

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Norumbega Oyster Inc.

Standard Aquaculture Lease Application
Suspended Culture of Oysters
Damariscotta River, Newcastle, Maine

DAM DU

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Norumbega Oyster Inc. applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 6.01¹ acres located in Upper Dodge Cove, Damariscotta River, Newcastle, Maine. The proposal is for the suspended culture of American oysters (*Crassostrea virginica*). The applicant currently operates experimental lease DAM DUx within the footprint of the standard lease proposal.

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on December 9, 2021, and a scoping session was held on April 14, 2022. DMR accepted the final application as complete on August 25, 2022. Notice of the completed application and public hearing was provided to state agencies, the Town of Newcastle, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. A Harbormaster Questionnaire was sent to the Harbormaster, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations. A response was received by DMR on September 14, 2022. Notice of the hearing was published in the *Lincoln County News* on August 29, 2024. The public notice for the hearing stated that the proceeding would be conducted in-person and directed interested persons to register to provide testimony or ask questions during the proceeding. No applications for intervenor status were received by DMR. A public hearing on this application was held on October 3, 2024. One individual registered to participate in the hearing but did not testify.

Sworn testimony was given at the hearing by Eric Peters. The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes the record of testimony at the hearing. The evidence from all sources is summarized below.²

¹ Applicant originally requested 6.0 acres. DMR calculations indicate the area is 6.01 acres.

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

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report, issued on May 1, 2024
4. Aerial photograph showing the experimental and proposed lease boundaries, submitted by Eric Peters

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture American oysters (*Crassostrea virginica*) using suspended culture techniques (App 1,2). The applicant proposes to use 900 four-pack grow out cages (36-inches by 40.5-inches by 9-inches), 750 six-pack grow out cages (68-inches by 40.5-inches by 9-inches), and up to 4,500 Vexar bags (36-inches by 18-inches by 3-inches) as well as moorings, buoys, and lines.

The applicant anticipates seeding oysters from April to September. The applicant expects to tend the site daily (App 9). Oysters will be harvested from April to November. The cages will be submerged from late October/early November to April each year (App 10).

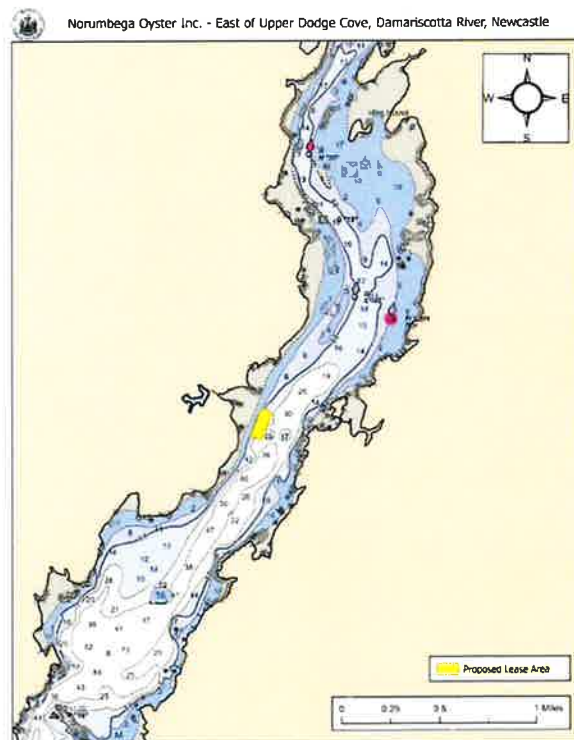


Figure 1: Proposed standard lease boundaries. Image from DMR site report.

B. Site Characteristics

On August 9, 2023, DMR scientists assessed the proposed lease site. The proposal is situated in subtidal waters of the Damariscotta River east of Upper Dodge Cove. The western shoreline consists of mature, undeveloped forest with occasional rocky beaches owned by the State of Maine. The eastern shoreline is rocky with forested uplands and scattered residential homes (SR 2).

2. 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; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or 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

Before granting a lease, the Commissioner must determine that the proposed project “will not unreasonably interfere with the ingress and egress of riparian owners[.]” 12 M.R.S.A. § 6072(7-A)(A). In examining riparian owner ingress and egress, the Commissioner “shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures.” Chapter 2.37(1)(A)(1)³.

The applicant has operated experimental lease DAM DUX within the boundaries of this proposal for the last six years. During that time, no issues concerning riparian access have been reported.

During the site visit, DMR observed one dock and two moorings located east of the proposal. The dock had three kayaks and a small powerboat tied up to it. The dock is approximately 1,075 feet southeast of the southeast corner of the proposal. DMR observed a vacant mooring near the dock at the time of the site visit. The vacant mooring is 980 feet southeast of the proposal. The second observed mooring is 861 feet east of the proposal. At the time of the site visit, there was a commercial fishing vessel moored to it (SR 4) (Figure 2).

³ 13-188 C.M.R. ch. 2.

A Harbormaster Questionnaire was completed by the local Harbormaster and submitted to the DMR Aquaculture Division on September 14, 2022. The Harbormaster stated that the proposal should not impact riparian ingress and egress.

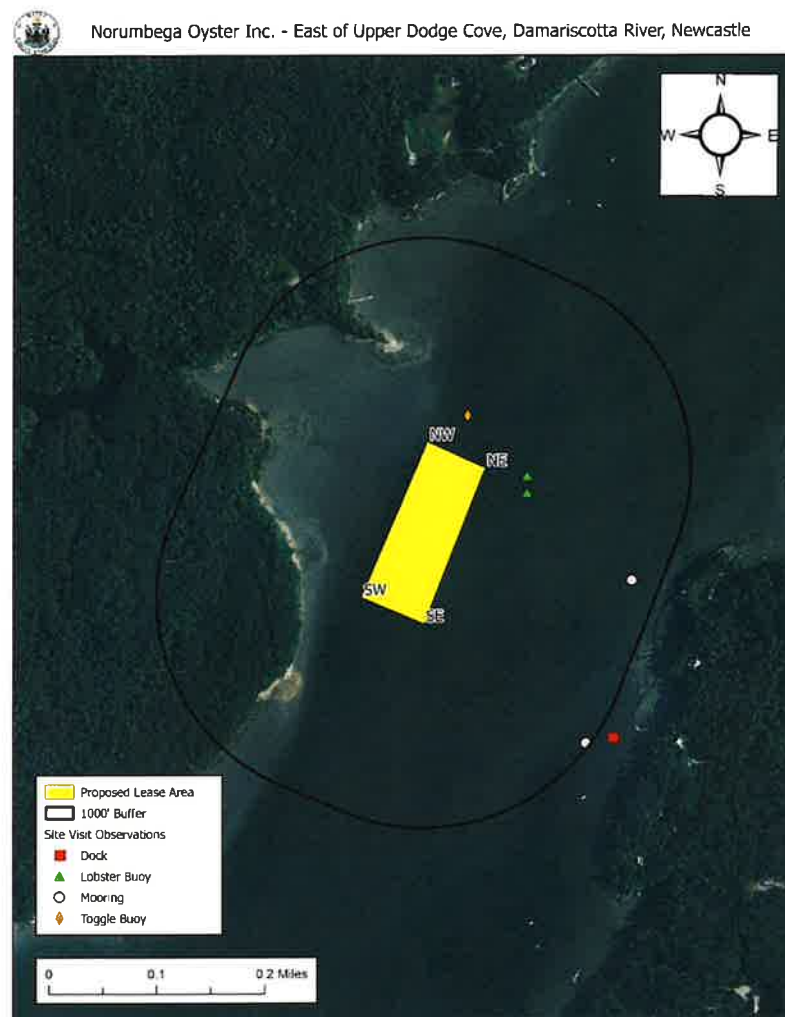


Figure 2. Proposed lease area with site visit observations.

No testimony was offered at the hearing concerning riparian ingress and egress. Based on the record, it is unlikely that the proposed lease activities will impede access.

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

B. Navigation

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area (12 M.R.S.A. § 6072(7-A)(B); Chapter 2.37(1)(A)(2)).

The applicant has operated experimental lease DAM DUX within the boundaries of this proposal for the last six years. During that time, no issues concerning navigation have been reported.

The proposal is located on the western edge of the navigational channel in the Damariscotta River. There is 860 feet of navigable water at all tidal stages from the eastern boundary of the proposal to the eastern edge of the navigational channel. During the site assessment, DMR observed four powerboats traveling in the main river channel east of the proposal (SR 5).

The Harbormaster stated in the Harbormaster Questionnaire that the proposal should not impact navigation in the area of the proposal.

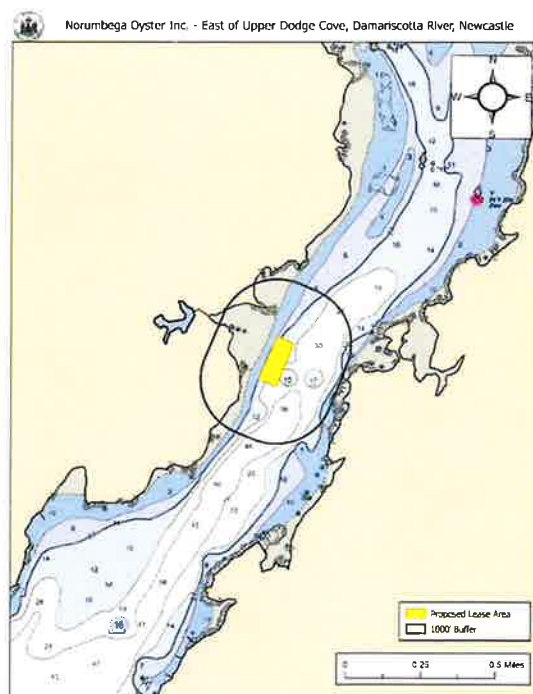


Figure 3. Navigational channels in the vicinity of the proposed lease area.

During the public hearing, no one offered testimony or evidence regarding potential impacts to navigation. Due to the proposal being located on the western edge of the navigational channel and outside of the deepest part of the channel, it is likely that sufficient distances for navigation remain.

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

C. Fishing & Other Uses

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other uses, including water-related uses, of the area (12 M.R.S.A. § 6072(7-A)(C); Chapter 2.37(1)(A)(3)).

The applicant has operated experimental lease DAM DUx within the boundaries of this proposal for the last six years. During that time, no issues concerning fishing and other uses have been reported.

Fishing. During the site assessment, two lobster buoys and a toggle buoy were observed in the vicinity of the proposal. The two lobster buoys were 206 feet and 235 feet east of the proposal. The toggle buoy was 200 feet north of the proposal (Figure 2). At the time of the site visit, there was a recreational fishing vessel observed in the vicinity of the proposal. The occupants were fishing with rod and reel and casting towards shore to the north and west of the proposal (SR 6).

The Harbormaster stated in the Harbormaster Questionnaire that there is no commercial or recreational fishing within the area of the proposed lease.

No testimony was given at the public hearing concerning impacts to commercial or recreational fisheries.

Other uses. The application states there is occasional kayaking in the project vicinity (App 15). In the exclusive use section of the application, the applicant did not seek to restrict these activities if the lease is approved (App 16). No evidence or testimony was provided at the hearing concerning other uses in the area.

Therefore, based on the information in the record, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

D. Other Aquaculture Uses

DMR's Chapter 2 regulations require the Commissioner to consider any evidence submitted concerning other aquaculture uses of the area. "The intensity and frequency of such uses as well as the degree of exclusivity required for each use shall be a factor in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner." Chapter 2, § 2.37(1)(A)(4).

The applicant currently operates experimental lease DAM DUx within the boundaries of this proposal and would relinquish the experimental lease if this standard lease application is granted. There is one additional aquaculture lease within 1,000 feet of this proposal. DAM WP is issued to Glidden Point Oyster Company for bottom culture only and is approximately 740 feet east of the proposal. There are no limited purpose aquaculture (LPA) sites within 1,000 feet of the proposed lease site. Given the

distance between the proposed lease and DAM WP, it is unlikely that the proposed lease will interfere with DAM WP.

No evidence or testimony was given at the public hearing concerning other aquaculture uses of the area.

Therefore, based on the information in the record, the aquaculture activities proposed for this site will not unreasonably interfere with existing aquaculture operations in the area.

E. Flora & Fauna

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna (12 M.R.S.A. § 6072(7-A)(D); Chapter 2.37(1)(A)(5)).

The applicant has operated experimental lease DAM DUx within the boundaries of this proposal for the last six years. During that time, no issues concerning flora and fauna have been reported.

Site observations. DMR utilized a remotely-operated vehicle to assess the epibenthic ecology of the proposed lease. Sand shrimp (*Crangon septemspinosa*) were found occasionally in the proposed lease footprint (SR 7).

Eelgrass. Records of eelgrass collected by Maine Department of Environmental Protection (MDEP) in 2023 indicate no mapped eelgrass presence in the vicinity of the proposal. The nearest mapped eelgrass is four miles north in the Great Salt Bay. No eelgrass was observed within proposal boundaries during the site assessment (SR 8).

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is located 92 feet east of mapped Tidal Waterfowl and Wading Bird Habitat. Data collected by the United States Fish and Wildlife Service (USFWS) in 2022 by aerial nest survey shows the closest mapped bald eagle nesting site to be approximately 1.5 miles north of the proposal (SR 9).

On September 12, 2022, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment” stating that minimal impacts to wildlife are anticipated.⁴

Based on the record, it appears that the proposed lease activities will not interfere with the ecological functioning of the area.

⁴ Email correspondence between MDIFW and DMR

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.

F. Public Use & Enjoyment

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government (12 M.R.S.A. § 6072(7-A)(F); Chapter 2.37(1)(A)(7)).

The proposed lease is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments. The proposed lease is within 1,000 feet of Dodge Point Public Land (DPPL), which is conserved lands owned by the Maine Department of Agriculture, Conservation and Forestry (DACF). The land is managed by the Bureau of Parks and Lands within DACF. DPPL is 131 feet west of the proposal at MLW and 300 feet at MHW. A dock associated with DPPL is 3,730 feet south of the proposal. During the site visit, DMR observed several people walking along the shoreline of DPPL (SR 10). As a riparian owner, DACF was notified of the hearing.

The harbormaster stated in the Harbormaster Questionnaire that the proposal should not affect any local, state, or federally owned beaches, parks, or docking facilities within 1,000 feet of the proposed area.

At the hearing, no testimony was provided concerning potential impacts to DPPL by the proposed lease.

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.

G. Source of Organisms

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices (12 M.R.S.A. § 6072(7-A)(E); Chapter 2.37(1)(A)(6)).

According to the application, American oyster (*C. virginica*) would be sourced from Muscongus Bay Aquaculture in Bremen, Maine (App 2). This is currently an approved source for this species. If the applicant is unable to obtain stock from this facility, then it must come from another DMR approved source.

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

H. Light

The Commissioner evaluates lighting in accordance with 12 M.R.S.A §6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(8). The statute specifies that a lease must not result in an unreasonable impact from light at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to lighting, including a requirement that the applicant demonstrate that all reasonable measures will be taken to mitigate light impacts associated with the lease activities.

According to the application, lights would only be used on the proposed lease site in emergency situations (App 12). Chapter 2.37(1)(A)(8) exempts the use of lights in such situations.

Therefore, the proposed aquaculture activities will not result in an unreasonable impact from light at the boundaries of the lease site.

I. Noise

The Commissioner evaluates noise in accordance with 12 M.R.S.A §6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(9). The statute specifies that a lease must not result in an unreasonable impact from noise at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to noise, including a requirement that the applicant take all reasonable measures to mitigate noise impacts associated with the lease activities.

According to the application, a power pack for a hydraulic winch and a water pump will be used on-site (App 11). The application states that this equipment will be covered with enclosures lined with noise suppression material to lessen noise output (App 11). The Commissioner finds that the applicant has demonstrated that it will take all reasonable measures to mitigate noise impacts associated with the lease activities through the use of noise suppression enclosures.

Therefore, the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease.

J. Visual Impact

The Commissioner evaluates visual impact in accordance with 12 M.R.S.A §6072(7-A)(H) and the regulatory standards specified in Chapter 2.37(1)(A)(10).

The application stated that yellow, black, green, and white marker buoys would be used on-site. The color of the other gear is black. In accordance with Chapter 2.37(1)(A)(10), approved gear colors are grays, blacks, browns, blues, and greens. In response to a question from DMR at the hearing, the applicant confirmed that if the project is approved, all surface gear, excepting corner marker buoys, will

comply with the approved colors so anything that is currently proposed as yellow or white will either be gray, black, brown, blue, or green (Peters testimony). Lease sites must be marked in accordance with Chapter 2.80 of DMR's regulations, which specify that marker buoys must be yellow in color. If the lease is granted, the holder would be responsible for complying with these marking requirements.

Therefore, the equipment utilized on the proposed lease site will comply with the DMR's visual impact criteria.

6. CONCLUSIONS OF LAW

Based on the above findings:

- 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 uses of the area, including water-related uses.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with other aquaculture uses of the area.
- e. The aquaculture activities proposed will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- f. 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.
- g. The applicant has demonstrated that there is an available source for organisms to be cultured for the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- j. The aquaculture activities proposed for this site, as modified as discussed above to comply with Chapter 2.80 marking requirements and Chapter 2.37(1)(A)(10) gear color requirements, 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.

7. DECISION

Based on the foregoing, the Commissioner grants a lease to Norumbega Oyster Inc. for 6.01 acres for twenty years for the cultivation of American 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.

8. 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).⁵ Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. No conditions shall be imposed on this lease.

9. 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 over the course of the lease, that the lease activities are substantially injurious to marine organisms or public health, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

⁵ 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."

Dated: 2/10/2025


Patrick C. Keliher, Commissioner
Department of Marine Resources

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Norumbega Oyster Inc.
DAM DUx**

Experimental Aquaculture Lease Application
Suspended Culture of American Oysters
Damariscotta River, Newcastle

November 19, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Norumbega Oyster Inc., a Maine company, applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease on 3.93 acres located in the Damariscotta River, east of Upper Dodge Cove, Newcastle, Lincoln County, Maine, for the suspended culture of American oysters (*Crassostrea virginica*). DMR accepted the application as complete on April 12, 2018. One request for a public hearing was received during the comment period. No hearing was held.¹

1. THE PROCEEDINGS

Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the towns of Damariscotta and Newcastle, and others on the Department's mailing list. Notice of the application and comment period was published in the *Lincoln County News* on May 3, 2018.

The evidentiary record before the Department regarding this lease application includes the application, the Department's site report dated September 14, 2018, and the case file. The evidence from these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

¹ For experimental leases, the Department is required to hold a public hearing if five or more written requests are received. The Department received one request for a hearing and comment from Wendy Strothman. Ms. Strothman was concerned about odor, the adequacy of the helix moorings, and the reason for the experimental lease. Ms. Strothman's letter also raised concerns about property values. The Department wrote to Ms. Strothman to address her concerns. Copies of the correspondence are in the case file.

² These sources are cited below, with page references, as CF (case file), App (application), and SR (site report).

The purpose of the proposed lease is to explore the commercial feasibility of cultivating American oysters using suspended culture techniques (App 4). The applicant plans to deploy a total of 450 floating cages that are secured to six longlines (App 5). The proposed spacing between each row of cages is 25-30 feet (App 5). The applicant will control biofouling by flipping the cages every 7 to 14 days (App 5). During the winter months, the cages will be submerged on the bottom of the proposed lease site (App 5). The applicant will access and service the site from a 22-foot Carolina skiff and a pontoon raft (App 5).

B. Site Characteristics

On August 2, 2018, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an experimental aquaculture lease. The proposed site occupies subtidal waters east of Dodge Upper Cove in Newcastle, Maine (SR 2). The uplands to the immediate west and south of the proposed lease site are an undeveloped mix of mature forests, which are owned by the State of Maine (SR 2). The shoreline to the north of the proposal contains several homes (SR 2). At mean low water, the distance from the southwest corner of the proposed lease to the nearest point of land is ~120 feet (SR 6). Calculating for mean low water, depths ranged from 7.8 feet at the northwest corner to 26 feet at southeast corner (SR 7). The bottom of the proposed site is characterized by soft mud (App 6).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities 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.

A. Riparian Access

Per the site report:

At low water, the proposal is a minimum of ~120 feet and a maximum of ~175 feet from the state-owned conserved land known as Dodge Point. Recreational boaters, particularly kayaks and canoes, may land on the beach to the southeast or, more likely, utilize the dock located greater than 3,000 feet to the south (SR 8).

Therefore, if the proposed lease is granted, it will not unreasonably interfere with access to and from the Dodge Point property (SR 8).

The closest observed private residence and dock was approximately 770 feet to the northwest of the proposal (SR 8).³ The proposal is separated from the private residence and dock by a tidally exposed finger of land (SR 8). If the lease is granted, riparian ingress and egress from the dock would remain unimpeded (SR 8). Four additional docks were observed to the northwest of the proposed site (SR 8). Per the site report: “the proposed lease, if granted, would not restrict access to these properties.” (SR 8).

The closest observed mooring was approximately 660 feet to the northeast of the proposal with several other moorings located further to the northeast (SR 9). There would be adequate room for vessels to navigate between the proposed lease and observed moorings (SR 9). Based on this evidence, activities at the proposed lease site in subtidal waters are unlikely to hamper access to and from the shore.

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

B. Navigation

Per the site report: “the Damariscotta River is heavily traveled year-round by commercial and recreational mariners” (SR 9). The proposed site is located on the western edge of the navigational channel in this section of the river, and is situated between the 10 and 30-foot contour lines. If the lease is granted, “more than 800 feet to the east of the proposal would remain available for navigation at all tidal stages” (SR 9). During the review period, the Department did not receive any comments concerning navigation.

³ The site report indicates that this is a straight-line distance.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site must be marked in accordance with U.S. Coast Guard requirements.

C. Fishing & Other Water Related Uses

During the site visit, staff did not observe any lobster buoys or other evidence of commercial fishing within the boundaries or vicinity of the proposed lease site (SR 9). However, it is likely that soft shelled clams (*Mya arenaria*) and polychaete worms are harvested from the tidally exposed mud flats to the west of the proposed lease area (SR 9). If the proposed lease is granted, it will “not hinder the ability of harvesters to access the surrounding intertidal” (SR 9). Department staff observed a recreational angler fishing from the beach at Dodge Point. If the lease is granted, it will not hinder access to or fishing from Dodge Point (SR 9). In addition, the applicant would permit recreational fishing within the boundaries of the proposed lease site (App 6). During the review period, the Department did not receive any comments about how the proposal may affect recreational or commercial fishing activities.

Exclusivity. To avoid gear conflicts, the applicant requests that lobster fishing and dragging be prohibited within the boundaries of the proposed lease.⁴ Such a restriction is reasonable to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). A condition reflecting this restriction will be included in the lease.

Other aquaculture uses. There are three aquaculture sites located within 1,000 feet of the proposed lease site (SR 10).⁵ There is one Limited Purpose Aquaculture (LPA) license within the boundaries of the proposed lease site. The LPA is held by the applicant for the suspended culture of shellfish (SR 10).⁶ Per the application, the LPA license will be relinquished if the lease is granted (App 6). There is an LPA for the suspended culture of shellfish approximately 530 feet from the proposed lease site⁷, and an aquaculture lease for the bottom culture shellfish approximately 820 feet from the proposed lease area (SR 10). The respective LPA and lease holder were notified of the proposed lease site and they did not submit any comments.

⁴ CF: Email for E. Peters to A.Ellis dated October 26, 2018.

⁵ See page 10 of the site report for a list of aquaculture sites within one mile of the proposal.

⁶LPA acronym: EPETE317

⁷ Lease acronym DAM WP

Therefore, considering the existing aquaculture activities, the proposed site will not unreasonably interfere with fishing or other water-related uses of the area.

D. Flora & Fauna

Site Observations. During the site visit, double-crested cormorants (*Phalacrocorax auritus*) and common terns (*Sterna hirundo*) were seen perched on the cages associated with the applicant's existing LPA license site (SR 11). Common terns and gulls (*Larus sp.*) were observed along the Dodge Point shoreline (SR 11). One juvenile harbor seal (*Phoca vitulina*) was documented near the proposal. Based on historical eelgrass (*Zostera marina*) data, in 2005, the closest eelgrass beds were over 1,000 feet to the east of the proposed area (SR 12). The proposed lease activities would not cause shading or other physical disturbances of the resource (SR 12).

Fisheries and Wildlife. Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed site is located approximately 110 to 160 feet from an intertidal area designated Tidal Waterfowl and Wading Bird Habitat (SR 12). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated that "minimal impacts to wildlife are anticipated."⁸

Based on this evidence, it appears that the culture of oysters as proposed for this 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

At mean low water, the proposed lease site is approximately 120 feet to the east of Dodge Point, which is owned by the State of Maine Bureau of Parks and Lands (SR 13). The associated dock is more than 3,800 feet to the south of the proposal (SR 13). The Department did not receive any comments from the Bureau of Parks and Lands concerning this lease proposal. Per the site report, "there are no other beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site" (SR 13).

⁸ CF: Email from J. Perry (Environmental Review Coordinator, MDIFW) to C. Burke dated May 8, 2018.

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, or docking facilities owned by municipal, state, or federal governments.

F. Source of Organisms

Seed stock for the proposed lease site will be sourced from Muscongus Bay Aquaculture located in Bremen, Maine (App 1). This is an approved source of seed stock.

Therefore, the applicant has demonstrated that there is an available source of American oysters (*C. virginica*) to be cultured for the lease site.

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 riparian ingress and egress.
- 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 uses of the area, taking into consideration existing 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, or docking facilities owned by municipal, state, or federal governments.
- F. The applicant has demonstrated that there is an available source of American oysters (*C. virginica*) to be cultured for the lease site.

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-A.

5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.93 acres to Norumbega Oyster Inc., for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee⁹; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessee for the cultivation of American oysters (*C. virginica*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (D) 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 MRSA §6072-A (15)¹⁰. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. The following conditions shall be incorporated into the lease:

- A. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- B. Lobster fishing and dragging are prohibited within the boundaries of the proposed lease site.

⁹ DMR Rule 2.64 (14) provides:

“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

¹⁰ 12 MRSA §6072-A (15) provides that:

“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. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

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

7. REVOCATION OF EXPERIMENTAL LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated:

11/19/18



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