

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Maine Ocean Farms, LLC

Standard Aquaculture Lease Application
Suspended culture of American/eastern oysters
Recompense Cove, Freeport, Maine

CAS RC2

October 21, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Maine Ocean Farms LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 9.86¹ acres in Recompense Cove, Freeport, Cumberland County, Maine. The proposal is for the suspended culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on June 14, 2019 and a scoping session was held on September 26, 2019. DMR accepted the final application as complete on December 5, 2019. A public hearing on this application was scheduled for September 13, 2021. Notice of the completed application and public hearing was provided to state and federal agencies, the Town of Freeport, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in *The Forecaster* on August 12 and September 2, 2021. The public notice for the hearing directed interested persons to contact DMR to sign up to participate in the proceeding. No one registered to participate in the hearing, however several members of the public did attend the hearing. No one intervened in this case.

The proposed lease location is located within 1,000 feet of one other aquaculture lease – Dirigo Marine Resources, LLC was recently issued a 2.99 acre experimental lease for the suspended and bottom culture of shellfish within Recompense Cove, approximately 878 feet away from the Maine Ocean Farms, LLC proposal. The Dirigo Marine Resources, LLC application was deemed complete by DMR on June 11, 2020, after the proposal from Maine Ocean Farms, LLC was deemed complete. 12 M.R.S.A. §6072-A, only requires a public hearing on an experimental lease application if 5 or more requests to hold one are received, and only 1 request to hold a hearing on that application was received during the associated public comment period. As such, a decision granting Dirigo Marine Resources a 3-year experimental lease was signed by the Commissioner on June 23, 2021. That lease was assigned the acronym CAS RCx. At the Maine Ocean Farms, LLC hearing, given the proximity of lease CAS RCx to the pending Maine Ocean Farms, LLC proposal, DMR took official notice of the Dirigo Marine Resources decision and case file.

¹ Applicant originally requested 9.88 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 9.86 acres.

Sworn testimony was given at the September 13, 2021 hearing by the following witnesses:

Name	Affiliation
Eric Oransky, William Leathers	Maine Ocean Farms, applicant
Marcy Nelson	Acting Director, DMR Aquaculture Division
Kerry Michaels, Fiona Wilson	Members of the Public

Additional members of the public attended the hearing, asked questions of the applicant and DMR, and expressed concern about the size and scale of the proposed activities and aquaculture across the state 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 the exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.²

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease on August 13 and August 21, 2020 (SR 2). The proposed lease occupies subtidal waters between Wolf Neck and Flying Point, in an area known as Recompense Cove, in Freeport Maine. The nearby shorelines are rocky, and lead to mature forests and residential properties (SR 2). Tidal flats are located at the head of Recompense Cove, to the north and northeast of the proposed lease. Crab, Bustins, Moshier, and Little Moshier Islands are in Casco Bay to the south and east of the proposed lease (SR 2). The bottom of the proposed site is flat, with uniform depth, and is composed primarily of soft mud (SR 6). During DMR’s visit to the site on August 13, 2020, depths at the corners of the proposed site ranged from 9.5 to 10.1 feet. Correcting for tidal variations results in depths approximately 2 feet lower at mean low water (SR 6).

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*), on the proposed lease site using suspended culture techniques (App 1). A maximum of 2,831 floating bags (2’ x 3’ x 4”), 175 OysterGro cages (67.5” x 40.5” x 22.75”), and 240 overwinter cages (3’ x 4’ x 2’) are proposed to be deployed

² Exhibits 1, 2, 3, and 4 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”

on the site. From March to January, floating bags and OysterGro cages would be at the surface of the water. During winter months (approximately October through May), product would be sunk to the bottom of the site in overwinter cages and submerged OysterGro cages. OysterGro cages are proposed to be deployed all year either at the surface or submerged, while the floating bags would be deployed on the surface of the site between March and January of each year, and the overwintering cages would be deployed only from October to May (App 4). According to the applicant's testimony, no gear will be on the surface between January-March of each year (Oransky, Leathers, testimony). Gear would be deployed across a total of 24 longlines that are oriented northeast to southwest. Twenty of these lines are proposed to be 200 feet long, while two are proposed to be 165 feet long (App 28). OysterGro cages are proposed to be deployed only in the southeastern quadrant of the site (App 28). The applicant has also proposed an 85' wide corridor that runs east to west across the center of the site, and a moored work float, with maximum dimensions of 36'L x 16'W x 13'6"H, is proposed for the center of this corridor (App 28, 40).

The applicant anticipates being on site for seeding, harvesting and maintenance activities 3-5 days per week, with the warmest months having the highest frequency of visits. Mr. Oransky and Mr. Leathers testified that it is their intention to keep activities on the site to within an 8 hour workday, Monday through Friday, but indicated that there may be times when work needs to occur on the site outside of a regular work day when daylight hours may be short in the spring/fall, or during emergencies such as weather events (Oransky, Leathers, testimony). According to information within the competed application, a typical workday on the site will be between 4-8 hours (App 8). Harvesting will occur year-round by hand or SCUBA diving, with harvesting during the winter occurring on an as-needed basis. (App 8, Oransky, testimony).

To service the site, the applicants plan to use a combination of power workboats ranging in size from 14' to 31'. Currently, they use two Carolina Skiffs (14' and 16' with 20 and 25 Hp outboard engines), a 24' pontoon boat (with 75 Hp outboard engine), and a 31' lobster boat (with a 210 Hp inboard diesel engine) (App 9). The applicants have also proposed to use an electric grader, tumbler, hopper/conveyor, washdown pump, pressure waster and hydraulic pump on the site (App 10). According to the applicant's testimony, power will be supplied to the equipment via a Honda EU 2200i generator with a decibel rating of 56 (Oransky, testimony), and approximately 10 gallons of fuel will be stored on the site to power the generator. This equipment will be used approximately 3-5 days per week, with most of the use occurring from March through December (App 10). The application states that the generator is designed to reduce noise, but that an enclosed housing, noise dampening and insulation will be used to help reduce noise levels (App 10). In addition, the applications testified that the tumbler they use is made of plastic, instead of metal (Leathers, testimony). As fuel will be stored on the site, the applicants also included a spill prevention, control and countermeasure plan with their application and indicated that any fuel will be stored on the work platform in the center of the lease in approved portable fuel containers (App 43).

Boats currently used by the applicant, as well as the proposed work barge, have, or will have, 16-18 watt LED deck/flood lights. These lights are used when daylight hours are shorter in the spring and fall to create an illuminated and safe workspace. The application indicates that housings for the lights are not shielded, but they are pointed downward (App 10). In their testimony, the applicants stated that lights

would only be used when needed and would not be left on when no one is on site (Oransky, Leathers, testimony).

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

The proposed lease is located within the center of Recompense Cove, in Casco Bay, Freeport, Maine. The shoreline surrounding the cove hosts residential buildings, some with docks and moorings (SR 8). The closest land to the proposed site, at mean low water, is Flying Point, approximately 2,050 feet to the southeast (SR 8). The Wolf Neck Peninsula is located to the west, approximate 2,800 feet from the proposal at the nearest point (SR 8).

DMR's site report states that, given the distance between the proposal and the surrounding shoreline, there is ample room for riparian owners in the area to navigate to and from their properties (SR 8). The report also states that there were no docks or moorings associated with riparian properties in the immediate vicinity of the proposed lease during DMR's visits to the site on August 13, and August 21, 2020. Ms. Nelson also reiterated during her testimony that there is more than 2,000 feet between the proposal and the nearest riparian (Nelson, testimony). While there are no riparian properties within 1,000 feet of the proposed site, community members from Flying Point were present at the hearing on September 13, 2021. Many asked questions of DMR about aquaculture in the state, and asked the applicant questions about their proposal and expressed concern about the size and scale of the proposed operations, but no public testimony was offered to indicate there is concern about being able to access properties if the lease proposal should be approved.

Given the distance between the proposal and the nearest point of land, 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 within Recompense Cove, north of the marked channel that leads into the Harraseeket River (SR 8). DMR's site report notes that this channel experiences heavy vessel traffic, especially during the summer months. However, the proposed lease is separated from the 18-foot contour line associated with the channel by approximately 3,100 feet. There are also several ledges between the proposal and the channel. As such, boats operating in the channel should not be impacted by the proposed lease (SR 9). In addition, Ms. Nelson testified that an impact to traffic within this channel is not anticipated (Nelson, testimony).

According to the site report, most of Recompense Cove is in less than 10 feet of water at mean low water, and therefore, navigation in the cove is naturally constrained (SR 9). An unmarked channel of deeper water, located on the east side of the cove, parallel to Flying Point, leads from the cove's mouth to the head. This channel is over 700 feet from the proposed lease.

The application indicates that recreational boating (including kayaking and sailing), anchoring, waterskiing, tubing, and recreational fishing, all occur within the cove (App 14-15). DMR's site report noted that on their visits to the site in August 2020, both motorized vessels and kayaks were observed within the cove (SR 9). Ms. Wilson testified at the hearing that she sails within the cove and is concerned about being able to navigate while sailing if the lease were approved, especially because one does not always have control while sailing and having obstacles in the area limits where they can sail within the cove (Wilson, testimony). According to her testimony, she sails a 19-foot sailboat that is moored at her house, and they use it on the weekends from May-October. Her testimony also stated that there are many other boats on Lower Flying Point Road, and there is a lot of recreational use of the cove (Wilson, testimony). However, her testimony did not indicate that sailing would be prohibited were the lease to be approved, just that it would limit the available area in the cove for sailing and could make navigation challenging at times. Testimony was not offered from any other members of the public that indicated specific concern about navigation in the cove. Flying Point is located approximately 2,050 feet to the southeast at mean low water, and the Wolf Neck Peninsula is located approximately 2,800 feet to the west of the proposal. Given these distances between the proposal and the nearby shorelines, and because the proposed lease will not prevent use of the deeper channel noted above, commercial, and recreational navigation within the cove should not be unreasonably impacted. While sailing may require altering of course or be more challenging at times due to the proposed lease location, it should also not be unreasonably impacted.

Since the site report was published, and as noted earlier in this decision, a lease located approximately 878 feet away from the proposal contemplated by this decision was issued to Dirigo Marine Resources, LLC. The Dirigo Marine Resources decision described that because navigation within Recompense Cove is already limited by the presence of shoal water, vessels that can navigate within the cove would likely be able to transit between the Dirigo Marine Resources lease and the proposal from

Maine Ocean Farms³. The site report on the Dirigo Marine Resources application noted that if both applications were approved, individuals may need to alter course to avoid one or both lease footprints, but it does not appear that navigation within the cove would be prevented⁴.

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

C. Fishing & Other Uses

Fishing. During visits to the general area on June 9 and July 15, 2020, DMR observed lobster fishing in Recompense Cove and to the south of the proposed lease, in the vicinity of the channel leading into the Harraseeket River (SR 9). No lobster fishing or other commercial fishing activities were observed in the immediate vicinity of the proposed lease during DMR's visits to the site in August 2020, and DMR's site report stated that no lobsters (*Homarus americanus*) were observed during the underwater assessment of the site (SR 9). The applicants also testified that they chose the proposed location away from Googins Ledge and proposed their gear to be deployed in a southwest to northeast direction so as not to interfere with those who lobster within Recompense Cove (App 14, Oransky, testimony). Mr. Oransky testified that they had early discussions with individuals who lobster within the cove to find an agreeable location and gear layout that would not interfere with the lobstering in the cove (Oransky, testimony). DMR's site report also notes that, while not observed during their visits to the site, commercial harvest of schooling baitfish may occur within Recompense Cove and the proposed lease boundaries (SR 9). The application noted that seining has been observed in the cove as bait fish move through the area, but that this has primarily been observed along the western shore of the cove, closer to Wolfes Neck. However, it could take place throughout the cove (App 14). The applicant has requested that commercial vessel traffic and fishing be excluded with the proposed lease site (App 17). No testimony was provided at the hearing from anyone to indicate there is a concern regarding the impact to commercial fishing if the lease were approved.

Recreational fishing likely occurs within Recompense Cove, and according to the application, there is a 'moderate' amount of recreational fishing throughout the cove (App 14). On a visit to the area on June 9, 2020, DMR observed recreational hook and line fishermen at the Harraseeket River entrance; no recreational fishing was observed in the immediate vicinity of the proposal during DMR's visits to the site in August 2020 (SR 9). However, Ms. Nelson did testify that DMR has observed recreational fishing within the cove (Nelson, testimony). The applicant has requested that recreational fishing be excluded within the boundaries of the proposed site, but that recreational boat traffic would be welcome (App 17). Because ample space would remain for fishing outside the proposed lease boundaries, and because DMR did not observe any distinct topographic features during the underwater assessment of the site or on the

³ Dirigo Marine Resources lease decision, signed by DMR's Commissioner on June 23, 2021, page 5. Available on DMR's website: https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/EXECUTEDDedcision_CASRCx_DirigoMarine.pdf

⁴ Site Report for standard lease application from Dirigo Marine Resources (SITEREPORT3252021_Dirigo Marine Resources_Recompense Cove_Casco Bay)

NOAA chat to indicate the proposed lease area is especially important for recreational fishing (SR 9), this activity should be able to continue within the cove without issue. Ms. Wilson did indicate in her testimony that recreational fishing occurs within the cove but did not indicate there was specific concern about this activity being unable to continue if the lease were approved (Wilson, testimony). No other testimony was offered regarding recreational fishing from members of the public.

Other aquaculture uses: At the time DMR published the site report, in September 2020, there were 18 Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease. Since the site report was published, a lease was issued to Dirigo Marine Resources (lease CAS RCx) approximately 878 feet away from the Maine Ocean Farms, LLC proposal. The closest aquaculture activity to the proposed site are 8 LPA licenses held by individuals associated with the application. According to their testimony, 7⁵ of these will be relinquished if the proposed lease is granted (Oransky, Leathers testimony). In addition, Ms. Nelson testified that 4 LPAs associated with Dirigo Marine Resources will be relinquished as they recently were granted a lease, and if this lease is also approved there will be a total of 11 less active LPA licenses within 1 mile of the proposed lease (Nelson, testimony).

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concern regarding the proposed activities. 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 visits in August 2020 DMR staff did not observe other water-related uses of the proposed lease area. The application indicates that other water-related activities such as tubing, waterskiing, sailing, and swimming takes place within Recompense Cove (App 14-15). The applicant has requested that all watersports be excluded from the lease area but that there is no limitation to recreational transiting of the site via any watercraft (power, sail, kayak, etc.) (App 17). DMR did not receive any testimony or evidence to suggest that the proposed site would interfere with other water-related uses of 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. DMR scientists conducted a dive transect through the proposed lease on August 21, 2020 (SR 11). The bottom of the proposed site is composed of soft mud, with occasional burrows observed throughout (SR 11). Benthic diatoms and soft shell clam shells were the most dominant species observed throughout the assessment (SR 11).

Eelgrass. Data collected by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that eelgrass beds with coverage ranging from 10-40% were located to the east, west and northwest of the proposed site, over 700 feet away at the closest point. Eelgrass beds with coverage ranging from 0-10% were located to the north, over 1,000 feet away from the

⁵ The applicants testified that if the lease is approved the following LPAs will be relinquished: EORA117, EORA217, EORA417, TKLO118, TKLO218, WLEA319, and WLEA419

proposed site (SR 12). During their visit to the site, DMR did observe dead unattached eelgrass, but no rooted eelgrass was noted during the underwater dive transect on August 21, 2020 (SR 12).

Wildlife. A grey seal (*Halichoerus grypus*) was observed in the vicinity of the proposed lease on August 21, 2020 (SR 23). Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located more than 2,000 feet away from mudflats listed as tidal waterfowl and wading bird habitat (SR 13), and two bald eagle nests are located approximately 1 mile from the proposed lease. Bald eagles are protected by the federal Bald and Golden Eagle Protection Act (SR 13); however, the proposed lease is located well outside of the 600-foot recommended buffer surrounding the nests. DMR sent a copy of the lease application to MDIFW for their review and comment, and they indicated that “minimal impacts to wildlife are anticipated for this project.”⁶

In her testimony, Ms. Wilson stated she observes seals multiple times per day within Recompense Cove and using Googins Ledge and is concerned about the impact of the proposed lease on the ecological functioning of the area (Wilson, testimony). DMR did observe a seal during their visits to the site, and Ms. Nelson testified at the hearing that the seal may have been following fish into the cove but that she didn’t take particular notice of the seal haul-out activity during the visit given the distance between the ledges and the proposal, but that she is familiar with seals being in the area (Nelson, testimony). The Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361-1423h) prohibits the hunting, harassing, capturing, or killing of marine mammals, including seals. DMR did not note seeing any seals hauled out on ledges, or rocks during their visits to the site. The closest area to the proposal upon which seals may congregate out of the water is likely Googins Ledge, which is approximately 775 feet away from the proposed site (SR 7). The National Marine Fisheries Service guidelines for viewing seals recommend maintaining a minimum distance of 50 yards (150 feet). If seals were to congregate on Googins Ledge, the proposed lease activities would be outside this recommended distance.

The applicants also testified that they are concerned about the environmental impact of their operations, and that they constantly monitor water temperature using a data logger, and only want to have a positive impact on the cove and the surrounding Casco Bay. Their testimony indicated they have been working with scientists in the area to gather data, and hope these relationships can continue (Leathers, testimony). Mr. Leathers also testified that they have a biosecurity plan and have worked to continue to refine their gear in an attempt to have a light footprint. Mr. Leathers also mentioned they’re working on developing a compostable shellfish packaging to further limit any potential impact on the environment.

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.

⁶ CF: Email from R. Settele to C. Burke on December 16, 2019.

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 14). Intertidal land associated with Wolfes Neck Woods State Park is located approximately 2,480 feet from the proposed site, and the Wolfes Neck Woods Conservation Easement is over 3,000 feet away (SR 14). The Winslow Park and Campground, a municipally owned facility, is over a mile away from the proposed lease. Given these distances, it is unlikely the proposed lease would interfere with any of these public facilities. No testimony was provided to indicate there was a concern the proposed lease activity would interference with the use of these facilities.

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 Mook Sea Farm in Walpole, Maine as the proposed source for American oyster seed (App 2). At the hearing, Mr. Oransky testified that they'd also like to add Muscongus Bay Aquaculture and Downeast Institute as sources for seed. These hatcheries are approved 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, their current work boats have 4, 16 or 18 watt LED deck/flood lights, and the future work platform will have similar lighting (App 10). Testimony from the applicants indicate that work lights will be used when daylight hours are limited to help create an illuminated and safe work environment, and that lights are pointed down at the deck of the boats (Oransky, Leathers, testimony). During questioning, applicants clarified that the lights will not be left on when work at the site is completed for the day. 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, a combination of power workboats ranging in size from 14' to 31' will be used on site. Currently, the applicant uses two Carolina Skiffs (14' and 16' with 20 and 25 Hp outboard engines) a 24' pontoon boat (with 75 Hp outboard engine), and a 31' lobster boat (with a 210 Hp inboard diesel engine) (App 9).

The applicant has also proposed to use an electric grader, tumbler, hopper/conveyor, washdown pump, pressure waster and hydraulic pump on the site (App 10). According to the applicant's testimony, power will be supplied to the equipment via a Honda EU 2200i generator with a decibel rating of 56

(Oransky, testimony), and approximately 10 gallons of fuel will be stored on the site to power equipment for the week (Leathers, testimony). This equipment will be used approximately 3-5 days per week, with most of the use occurring from March through December (App 10). Testimony at the hearing indicated that the washdown pump would be used throughout the year but tumbling and grading of oysters occurs primarily June through September and use of equipment drops off as the weather cools. During the summer season work generally occurs Monday- Friday, typically 7:30am-3:30pm, and when equipment is in use during the summer, up to five days a week, it tends to run for about half of the workday (Oransky, Leathers testimony).

At the hearing, there was some questioning from members of the public about noise on the site, and if the applicant would be willing to limit their operations to only Monday to Friday. Members of the public also expressed concern about work on the site increasing as operations scale up and the site is fully operational. The applicants testified that they have attempted to reduce noise at the site, including by using a plastic tumbler, sorter and grader instead of metal, but given the unpredictable nature of oyster farming, there may be a need to harvest on the weekend or to prepare for an upcoming storm; because they have applied for a twenty year lease they did not want to limit themselves to not being able to work the site on the weekends if the need arises (Oransky, Leathers testimony). The applicant's testimony also indicated that by continuing to refine their processing and becoming more efficient they're able to handle and process more oysters. In addition, they hope to hire additional staff so that they can continue to work across a regular, Monday-Friday, 40-hour workday as much as possible (Oransky, testimony).

No members of the public offered testimony with regard to noise, but did testify that they have concern regarding the overall size and scale of the proposed operations, combined effect of multiple leases in the cove, and what might happen if the lease were transferred and the new leaseholder was not as respectful as the current applicant (Wilson, Michaels, testimony). During questioning, the applicant stated that almost all the proposed equipment is currently in use on the LPA sites within Recompense Cove (Oransky, testimony).

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 floating bags (2' x 3' x 4"), OysterGro cages (67.5" x 40.5" x 22.75") and overwintering cages (3' x 4' x 2') on the site (App 4). In addition, a work platform measuring up to 36' x 16' x 13'6" will be deployed in the center of the site (App 40). 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. 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 Ocean Farms, LLC for 9.86 acres, for twenty 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).⁷ 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. No conditions have been imposed on this lease.

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: 10/21/2021


Patrick C. Keliher, Commissioner
Department of Marine Resources

⁷ 12 M.R.S.A §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."