

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

CAS LI3

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Wolfe Neck Oyster Company LLC applied to the Department of Marine Resources (DMR) for a ten-year standard aquaculture lease on 7.65¹ acres south of Lanes Island, Casco Bay, in Yarmouth, Maine. The proposal is for the suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on July 2, 2019 and a scoping session was held on October 3, 2019. DMR accepted the final application as complete on November 7, 2019. A public hearing on this application was scheduled for August 23, 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 July 22 and August 12, 2021. Due to the COVID-19 pandemic and to limit any potential public health risks associated with gathering in groups, DMR elected to offer both an in-person and a remote participation option for this hearing.² The public notice for the hearing indicated that the proceeding would be conducted both in-person and remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. One individual registered to participate in the hearing but ultimately did not attend³. No one intervened in this case.

The proposal from Wolfe Neck Oyster Company LLC is for a lease site near two other pending or existing aquaculture leases. DMR recently granted a 3.47-acre standard lease, for 15 years, to Maine Source Seafood. This lease is located near Lanes Island, approximately 1,750 feet away from the pending Wolfe Neck Oyster Company LLC proposal. The hearing on that proposal was held on March 16, 2021 and the decision granting that lease was issued on May 26, 2021. Additionally, DMR held a lease hearing on July 12, 2021 for an 8.62-acre aquaculture lease application submitted by Amanda Moeser. Ms. Moeser's application is also located near Lanes Island, approximately 55 feet away, at the nearest point, from the pending Wolfe Neck Oyster Company proposal. The decision granting the Maine Source Seafood lease noted that, based on the testimony received during that proceeding, the lease site and surrounding areas

¹ Applicant originally requested ~8acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 7.65 acres.

² The Department of Marine Resources uses Microsoft Teams for all virtual conferencing, so this was the platform used for the Wolfe Neck Oyster LLC hearing.

³ A. Moeser registered to participate in the proceeding. Their registration indicated they would be attending in person. However, this individual later contacted DMR to inquire about participating remotely, and they were provided details on how to attend via the online Microsoft Teams platform.

are important for the commercial harvest of wild European oysters (*Ostrea edulis*). There was also discussion regarding the commercial harvest of wild European oysters at Ms. Moeser’s hearing. A decision granting Ms. Moser a lease was signed by DMR’s commissioner on October 8, 2021. DMR’s site report and addendum published for the Wolfe Neck Oyster Company proposal also identified a wild European oyster resource within the boundaries of the proposed site. Given the close proximity of the Moeser application and Maine Source Seafood lease to the pending Wolfe Neck Oyster Company application, and because DMR’s site report identified a wild European oyster resource within the proposed lease boundaries, DMR took official notice, for the purposes of its review of the Wolfe Neck Oyster Company application, of the Maine Source Seafood decision including the evidence and hearing recording associated with that proceeding, as well as the Moeser case file and the evidence and hearing recording associated with that proceeding.

Sworn testimony was given at the August 23, 2021 hearing by the following witnesses:

Name	Affiliation
Mark Green and Hillevi Jaegerman	Wolfe Neck Oyster Company, applicant
Flora Drury	DMR Aquaculture Scientist

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 either in person or remotely 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 five exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.⁴

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report
4. DMR Site report addendum, issued on 5.25.2021
5. Map of proposed lease site and potential boundary changes described by applicant during the hearing

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

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

On November 21, 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). DMR visited the proposed site again on May 18, 2021 and July 12, 2021. The proposed lease site occupies subtidal waters south of Lanes Island in Casco Bay, Yarmouth. Lanes Island, located north 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 east (SR 2). To the south and west between the proposed lease and Cousins Island is a marked navigation channel that leads to the Royal River (SR 2). The bottom of the proposed lease site in the northern half is predominantly mud-sand mix, while the southern half is dominated by abundant European oysters and shell hash (SR 6).

During DMR's visit to the site on November 21, 2019 depths within the proposed lease area ranged from 2.1 feet at the northeast corner to 3.8 feet at the southwest corner to 4.7 feet at the southeast corner. Depths near the proposed northwest corner were less than 2 feet (SR 6). Correcting for tidal variations results in depths approximately 8.1 feet high at the nearest high tide and 1.1 feet lower at mean low water (SR 6). Available NOAA charting indicates that portions of the proposed lease may be exposed at mean low water. However, depth calculations and aerial imagery taken near mean low water suggest the site remains subtidal at a 0.0' tide. DMR remained on site through the predicted low tide on November 21, 2019, which was predicted to be 0.71 feet above mean low water, and throughout their visit, the entire area remained subtidal (SR 6). During negative tides, the proposed lease site appears to have exposed flats (SR 6). DMR also visited the site again on July 12, 2021 during a 0.0 tide and confirmed that the entire site did remain subtidal at mean low water (Drury, testimony).

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.

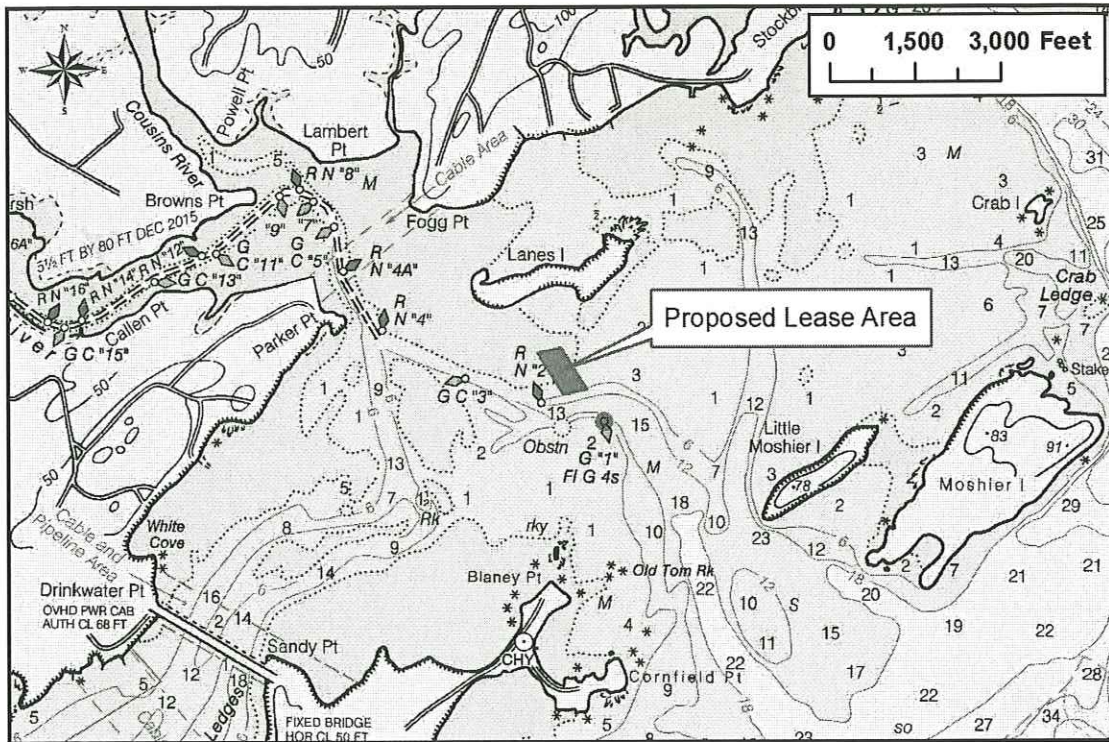


Figure 1: Proposed lease site and surrounding area. Image taken from DMR’s site report.

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*) on the proposed lease site using suspended and bottom culture techniques (App 1). A total of 800 floating mesh bags (36” x 24” x 3”) and 200 bottom cages (48” x 36” x 15”) are proposed for the site (App 27). Floating bags would be deployed in (8) ~180-foot long lines, organized into (4) ~360-foot long rows. Each ~180-foot long line of bags would contain 100 bags, deployed in 2 parallel sets of 50.⁵ Floating bags would be on the surface during the spring, summer, and fall, and would be sunk to the bottom during the winter (App 27, Green testimony). Bottom cages would be deployed in 2 parallel rows of 100 cages each and sunk to the bottom year-round. According to the overhead gear view submitted with the application, all gear would be deployed on the northern portion of the site, and comprise approximately ~2 acres of the site, while the remainder of the area would be used for bottom planting oysters only. However, text on the same overhead view described gear being deployed in both the northern and southern portions of the site (App 27). DMR’s site report stated all gear would be deployed in the northern portion of the site (SR 2). Testimony provided at the hearing by Mr. Green and Ms. Jaegerman, clarified that bottom cages would be deployed in the southern portion of the site, while the floating bags would be deployed approximately 500 feet away, closer to the

⁵ The decision on this lease was originally signed on October 19, 2021. In that decision, the gear description noted: “Floating bags would be deployed across (4) 180-foot-long rows, with each row comprising 2 parallel groups of bags with 100 bags per group.” After the decision was signed, it came to DMR’s attention that this description was incorrect. This was a minor inaccuracy that did not impact DMR’s assessment or conclusions of law with regard to the decision. Therefore, the decision is hereby amended accordingly.

northern boundary of the site toward Lanes Island. The portions of the site without gear deployed would be used for bottom planting.

The applicant anticipates being on site for seeding, harvesting, and maintenance activities 3-4 days per week during the spring, summer, and fall, but will be on the site less frequently during the winter, as only harvesting will occur during that time (Green, testimony). Harvesting will occur mainly by hand or rake, but a small drag (24" x 9") is proposed for potential use during colder months (App 12). A tumbler powered by a 4-stroke generator is proposed to be used on the site, approximately once or twice a week (Green, Jaegerman testimony). The applicant intends to service the site via a 24-foot Carolina skiff and a work barge that measures approximately 35 feet with a 20 foot beam (App 13). In his testimony, Mr. Green indicated that they are in the process of applying for a mooring permit for the work barge, and unless they're actively working on the site, the barge would be moored outside the boundaries of the proposal (Green, 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

Lanes Island, which is owned by Maine Coast Heritage Trust, is the only riparian property within 1,000 feet of the proposed site. During DMR's visit to the site, no docks or moorings were observed in the general vicinity. Lanes island is undeveloped with two recommended landing sites and campsites that are available for public use (SR 10). Recommended access to the island is via a sand beach on the southwestern end of the island or via a gravel beach near the northern end of the southeastern shore (SR 10). According to DMR's site report, the sand beach access is more than 1,500 feet to the northwest of the proposed lease site and is inaccessible at low tide (SR 10). The gravel beach, which is more than 1,600 feet to the northeast of the proposed site, is reportedly accessible at all tides but aerial photography taken at low tide indicates the area is surrounded by exposed mud flats during negative tides (SR 10). DMR's site report notes that the distance between the two recommended landing sites and the proposed lease is sufficient for vessels to access Lanes Island unimpeded (SR 10).

During the hearing, no testimony was provided from Maine Coast Heritage Trust, or others, indicating that riparian ingress or egress was a concern. In addition, evidence in the site report indicates that access to the island should not be impeded by the proposal. 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 next to the northern edge of a marked navigation channel that leads to the Royal River. DMR's site report states that this channel likely experiences heavy vessel traffic due to boatyards and boat launches present in the river, but that it is unlikely the proposed lease would impede vessel flow (SR 10). The completed application indicated that discussions between the applicant and the Yarmouth Harbormaster concluded that the proposed site would not have an impact on navigation in and out of the Royal River (App 17). In her testimony, Ms. Drury stated that even though there will be bottom cages deployed on the southern end of the site, closest to the channel, this should not impact vessels navigating in the channel. Ms. Drury did however stress that given their proximity to the channel, any bottom cages should always be properly marked so mariners are aware that submerged gear is present (Drury, testimony).

At low water, the area between the proposed lease and Lanes Island is exposed mud flats. Except for vessels accessing the mud flats, or those depths appropriate vessels like skiffs and kayaks travelling in the open shoal water around the proposed site, most vessel traffic is expected to travel within the marked navigation channel and would therefore avoid the proposed lease area (SR 10). If the lease is approved, vessels that do transit through the area may need to alter their course when the site is being worked for harvesting, seeding, or maintenance activities (SR 10). Ms. Drury's testimony indicated that there should be ample room for mariners to navigate in the area, both outside and within the lease between where floating bags and bottom cages are proposed to be deployed (Drury, testimony).

No testimony was offered by members of the public or others to indicate there is a concern regarding the impact the proposed activities may have on navigation in the area.

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 on November 21, 2019, DMR staff did not observe any lobster fishing activity. In addition, the site report notes that based on previous visits to the general area by DMR's Aquaculture Division, it is known that the lobster fishing occurs in the deeper water to the south and southeast of the proposed lease (SR 10). DMR did not observe any recreational fishing during their November 2019 visit to the site, but this activity likely occurs during the summer months, and therefore, would not have been observed during the site assessment (SR 10). In her testimony, Ms. Drury

indicated that DMR did not observe lobster fishing during any of the other visits to the sites in May or July 2021 (Drury, testimony), No testimony was provided from commercial or recreational fishermen during the hearing to indicate there is concern regarding the proposed aquaculture activities.

During their visit to the site in November 2019, DMR staff observed commercially viable quantities of wild European oysters within the proposed lease boundaries. To better assess the extent of this commercial resource, DMR visited the site a second time on May 18, 2021 and found a dense bed, or reef, of live European oysters in the southeastern portion of the proposed lease and observed that many of the oysters were actively filtering water for feeding (SR Addendum 1). Less dense European oyster beds, that contained higher proportions of dead shells, were observed to the northwest of the dense bed, and near the center of the proposed site. In other areas of the site, especially in the shoal water closer to Lanes Island, few to no European oysters were observed (SR Addendum 1).

Site reports for two other nearby leases also noted that there were live, commercially viable quantities of European Oysters present within the boundaries of those sites⁶. Lease CAS LI, held by Maine Source Seafood, is approximately 1,750 feet to the east, and Amanda Moeser was recently granted a lease approximately 55 feet to the northeast, at the nearest point, from the proposal contemplated by this decision. During the Wolfe Neck Oyster Company hearing, DMR took official notice of the Maine Source Seafood decision as well as the hearing record on Ms. Moeser's application. Given the proximity of those sites to this pending application, DMR felt the issues and evidence from those cases are germane to this decision.

A decision granting Maine Source Seafood⁷ a 3.47-acre standard aquaculture lease with a fifteen-year term was issued on May 26, 2021. This decision authorized the leaseholder to culture American oysters using suspended culture techniques. During the hearing on the Maine Source Seafood application, testimony provided by Chad Coffin and Mike Brown indicated that the area to be leased by Maine Source Seafood, as well as the immediate surrounding area, was important to the commercial wild harvest of European oysters. Both Mr. Coffin and Mr. Brown identified themselves as wild shellfish harvesters. Their testimony stated that European oyster harvest occurs via hand, rake and small drag, with most of the harvest occurring during the cooler winter months⁸. Based on the evidence provided at the Maine Source Seafood hearing, and because the applicants had not requested exclusive use of the site, it was determined that both the aquaculture activities proposed by Maine Source Seafood and the wild commercial harvest of European oysters could likely co-exist. Maine Source Seafood applied only for suspended culture, and representatives for the applicant testified that they had no problem with fishermen going into the site to harvest wild European oysters. Maine Source Seafood had initially applied to culture European oysters on the site, but to ensure the wild resource remains available for commercial shellfish harvesters, the site was not approved for the culture of that species. In addition, a condition was

⁶ Site Reports for standard lease applications from Maine Source Seafood (SITEREPORT_04.02.2020_Maine Source Seafood_Casco Bay_Yarmouth) and Amanda Moeser (SITEREPORT05.08.2020_Moeser_Casco Bay_Yarmouth)

⁷ The Maine Source Seafood decision is available on DMR's website:
<https://www.maine.gov/dmr/aquaculture/leases/decisions/index.html>

⁸Per DMR Regulations Chapter 14.10, the harvest of wild European oysters is permitted from September 16 through June 14.

placed on the lease that required all gear, with the exception of one longline and associated moorings, be removed from the site between December 15 and April 15 each year, when most of the commercial harvest of European oysters occurs. The decision reasoned that by granting the lease but placing such a condition on it would ensure the area remains accessible to wild shellfish harvesters.

A decision on Amanda Moeser's application, granting her an 8.62 acre lease was signed by DMR's Commissioner on October 8, 2021⁹. During the hearing on that proceeding, Mr. Chad Coffin testified that he had not observed anyone harvesting shellfish within the proposed boundaries, and that he does not harvest European oysters from within the boundaries of that site. Mr. Mike Brown similarly testified that Ms. Moeser's proposal should not impact his commercial shellfishing activities¹⁰. Ms. Moser did not request exclusive use of her site, and while she testified at her hearing that she had not observed fishing to occur within the proposed boundaries, she is not opposed to individuals harvesting European oysters via hand, rake, or drag from the site. Similar to the Wolfe Neck Oyster Company proposal contemplated in this decision, Ms. Moser had proposed to deploy a small amount of gear while much of the site would be used for bottom planting only.

Wolfe Neck Oyster Company is proposing to deploy two lines of year-round bottom cages in the southern portion of the site, and floating bags in the northern portion of the site that would be submerged in the winter. According to testimony provided by Mr. Green and Ms. Jaegerman at the hearing, a portion of one of the lines of proposed bottom cages may be deployed over the top of the existing dense European oyster bed located in the southeastern portion of the site and that was noted by DMR staff in the site report addendum, however the bottom cages would not cover the entire bed, and much of it would still be accessible (Green, Jaegerman testimony). Figure 2 shows the approximate¹¹ location of deployed gear and the European oyster beds observed by DMR during their visits to the site.

⁹ The Amanda Moeser decision is available on DMR's website:
<https://www.maine.gov/dmr/aquaculture/leases/decisions/index.html>

¹⁰ Amanda Moeser, case file, hearing recording from July 12, 2021

¹¹ Figure 2 is only an approximation of where gear and European oysters would potentially overlapped and was developed based on testimony provided at the hearing by both the applicants and DMR.

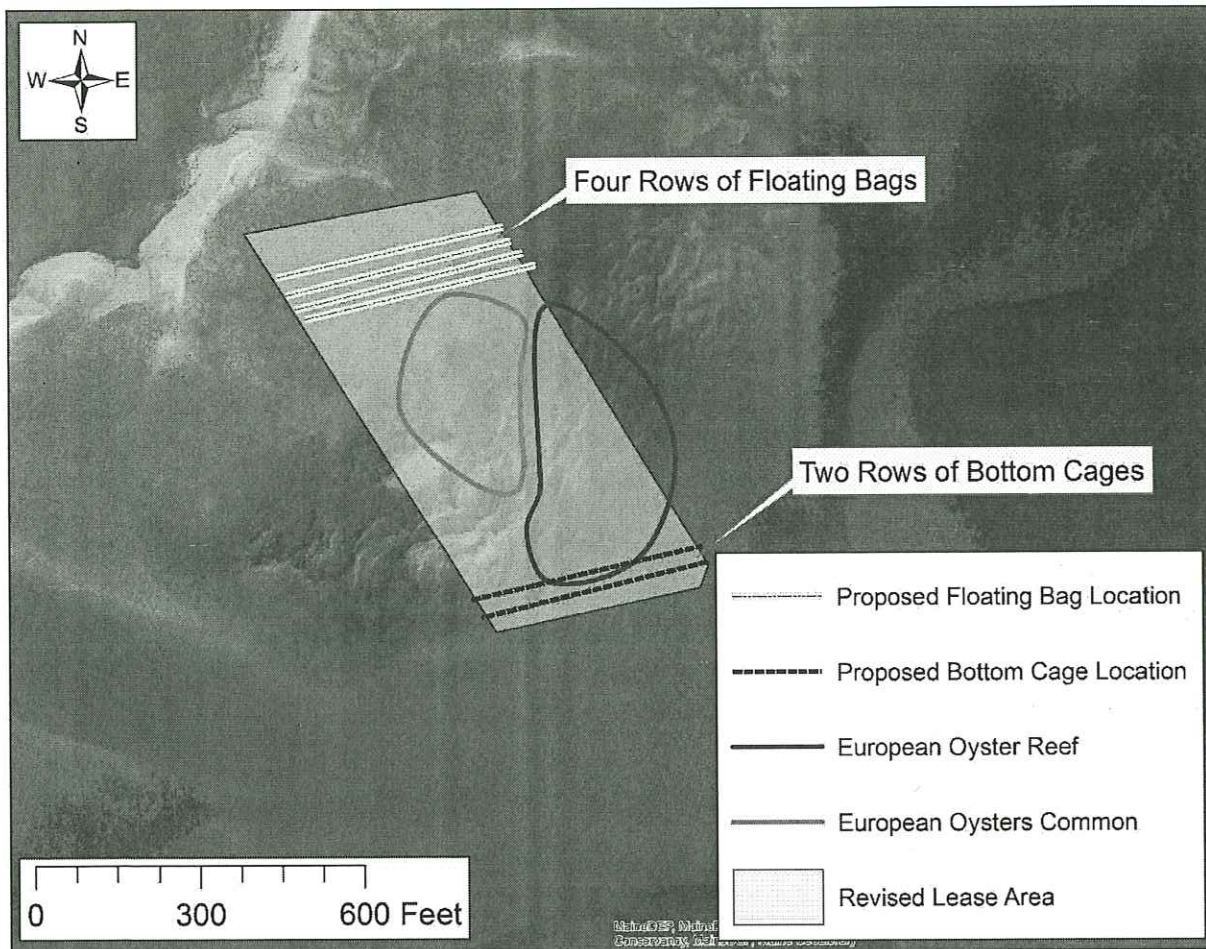


Figure 2: Approximate location of European oyster beds observed by DMR and the approximate locations of gear proposed by the applicant.

If bottom cages are deployed on top of the wild European oysters, this could impact a wild harvester's ability to access portions of that resource. The proposed floating bags, which would be submerged during the winter, are proposed to be deployed closer to Lanes Island, where the density of European oysters observed was much less and should therefore not unreasonably impede any potential harvest of the wild resource. The remainder of the site would be used for bottom planting American oysters only and would have no gear. Wolfe Neck Oyster Company testified that they have not observed any commercial harvest of Europeans taking place within the proposed lease boundaries and have not requested exclusive use of the site. Similar to the Maine Source Seafood and Moeser leases, representatives for Wolfe Neck Oyster Company testified that they feel their proposed operations are compatible with the wild commercial harvest of European oysters, and are confident if someone wished to harvest Europeans from within the proposed boundaries, they would be able to do so, regardless of the method used to harvest (e.g. by hand, rake, or small drag). While a small portion of the dense bed may be impacted due to the deployment of year-round bottom cages, it appears that much of this bed would not

be impacted by their proposed gear and would remain available to harvesters. The applicants further testified that the bottom cages have at least a 4" 'foot' on them so the cages would be elevated and resting on top of the reef, and that they do not think there would be a significant impact to the reef as a result. And, while there is a chance they'd harvest some European oysters, they have no current plan to as they are much more labor intensive. In addition, the applicants indicated that they do not plan to bottom plant American oysters on top of the dense bed of European oysters, and if there were harvestable American oysters on top of the European oysters, the applicants testified that they would harvest those by hand (Green, Jaegerman, testimony).

Unlike in the Maine Source Seafood and Amanda Moeser cases, DMR did not hear any testimony from commercial shellfish harvesters regarding the Wolfe Neck Oyster Company application. While there is an identified European resource within the proposed boundaries, the applicants are not requesting exclusive use, and should someone wish to harvest the European oysters from within the lease boundaries, they should not be prohibited from doing so¹². While some bottom cages may be deployed on top of an existing bed of European oysters, because gear would likely cover only a small portion of the bed, much would still be accessible to harvest by hand or rake. In addition, in a response to an email notification of the draft application submitted, staff of DMR's Bureau of Public Health division indicated that they had spoken with Will Owen, the Harbormaster for the Town of Yarmouth, who said that most, if not all, of the shellfish harvesting activity occurs around the northwest corner of Lanes Island, and that the area proposed by Wolfe Neck Oyster Company really has no shellfish harvesting activity unless it is a very low tide¹³. Testimony from the Maine Source Seafood hearing indicates some European harvesting does occur to the south and southeast of Lanes Island, but testimony from Ms. Moeser's hearing indicates that the area occupied by her lease, which is only approximately 55 feet from the proposal contemplated by this decision, is not as important to the commercial European oyster harvests. As such, the record in this case indicates that the site would not unreasonably interfere with existing fisheries. In addition, the applicant has requested only a 10-year lease term. Chapter 2.45(2)(B) of DMR regulations provide that DMR may consider possible conflicts with new or existing uses of a lease area during the time of lease renewal. Should the wild European oyster resource change within the area, or conflicts with the wild commercial shellfish fishery arise, DMR could review that issue at the time of renewal.

Other aquaculture uses: At the time DMR published the site report, in May 2020, there were 3 active leases and 17 Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease. At the time of the hearing, there were 28 active LPAs within 1 mile of the proposal, 4 active leases, and 1 pending lease within 1 mile of the proposal (Drury, testimony).

¹² Mr. Green and Ms. Jaegerman testified at the hearing that they would be willing to shift some of the lease coordinates to the west, in an attempt to avoid the dense European oyster bed (Exhibit 5). However, this was not discussed in detail or considered a viable option as it would put the coordinates outside the area that was originally proposed and publicly noticed, and therefore into an area not evaluated as part of the application review process. The proposed revision to the lease boundaries was entered into the record as Exhibit 5 but has no bearing on this decision.

¹³ CF: Email from A. Leach to C. Burke, J. Lewis, K. Kanwit, and D. Nault on 9.24.2019.

Of the active LPAs within 1 mile of the proposed site, one is operated by Mark Green, who is a shareholder of Wolfe Neck Oyster. Mr. Green has indicated if the lease is approved this LPA will be relinquished. The next closest active LPAs are held by Amanda Moeser, who's lease site is approximately 55 feet away. Ms. Moeser indicated in testimony at her hearing, that if her lease application is approved, she intends to relinquish these 4 LPAs. Since the lease was approved, DMR will not renew the LPAs held by Ms. Moeser.

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 visit on November 21, 2019, DMR staff did not observe other water-related uses of the proposed lease area. 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 drop camera transect of the proposed site on November 21, 2019 and visited the site a second time on May 18, 2021 (SR Addendum, 1) and a third time on July 12, 2021 (Drury, testimony). 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, but common periwinkles, barnacles, and colonial tunicates were also observed (SR 13). Clam and worm holes were also commonly noted in areas of the proposed site that were not dominated by European oysters (SR 13).

Eelgrass. In their application, Wolfe Neck Oyster Company indicated that there was no eelgrass within the proposed lease boundaries, but that an eelgrass bed is present approximately 30 feet away from the proposed southeast corner (App 16). Data collected by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that the proposed southeast corner overlaps, by about 5-10 feet, with the start of a large, dense eelgrass bed. DMR's site report also notes that there are extensive beds farther to the southeast and east of the proposed site. Over the 4 historical eelgrass surveys conducted between 1994 and 2018, data from 2001 and 2018 categorize the adjacent bed as having 40-70% eelgrass coverage (SR 15). During DMR's assessment of the site in November 2019, no rooted eelgrass was observed. The U.S. Army Corps of Engineers recommends a minimum set-back of 25 feet from eelgrass beds. To mitigate the potential of the proposal to overlap with the existing bed, DMR's science staff have recommend shifting the proposed southeast corner of the site 35 feet to the west. As such, a small portion of the southeast corner of the proposed site has been reduced to achieve the appropriate setback. Figure 3 displays this change, and revised coordinates are provided in table 1. Any lease approved for this site will reflect this coordinate change, which also reduces the acreage of the site to 7.64 acres.

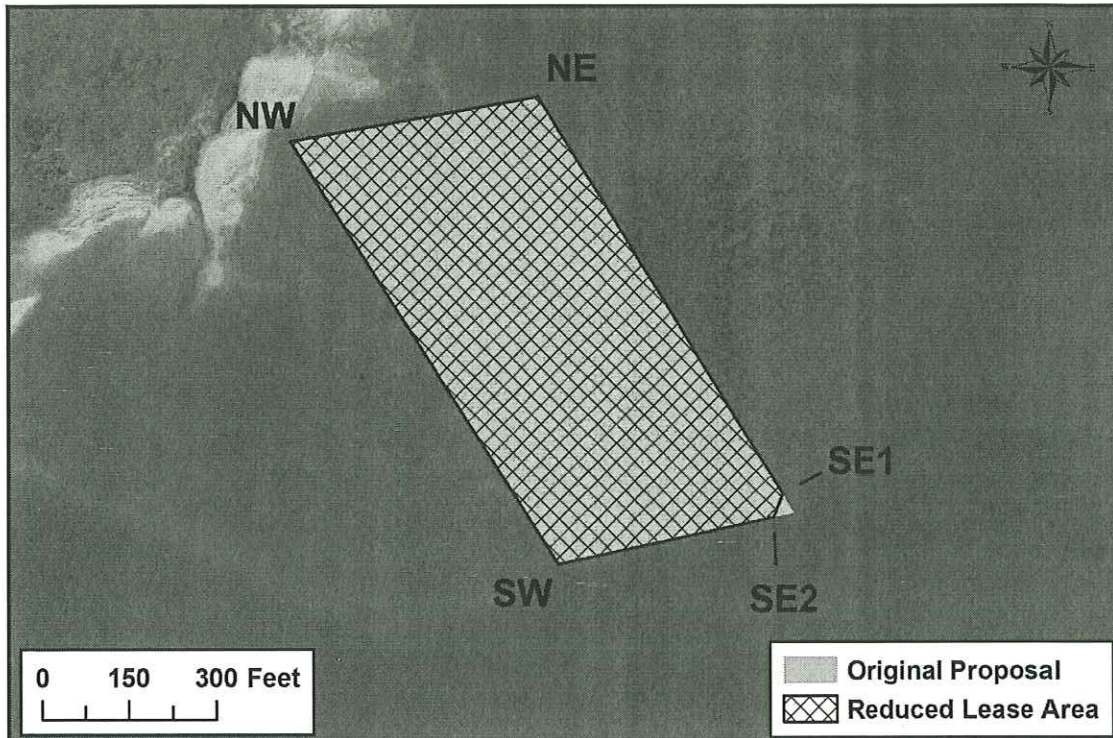


Figure 3: Original and reduced lease footprint.

Table 1: Revised Lease Coordinates- 7.64 Acres

Corner	Latitude	Longitude
NW	43° 47' 18.13"N	70° 07' 40.70"W then 433.16 feet at 79.87° True to
NE	43° 47' 18.94"N	70° 07' 34.90"W then 793.94 feet at 148.29° True to
SE1	43° 47' 12.29"N	70° 07' 29.08"W then 43.67 feet at 200.89° True to
SE2	43° 47' 11.99"N	70° 07' 29.43"W then 377.61 feet at 257.94° True to
SW	43° 47' 11.09"N	70° 07' 34.31"W then 852.90 feet at 327.45° True NW

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is partially located within tidal waterfowl and wading bird habitat (SR 17). A bald eagle nest is also present on Lanes Island. Bald eagles are protected by the federal Bald and Golden Eagle Protection Act; however, the proposed lease is located outside of the 600-foot recommended buffer surrounding the nest (SR 17). The Department sent a copy of the lease application to MDIFW on November 15, 2019 for their review and comment, but no response was received.”¹⁴

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

¹⁴ CF: Email from R. Clark to K. Kanwit, J. Noll, J. Perry, and G. Wood on 11.15.2019.

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 4,800 feet to the northeast 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 18).

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 (App 2). This hatchery is 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, 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 such as a large storm (App 14). 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 tumbler will be used on site to separate oysters based on size and will be powered by a 4-stroke generator (App 13). This equipment will mostly be used in the spring and summer approximately 3 days per week (App 13). Testimony from Ms. Jaegerman indicates the tumbler will be used only for about 30 min or less at a time (Jaegerman, testimony). 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 bottom cages (48" x 36" x 15") and floating mesh bags (36" x 24" x 3"). While a barge will be used on the site, applicant testimony indicates it will not be moored on the site (Green, testimony). According to the application, the work barge measures approximately 35' with a 20' beam (App 13). 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. With the reduction to the southeast corner of the site, the aquaculture activities proposed 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 Wolfe Neck Oyster Company, LLC for 7.64 acres for ten years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended culture techniques. Final approved coordinates for this lease are provided in Table 1. 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.

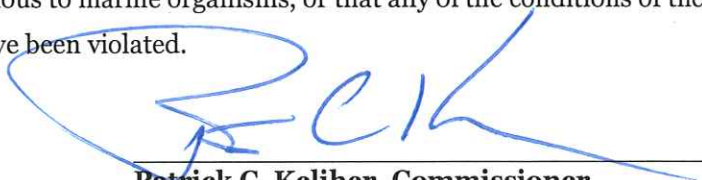
6. CONDITIONS TO BE IMPOSED ON LEASE

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).¹⁵ 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. REVOCAION 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: 3/23/22



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

¹⁵ 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."