depicted in Figure 1 surface gear is proposed for a ~420 foot x 20-foot section of Tract 5.



**Figure 1:** Depicting the boundaries of proposed Tract 5 and the layout of surface gear. Image from the site report.

Per the site report:

At low water, the majority of the river is ~40 feet wide, and therefore, the proposed gear placement provides a 20-foot corridor for depth-appropriate vessels to navigate past the majority of the tract at low water. However, the river narrows to a width of ~20 feet in the center of Tract 5, and due to this, the channel available for navigation at low water is impeded by the northerly ~100 feet of the proposed gear (Figure 3). Minimizing the length of the gear by 100 feet, or shifting the proposed gear layout 100 feet to the south so that it would all remain in a wider section of the channel, could remedy this potential conflict (SR 10).

During the hearing, Mr. Leach explained that at low water the area where Mr. Gott is placing gear becomes very shallow. Only non-motorized vessels such as canoes and kayaks would traverse that area (Leach/Ellis). These types of vessels would still have adequate area to navigate at low tide (Leach/Neal). Mr. Leach and Mr. Carter did not believe the proposed gear layout on Tract 5 would interfere with navigation.

Mr. Gott indicated that if the layout of the gear did become problematic, he would either minimize the length of gear by 100 feet or shift the proposed gear layout 100 feet to the south as suggested in the site report. However, Mr. Leach and Mr. Carter, who represent the Town of Wells, do not believe the proposed gear layout would present a conflict. In addition, Ryan Liberty, who is a member of the Wells Harbor Advisory Committee, indicated his support of the proposed lease.<sup>6</sup> Therefore, the Department will not require Mr. Gott to modify his proposed gear layout.

Based on the evidence, it is reasonable to conclude that navigation in the area will not be unduly affected by the presence of the proposed lease site.

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

## **B. Riparian Access**

Most of the uplands surrounding Tracts 1-5 are owned by the Rachel Carson National Wildlife Refuge, so the uplands closest to the site are largely uninhabited (SR 9). Per the site report:

...No docks or moorings, with which the proposed lease activities might interfere, were observed. Wells Harbor, which is over 1,700 feet from the nearest proposed tract, contains the closest docks, moorings, and boat launches. Therefore, it is unlikely that the proposed lease will interfere with riparian ingress and egress (SR 9).

During the review period and public hearing, members of the public did not raise concerns about the affects the proposed site may have on riparian access.

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

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<sup>6</sup> CF: Email from J. Carter to C. Burke dated January 17, 2018.

### **C. Fishing & Other Uses**

The application indicates that commercial shellfish harvesting occurs in the intertidal flats that surround the proposed lease (App 9). A moderate amount of recreational fishing occurs in the Webhannet River from mid-May through early October (SR 11, App 9). During the site visit, DMR staff did not observe any fishing activity (SR 10). Regarding recreational fishing, the site report indicates:

Given their small size, it is unlikely that recreational fishing will be hindered by Tracts 1-4 of the proposed lease site. It is also unlikely that the bottom culture on proposed Tract 5 will hinder recreational fishing in the area, however, it is possible that proposed gear on Tract 5 might hinder recreational fishers from navigating to the northern sections of the Webhannet River at low tide (SR 11).

During the review period and public hearing, no one raised concerns about how the proposed lease may affect recreational fishing in the area.

With regards to commercial shellfish harvesting in the intertidal, the site report notes that “the proposed lease tracts appear to be subtidal, and therefore the proposed lease should not interfere with commercial shellfish harvest in the intertidal mudflats” (SR 11). During the review period and public hearing, no one raised concerns about how the proposed lease may affect commercial shellfish harvesting in the intertidal. The applicant indicates that in the six or more years he has operated LPAs in the area, there has never been conflicts between his aquaculture activities and other uses in the area (App 10). Mr. Leach testified in favor of the proposal and indicated that the proposed lease would not interfere with commercial shellfish harvesting.

**Exclusivity.** The applicant is not requesting exclusive use of the proposed area.

**Other aquaculture leases.** The applicant and Mrs. Gott are the only aquaculturists operating on the Webhannet River (SR 11). The applicant indicates that all LPAs will be relinquished, if the proposed lease is granted (App 8).

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

**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.** During the site visit, Department staff observed several species of marine flora and fauna including periwinkles (*Littorina sp.*), barnacles (*Balanus sp.*), and green crabs (*Carcinus maenas*) (SR 11).<sup>7</sup> Department staff also observed eider ducks (*Somateria mollissima*) and herring gulls (*Larus argentatus*) within the general vicinity of the site (SR 15). Harbor seals (*Phoca vitulina*) were hauled out just north of Wells Harbor (SR 15). Based on data collected by the Department, between 1992 and 2010, eelgrass (*Zostera marina*) is not located near the proposed lease site. (SR 14).

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<sup>7</sup> For a complete list of observed species and their relative abundance see page 11 of the site report.

No eelgrass was observed within the boundaries of the lease site during the Department's site assessment (SR 14).

**Fisheries & wildlife.** Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that all the proposed tracts are in Tidal Wading Bird and Waterfowl Habitat (TWBWH) (SR 15). TWBWH is classified as Significant Wildlife Habitat under Maine's Natural Resource Protection Act (SR 15). Per the site report:

The proposed lease is also almost entirely within salt marsh sparrow (*Ammodramus caudacutus*) habitat, a species of Special Concern in Maine (Figure 5). Additionally, the proposed lease tracts are nearby least tern (*Sternula antillarum*) and piping plover (*Charadrius melodus*) habitat; species which are listed as Endangered Species by the State of Maine (15).

DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW did not have any immediate concerns with the location of the proposed lease site and possible effects to waterfowl, shorebirds, and their respective habitats. Specifically, MDIFW noted:

Staff have reviewed this application, and while it is located within mapped Tidal Waterfowl and Wading Bird Habitat, minimal impacts are anticipated to this resource. In addition, the track locations identified in this project are near candidate shorebird Significant Wildlife Habitat and mapped as Essential Habitat for piping plovers and least tern (primarily for least tern feeding). Overall, staff has little concern regarding impacts to shorebirds using the flats near the proposed tracts...<sup>8</sup>

However, because the applicant is requesting a ten-year lease term and expanding operations, MDIFW was unsure what effects, if any, the proposal could have on the least tern feeding area. MDIFW indicated that they would like to work with the applicant and Department should operations affect least tern productivity in the future.<sup>9</sup> No representatives from MDIFW attended the hearing. However, Mr. Gott testified that he would work with the Department and MDIFW should the proposal affect least tern productivity in the future. However, there are currently minimal impacts anticipated.

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

**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**

All of the proposed tracts are located within 1,000 feet of the Rachel Carson National Wildlife Refuge, which is managed by the United States Fish and Wildlife Service (USFWS) (SR 17). Tract 5 is also located within 1,000 feet of the Wells Reserve, which is owned by the Town of Wells

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<sup>8</sup> CF: Email from J.Perry, Environmental Review Coordinator, MDIFW, to C. Burke dated January 22, 2018.

<sup>9</sup> Ibid.

(SR 17). Both USFWS and the Town of Wells were provided with the opportunity to review and comment on the proposal. The USFWS did not raise any concerns related to public use or enjoyment. The Board of Selectmen for the Town of Wells sent a comment in support of the proposal.<sup>10</sup> A member of the Wells Harbor Advisory Committee also indicated their support for the operation.<sup>11</sup>

**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 application indicates that the source of stock for this proposed lease site is Muscongus Bay Aquaculture located in Bremen, Maine (App 1A).

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

#### **G. Light**

The application indicates that no lights will be used at the proposed lease site (App 8). Night work would only occur in case of emergency (App 8).

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

#### **H. Noise**

The applicant will use an outboard boat to service the site (App 7, SR 19). Per the application, no other machine powered equipment will be used on the site (SR 19). Cages will be lifted and oysters will be tumbled using equipment powered by hand (SR 19).

**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 is proposing to utilize shellfish cages on Tracts 1-4, which measure 68" x 41" and have black floats (App 5, SR 19). A portion of Tract 5 will contain 120 floating black bags while the rest of the site will be utilized for bottom culture (App 5, SR 19). Per the site report: "the proposed gear complies with the MDMR's height and color limitations" (SR 19).

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

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<sup>10</sup> CF: Email from J. Carter to C. Burke dated January 17, 2018.

<sup>11</sup> CF: Email from R. Liberty to C. Burke dated January 14, 2018.



#### **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. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases 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, or docking facilities owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*) 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 of 1.86 acres to Erin Gott for ten years for the cultivation of American oysters (*Crassostrea virginica*), using suspended and bottom 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).<sup>12</sup> 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 shall be incorporated into the lease:

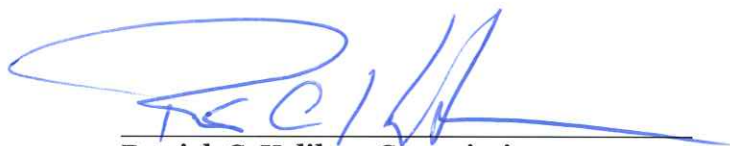
- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

#### **7. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: \_\_\_\_\_

8/20/18



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

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<sup>12</sup> 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."