FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The Maine Scallop Company, LLC applied to the Department of Marine Resources (DMR) for a ten-year standard aquaculture lease on 5.36 acres located east of Sturdivant Island, Casco Bay, in the Town of Cumberland, Cumberland County, Maine. The proposal is for the suspended culture of sea scallops (Placopecten magellanicus) and blue mussels (Mytilus edulis). The Department accepted the application as complete on December 11, 2017. A public hearing on this application was held on September 25, 2018 at the Cumberland Town Hall in Cumberland, Maine. No one intervened in this case.

1. THE PROCEEDINGS

Notice of the hearing, and copies of the application and DMR site report, were provided to state and federal agencies for their review, the Town of Cumberland, 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 Northern Forecaster on August 23, 2018 and September 13, 2018. Notice was also published in the September 2018 edition of Commercial Fisheries News.

Sworn testimony was given at the hearing by the applicant, represented by Peter Stocks, who described the proposed project. Flora Drury, DMR Aquaculture Scientist, described the site visit. Jay Clement with the United States Army Corps of Engineers (USACOE) attended the hearing, but did not offer testimony. Two members of the public asked general questions of the applicant and the USACOE. 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.²

LIST OF EXHIBITS:
1. Case file
2. Application
3. DMR site report

¹ Applicant originally requested 6.0 acres. The Department verified the coordinates and determined the site is 5.36 acres.
² In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.
³ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”; Application – “App”, site report – “SR”. Other exhibits are cited by number.
2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On July 10, 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 between Sturdivant and Basket Islands (SR 2). At mean low water, the northwest corner of the proposed site is ~760 feet to the east of the closest point of land on Sturdivant Island, (SR 2, 7). The shoreline of Sturdivant Island is characterized by a rocky and sandy shoreline. The upland is comprised of mixed vegetation, maintained lawns, and residential buildings (SR 2). Staff observed a dock on the Sturdivant Island shoreline (SR 2). Multiple moorings were observed near the dock (SR 2). The bottom of the proposed lease site is characterized by mud (SR 2). Correcting for tidal variations, depths at mean low water would range between 41.5 to 38.5 feet (SR 2). The proposed lease is an area currently classified by the Department’s Water Quality Classification program as “open/approved” for the harvest of shellfish (SR 16).

B. Proposed Operations

The purpose of the proposed lease is to expand sea scallop production and to explore the possibility of mussel culture (App 17). Shellfish will be cultured using a combination of mesh bags, wire cages, lantern nets, plastic containers, and dropper ropes that are attached to 500-foot longlines (SR 2, App 13–16). The applicant also intends to install a raft on the proposed lease site (App 9). The applicant will utilize a 43-foot lobster boat powered by a muffled diesel engine, a Carolina skiff, and a pontoon boat (App 18). Additional mechanized equipment proposed for the site include electrical winches, water-based power washers, and hydraulically powered conveyers, star wheels, and tumblers (App 18). Production activities will occur year-round. Processing will occur at a land based facility (App 17).

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 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
During the site visit, staff observed lobster boats and recreational outboard boats operating between Sturdivant and Basket Islands (SR 9). Sailboats were also noted near the proposal (SR 9). At the nearest point, there is ~2,240 feet of navigable area between the 36-foot contour lines that run laterally between Sturdivant and Basket Islands (SR 9). Navigational aids that mark the channel are over 1,000 feet to the southeast of the proposed area (SR 9). The proposed site is located ~400 feet to the west of the recommended two-way route for deep vessel traffic (SR 9). The proposed site is closer to Sturdivant Island, so if the lease is granted mariners would likely navigate to the east in the channel, in the direction of Basket Island (SR 9). However, ~1,640 feet of navigable area would remain between the proposed lease site and the 36-foot contour line located off the western shoreline of Basket Island (SR 9).

![Figure 1: Location of the proposed lease site on a nautical chart. Image taken from site report.](image)

In addition, the Cumberland Harbormaster indicated that the proposed site would not interfere with navigation in designated channels.\(^4\) 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

The proposed site is near the eastern shore of Sturdivant Island, there are approximately ten houses along this shoreline (SR 7). Four of the ten houses are to the immediate west of the proposed site (SR 7). During the site visit, staff observed one dock with an attached ramp and float along the eastern shoreline (SR 7). The float had a skiff tied to it and a row boat hauled out on top (SR 7). A lobster boat tied up to the float during the Department’s site assessment (SR 7). In addition, three moorings were observed near the dock (SR 7).

Per the site report, “the dock and closest mooring are located approximately 770 feet and 555 feet, respectively, to the west of the proposed lease” (SR 7). The Cumberland Harbormaster indicated that the proposed lease could pose a “possible interference as there are landowners with moorings within 1,000 feet of the proposal.” The site report indicates that the proposed lease may alter traditional routes to and from the docks and moorings, because the proposal is located between access points and the main navigational channel (SR 7).

Although the proposal may alter traditional routes riparian landowners may utilize to access docks and moorings, it is unlikely that the deviations are unreasonable. The respective distances from the dock and mooring to the western boundary of the proposed lease site provide for a reasonable navigable area. During the review period and public hearing riparian landowners did not raise any concerns about access. At the hearing, Mr. Stocks presented a written comment from Phil Grondin, Jr., whose family owns land on Sturdivant Island. Mr. Grondin indicated that his family supports the issuance of the proposed lease.

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

C. Fishing & Other Uses

Per the Cumberland Harbormaster, commercial fisheries within the area of the proposed lease include lobster and menhaden fishing. Recreational uses of the area include striped bass and lobster fishing, and sea duck hunting. Department staff observed several lobstermen hauling traps between Sturdivant and Basket Islands (SR 10). More than 30 lobster buoys were observed near the proposal, and one lobster trap was located within the boundaries of the proposed area (SR 10). The gear proposed by The Maine Scallop Company, LLC would prevent most fishing activity within the boundaries of the proposed lease site (SR 10).

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6 Ibid.
6 CF: Email from Phil Groncin to David Perkins dated September 25, 2018.
However, Basket Island is ~2,060 feet to the east of the proposal and Sturdivant Island is ~760 feet to the west of the proposed area (SR 10). These distances provide a reasonable space for lobstermen to set traps and for fishing with hook and line (SR 10). With regards to menhaden fishing: “It is possible that this distance, in combination with existing moorings, would prevent menhaden fishermen from operating between the proposal and Sturdivant Island” (SR 10). During the review period and public hearing, no one raised concerns about how the proposed lease may affect commercial and recreational fishing in the area. Based on the absence of comments, it is reasonable to conclude that menhaden fishermen and others do not have concerns about the effects the proposal may have on fishing or other water-related uses of the area.

**Exclusivity.** Given the deployment of longlines throughout the year, the applicants are requesting that dragging and lobster fishing be prohibited within the lease boundaries (App 22). Such a restriction is reasonable to accommodate the proposed operations, while also encouraging the greatest number of compatible uses of the area. A condition reflecting this restriction will be included in the lease.

**Other aquaculture leases.** There are three Limited Purpose Aquaculture (LPA) licenses within 1,000 feet of the proposed site (SR 12). These LPAs are held by Mr. Stocks, a co-owner of The Maine Scallop Company, for the suspended culture of sea scallops (SR 10). Mr. Stocks indicated that he intends to renew the LPAs (Stocks/Druy). If the lease is granted and operations are successful, Mr. Stocks may relinquish the LPAs in the future (Stocks/Druy).

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 multiple species of marine organisms including lobster (*Homarus americanus*), skeleton shrimp (*Caprella sp.*), and sand shrimp (*Crangon septemspinosa*) (SR 12). Based on data collected by the Department, in 2013, the closest eelgrass (*Zostera marina*) bed to the proposed site was over 600 feet to the west (SR 13). No eelgrass was observed within the boundaries of the lease site during the Department’s site assessment (SR 13).

** Fisheries & wildlife.** Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that Sturdivant Island is encircled by Tidal Wading Bird and Waterfowl Habitat (TWBWH) (SR 14). TWBWH is classified as Significant Wildlife Habitat under Maine’s Natural Resource Protection Act (SR 14). However, none of the area designated as TWBWH intersects with the proposed lease (SR 14). The Department sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated: “as the lease is outside of mapped resources of our concern, minimal impacts to wildlife

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* For a list of aquaculture sites, pending and current, within one mile of the site, please see page 12 of the site report.
* For a complete list of observed species and their relative abundance see page 11 of the site report.
are 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

There are no publicly-owned beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments within 1,000 feet of the proposed lease site (SR 15).

**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 intends to source scallop spat from individuals listed on a Department issued Special License (App 1). Individuals listed on the Special License are an approved source of seed stock. Mussel spat will be collected within the boundaries of the proposed lease site (App 1).

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

### G. Light

Except for a navigational light, the application indicates that no lights will be used at the proposed lease site (App 18). Night work would only occur in the case of an emergency (App 18).

**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 intends to utilize a 43-foot boat powered by a muffled diesel engine, a Carolina skiff, and a pontoon boat on the proposed site. Star wheels, conveyors, seeding machines, and tumblers powered by inboard engines and hydraulic pumps are also proposed. In addition, electric winches and water based power washers may be deployed. Some form of noise generating machinery will be utilized 80% of the time the applicant is at the proposed site (App 18). During the winter months, the applicant intends to be at the site three days per week for up to five hours (App 18). During other times of the year, the applicant anticipates being at the site four to five days per week for up to eight hours each day (App 18). Typically, work at the site would not start before 7am and would end no later than 6pm (App 18). Based on this

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11 CP: Email from J. Perry to C. Burke dated December 10, 2017.
12 Per Chapter 2.37(1)(A)(8) Lighting standards do not apply to lighting for navigation, emergencies, and construction of a temporary nature.
evidence, it appears that any noise generated by operations on the proposed site 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.

**1. Visual Impact**

The applicant is proposing to utilize mesh bags, wire cages, lantern nets, plastic containers, and dropper ropes attached to 500-foot longlines. Except for corner markers and required marker buoys, most of the gear, which is black in color will be submerged below the surface of the water (App 3, SR 17). The proposed raft “is galvanized gray and natural wood colored” (App 3). No structures are proposed for the top of the raft. The color of the proposed gear and raft satisfies the visual impact criteria. The height of the proposed raft, as measured from the surface of the water to the top of the structure, is approximately 32 to 36 inches (Stocks/Ellis). The height of the raft complies with applicable regulations governing the height of structures on lease sites.

**Therefore,** the equipment utilized on the proposed lease site will comply with the Department’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. 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 sea scallops (*Placopecten magellanicus*) and blue mussels (*Mytilus edulis*) 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 5.36 acres to The Maine Scallop Company, LLC for ten years for the cultivation of \textit{(Placopecten magellanicus)} and blue mussels \textit{(Mytilus edulis)} 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).\textsuperscript{33} 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. Dragging and lobster fishing are prohibited within the boundaries of the lease site.

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: 10/18/15

\textit{Patrick C. Keliber, Commissioner}

Department of Marine Resources

\textsuperscript{33} 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."