

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Love Point Oysters, LLC

CAS SP2

Application for Change in Gear Authorization
Casco Bay, Freeport, Maine

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters LLC applied to the Department of Marine Resources (DMR) to change the gear authorization for existing standard lease CAS SP2, located southeast of Stockbridge Point in Casco Bay in the Town of Freeport, Cumberland County, Maine.

1. THE PROCEEDINGS

The application was submitted to DMR on January 16, 2024. The application was deemed complete by DMR on February 15, 2024. Notice of the application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of Freeport and its Harbormaster, and others on DMR's email listserv. One public comment with a request for a hearing was received. However, a lease amendment is not an adjudicatory proceeding, and a hearing was not held. The evidentiary record before DMR regarding this lease amendment application includes eight exhibits (see exhibit list below).

LIST OF EXHIBITS¹

1. Amendment application for change in gear authorization, deemed complete February 15, 2024
2. Amanda Moeser comment on amendment application, dated February 26, 2024
3. Amendment lease decision signed January 25, 2023
4. A. Moeser Exhibit from hearing held October 26, 2021
5. Original lease decision signed December 20, 2021
6. Case file for the amendment application

2. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture lease amendments is governed by 12 M.R.S.A. § 6072 (13)(G) and Chapter 2.44 of DMR regulations. The statute and regulations provide that the Commissioner may grant amendments for the use of specific gear or the growth of specific species, and for operational modifications resulting from the change(s), on an existing lease site provided the lease amendment does

¹ Exhibits 1-6 are cited below as: Amendment Application – “App”, A. Moeser comments – “Exhibit 2”, Amendment lease decision – “Exhibit 3”, A. Moeser hearing exhibit – “Exhibit 4”, Original executed lease for CAS SP2 – “Exhibit 5”, and Case File – “CF”.

not violate any of the lease issuance criteria, the lease amendment is consistent with the Commissioner's findings on the underlying lease application, and the lease amendment does not violate any of the conditions set forth in the original lease.

A. Original Lease Decision

On December 20, 2021, DMR granted lease CAS SP2 to Love Point Oysters LLC (Exhibit 5, 14). DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the original decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Love Point Oysters LLC met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 5, 14).

The original decision provided authorization to cultivate American/eastern oysters (*Crassostrea virginica*), using suspended gear (Exhibit 5, 13). Specifically, the decision authorized a maximum of 1,600 34" x 23" x 5" semi-rigid floating mesh bags arranged across (16) 150-foot-long longline sections. Each longline section is spaced 48 feet apart, with 8 sections located in the northeastern half of the site and 8 sections located in the southwestern half. The longlines are oriented in a northeasterly to southwesterly direction (Exhibit 5, 3). A 100-foot-wide corridor, running from the northwest to southeast, separates the northeastern and southwestern areas of the site. From April through December bags float at the surface; during the winter, from January through March, the applicant removes product and gear from the site.

In the original decision, the Commissioner established the following conditions governing the use of CAS SP2, as is allowed pursuant to 12 M.R.S.A § 6072 (7-B):

"All gear, except for anchors and associated buoys must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round."

As part of the original decision, the applicant was not required to maintain minimum spacing requirements between the longlines or any navigational corridors throughout the lease site.

B. 2023 Gear Amendment

In accordance with 12 M.R.S.A. § 6072 (13)(G) and Chapter 2.44 of DMR regulations, on January 25, 2023, DMR granted a gear amendment for CAS SP2 that authorized the placement of (128) 60" x 36" x 24" OysterGro 6-bag cages, holding up to (768) 35" x 18" x 3" HPDE mesh bags, deployed along a maximum of (8) existing longlines in the northeastern section of the site. The amendment also authorized an increase to the length of the longlines in the northeastern section (8 longlines total) by five feet, from 150-feet to 155-feet. Therefore, the amendment resulted in the reduction of the 100-foot-wide corridor by 5-feet, so the distance between the two sections of the site is 95-feet. However, it did not change the spacing between each longline, which is 48 feet.

C. Proposed Amendment and Findings

The leaseholder is requesting to add up to (800) 31"x 35" x 10" Seapa Baskets (App 6). The baskets would be deployed on up to (8) of the existing 150-foot longlines, along the southwestern half of the site (App 6). The Seapa baskets would be interchangeable with the existing mesh bags, so each line could contain either floating bags or Seapa baskets (App 6). The Seapa baskets would be used to culture smaller seed (App 11).

Additionally, the leaseholder is also requesting to add an 11-foot x 24-foot x 2-foot floating work platform to the site (App 6). The platform would contain a sorting table and electric sorter (App 9). The floating work platform would be anchored using (4) 84" helical anchors (App 9). The electric sorter would be solar powered and constructed using PVC piping to minimize the amount of noise on site (App 11). The floating work platform and associated equipment are requested to sort seed oysters on site. The baskets, float and associated equipment would be on site from April 1 – December 31 (App 5).

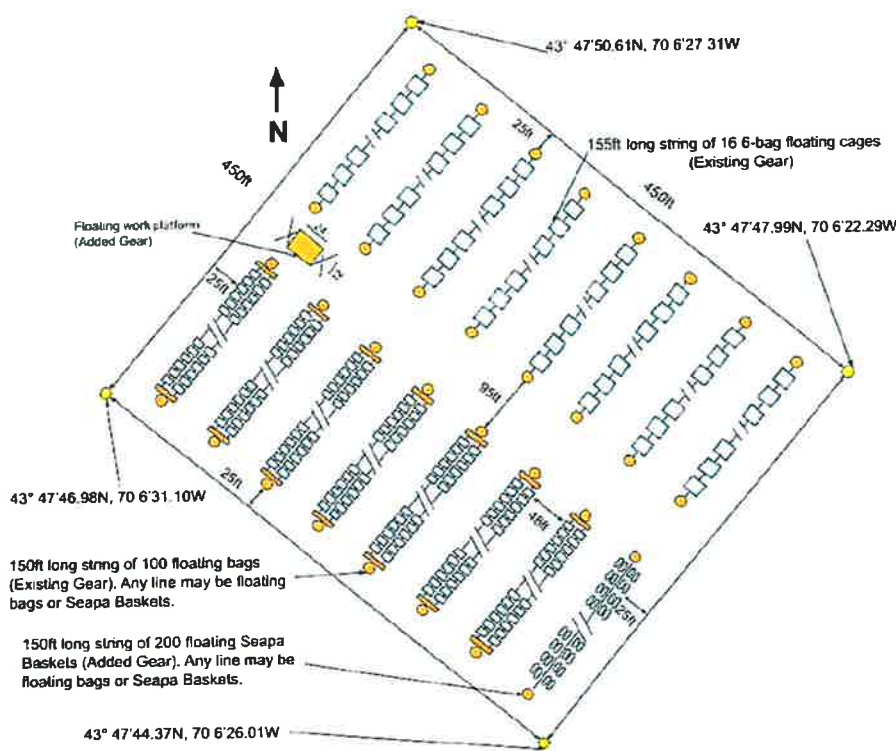


Figure 1. CAS SP2 site layout with addition of Seapa baskets and floating work float. App 6.

1. Gear – Suspended Aquaculture

12 M.R.S.A. § 6072 (13)(G) and Chapter 2.44 (1) of DMR regulations states that the Commissioner may grant amendments for the use of specific gear, species, and resultant operational modifications on an

existing lease site provided the proposed changes are consistent with the findings on the underlying lease application, do not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

As depicted in Figure 1, the placement of the Seapa baskets is located within the southwestern half of the site, while the floating work platform would be in the northwestern portion of the site. The floating work platform is discussed in the next section but is referenced below as part of a comment received.

Amanda Moeser, who holds the lease site CAS LI2, submitted comments to DMR during the comment period. CAS LI2 is located southwest of CAS SP2 and is approximately 4,100 feet from this lease site. Ms. Moeser stated that she attended the public hearing on the original application and that she thought there would be a 95-foot corridor and 25 feet of spacing between the longlines to provide for navigation through the site (Exhibit 2, 1). Ms. Moeser stated that with the change in floating gear and the addition of a floating work platform, the 95-foot corridor would be eliminated along with the 25-foot spacing between some of the longlines, which would prevent navigation through the site (Exhibit 2, page 1).

In testimony provided at the October 26, 2021, hearing, Ms. Moeser stated that she navigates through this site, as well as in the general area. She mostly navigates in the area to access her own lease site near Lane's Island (Exhibit 5, 5). During the hearing, Ms. Moeser submitted a map showing her vessel tracks through the area (Exhibit 4). The map was entered into the record as an exhibit depicted in Figure 2.

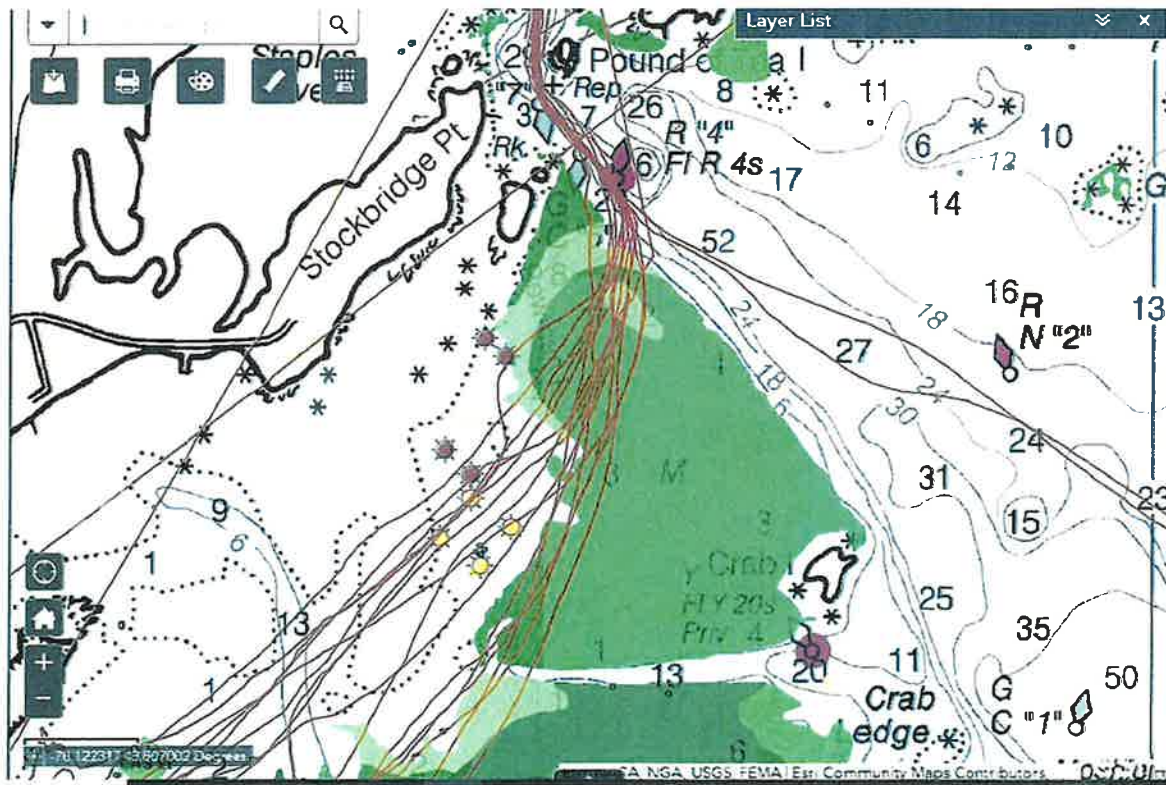


Figure 2. A. Moeser travel path through the area of the lease (not shown). CAS SP2 CF, Exhibit 4

With regard to Ms. Moeser's testimony, the original decision states:

As long as she [Amanda Moeser] is able to still transit through the area, while it may inconvenience her, she understood the need to find compromise in an effort to ensure the most uses of an area and she was not ultimately opposed to the proposed lease (Exhibit 5, 5-6).

The original decision also stated that the orientation of the proposed longlines and attached gear was consistent with Ms. Moeser's direction of travel and that she would be able to continue to navigate through the site if the lease were approved (Exhibit 5, 6). No other testimony was offered from members of the public to indicate that there would be concern regarding the lease and navigation in the area. The decision found that the lease would not unreasonably interfere with navigation. The finding was not contingent upon the holder maintaining a minimum distance between the longlines or the corridor. It did not place any conditions on the spacing between the longlines or the corridor.

Discussion:

The proposed amendment would utilize (8) of the previously permitted 150-foot longlines in the southwestern half to secure the Seapa baskets. The amendment request does not change the orientation of the longlines. There would be at least 48 feet between the longlines, not 25 feet as Ms. Moeser asserted. This spacing and orientation is consistent with the original decision.

The original decision and subsequent amendment included a condition that required that all gear, excluding corner markers and moorings, be removed from the site from January 1st through March 31st of each year. If this amendment is approved, the Seapa baskets would also be required to be removed from the site from January 1st through March 31st, consistent with the condition placed on the original lease.

Seapa Baskets are suspended floating oyster baskets and are similar in nature to the currently authorized semi-rigid floating mesh bags, and OysterGro 6-bag cages. The requested addition of Seapa Baskets to a lease site which is already authorized for a similar gear type, and associated changes in layout to existing suspended gear, is consistent with the Commissioner's findings on the underlying lease application. This requested change also does not violate any of the conditions set forth in the original lease. The addition of this gear would not violate any lease issuance criteria and is consistent with the findings of the underlying lease decision.

Therefore, the request to add Seapa Baskets does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7A)(A-F); is consistent with the Commissioner's findings on the underlying lease application in accordance with Chapter 2.37(A)(1-7); and does not violate any of the conditions set forth in the original lease.

2. Gear – Floating Work Platform

In the northwest most section of the 95-foot corridor, the lease holder is proposing to install a 11-foot x 24-foot x 2-foot, or 264 square feet, wooden floating work platform to assist with the sorting of product (Figure 1). The proposed floating work platform would have an electric sorting machine, table, and

storage box, that when measured from the water line, is approximately six feet in height (App 9). As proposed, the new float would be moored within the boundaries of the site using four 84" helical anchors and 1/2" mooring chain (App 9). The floating work platform is proposed to be on site from April 1st through December 31st (App, 10). The original decision conditioned the site, so all gear, except for anchors and associated buoys, must be removed from the site between January 1st through March 31st each year. According to the amendment application, the floating work platform would be removed with all other applicable gear from the site during that time frame, which is consistent with the existing condition.

In Ms. Moeser's comments to DMR, she stated that the placement of the floating work platform, with its associated mooring gear, would essentially eliminate the 95-foot corridor (Exhibit 2, page 1).

Discussion:

DMR Rule Chapter 2.44 (1) states "the Commissioner shall not amend a lease in such a way that it materially alters the findings of the original decision or would result in a change to the original lease conditions." The rule also says that a lease amendment may only be granted if it "does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A)." Chapter 2.44 (4).

The corridor is approximately 95 feet wide by 450 feet long, resulting in approximately 42,750 square feet, or 0.981 acres, of open area between the two sections of suspended aquaculture gear. The proposed floating work platform is 264 square feet and would be located at the northwesternmost portion of the corridor, as seen in Figure 1, leaving approximately 42,486 square feet of navigable area within the 95-foot corridor. Additionally, the proposed platform is 11 feet wide, which would result in approximately 41 feet of navigable area within the corridor remaining on either side of the platform for any boaters traveling to or from the northwestern corner through the lease site

The proposed work float would be located between two row sections of longlines (see Figure 1). However, this would only impact navigation between that specific section of longline rows, not the entire site. It is possible that if someone elected to navigate through the section where the float is located, they would encounter the work platform and then need to navigate around it. As discussed in Section 1, Ms. Moeser's navigational routes (see Figure 2) through the lease site are not limited to certain areas within the site. For example, there are 6 other corridors, running northeast to southwest, below where the float would be deployed that provide for unobstructed navigation through the lease site. Given Ms. Moeser's travel routes, as documented as part of the original proceeding, she can still navigate through the site if she chooses.

Based on DMR's review of the proposed modifications and review of Ms. Moeser's comments, the placement of the floating work platform does not eliminate or unreasonably interfere with navigation through the site and would not materially alter the findings of the original lease decision.

In the original application and subsequent decisions, the lease holder did not propose to utilize a work float or have any similar structures within the boundaries of the site. When evaluating a lease

application, DMR considers an established set of decision criteria as specified in law and rule.² Accordingly, DMR must consider the visual impacts associated with the proposal.³ Rules regarding visual impact apply to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored or routinely used at a lease location such as harvest or feed delivery vessels. Chapter 2, §2.37(1)(A)(10). Because the proposed floating work platform would be moored within the boundaries of the lease site, it would be subject to visual impact rules.

Aluminum pontoons with wooden beams, deck, and storage bin.

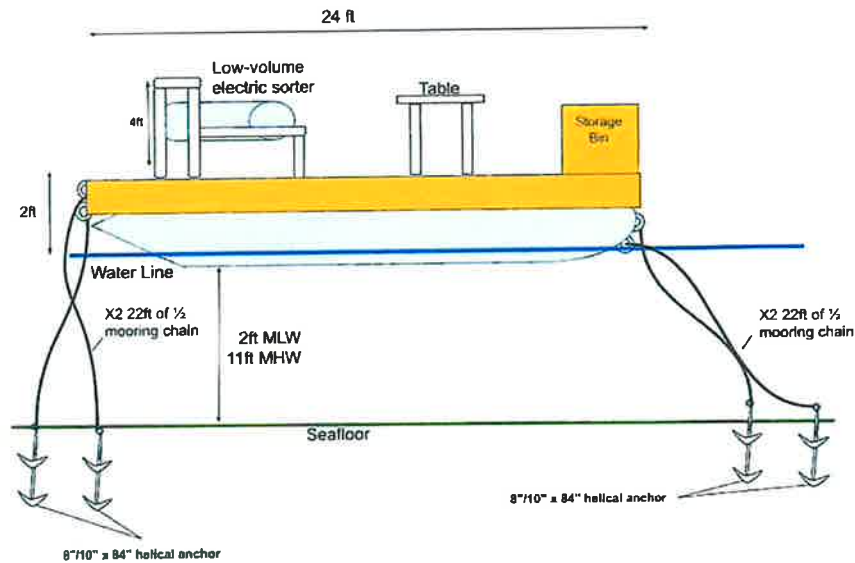


Figure 3. Cross-sectional view of proposed floating work platform on CAS SP2. App 10

The lease holder is proposing to install an 11-foot x 24-foot x 2-foot, or 264 square foot, wooden floating work platform with a 4-foot-tall electric sorting machine, table, and storage bin to assist in sorting operations (App 11/Figure 3). The gear proposed for use on the float is discussed in section 3. The floating work platform is comprised of aluminum pontoons with unpainted wooden beams and decking (App, 10). The proposed height of the float is approximately two feet above the waterline, which maintains a low profile similar to the previously approved floating gear. For example, the float is the same height as the previously approved OysterGro cages. The size, height, color, and building materials of the new float are within the perimeters consistent with the original decision and its findings, due to its low profile and minimal visual prominence.

² 12 M.R.S.A. § 6072(7-A); Chapter 2, § 2.37(1)(A)(1)-(10).

³ For full rules regarding visual impact of an aquaculture lease see Chapter 2, § 2.37(1)(A)(10). Any rule applicable to this decision will be fully stated in the decision.

Therefore, the proposed gear change of the addition of a permanent 11-foot x 24-foot float is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision, including the lease conditions.

3. Gear – Electric Sorting Machine, Sorting Table, & Storage Box

The leaseholder is proposing to install a 2-foot x 7.5-foot x 4-foot electric sorting machine. The float would also house a proposed 2.5-foot x 7-foot x 3-foot table and a 2-foot x 10-foot x 2.5-foot storage box. The float would be within the boundaries of the lease site from April 1st through December 31st (App, 5). According to the lease holder, the electric sorting machine would be on site from late June through early September (CF, Email dated September 16, 2024). The application states that the electric sorter would be constructed using PVC pipe instead of aluminum and would be powered by solar energy to reduce the amount of noise generated onsite (App, 11).

According to the lease holder, the site is currently visited/tended up to two times a day, for up to two hours a day, up to four times a week (CF, Email dated September 16, 2024). Tending activities include flipping cages and bags for defouling or picking up bags of oysters to be sorted off site. The leaseholder states that with the proposed electric sorter, time spent on the site can increase by up to six hours a day, four times a week, during June through September (CF, Email dated September 16, 2024). According to the leaseholder, the electric sorter has the potential to be used up to four hours each day.

In Ms. Moeser's comment to DMR, she stated that the addition of the electric sorting machine would have visual and noise impacts in the area. Ms. Moeser's comment did not include additional details about these potential concerns.

Discussion:

When evaluating a lease application, DMR considers an established set of decision criteria as specified in law and rule.⁴ Accordingly, DMR must consider the visual impacts associated with the proposal.⁵ Rules regarding visual impact apply to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored or routinely used at a lease location such as harvest or feed delivery vessels. Chapter 2, § 2.37(1)(A)(10). Because the proposed float is moored within the boundaries of the site and would contain the electric sorter, a table, and a storage box, this equipment would also be subject to a visual impact analysis.

The electric sorting machine is constructed out of a white PVC frame with a muted green sorting tube and would sit four feet high on the floating work platform⁶. The table and storage box would be constructed from natural wood, with the tabletop being constructed using white PVC board. None of the proposed structures are painted. In accordance with Chapter 2.37(1)(A)(10), approved gear colors are grays,

⁴ 12 M.R.S.A. § 6072(7-A); Chapter 2, § 2.37(1)(A)(1)-(10).

⁵ For full rules regarding visual impact of an aquaculture lease see Chapter 2, § 2.37(1)(A)(10). Any rule applicable to this decision will be fully stated in the decision.

⁶ Case file – Email between lease holder and DMR

blacks, browns, blues, and greens. DMR's visual impact rule requires structures and gear on lease sites to blend with the surroundings as much as possible. If the amendment is approved, the white PVC electric sorting machine frame and the white PVC tabletop must be either gray, black, brown, blue, or green in order to comply with visual standards adopted by the Commissioner. If the amendment is granted, a condition will be added to the lease requiring that the white PVC electric sorting machine frame and the white PVC tabletop be either gray, black, brown, blue or green.

In accordance with applicable regulatory standards, structures cannot exceed 20 feet in height as measured from the waterline. The application states that when all gear is present on the float, the proposed structures would sit approximately 6 feet above the waterline, which is below the 20-foot height threshold specified in DMR Regulation 2.37(1)(A)(10). The existing suspended gear on the site is 2 feet above the waterline, so there would be a 4-foot difference in height between what is currently permitted and the equipment proposed for the float. While the equipment has a higher visual prominence when compared to the gear, the deployment of this equipment would be limited to the float, which would occupy a smaller footprint of the overall lease site when compared to the existing gear.

The float and associated equipment would be removed from the site January 1st through March 31st each year, which is consistent with an existing condition that requires removal of all gear from the site during this timeframe. Based on the record, the general size and height of the table, storage box, and sorting machine are consistent with the original decision and its findings.

DMR evaluates noise in accordance with 12 M.R.S.A §6072-A(G) and the regulatory standards specified in Chapter 2.37(1)(A)(9). The statutory criterion specifies that a lease must not result in an unreasonable impact from noise at the boundaries of the proposed site. The statute further specifies that DMR must adopt rules that establish noise impact criteria. The applicable regulatory standards concerning noise require that all motorized equipment be designed or mitigated to reduce the source sound levels to the maximum practical extent and that the applicant has taken all reasonable measures to mitigate noise impacts associated with the lease activities.

In the original decision, the noise generating activities proposed were from the service vessels utilized by the lease holder to access and tend the site. Specifically, the decision approved the use of a 19-foot skiff powered by a 50-horsepower, 4 stroke outboard motor and a 23-foot Seaway vessel powered by a 115 horsepower, 4 stroke outboard motor. In the original decision, the motors would be turned off whenever possible to reduce noise but did not limit their use (Exhibit 5, page 12). The original decision states that no testimony was provided to indicate any concerns with noise (Exhibit 5, page 12). The original decision found that noise generated by the operations would not be unreasonable (Exhibit 5, page 12). The original decision also states that work conducted on the lease site would be during daylight hours only (Exhibit 5, page 12).

The amendment application proposes utilizing a solar-powered electric sorting machine affixed to the top of the floating work platform. While the sorting machine may create additional noise, the lease

holder is proposing to reduce the amount of noise generated by constructing the sorter from PVC materials instead of metal. The PVC material creates less sound as product is sorted when compared to metal. The lease holder would power the sorting machine using solar power instead of a gas-powered generator, which further reduces noise.

In addition, limiting the use of the solar-powered electric sorting machine to four days each week, and only working during daylight hours are all reasonable measures that mitigate noise impacts. Based on this evidence, it appears that any noise generated by the addition of the sorting machine on the site is unlikely to result in an unreasonable impact from noise at the boundaries of the lease site and is consistent with the original decision and its findings.

Therefore, based on the minimal visual prominence of the proposed equipment, additional condition governing the color of certain pieces of equipment, and the steps taken to reduce and mitigate noise impacts, the proposed electric sorting machine, table and storage box is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision, including the lease conditions in place.

3. CONDITIONS

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). 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 lease is subject to the following condition:

All gear, except for anchors and associated buoys, must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round.

In addition to the aforementioned condition that would remain imposed on the lease site, the Commissioner also imposes the following condition:

The white PVC electric sorting machine frame and the white PVC tabletop must be either gray, black, brown, blue, or green in order to comply with visual standards adopted by the Commissioner.

Therefore, the conditions applied to the lease shall be as follows:

1. All gear, except for anchors and associated buoys, must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round.
2. The white PVC electric sorting machine frame and the white PVC tabletop must be either gray, black, brown, blue, or green in order to comply with visual standards adopted by the Commissioner.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The proposed lease amendment does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A);
- b. The proposed lease amendment is consistent with the Commissioner's findings on the underlying lease application;
- c. The proposed lease amendment does not violate any of the conditions set forth in the original lease.

Accordingly, the evidence in the record supports the conclusion that the proposed lease amendment meets the requirements for the granting of a lease amendment set forth in 12 M.R.S.A. § 6072 and in DMR Rule Chapter 2.44.

5. DECISION

Based on the foregoing, the Commissioner grants the amendment request for CAS SP2 from Love Point Oyster LLC to cultivate American/eastern oysters (*Crassostrea virginica*), using the gear listed above in section 2.B, and deployed in the manner described in section 2.B, which adds a maximum of 800 Seapa baskets, deployed on up to (8) 150-foot-long longlines, along the southwestern half of the site. The Commissioner also grants the request from Love Point Oyster, LLC for the authorization of an 11-foot x 24-foot float, 2-foot x 7.5-foot x 4-foot electric sorting machine, 2.5-foot x 7-foot x 3-foot table and 2-foot x 10-foot x 2.5-foot storage box moored in the lease site.

Dated: Feb. 3rd 2025


Patrick C. Keliher, Commissioner
Department of Marine Resources

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Harraseeket Oyster Co. LLC

Standard Aquaculture Lease Application
Suspended culture of American/eastern oysters
Casco Bay, Freeport, Maine

CAS SP

October 25, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Harraseeket Oyster Co. LLC, applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 6.79¹ acres southeast of Stockbridge Point in Casco Bay, 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 September 17, 2019 and a scoping session was held on October 30, 2019. DMR accepted the final application as complete on December 5, 2019. A public hearing on this application was scheduled for September 27, 2021. Notice of the completed application and public hearing was provided to riparian landowners within 1,000 feet of the proposed site, 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 26 and September 16, 2021. The public notice for the hearing directed interested persons to contact DMR to sign up to participate in the proceeding. Two members of the public registered to provide testimony at the hearing. No one intervened in this case.

Sworn testimony was given at the September 27, 2021 hearing by the following witnesses:

Name	Affiliation
Emily Selinger	Harraseeket Oyster Co., LLC, applicant
Cheyenne Adams	Aquaculture Scientist, DMR Aquaculture Division
Amanda Moeser, Chad Coffin	Members of the Public

LeeAnn Neal with the United States Army Corps of Engineers attended the hearing and asked questions of the applicant but did not offer testimony. Additional members of the public who had not registered also attended the hearing and asked questions of the applicant and DMR but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson.

¹ Applicant originally requested 7 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 6.79 acres.

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
4. Pre-filed list of proposed changes from the applicant
5. PowerPoint presentation used by applicant during the hearing

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

DMR staff initially assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease on June 9, 2020 (SR 2). In her testimony, Ms. Adams stated that DMR visited the site a second time on July 15, 2020 to conduct an underwater video transect through center of site and visited a third time on September 13, 2021 to assess abundance of European oysters within the proposed area (Adams, testimony). The proposed lease occupies subtidal waters southeast of Stockbridge Point and south of Bowman Island in Casco Bay, Freeport, Maine (SR 2). The nearby shorelines are partially rocky, with areas of extensive mudflats and ledges that are exposed at lower tidal stages (SR 2). DMR observed approximately six houses, and four sets of stairs leading from the uplands to the intertidal area along Stockbridge Point to the northwest of the proposed lease (SR 2). Residential buildings were also observed on Bowman Island, with a dock located on the island's northern shoreline (SR 2). Other Casco Bay Islands, including Bustins, Little Bustins, Crab, Moshier, and Little Moshier are located to the east and southeast of the proposed lease (SR 2). The bottom of the proposed site is relatively uniform in depth, except for a shallow sandbar along the southern boundary (SR 6). During DMR's visit to the site on June 9, 2020, low tide was predicted to occur at 8:46am, with a height of -0.57 feet (SR 6). Depths at the corners of the proposed lease were taken between 8:10 and 9:00 am, and ranged from ~20 inches at the east, south, and north corners, to ~25 inches at the west corner (SR 6). Correcting for tidal variation results in depths between 11 and 12 feet at high tide, and between 2 and 3 feet a mean low water (0.0 feet) (SR 6). Figure 1 shows the proposed lease area and approximate location of DMR's underwater video transects through and nearby the site.

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

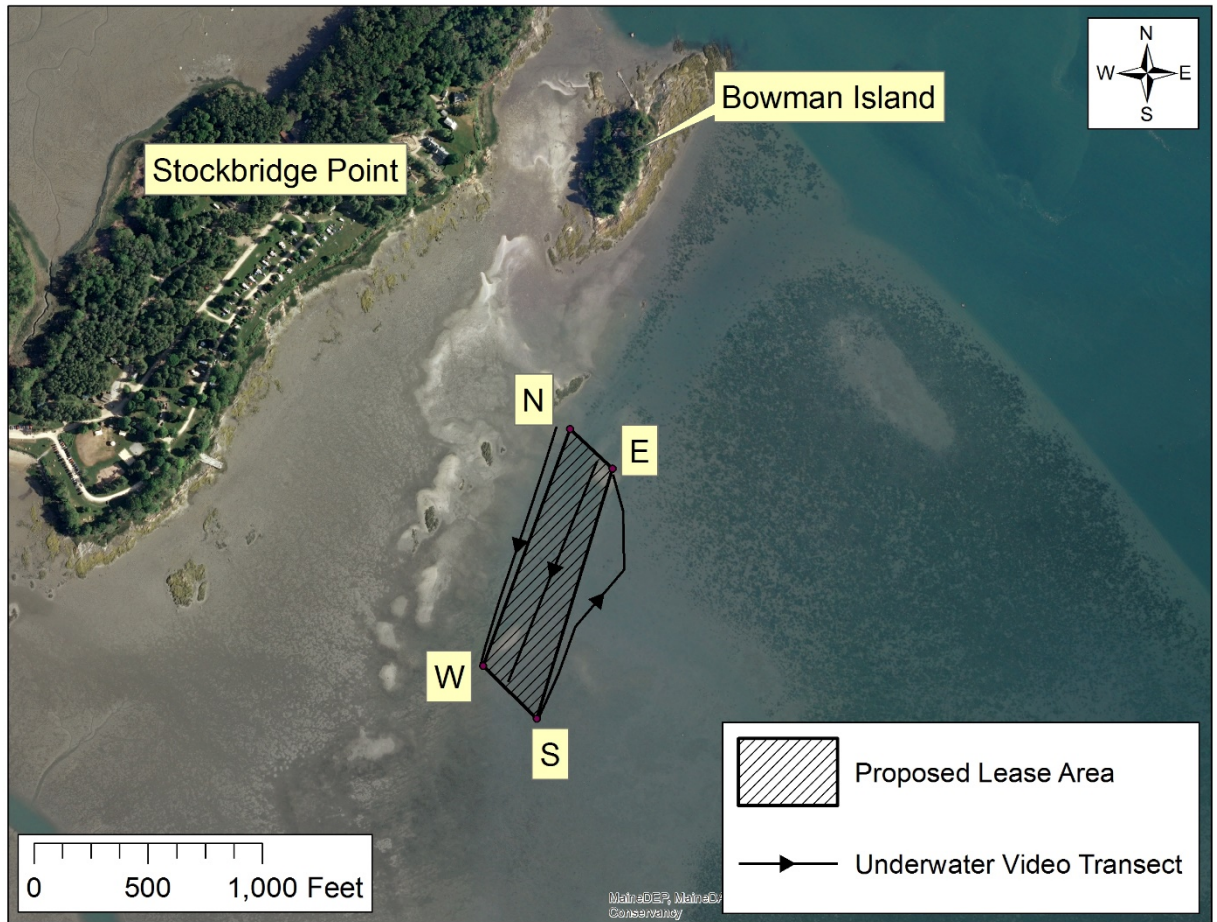


Figure 1: Proposed lease area. Image taken from DMR’s site report.

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*), on the proposed lease site using suspended culture techniques (App 1). The applicant originally requested a 6.79 acre lease, but in pre-filings submitted to the department, and in their testimony, asked that the proposed area be modified by eliminating the northwestern section of the proposal, thereby reducing the area to approximately 4.79 acres (Exhibit 4, Salinger, testimony). In her testimony, Ms. Adams clarified that with the proposed reduction, the proposed area measures 4.74 acres (Adams, testimony).³ An updated map of the site is provided in Figure 2, and updated coordinates for the site are provided in Table 1.

³ At the hearing, Ms. Adam’s clarified that the revised coordinates provided by the applicant resulted in two coordinates being outside the area originally proposed by approximately 12 feet. DMR cannot consider areas outside of the original proposal. The applicant testified that they did not intend for the coordinates to be outside of what was originally proposed and would be fine with DMR adjusting coordinates so that they remain along the originally proposed boundaries. With the proposed reduction and adjustment in coordinates, the revised lease area measures 4.74 acres.

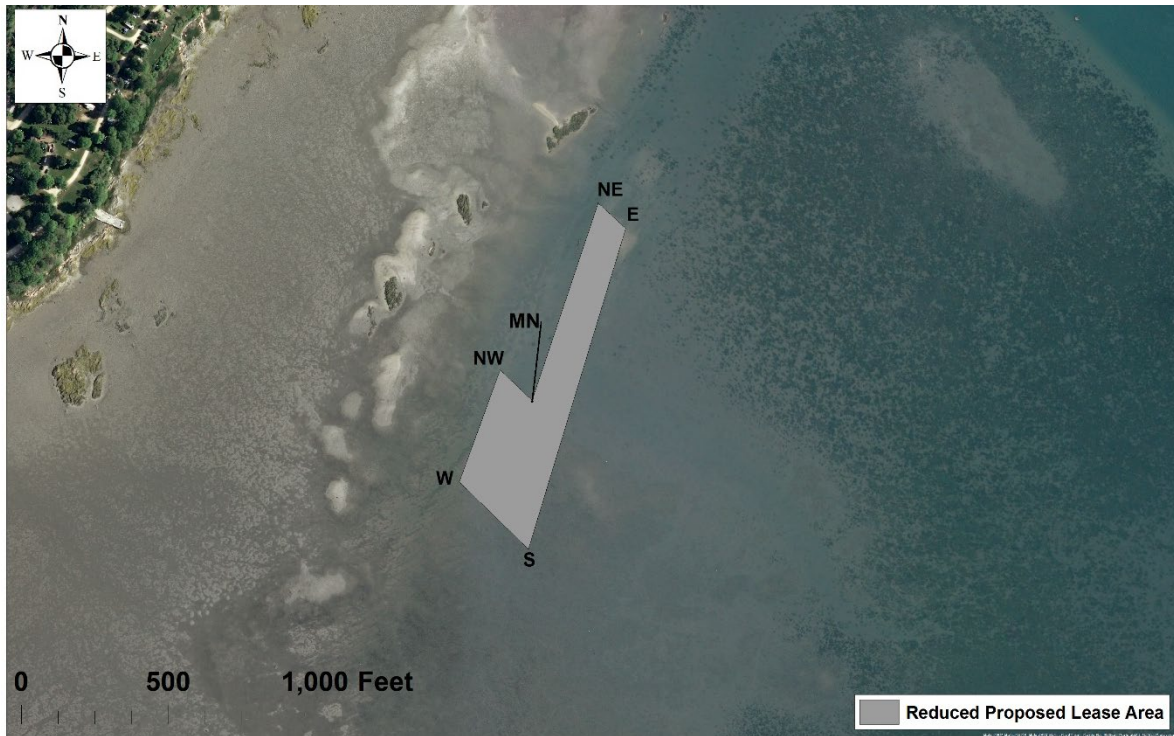


Figure 2: Map of reduced lease area.

Table 1: Revised lease coordinates (WGS84)⁴; 4.74 acres

Corner	Latitude	Longitude	
E	43.801035	-70.106404	then 1,141.16 feet at 196.91° True to
S	43.798027	-70.107606	then 328.04 feet at 314.30° True to
W	43.798647	-70.108507	then 405.30 feet at 20.12° True to
NW	43.799696	-70.107998	then 149.78 feet at 133.58° True to
MN	43.799417	-70.107582	then 707.89 feet at 18.56° True to
NE	43.801267	-70.106762	then 126.79 feet at 132.50° True to E

In consideration of the proposed lease reduction, the applicant testified that they intend to deploy up to 12, 400-foot longlines of gear. Three rows of stackable bottom cages would be deployed in the southwestern portion of the site, 4 rows of floating bags would be deployed in the northeastern section of the site and 5 rows of floating bags would be deployed in the southeastern areas of the site (Exhibit 4; Selinger, testimony). The applicant testified that a maximum of 150 bottom cages and 2,160 floating bags would be deployed (Selinger, testimony). The application also indicated that seed boxes may be used on the site and would be deployed along the same lines as the floating gear (App 4). A 100-foot wide corridor would separate the floating bags and bottom cages deployed on the southern portion of the site, and the

⁴ The measuring tool and coordinate geometry (COGO) report tool in ArcMap 10.6 were used to verify the distances and bearings between proposed lease corners

bags deployed on the northern portion of the site (App 25; Exhibit 4). According to materials submitted in the application, the bottom cages measure up to 36" x 45" x 24". However, pre-filed changes and the applicant's testimony indicated that the stackable bottom cages may be deployed in tiers of 1, 2 or 3 layers, and may be smaller, with each layer measuring 24" x 36" x 4" (Exhibit 4; Selinger, testimony). Floating gear would consist of mesh bags with floats attached to the bottom (36" x 18" x 6") or the sides (36" x 24" x 4"), and PVC and mesh seed boxes (24" x 12" x 6") (App 24; Exhibit 4). Gear would remain on site year round, but floating gear would be submerged in place during the winter, or oysters would be moved to the bottom cages and floating gear removed (App 8). DMR's site report notes that given the depth of the proposed site, the bottom cages proposed by the applicant may become exposed during at least some negative tidal stages (SR 6). As such, the applicant has proposed to mark each bottom cage with a floating toggle buoy so their locations are known to boaters (Exhibit 4, Selinger, testimony).

The applicant anticipates being on site for seeding, harvesting and maintenance activities 3-5 days per week in the summer, and 1-2 days per week in the winter. The applicant testified they expect to be on the site for 8 hours per day, though likely less during the winter (Selinger, testimony). Oysters would be harvested directly from the bags or cages they are grown in. This would be accomplished by pulling floating bags into the workboat or harvesting by hand directly from the bottom cages at low tide (App 8). No power equipment is proposed, and the applicant intends to service the site from a 19 or 14 foot boat (App 9). Headlamps may be used when work or harvesting activities need to extend beyond daylight hours (App 9; Selinger, 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 southeast of Stockbridge Point and south of Bowman Island in Casco Bay, Freeport. According to DMR's site report, at low water, intertidal mud flats extend about 1,000 feet east from the Stockbridge Point uplands to near the proposal. A tidally exposed ledge and sandbar are located within these mud flats, to the west of the proposal's western boundary (SR 9). There are also over 900 feet of intertidal land between the proposal and Bowman Island (SR 9). Given this

geography there appears to be ample room for riparian owners to navigate to and from their properties along Stockbridge Point and Bowman Island at high water. At low water, accessing uplands to the north and west of the proposal is already limited due to the extensive mud flats, as such the proposed lease is unlikely to create any increased difficulty in accessing these areas (SR 9). In addition, no docks or moorings were observed by DMR in the immediate vicinity of the site, though docks and multiple moorings were observed over 1,000 feet to the north and northeast (SR 9). In her testimony, Ms. Selinger noted that she did not think the proposal would interfere with riparian ingress and egress given the proposed location's distance from shore and because no docks or moorings are located along the immediate shoreline (Selinger, testimony).

No testimony was provided at the hearing to indicate there is concern about the proposed lease and riparian ingress and egress. Given the distance between the proposal and the nearest point of land, and because it appears access to the immediate shoreline is likely more limited by the presence of extensive mud flats at low tide, 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 Casco Bay, south of the marked channel that leads into the Harraseeket River and Staples Cove (SR 10). DMR's site report notes that this channel experiences heavy recreational and commercial 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 1,660 feet of shallow water, and according to the NOAA Chart, water depths in this area are less than 5 feet at mean low water (SR 10). As such, boats operating in the channel should not be impacted by the proposed lease (SR 10). An unmarked channel located to the southwest of the proposal leads to the Winslow Park Boat Launch. DMR's site report states that because this channel hosts deeper water than the surrounding area and is located approximately 1,900 feet from the proposed lease, boats going to and from the boat launch are unlikely to be impacted by the proposal (SR 10).

Because of the shoal water surrounding the proposal, and tidally exposed mudflats, sandbars, and ledges to the west and north around the proposal, navigation within the general area is naturally restricted to shallow draft vessels. This type of vessel should be able to maneuver around the proposed lease without significant issue (SR 10). The application indicated that the proposed lease area is generally avoided by most large or medium size boats and by all vessels at low tides given the shallow nature of the area, but that during high tides some small motorboat and kayak traffic occurs (App 13). Ms. Adam's did state in her testimony that because the proposed bottom cages may be exposed during at least some negative tides, it will be important that these are properly marked so they do not become a navigational hazard (Adams, testimony). Upon questioning, Ms. Adams indicated that the applicant's plan to mark the bottom cages with toggle buoys should be sufficient (Adams, testimony).

No testimony was offered from members of the public to indicate there is concern regarding the proposed lease and navigation in the area.

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

C. Fishing & Other Uses

Fishing. During the June 9, 2020 visit to the site, DMR observed two harvesters collecting wild American/eastern oysters (*C. virginica*) in the intertidal area to the southwest of the proposal (SR 10). It does not appear that the proposed site would prevent access to the tidally-exposed mudflats to the west of the proposal (SR 10). DMR's site report indicates that European oyster (*Ostrea edulis*) beds were observed along the eastern and western boundaries and within the proposal's northern third. While many of the shells were empty, the report notes that there were live European oysters in exploitable quantities (SR 11). The applicant has not requested exclusive use of the site, and the area is shallow enough to be harvested by rake, small drag, or hand. While commercial or recreational harvest of this resource would not be explicitly prevented by the proposal, the presence of the submerged and floating gear could limit or prevent this activity. However, the applicant has proposed to reduce the lease footprint from what was originally proposed by eliminating the northwestern portion, and according to Ms. Adam's testimony, the densest European oyster beds observed by DMR during their visit to the site in September 2021 were located in the area the applicant is proposing to remove from the proposal. Ms. Adam's also testified that while other European oysters were observed within other areas of the site, they were more scattered with many dead shells (Adams, testimony). In addition, Mr. Coffin testified that he harvests shellfish in the general area and does not feel that his activities would be prevented or negatively impacted by the proposed lease (Coffin, testimony).

No lobster buoys were observed by DMR within the proposed lease boundaries during visits to the site on June 9 or July 15, 2020 (SR 10). Lobstering activity was observed in the deeper water north of Bowman Island and northeast of the proposed lease (SR 10). The application indicated that one lobsterman regularly fishes in the eelgrass beds located to the south and east of the proposed site, but not within 500 feet of the proposed boundaries (APP 13). The shallow nature of the site makes it unlikely to be heavily used by lobsterman (SR 10).

During the July 9, 2020 visit to the proposed site, recreational hook and line fishing was observed at the mouth of the Harraseeket River, and a striped bass was observed during the drop camera video transect conducted by DMR on July 15, 2020 (SR 11). DMR's site report notes that while the proposed gear may make it more difficult for recreational fishermen to operate within the site, the applicant has not asked that this activity be excluded from the lease boundaries, and this activity would be able to continue along the boundaries of the proposal (SR 11). The completed application states that recreational fishing does occur during high tides from small vessels in the area, but not usually within 400 feet of the proposed site (APP 13), and the applicant's testimony indicates that this activity should be able to

continue without issue (Selinger, testimony). No other testimony was offered from members of the public regarding other commercial or recreational fishing in the area.

Other aquaculture uses: At the time DMR published the site report, in September 2020, there were 23 Limited Purpose Aquaculture (LPA) licenses, and no active leases, within one mile of the proposed lease (SR 11). At the hearing, Ms. Adams testified that there are now 37 active LPA licenses and 1 active lease within 1 mile of the proposal (Adams, testimony). The closest existing aquaculture activities to the proposed site are 4 LPA licenses held by Emily Selinger, the owner of Harraseeket Oyster Co, LLC (SR 11). According to the application and Ms. Selinger's testimony, these 4 LPAs will be relinquished if the lease is granted (APP 10; Selinger, testimony).

No testimony was offered 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: DMR's site report does not detail other water-related uses of the proposed lease area. The application indicates that kayaking is common in the area during the summer months (APP 13). 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 near the east and west boundaries of the proposed site on June 9, 2020. They visited the site a second time and conducted an additional transect on July 15, 2020 (SR 13). A third visit, which included a snorkel transect through the site, was conducted on September 13, 2021 to evaluate the presence of European oysters within the proposed site (Adams, testimony). The bottom of the proposed site is composed of mud, with some sections of European oyster shell rubble and shell hash (SR 13). European oysters were the dominant species observed in the site, with sections of oyster bed observed along or just outside of the proposal's western and eastern boundaries, and in the northern portion of the site (SR 13). DMR's site report also noted that barnacles and colonial tunicates were commonly observed attached to oyster shells, diatoms were abundant on the mud, and clam and worm holes and castings were also commonly noted (SR 13). As indicated above, because the applicant has proposed to reduce the lease footprint by eliminating a portion of the northwestern section, the densest European oyster beds observed by DMR during their site visits will no longer be present within the proposed boundaries (Adam's testimony).

Eelgrass. Data collected in 2018 by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that eelgrass beds with coverage ranging from 0-10% were located approximately 60 feet from the northern boundary of the proposal, along the northern ½ of the eastern boundary, at the closest point (SR 14). There are also extensive eelgrass beds mapped to the south, east and northeast of the proposed site, but no rooted eelgrass was observed in the

underwater transect conducted by DMR on July 15, 2020 (SR 14). Some small amounts of rooted eelgrass were noted approximately 65 feet to the east of the proposed eastern boundary (SR 14).

Wildlife. During DMR's visit to the site on June 9, 2020, terns, eider ducks, herring gulls, and a great blue heron were observed in the general vicinity of the proposed lease (SR 16). Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease borders but does not overlap mudflats listed as tidal waterfowl and wading bird habitat (SR 1). A bald eagle nest is located approximately 1 mile from the proposed lease. Bald eagles are protected by the federal Bald and Golden Eagle Protection Act (SR 1), however, the proposed lease is located well outside of the 660 foot recommended buffer surrounding a nest. 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."⁵ No testimony was provided at the hearing to indicate there is concern regarding the proposed activities and the flora and fauna in the area.

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

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

The proposed site is located within 1,000 feet of the intertidal lands associated with Winslow Park and Campground; a municipally-owned facility located to the northwest of the proposal (SR 17). The park hosts camping facilities, as well as a public boat ramp and dock accessible from mid to high tidal stages (SR 17). The boat ramp is located more than 2,000 feet to the west of the proposal (SR 17). DMR's site report notes that it is unlikely the proposed aquaculture activities would interfere with use of the campground or boat ramp (SR 17). No testimony was provided to indicate there was a concern regarding the proposed lease activities and 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 Muscongus Bay Aquaculture and Mook Sea Farm as sources of stock for American oyster seed (APP 2). These hatcheries are approved by DMR. In addition, the applicant has listed Mark Green and Chad Coffin as additional sources for American oyster seed. According to DMR records, Mr. Green and Mr. Coffin hold active aquaculture sites, or are stakeholders in companies that hold aquaculture leases. If the lease is granted, Harraseeket Oyster may obtain stock from these sources, but

⁵ CF: Email from R. Settele to C. Burke on December 20, 2019.

individuals would need to comply with any applicable laws governing the transfer of seed, and Harraseeket Oyster would need to adhere to any applicable provisions governing the deployment of seed on the lease site.

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 lighting, except for the use of a headlamp will be used on the site (Selinger, testimony). The completed application indicates that either a small headlamp or lantern would be used when work or harvest activities need to extend into the dawn or dusk hours (APP 9). 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, no power equipment of any kind will be used on the site, aside from the outboard engines that power the skiffs used to service the site (APP 9). The boats proposed for use on the site are a 19-foot skiff powered by a 50-horsepower motor, and a 14-foot skiff powered by an 8-horsepower motor (APP 8). DMR's site report indicates that these boats are consistent with the size and type of vessels used for aquaculture, as well as other commercial and recreational uses along the Maine coast (SR 18). The completed application also stated that when not being used to maneuver between lines of gear at high tide, the boat engine will be shut off during work and harvesting activities (APP 9). No testimony was provided to indicate there is concern about the proposed activities and noise.

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, mesh bags with floats attached to the bottom or sides, and PVC and mesh seed boxes. 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 reduced lease to Harraseeket Oyster Co. LLC for 4.74 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).⁶ Conditions are designed to

⁶ 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.”

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: 10/25/2021


Patrick C. Keliher, Commissioner
Department of Marine Resources