

**STATE OF MAINE**

**Lease CAS BASK2**

**DEPARTMENT OF MARINE RESOURCES**

Trundy Point, LLC, Transferor

Wild Ocean Aquaculture, LLC, Transferee

Aquaculture Lease Transfer Application

August 28, 2019

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

**1. THE PROCEEDINGS**

Trundy Point LLC, applied to the Department of Marine Resources ("DMR") to transfer to Wild Ocean Aquaculture, LLC, its 4.1-acre aquaculture lease CAS BASK2, located in the coastal waters of the State of Maine, east of Basket Island in Casco Bay, in the Town of Cumberland in Cumberland County. The lease was originally granted on August 12, 2016 for a period of ten years for the purpose of cultivating blue mussels (*Mytilus edulis*), American oysters (*Crassostrea virginica*), and sea scallops (*Placopecten magellanicus*) using suspended culture techniques. The current lease expires on August 11, 2026.

The transfer application was accepted as complete on June 13, 2019. The Department provided a notice of the application and of the 14-day comment period to all riparian owners, the Town of Cumberland, the general mailing list of interested persons, and various state and federal agencies. A notice of the application and comment period was published in *The Forecaster* on July 11, 2019. No comments were received.

**2. STATUTORY CRITERIA & FINDINGS OF FACT**

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) and DMR Rule 2.60. They provide that the Commissioner of DMR may allow a lease to be transferred from one lessee to another upon determining that: (A) the change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated; (B) the transfer is not intended to circumvent the preference guidelines for treatment of competing applications; (C) the transfer is not for speculative purposes; and (D) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

**A. Effect of Lessee Change on Lease Criteria**

The transferee has met the same requirements for providing information about financial and technical capability and corporate status as is required for an applicant for a standard lease. The transferee has experience in shellfish and marine algae aquaculture and is acquainted with Maine's aquaculture laws and rules. According to the transfer application, the transferee plans no changes in the aquaculture activities taking place on the lease site. No comments on this transfer application were received by the Department. There is no evidence that the change in the identity of the lessee will affect any of the statutory criteria for issuing an aquaculture lease.

**THEREFORE, I FIND** that the change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A).

**B. Effect on Preference Guidelines**

There are no competing applications for this lease site, so the preference guidelines are not relevant to this application.

**THEREFORE, I FIND** that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8).

**C. Speculative Purposes**

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” It is clear from annual reports filed with DMR by the Transferor that aquaculture has been conducted on this lease site.

**THEREFORE, I FIND** that the lease transfer is not for speculative purposes.

**D. Acres Leased by Transferee**

The statute and rule require that to grant the lease transfer, the Commissioner must find that “the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.” According to DMR records, the transferee holds the following leases: CAS CF3 (11 acres), CAS BA2 (2 acres), CAS CHEB2 (3.03 acres), and CAS LCI2 (0.86 acres). The Transferor and Transferee are in the process of having the Transferor’s lease, CAS LONG (1.74 acres) also transferred to the Transferee. Should this transfer (CAS BASK2 (4.1 acres)) and the pending transfer for CAS LONG both be granted, the total acreage held by the Transferee would total 22.73 acres.

**THEREFORE, I FIND** that the lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

**3. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

1. The change in the identity of the lessee does not violate any of the lease issuance criteria set forth in 12 MRSA §6072 (7-A);
2. The lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 MRSA §6072 (8);
3. The lease transfer is not for speculative purposes; and
4. The lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 MRSA §6072 (12-A) and by DMR rule 2.60, this lease transfer may be granted.



#### **4. DECISION**

Based on the foregoing, I grant the requested transfer of the aquaculture lease CAS BASK2 from Trundy Point, LLC, to Wild Ocean Aquaculture, LLC. The term of the lease is not affected by the transfer, so the new lease will expire on the same date as the current lease, which is August 11, 2026.

All provisions of the existing lease shall continue in full force and effect, including all conditions on the lease, as noted below. 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), conditioned upon its performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

DMR placed a condition on the original lease pertaining to bonding requirements. The condition provides for scheduled increases in the bonding amount in consideration of the amount of the gear on the site and future gear deployment. Pursuant to the condition, the bond was initially set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount was due to increase to \$10,000.00. However, the Department has the discretion, in accordance with the condition, to review the amount of the bond considering experience under the lease and evidence of the lessee's plans for gear in the next lease term and set the amount as it deems appropriate irrespective of the scheduled increase.

Per communication with Trundy Point LLC., prior to executing this decision, the lease site has only five rafts currently on site<sup>1</sup>. According to the transfer application, the transferee plans no changes in the aquaculture activities taking place on the lease site. The Department has evaluated the amount of the bond and based on the amount of gear currently in place, has kept the required bond amount at \$5,000.00. Pursuant to Department regulations, the transferee will be required to secure a bond, or open an escrow account in the amount of \$5,000.00. In 2022, the amount of the bond will be reevaluated as specified in the applicable condition.

#### **5. CONDITIONS**

Pursuant to 12 MRSA §6072 (7-B), the Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. 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 existing conditions on this lease, which continue in effect after the transfer, are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80.
- b. The bond initially will be set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount will increase to \$10,000.00; on the same date in 2022, it will increase to \$15,000.00 and in 2025, it will increase to \$20,000.00. At the time of each such increase, the lessee may demonstrate to the Department that the

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<sup>1</sup> Case File: Email from P. Stocks to C. Burke on August 13, 2019

amount of gear has not been increased as expected, and the Department, in its sole discretion, may reconsider the amount of the bond to be required. If the lease is proposed to be renewed at the end of its term, the Department may review the amount of the bond in light of experience under the lease and evidence of the lessee's plans for gear in the next lease term and review the amount as it deems appropriate.

- c. Other public uses that are not inconsistent with the purpose of the lease are permitted within the lease boundaries.

#### **6. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures if it is determined that substantial aquaculture has not been conducted within the preceding year or that the lease activities are substantially injurious to marine organisms. If any of the conditions or requirements imposed in this decision, in the lease, or in the law is not being observed, the Commissioner may revoke the aquaculture lease.

**Dated:**

8/28/19

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

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**

Standard Aquaculture Lease Application  
Suspended culture of shellfish, Casco Bay

**Trundy Point, LLC**  
**CAS BASK2**

Docket # 2015-24  
Date: August 12, 2016

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

Trundy Point, LLC, a Maine corporation, applied to the Department of Marine Resources (“DMR”) for a standard aquaculture lease on 4.01 acres located in the coastal waters of the State of Maine, east of Basket Island in Casco Bay, in the Town of Cumberland in Cumberland County, for the purpose of cultivating blue mussels (*Mytilus edulis*), American oysters (*Crassostrea virginica*), and sea scallops (*Placopecten magellanicus*), using suspended and bottom culture techniques.<sup>1</sup> DMR accepted the application as complete on December 21, 2015. No one intervened in this case. A public hearing on this application was held on July 25, 2016, in Cumberland.

**1. THE PROCEEDINGS**

Notices of the hearing and copies of the application and DMR site report were provided to numerous state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Town of Cumberland and the Cumberland Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the *Portland Press Herald* on June 20 and July 11 and in the *Commercial Fisheries News* July, 2016 edition.

Sworn testimony was given at the hearing by Peter Stocks on behalf of the applicant, and by DMR Aquaculture Scientist Marcy Nelson. Mr. Stocks described his proposed project. Ms. Nelson described the site visit and presented a videotape of the bottom. Each witness was subject to questioning by the Department and the applicant. No representatives of federal, state, or local agencies were present. The hearing was attended only by a single member of the public, who did not testify or ask questions. The hearing was recorded by DMR. The hearing officer was Diantha Robinson.

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 all of these sources is summarized below.<sup>2</sup>

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<sup>1</sup> The application listed the size of the proposed lease as 4.5 acres. The site report states that after correcting an error in the corner coordinates listed in the application, Department staff calculated the area of the site as 4.01 acres (SR 2-3).

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



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

1. Case file, #2015-24
2. Application signed and dated 11-23-15
3. DMR site report dated May 27, 2016

**2. DESCRIPTION OF THE PROJECT****A. Site History**

The proposed standard lease would replace lease CAS BASK, the 2.71-acre experimental lease granted to Trundy Point for suspended culture of blue mussels, American oysters, European oysters, and sea scallops. The term of that lease expired on December 31, 2015, but according to 12 MRS §6072-A (20), the lease remains in effect pending the Commissioner's decision on the proposed standard lease. Mr. Stocks testified that he is currently growing mussels and scallops on the lease site.

Four limited-purpose aquaculture licenses (LPAs) located within the proposed lease site were issued to Peter and Lynda Stocks in May, 2016 and are used for mussel spat collection.<sup>4</sup> Mr. Stocks stated that these licenses will not be renewed if the proposed lease is granted.

**B. Site Characteristics**

The proposed lease site is located in western Casco Bay, west of Great Chebeague Island and east of Basket Island. Basket Island is undeveloped and uninhabited. The proposed lease site lies in open water approximately 270 feet east of the intertidal ledges on the east side of Basket Island and approximately 690 feet east of the nearest upland on the island shore (SR 4). Mr. Stocks testified that he gains access to the lease site by boat from Deake's wharf in Portland or from the Handy Boat marina in Falmouth. He said that he does not use any part of Basket Island in connection with his aquaculture activities.

On April 13, 2016, DMR biologists visited the proposed lease site and assessed it and the surrounding area in light of the criteria for granting an aquaculture lease, as described in the DMR site report. The report notes that the proposed lease site, compared to the existing site of the CAS BASK experimental lease, "has been expanded approximately 60 feet eastward, 100 feet northward and the southern boundary has been moved 30 feet northward" (SR 5).

Mean low water depth within the area of the proposed lease, as calculated from measurements taken during the site visit, is approximately 40 feet, increasing gradually from west to east and south to north. According to the site report, current direction is southwest to

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

<sup>4</sup> The licenses are: PTSO816, PTSO916, PTSO1016, and LSTO116.

northeast, and “the bottom is a mixture of soft mud and sand” (SR 2). The report notes that while the bay around the proposed lease site is not expected to freeze in winter, structures on the site could accumulate ice from freezing spray (SR 3). The waters around the site are currently classified by the Department’s Water Quality Classification program as “open/approved for the harvest of shellfish” (SR 9).

### **C. Proposed Operations**

The applicant proposes to grow mussels, scallops, and oysters on the proposed lease site, using either rafts with dropper ropes suspended beneath them or a system of submerged long-lines. In either case, a variety of cages, bags, and containers holding shellfish will be suspended from either the dropper ropes or the long-lines (App 3).

A maximum of 15 mussel rafts measuring 40 feet by 40 feet could be deployed on the site. Alternatively, a maximum of 14 600-foot long-lines could be used. In addition, “200 shellfish grow-out cages, 250 [each of two sizes of] wire shellfish cages, 500 Japanese lantern nets, 500 scallop or oyster grow-out bags or 250 plastic containers; or some combination of each” may be used (SR 3). Mussel spat may be collected and mussels may be grown directly on ropes, and scallops may be grown on ear hangers on ropes, as well, according to Mr. Stocks’s testimony. Predator nets will be used on mussel rafts, and mooring gear will hold rafts and long-lines in place.

According to both the application and the testimony, the applicant’s goal is to use all rafts or all long-lines on the site, but it is possible that at times a combination of gear may be used, in which case the total of each type of gear would be less than the maximum described in the application. Mussel rafts will be moored forty feet inside the western and eastern lease boundaries, and long-lines will be moored ten to twenty feet inside the boundaries. The gear will be deployed on the lease site year-round (App 3-4).

White “Sea Farm” buoys will mark the corners and possibly intervals along the boundaries of the proposed lease site; these white buoys will also serve as markers required by the U.S. Coast Guard’s Private Aids to Navigation (PATON) program, according to Mr. Stocks (Stocks, testimony).

Operations at the site, which include seed collection, stocking, monitoring, tending, and harvest activities, will occur year-round. Mr. Stocks noted that he and his crew will be on the site no earlier than 6:30 a.m. and no later than sunset. He expects to work on the site from two to four times each week from April to November and at least once a week in winter (Stocks, 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 of DMR 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 be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

#### **A. Riparian Access**

The sole riparian landowner within 1,000 feet of the proposed lease site is the Chebeague and Cumberland Land Trust, owner of Basket Island (App 35-38; SR 4). The site report states, "Ingress and egress to and from Basket Island would be unimpeded by this proposed lease. No docks, floats or improved access points exist on Basket Island" (SR 4).

Mr. Stocks testified that people land on the northeast shore of Basket Island to picnic; this location is northwest of the proposed lease site. One or two moorings are located northwest of the island, approximately 800-1,000 feet northwest of the proposed lease site. The island is open for day use only. Some mackerel fishing takes place off the northwest side of the island (Stocks, testimony). As noted above, the proposed lease site is 270 feet east of the ledges on the east side of the island and 690 feet east of the nearest upland area. None of the activities that take place on and around Basket Island appears likely to be impeded by the aquaculture operations.

**Therefore, I find** that the aquaculture activities proposed for this site will not unreasonably interfere with riparian ingress and egress.

#### **B. Navigation**

As shown on the chart in Figure 1 of the site report (SR 1), the main navigation channel in this part of Casco Bay lies west of Basket Island. The site report notes that "This channel is approximately 1,500 feet to the south of the proposed lease boundary" (SR 4). The report continues:

There is an unmarked channel between Basket Island and Lower Basket Ledges and to the south of Upper Basket Ledges. The proposed lease would encroach approximately 300 feet into this channel, however approximately 800 feet of water with depths of 30 feet or greater would remain to the east of the proposed lease site (SR 4-5).

The report observes that although the proposed lease site has been expanded to the north and east, "The remaining 800 feet of water to the east of the proposed lease that is 30 feet or more deep should be more than adequate to accommodate transit through this area" (SR 5). Mr. Stocks



testified that few recreational power boats use the area around the proposed lease site and that most sailboats travel south or east of the proposed site in order to avoid the ledges.

The Cumberland Harbormaster completed a Harbormaster Questionnaire at the request of the Department in which he stated “that the site would not interfere with moorings, traditional storm anchorages, riparian access, commercial or recreational fishing, or publically [sic] owned facilities within 1,000 feet of the proposed lease. He also indicated that he felt the moorings proposed were adequate and appropriate” (SR 5).<sup>5</sup>

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

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

Mr. Stocks testified that three or four lobster boats typically fish in the area around the lease, with usually only one boat fishing in the waters to the west between the site and Basket Island, and one other boat fishing to the east of the site.

The site report notes that no fishing was observed at the time of the site visit in April, which is not surprising at that time of year. The report states:

Lobstering may occur later in the year around the lease, as water temperatures increase during the summer months. According to the Harbormaster some recreational fishing for mackerel takes place to the north of the proposed lease.

No urchins, scallops, or other commercially harvested species were observed in commercially exploitable quantities on the bottom of the proposed lease during the SCUBA survey. (SR 5)

The evidence indicates that while some level of commercial and recreational fishing is likely to occur in the area east of Basket Island, it is unlikely that the presence of the aquaculture lease site will interfere significantly with fishing of any kind. The lease must be marked in accordance with DMR Rule 2.80.<sup>6</sup>

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<sup>5</sup> CF, Harbormaster Questionnaire dated 2/3/2016

<sup>6</sup> **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

**Other aquaculture leases.** According to the site report, the nearest aquaculture sites other than the four Stocks LPAs within the proposed lease boundaries are two LPA licenses (GRE-3-12 and GRE-1-05) approximately 588 feet west and 673 feet southwest, respectively, of the proposed lease site. Other aquaculture sites in the vicinity are all a mile or more distant. The site report concludes, "The proposed activities are unlikely to impact existing aquaculture operations in the area" (SR 6).

**Exclusivity.** The application states:

"We have used this lease site for nearly 2.75 years and not had any incidents or claimed incidents of interference with any fishing or boat traffic in or around the lease site. We do not require exclusion of fishing from the lease site. We would respectfully ask for exclusive use within this site" (App 27).

Mr. Stocks testified that his reason for this request is his wish to be able to exclude recreational boating from the site, after experiencing repeated damage to his other lease site, CAS LONG, by recreational boats that cross the site and repeatedly cut or destroy marker buoys. He noted, however, that to date he has not had such problems at the Basket Island site (Stocks, testimony).

Given Mr. Stocks's testimony that the problems with recreational boating encountered at CAS LONG have not been replicated at CAS BASK and that little recreational boat traffic occurs near the proposed lease site, it does not appear necessary to restrict recreational boating from open areas on the proposed lease site in order to enable the aquaculture operation to be carried out, as contemplated in 12 MRS §6072 (7-B). In particular, if the site is ultimately developed as proposed, using submerged long-lines, all gear except marking buoys will be submerged at least seven feet below mean low water; in that instance, it would be unreasonable to prohibit recreational boats from crossing the site, absent evidence that they would damage the gear or otherwise hamper the aquaculture operations.

The applicant is not requesting any limitations on fishing on the lease site, and no such limiting conditions will be included in the lease.

**Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.**

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3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
  4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.



#### **D. Flora & Fauna**

**Site observations.** The most common species of marine fauna observed by Department biologists during the site visit included sea stars, burrowing anemones, blue mussels, and nudibranchs. No eelgrass or other submerged aquatic vegetation was observed within the proposed lease boundaries. Figure 4 of the site report depicts eelgrass close to Basket Island, some distance from the site. The site report does not list lobsters as species observed at the site in April but notes that “It is possible that in summer months lobsters and crabs may be present in the area in greater numbers” (SR 7).

**Fisheries & wildlife.** Copies of the application were provided to the Maine Departments of Environmental Protection and Inland Fisheries and Wildlife for review. The proposed lease site is not located within the boundaries of an area designated by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) as “Essential Wildlife Habitat.”

The site report observes:

The eastern shoreline of Basket Island is classified as Tidal Waterfowl/Wading bird habitat by the Maine Department of Inland Fisheries and Wildlife (see Figure 5). The proposed lease site would be located approximately 250’ east of this Significant Wildlife Habitat. The application and a request for comments were sent to the IF&W on January 4, 2016. John MacLaine, Habitat Outreach Biologist replied on January 12, 2016 that there are no resources in the project area under MDIF&W jurisdiction that would be affected by the project, so they had no comments related to the project.

During the DMR site visit on April 13, 2016, no waterfowl or wading birds were observed within this habitat. Birds may occupy this habitat later in the season. (SR 8)

The site report also notes the presence of harbor seals in the vicinity:

During the site visit of April 13, 2016, DMR staff observed approximately 100 harbor seals (*Phoca vitulina*) hauled out on the intertidal ledges of Basket Island. With farm employees on site and the 43’ lobster boat tied to the western side of the existing mussel rafts the seals appeared completely undisturbed. (SR 8)

Ms Nelson testified at the hearing that she observed during the site visit that the seals appeared to be habituated to the human activities at and around the lease site. Even when the DMR boat approached the seals from a safe distance, she said, the seals did not move away or abandon their position on the ledges. She said that, given her extensive research experience with harbor seals, this experience convinced her that there was no reason to be concerned about the aquaculture project disturbing them. Mr. Stocks testified that the seals are generally present on the ledges in winter but not in summer, which Ms Nelson noted is the reverse of common experience.

This evidence indicates that the proposed aquaculture operations are unlikely to cause harm or disturbance to any species of flora and fauna occurring on or near the proposed lease site.

**Therefore, I find** that 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**

According to the Harbormaster Questionnaire, there are no government-owned beaches, parks, or docking facilities within 1,000 feet of the proposed lease site.<sup>7</sup> The only land within 1,000 feet of the site is Basket Island, which is protected from development but is privately owned and therefore does not constitute “conserved lands” within the meaning of the statute.<sup>8</sup>

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

#### **F. Source of Organisms**

The application indicates that the source of stock for this proposed lease site is primarily seed that the applicant collects itself: “We grow or harvest 90% plus of our seed stock” (App 28). Mr. Stocks testified that this applies only to mussels, for which he collects mussel spat on his lease and LPA sites, and to scallops, for which he collects spat under a DMR special license issued to the University of Maine Sea Grant program. He explained that he does not obtain oyster seed himself (Stocks, testimony).

Should additional seed stock be needed, the application indicates that mussel seed would be obtained from Evan Young of Blue Hill Bay Mussels in Ellsworth, Maine; scallop seed would be obtained from Marsden Brewer of Stonington, Maine; and oyster seed would be obtained from Bill Mook of Mook Sea Farms in Walpole, Maine (App 28).

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

#### **G. Light**

The application states that in general, no lights will be used at the proposed lease site, although the applicant hopes “to be able to continue to experiment using 1.5-watt LED lights to reduce duck predation” (App 24). At the hearing, Mr. Stocks testified that the light experiment

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<sup>7</sup> CF, Harbormaster Questionnaire, p. 3

<sup>8</sup> 12 MRS §6072 (7-A)(F) describes this criterion as follows: The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands. For purposes of this paragraph, “conserved lands” means land in which fee ownership has been acquired by the municipal government, State Government or Federal Government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property.



had never been conducted at the Basket Island lease site and that, in any event, the project has been concluded and is no longer ongoing.

The applicant will be bound by any lighting requirements imposed by the U. S. Coast Guard for navigation purposes under the Private Aids to Navigation (PATON) program. Mr. Stocks said that he voluntarily maintains a lighted marker on his CAS LONG lease site with the knowledge of the U.S. Coast Guard, although that agency does not require the marker. He may install a similar lighted marker at the Basket Island site, even if not required to do by the Coast Guard.

It is clear from this evidence that light, other than a possible marker, will not be used at the proposed lease site.

**Therefore, I find** that 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 site report describes noise likely to be generated on the lease site as follows:

The applicant has proposed using a diesel powered lobster boat (ubiquitous in the area), hydraulics, wash down hoses, conveyors, a seeding machine, mussel declumper, a star wheel (similar to a lobster hauling block), and power washing equipment. The power source for this equipment is below deck of the lobster boat and therefore should produce little external noise. Anticipated noise levels from lease activities would be similar or less than other waterborne activities in the area. (SR 8-9)

Based on this evidence, it appears that any noise generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease.

**Therefore, I find** that 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 site report summarizes the information in the application regarding visual impact as follows:

Mussel rafts proposed for this lease site are the standard in the mussel raft industry. Rafts would extend approximately three feet above the water when unseeded and 1-2 feet above the water when full. The rafts are a mixture of steel gray beams, natural wood cross-members and black floats. Predator nets are blue green and light red according to the application and would mostly be below the water's surface.

Oyster and scallop cages are black or green and also would be suspended below the water's surface.

No building is planned as part of this proposal. (SR 10)

Mr. Stocks testified that he is hopeful that he will be able to develop a submerged long-line system that will enable all gear to be deployed below the sea surface, reducing the visibility of the aquaculture operation. As explained in the application, he may deploy up to 15 mussel rafts, or use a combination of rafts and long-lines, if necessary (App 3). Thus, over the term of the lease, the gear visible on the site is likely to change in type and amount.

The Department's visual impact rule requires structures and gear on lease sites to blend with the surroundings as much as possible. As described above, the evidence shows that this will be the case on the proposed lease site.

**Therefore, I find** that the equipment, buildings, and watercraft to be used at the proposed lease site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

#### **4. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area.
4. 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.
5. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.
6. The applicant has demonstrated that there is an available source of blue mussels (*Mytilus edulis*), American oysters (*Crassostrea virginica*), and sea scallops (*Placopecten magellanicus*) to be cultured for the lease site.
7. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
8. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
9. 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. **BOND**

Chapter 2.40 (2) of the Department's rules describes the requirements for performance bonds and includes the following language:

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

The lease proposed here is a "structure, no-discharge" lease; it contains structures (gear) but does not involve adding foreign substances to the water, such as fish food, which would require a discharge permit under the Clean Water Act. The bond or escrow amount required by the rule for "structure, no discharge" leases is \$1,500 for leases with less than 400 square feet of gear and \$5,000 for leases with more than 400 square feet of gear. The purpose of the bond is to protect the Department and the State of Maine from bearing any costs for cleaning up the lease site in the event that the leaseholder does not meet his obligations.

Based on the maximum gear described in the lease application, it appears that the following types and amounts of gear will potentially be used on the proposed lease site:

- Up to 15 mussel rafts, 40 feet x 40 feet = 24,000 square feet, not including predator nets
- Up to 14 long-lines, 600 feet long = 8,400 linear feet of 1/2" to 3/4" long-line
- Mooring gear for rafts and/or long-lines (not calculated)
- 300 dropper ropes 25 feet long per raft or long-line = 112,500 linear feet of 1/2" to 3/4" dropper lines
- 1,950 containers of various types, totaling approximately 19,169 square feet, including:
  - 200 grow-out cages, 4 feet x 2 feet = 1,600 square feet
  - 250 cages, 3 feet x 3 feet = 2,250 square feet
  - 250 cages, 3 feet x 4 feet = 3,000 square feet
  - 500 lantern nets, 2 feet x 8 feet = 8,500 square feet
  - 500 scallop bags, 24" x 39" = 3,250 square feet
  - 250 containers, 28" diameter x 21" deep = 1,069 square feet +/-

If only rafts are used, maximum gear deployed would include approximately 44,000 square feet of rafts and containers and 112,500 linear feet of ropes, plus mooring gear and predator nets. Considering only the rafts and containers, this is 22 times the 2,000 square foot threshold for pro-rating the bond amount above \$5,000.00.

If only long-lines are used, maximum gear deployed would include approximately 20,000 square feet of containers and 120,900 linear feet of long-lines and dropper ropes, plus mooring gear. Considering only the containers, this is 10 times the 2,000 square foot threshold for pro-rating the bond amount above \$5,000.00.

If a combination of rafts and long-lines is used, the amount of gear would obviously be somewhere between these amounts.

While the language of the rule authorizes the Department to pro-rate the amount of the bond or escrow, it contains no information on how that should be done. The gear proposed for the expanded Basket Island lease site exceeds the 2,000 sq. ft. threshold by approximately 10-22 times. A bond for 10 times \$5,000 would be \$50,000; for 22 times that amount would be \$110,000.

The maximum bond required under current DMR rules for an aquaculture site is \$25,000 for a “structure, discharge” lease, which is normally a lease containing multiple fish pens in a complex mooring grid. With respect to the proposed lease site, the potential cost of cleaning up 20,000 to 44,000 square feet of containers and rafts, well over 100,000 feet of line, plus additional mooring gear and predator nets, could well be comparable to the cost of retrieving fish pens and mooring gear, depending on the circumstances. In light of the purpose for requiring a bond, it is reasonable to require a \$20,000 bond for this lease site when the amount of gear approaches this level.

Because the gear on the lease site will be deployed gradually, however, it is appropriate for the bond amount to increase gradually, as well, to reflect the expected increase in gear. Thus, the bond initially will be set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount will increase to \$10,000.00; on the same date in 2022, it will increase to \$15,000.00, and in 2025, it will increase to \$20,000.00. If, at the time the bond increases would otherwise be required, additional gear has not been deployed on the lease site as expected, the lessee may demonstrate this to the Department and request that the amount of the bond be reconsidered, which the Department, in its sole discretion, may do. Upon considering an application to renew the lease in 2026, the Department may review the amount of the bond in light of experience under the lease and evidence of the lessee’s plans for gear in the next lease term and revise the amount as it deems appropriate.

## **6. DECISION**

Based on the foregoing, the Commissioner grants the requested lease of 4.01 acres to Trundy Point, LLC, for ten years for the purpose of cultivating blue mussels (*Mytilus edulis*), American oysters (*Crassostrea virginica*), and sea scallops (*Placopecten magellanicus*) 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. The amount of the bond will be adjusted during the term of the lease as described in section 5, above, and in lease condition 2, in section 7, below.



## **7. 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 MRSA §6072 (7-B)<sup>9</sup>. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. The bond initially will be set at \$5,000.00. On the anniversary of the beginning of the lease term in 2019, the required bond amount will increase to \$10,000.00; on the same date in 2022, it will increase to \$15,000.00, and in 2025, it will increase to \$20,000.00. At the time of each such increase, the lessee may demonstrate to the Department that the amount of gear has not been increased as expected, and the Department, in its sole discretion, may reconsider the amount of the bond to be required. If the lease is proposed to be renewed at the end of its term, the Department may review the amount of the bond in light of experience under the lease and evidence of the lessee's plans for gear in the next lease term and revise the amount as it deems appropriate.
3. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

## **8. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §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: \_\_\_\_\_

August 12, 2016

  
Meredith Mendelson  
Deputy Commissioner,  
Department of Marine Resources

<sup>9</sup> 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."