

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

SALTWIND SEAFARM, LLC

Standard Aquaculture Lease Application
Suspended Culture of Shellfish
Scarborough River, Scarborough

SCAR NR

Findings of Fact, Conclusions of Law, and Decision

Saltwind Seafarm, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 2.31 acres located west of Nonesuch Point in the Scarborough River, Scarborough. The proposal is for the suspended culture of American/Eastern oysters (*Crassostrea virginica*).

1. Proceedings

DMR held a pre-application meeting on this proposal on September 2, 2021, and a scoping session was held on March 11, 2022. On June 27, 2023, DMR accepted the final application as complete. Notice of the completed application was provided to state agencies, the Town of Scarborough, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. DMR sent a Harbormaster Questionnaire to the Harbormaster for the Town of Scarborough, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations and received a response from the Harbormaster on July 18, 2023. Notice of the hearing was published in the *Portland Press Herald* on December 18, 2025, and provided to state agencies, the Town of Scarborough, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. The public notice for the hearing stated that the proceeding would be conducted in-person and remotely and directed interested persons to register to provide testimony or ask questions during the proceeding. The registration deadline was January 5, 2026. The deadline for requesting intervenor status was January 5, 2026. No applications for intervenor status were received by DMR. Seven individuals registered to participate in the hearing. DMR held a public hearing on this application on January 20, 2026.

Table 1. Individuals who provided sworn testimony at the hearing.

Name	Affiliation
Matt Hassler	Applicant
Andrew Wood	Maine Department of Inland Fisheries and Wildlife
Daryen Granata	Harbormaster/Marine Resource Officer Town of Scarborough
Nathan Orff	Members of the public
Sydney Abramovich	
Noah Nygren	

Additional DMR staff and members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett. The record was closed on January 20, 2026.

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.

A. List of Exhibits

1. Case file (CF)
2. Application (App)
3. DMR site report, issued on July 22, 2025 (SR)
4. Exhibit 1 – PowerPoint presentation submitted by the applicant

The case file, application, and site report are referred to in the decision with their designated abbreviations. The applicant pre-filed two exhibits, a copy of the application and a PowerPoint presentation. As the application is already part of the record, it was not accepted as a pre-filed exhibit. The PowerPoint was accepted as an exhibit and entered into the record at the hearing. It is referred to in the decision as Exhibit 1.

2. Description of the Project

A. Site History

The applicant currently operates one tract of experimental lease SCAR NRx within the boundaries of the standard lease proposal (SR 2)¹.

¹ The experimental lease expired on November 21, 2021. 12 M.R.S.A. §6072-A(20) provides that if the lease holder applies for a standard lease under 12 M.R.S.A. § 6072 prior to the expiration of the experimental lease and the standard application encompasses all or a portion of the experimental lease area then the holder may continue to

B. Proposed Operations

The applicant proposes to culture American/Eastern oysters (*Crassostrea virginica*) using suspended culture techniques (App 2-3). The applicant proposes to use 690 OysterGro floating cages (40-inch by 36-inch by 4-inch) and 1,380 shellfish grow-out bags (34-inch by 18-inch by 3-inch) (App 15). In response to a question from DMR at the hearing, the applicant detailed additional gear proposed for the site, including sixteen helical moorings, fifteen granite blocks, buoys, and lines (Hassler testimony). The applicant also proposes to use two float structures: a 16-foot by 10-foot by 20-inch (above the waterline) wooden float with wire mesh cages below deck, and a 24-foot by 10-foot by 9-foot (above the waterline) pontoon boat. The pontoon boat would contain an 8-foot by 12-foot by 7.5-foot shed (App 22).

The applicant anticipates seeding oysters from June to July for approximately 1-2 days per year. The applicant expects to tend and harvest the site 5-6 days per week during the spring, summer, and fall. Winter harvesting would occur approximately two days per week (App 32-33). In response to a question from DMR at the hearing, the applicant stated that approximately 80% of the gear would be removed during the winter months. The remaining 20% would be consolidated into a single string and may be submerged (App 19 and 33, Hassler testimony).

According to the application, two vessels under 20-feet in length with four-stroke outboard motors will be used at the lease site (App 35).

Table 2. Power equipment proposed for the lease site

Equipment	Description	Frequency of Use
Pressure washer	Gas powered	Two days per week, 4 hours per day
Tumbler	Electric, 12-volt battery	Five days per week, 6-8 hours per day
Transfer pump	Gas powered	Five days per week, 6-8 hours per day

C. Site Characteristics

Description. On July 9, 2024, DMR scientists assessed the proposed lease site. The proposal is located in the Scarborough River. It includes most of the existing SCAR NRx site, and its boundaries extend

operate the experimental lease while DMR considers the standard lease application. On November 16, 2021, Saltwind Seafarm submitted this standard lease application for an area that includes a portion of SCAR NRx. Therefore, Saltwind Seafarm was allowed to operate SCAR NRx while this decision was pending.

beyond the existing SCAR NRx boundaries (Figure 1). The shoreline is composed primarily of sand with surrounding marshland.

Depths were determined to be approximately 2.3 to 6.8 feet at mean low water (MLW, 0.0 feet). The proposed lease is located in subtidal waters (SR 2). DMR scientists observed the bottom characteristics of the proposed lease site via a remotely operated vehicle (ROV). The bottom of the proposed lease site is primarily composed of sand with shell rubble (SR 2-3).

Growing Area Classifications for bivalve shellfish are reviewed on an annual basis and subject to change. Classifications can also be updated at any time in response to changing environmental conditions, emergency situations, or other factors that impact water quality. If the lease is granted, it is the responsibility of the leaseholder to stay informed of and comply with harvest requirements applicable to the respective growing area. The proposed lease is located within an area that is currently classified as Approved for the harvest of shellfish by the DMR Bureau of Public Health and Aquaculture.

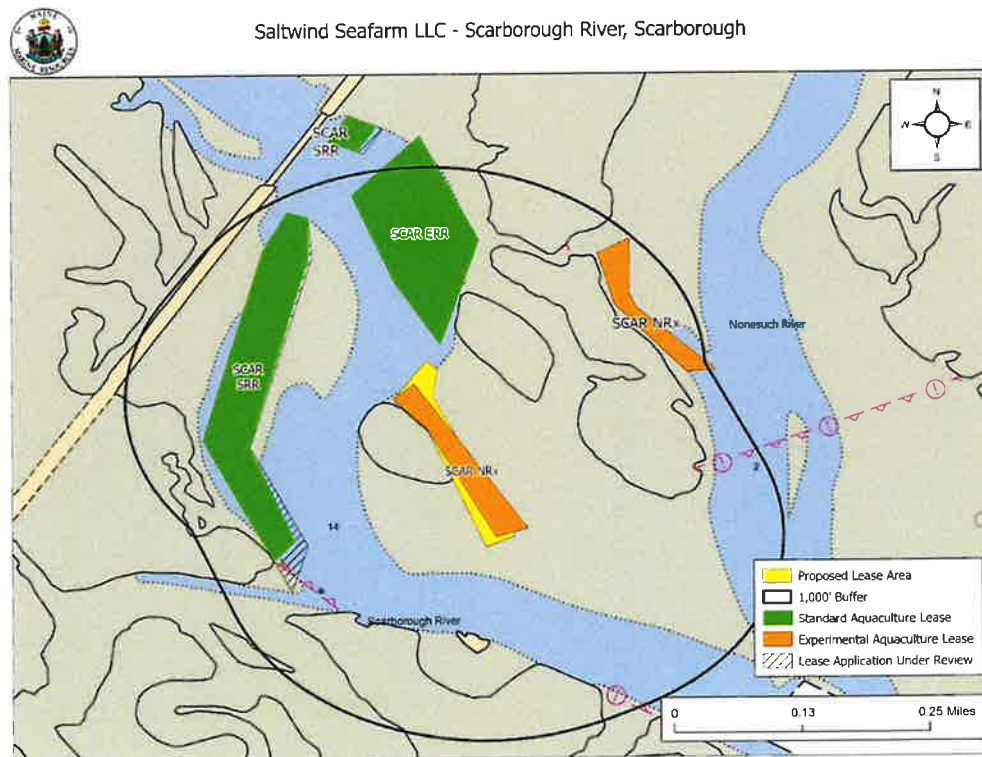


Figure 1. Proposed lease site and surrounding area²

² Unless otherwise noted, all figures in this report were created in ArcGIS Pro version 3.3 using digitized NOAA Nautical Charts or geo-referenced aerial photographs provided by The Maine Office of GIS.

3. Legal Criteria and Findings of Fact

Approval of standard aquaculture leases is governed by 12 M.R.S.A. § 6072 and DMR Regulations, Chapter 2.37³. The statute and regulations provide 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; other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; and 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 light at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

A. Riparian Owners Ingress and Egress

When examining riparian access, the Commissioner considers whether the proposed lease will unreasonably interfere with the ingress and egress of riparian owners. 12 M.R.S.A. § 6072(7-A)(A). The Commissioner shall examine whether the riparian owners can safely navigate to their shore and consider the type of shore, the type of vessel that can reasonably land on that shore and the types of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures. Chapter 2.37(1)(A)(1).

During the site visit, DMR observed seven moorings in the vicinity of the proposal. The closest mooring was approximately 450 feet south of the proposal. Six out of seven moorings had a vessel present. The moored vessels were a mix of commercial and recreational vessels of varying lengths. The moorings observed to the south of the proposal were part of a larger mooring field that is associated with the Pine Point boat launch.

DMR did not observe any piers, docks, or houses within the vicinity of the proposal. The surrounding uplands and adjoining intertidal are owned and managed by the Department of Inland Fisheries and Wildlife (IFW) as a Wildlife Management Area (WMA).

A Harbormaster Questionnaire was completed by the local Harbormaster and submitted to DMR on July 12, 2023. The Harbormaster indicated that the proposal should not impact riparian ingress and egress (SR 4-5).

³ Chapter 2 of DMR Regulations is published at 13-188 C.M.R. ch. 2 and may be found at <https://www.maine.gov/dmr/rules-enforcement/regulations-rules>.

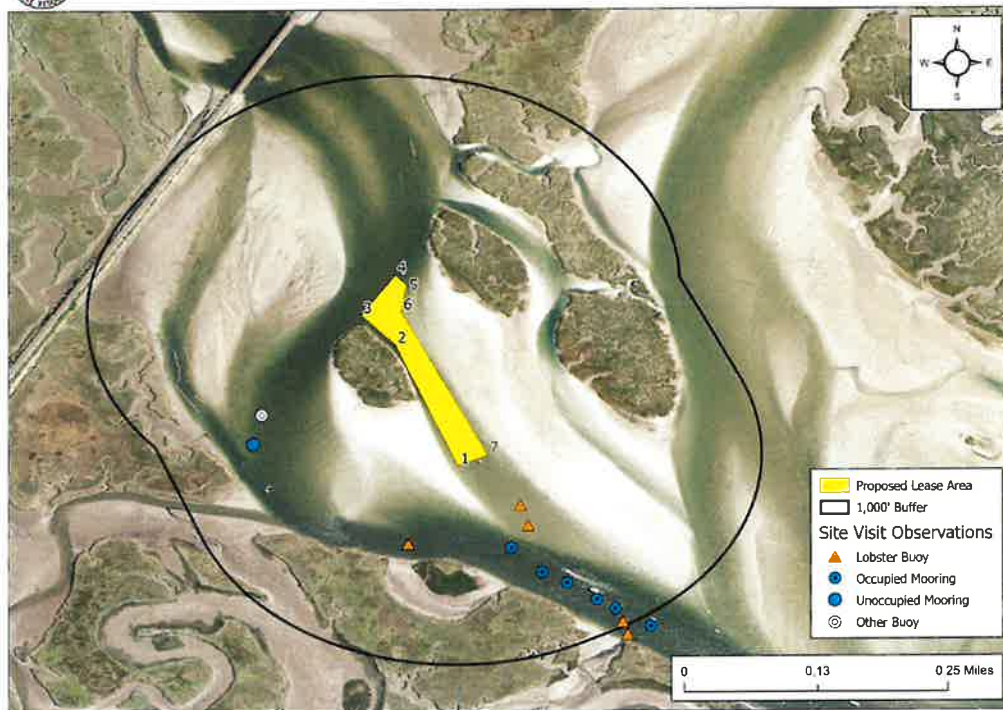


Figure 2. Proposed lease area with site visit observations

At the hearing, Andrew Wood of IFW stated that because the applicant currently accesses the site from Pine Point and navigates directly to the site (and will continue to do so), IFW does not have concerns about the lease impacting the WMA, but recommends the applicant annually monitor the site and contact IFW if conditions change in respect to the WMA (Wood testimony). Because DMR does not have jurisdiction over the WMA, this monitoring and reporting may be required as part of the IFW Essential Habitat (EH) review, at their discretion and separate from the lease decision.

Given the distance from the proposed lease to any riparian land and/or structures, the Harbormaster's comment, and IFW's testimony, the proposed lease activities will not impede riparian ingress and egress.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with riparian owner ingress and egress.

B. Navigation

When examining navigation, the Commissioner considers whether the proposed lease will unreasonably interfere with navigation. 12 M.R.S.A. § 6072(7-A)(B). The Commissioner shall examine

whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area and consider the current uses and different degrees of use of the navigational channels in the area. High tide “short cuts” shall not be considered navigational ways for purposes of this section. Chapter 2.37(1)(A)(2).

The proposal is located in subtidal water in the Scarborough River. The proposal is mostly situated outside of the main navigational channel in the Scarborough River, though corner 4 is slightly within the eastern edge of the main navigational channel by approximately 50 feet. The proposal is approximately 730 feet west of the main navigational channel in the Nonesuch River.

There are two boat launches in the general vicinity of the proposal. Seavey’s Landing is located approximately 2,600 feet northwest of the proposal, and Pine Point is located approximately 2,500 feet southeast of the proposal (Figure 3) (SR 5).

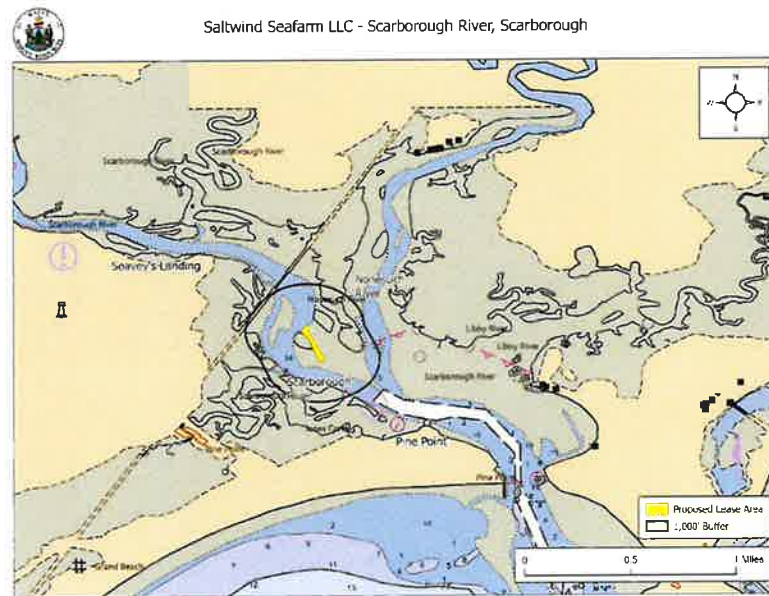


Figure 3. Navigational channels in the vicinity of the proposed lease area

DMR scientists did not observe any vessels operating in the vicinity of the proposal during the site visit.

The Harbormaster stated in the Harbormaster Questionnaire that the proposal would not have an effect on navigation (SR 5).

During the public hearing, Daryen Granata, Harbormaster for the Town of Scarborough testified that he routinely patrols the area and he does not believe the lease as proposed imposes a risk to navigation (Granata testimony). Nathan Orff, a commercial fisherman, testified that he has not observed any adverse impacts to navigation from the existing experimental lease (Orff testimony). Sydney Abramovich, manager

of an adjacent oyster farm, testified that the existing experimental lease has never impacted their navigation in this area (Abramovich testimony).

Because of the proposal's location predominantly outside of the mapped navigational channels, and based on the Harbormaster's and members of the public's testimony, sufficient area for safe navigation remains.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with navigation.

C. Fishing and Other Uses

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

Fishing. With respect to fishing, the Commissioner shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area. Chapter 2.37(1)(A)(3). For the purposes of this criterion, "fishing" includes public access to a redeemable shellfish resource, as defined by DMR, for the purpose of harvesting, provided that the resource is commercially significant and subject to a pollution abatement plan that predates the lease application, that includes verifiable activities in the process of implementation and that is reasonably expected to result in the opening of the area to the taking of shellfish within 3 years. 12 M.R.S.A. § 6072(7-A)(C). During the site visit, DMR scientists observed five lobster-style buoys in the vicinity of the proposal (Figure 2). The nearest buoy was approximately 275 feet to the southeast. Additionally, DMR scientists observed a buoy with an unknown purpose approximately 580 feet west of the proposal near SCAR SRR a standard aquaculture lease site.

During the site visit, DMR also observed at least six individuals harvesting wild shellfish on intertidal flats to the east of Pine Point.

The Harbormaster stated in the Harbormaster Questionnaire that there is some, but very little, recreational fishing and clam digging within the area of the proposal (SR 6).

During the public hearing, Daryen Granata (Harbormaster/Marine Resource Officer for the Town of Scarborough) stated that there is no lobster gear located in the vicinity of the lease proposal (Granata testimony).

While it appears that commercial and recreational fishing do occur in the vicinity of the proposed lease site, most occurs outside of the lease boundaries. Therefore, the lease activities as proposed will not adversely impact fishing activities.

Other Uses. According to the application, kayaking is common in the lease proposal area and typically originates from Pine Point or Seavy's Landing. The application states that kayaking could continue at the site (App 40). Because ample space would remain for recreational uses to continue without interference while gear is in place, the proposed activities would not unreasonably interfere with existing recreational uses.

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

D. Other Aquaculture Uses

Pursuant to 12 M.R.S.A. § 6072(7-A), in evaluating the proposed lease, the Commissioner shall take into consideration the number and density of aquaculture leases in an area. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area, the intensity and frequency of such uses, the degree of exclusivity required for each use as well as the number, size, location, and type of other aquaculture leases. Chapter 2.37(1)(A)(4).

There are three aquaculture leases within 1,000 feet of this proposal. The applicant currently operates one tract of experimental lease SCAR NRx within the boundaries of this standard lease proposal; if this application is granted, it will be replaced by the new standard lease. A second tract of SCAR NRx is approximately 750 feet to the northeast. The second tract was not included in the standard lease proposal and will expire when a decision on this proposal is issued by DMR. SCAR ERR, approximately 100 feet north of the proposal, is held by Pine Point Oyster Company LLC. One tract of SCAR SRR, approximately 465 feet to the west of the proposal, is held by Nonesuch Oysters LLC. SCAR SRR has a second tract approximately 1,100 feet north of the proposal. There are no Limited Purpose Aquaculture (LPA) sites within 1,000 feet of the proposed lease site.

There is one application under review by DMR within 1,000 feet of the proposal, an expansion application for standard lease SCAR SRR approximately 460 feet to the west. The SCAR SRR expansion application was deemed complete after this standard lease application was deemed complete (Figure 1)(SR 7).

At the hearing, Sydney Abramovich, manager of the SCAR SRR lease site held by Nonesuch Oyster, stated the relationship between Nonesuch and the existing experimental lease has been extremely positive (Abramovich testimony). Given that the other leases in this area have been operating in proximity

to the existing SCAR NRx with no identified issues, and the proposal would occupy a similar location as SCAR NRx, DMR concludes that the proposed operation will not unreasonably interfere with the operations of the existing leases.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with other aquaculture uses in the area.

E. Existing System Support

When examining the existing system support, the Commissioner considers whether the proposed lease activities will unreasonably interfere with significant wildlife and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna. 12 M.R.S.A. § 6072(7-A)(D). Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination. Chapter 2.37(1)(A)(5).

Site Observations. DMR scientists utilized an ROV to assess the epibenthic ecology of the proposed lease. The relative abundance of epibenthic flora and fauna observed in the video footage is described below in Table 3.

Table 3. Species observed using underwater video footage.

Species Observed	Abundance
Hermit crab (<i>Pagurus</i> spp)	Common
Periwinkle (<i>Littorinidae</i> spp)	Occasional

Marine Vegetation. Records of eelgrass collected by the Department of Environmental Protection (DEP) in 2021 indicate no mapped eelgrass presence in the vicinity of the proposal.⁴ The nearest mapped eelgrass is approximately 1.2 miles to the southeast. No eelgrass was observed within the proposal boundaries during DMR's site visit (SR 8).

Wildlife. During DMR's site visit, scientists observed great blue heron (*Ardea herodias*), great cormorant (*Phalacrocorax carbo*), herring gull (*Larus argentatus*), great egret (*Ardea alba*), common eider (*Somateria mollissima*), mallard (*Anas platyrhynchos*), willet (*Tringa semipalmata*), common tern (*Sterna hirundo*), and least tern (*Sterna antillarum*) in the general vicinity of the proposal. The least tern is listed as endangered under the Maine Endangered Species Act (MESA) and is state protected.

⁴ Data obtained from The Maine Office of GIS "GISVIEW.MEDEP.Eelgrass2021". This is the most current record of mapped eelgrass within the vicinity of the proposal.

Though bald eagles are no longer listed on Maine's Endangered and Threatened Species List, the United States Fish and Wildlife Service (USFWS) may also have jurisdiction over the management and conservation of the species based on applicable law and rule. Data collected by USFWS in 2023 by aerial nest survey shows there is no mapped bald eagle nesting site within the vicinity of the proposal⁵. The nearest mapped bald eagle nest is approximately 1.1 miles southeast of the proposal.

The Department of Inland Fisheries and Wildlife (IFW) has jurisdiction over inland fisheries and wildlife resources of the state. IFW also has the authority to conserve wildlife populations and their ecosystems through applicable state laws and rules. DMR provides IFW with notice and the opportunity to comment on all complete lease applications. In addition, the site report also includes IFW designated and mapped habitat types that are within 1,000 feet of the lease proposal, if applicable.

The surrounding uplands and adjoining intertidal are owned and managed by IFW as a Wildlife Management Area (WMA). According to Geographic Information System (GIS) data maintained by IFW and available through the Maine Office of GIS (MEGIS), there are three mapped habitat types within 1,000 feet of the lease proposal. The proposal is located entirely within mapped Tidal Waterfowl and Wading Bird Habitat (TWWH) and located partially within mapped Shorebird Area, which are types of Significant Wildlife Habitats designated and regulated by IFW.⁶ Based on data maintained by IFW, approximately 0.1 acre of the proposal is located with Shorebird Area (Figure 4, Inset B). The proposal is also located entirely within mapped Piping Plover and Least Tern Essential Habitat, which is a type of Essential Habitat (EH) designated and regulated by IFW (Figure 4, Inset A).⁷ During the site visit, DMR scientists observed least tern (*Sterna antillarum*) perched on aquaculture cages on the experimental lease site, SCAR NRx (SR 9-10).

⁵ Data obtained from USFWS "Bald Eagle Nest Sites" at "<https://gis-fws.opendata.arcgis.com/datasets/fws::bald-eagle-nests-maine/explore?layer=1&location=45.242958%2C-69.027618%2C5>". This is the most current record of bald eagle nests within the vicinity of the proposal.

⁶ <https://www.maine.gov/ifw/programs-resources/environmental-review/significant.html>

⁷ <https://www.maine.gov/ifw/fish-wildlife/wildlife/endangered-threatened-species/essential-wildlife-habitat/index.html>



Figure 4. Mapped habitats in the vicinity of the proposed lease area.⁸

IFW was provided with the opportunity to comment on this proposal. On August 15, 2023, the Environmental Program Manager with IFW responded via email stating that the proposal is within, or nearby, several resources managed by IFW. To minimize impacts to these resources, IFW recommends all structures and activities be located in subtidal areas with greater than 3 feet of water depth at MLW, and the lease site should only be accessed from the subtidal (via boat).⁹

At the hearing, Matt Hassler stated that the lease footprint was sited to ensure the gear would be located in three feet of water or more to comply with the IFW recommendation. Matt Hassler acknowledged that the river environment was dynamic and depths could change over the life of the lease and therefore, gear would be adjusted accordingly (Hassler testimony). In response to a question from DMR, the applicant stated that they are aware that if granted, the boundaries of the lease may not be shifted or expanded to accommodate such gear adjustments (Hassler testimony). In response to a DMR question regarding how they would know if gear was in three feet of water, the applicant stated that no official depth monitoring plan is proposed, however, the applicants would be on-site daily and gradual depth changes would be apparent in relation to the gear. If changes are observed, depths would be checked to verify gear is maintained in greater than three feet of water (Hassler testimony).

⁸ Data obtained from USFWS “Bald_Eagle_Nests_-_Maine_2023” and IFW “EHRTERN”, “EHPLVTRN”, “GISVIEW.MEIFW.Twwh”, “ShorebirdAreas”, and “SNI”.

⁹ Correspondence between IFW and DMR

On cross-examination, in response to a question from IFW asking how specifically the lease gear would be adjusted, Matt Hassler stated the application shows a maximum gear layout, which provides some flexibility to remove gear as needed to accommodate the three-foot depth minimum (Hassler testimony). IFW asked how long it would take to shift gear if needed and the applicant stated probably one day (Hassler testimony).

Andrew Wood from IFW testified that least terns forage in shallow areas by plunge diving and prefer water depths of less than three feet, therefore, no gear should be placed in less than three feet of water, as measured at MLW. Andrew Wood testified that if the gear is placed in greater than three feet of water, IFW is comfortable with the lease with respect to least tern essential habitat (Wood testimony). This preliminary assessment by IFW does not relieve the applicant of their obligation to go through IFW's independent EH review process. But it does provide relevant information to DMR in its assessment of this lease decision criterion.

The lease as proposed would place gear and aquaculture activities within an essential habitat. At the hearing, the applicant displayed three video clips that show bird activity at the site (Exhibit 1), demonstrating that the area is currently used by protected species. Feeding activities are especially important for migratory species such as the least tern and adverse impacts to the feeding habitat or the birds' utilization of the feeding area can increase mortality during migration¹⁰. Therefore, it is imperative that impacts to the habitat be avoided.

Based on the testimony and expertise of IFW, if approved, a condition will be added to require that all gear from the lease activities must be placed in greater than three feet of water, as measured at MLW. To ensure that this condition is met, the applicant must measure and record water depths twice per year, in April or May and September or October and maintain this information as a compliance record. Measurements must be taken at each corner of the lease boundaries as well as at each end and middle point of every string of gear deployed. The depths at the float and pontoon boat must also be measured. These measurements must be taken at the lowest predicted tide during daylight hours for April/May and September/October as shown on a published tide chart for the Scarborough area. Photograph(s) must be taken showing the gear arrangement at the time of the measurements. This information must be recorded and retained by the lease holder for inspection by DMR.

If at any time a depth at the site of deployed gear is found to be less than three feet at MLW, said gear must be moved to deeper water and notification provided to DMR within 24 hours. If any unforeseen circumstance prevents timely movement, the applicant must contact DMR within the 24-hour window to

¹⁰ <https://www.maine.gov/ifw/fish-wildlife/wildlife/species-information/birds/shorebirds.html>

request an extension. The applicant must record the date and type/quantity of gear moved as part of the compliance record.

DMR's lease review process is independent of IFW's EH review process. DMR does not have authority over IFW's EH review process, and IFW does not have authority over DMR's lease review process. Therefore, if this application is granted, DMR may issue the lease before IFW completes its EH review process. However, by virtue of IFW's comment and this decision, the applicant is on notice that if DMR grants this lease, the applicant is required by IFW to secure separate approvals from IFW before conducting any aquaculture activities within the Essential Habitat.

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

F. Source of Organisms to be Cultured

Pursuant to 12 M.R.S.A. §6072(7-A)(E), in evaluating the proposed lease, the Commissioner considers whether the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices. Chapter 2.37(1)(A)(6).

According to the application, American/Eastern oysters (*Crassostrea virginica*) would be sourced from Muscongus Bay Aquaculture in Bremen, Maine (App 3). This is currently an approved source of stock.

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

G. Interference with Public Facilities

When examining interference with public facilities, the Commissioner considers whether the proposed lease will unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved lands owned by the Federal Government, the State Government or a municipal governmental agency. 12 M.R.S.A. § 6072(7-A)(F). In determining interference with the public use or enjoyment of conserved lands, the Commissioner shall consider the purpose(s) for which the land was acquired. Chapter 2.37(1)(A)(7)).

The proposal is adjacent to conserved lands owned and managed by IFW. The Scarborough Marsh WMA includes all salt marsh and adjoining intertidal flats in the vicinity (Figure 4). According to comments

submitted by IFW dated August 15, 2023, the WMA was purchased by IFW for its unique ecosystems which support numerous species of waterfowl, wading birds, shorebirds, and other species, and is highly prized by birders, kayakers, hunters, and other recreationists. IFW stated that it is critical that aquaculture leases, structures, and activities do not unreasonably interfere with navigation or impede access to the use of these public lands¹¹.

At the hearing, Andrew Wood of IFW stated that because the applicant accesses the site from Pine Point and navigates directly to the site, IFW does not have concerns about the lease impacting the WMA, but recommends the applicant annually monitor the site and contact IFW if conditions change in respect to the WMA (Wood testimony). Because DMR does not have jurisdiction over the WMA, this monitoring and reporting may be required as part of the IFW EH review, at their discretion.

The proposed lease is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments (SR 11).



Figure 4. Public facilities near the proposed lease site.¹²

Therefore, the aquaculture activities as proposed 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 federal, state, or municipal government.

¹¹ Correspondence submitted by IFW dated August 15, 2023

¹² Data obtained from The Maine Office of GIS "GISVIEW.MECONSLANDS.Conserved_Lands"

H. Light

When examining light, the Commissioner considers whether the proposed lease will result in unreasonable impact from light at the boundaries of the lease site. 12 M.R.S.A. §6072(7-A)(G). Compliance with exterior lighting regulations is evaluated, including the requirement that the applicant demonstrate that all reasonable measures will be taken to mitigate light impacts from the lease activities. Chapter 2.37(1)(A)(8).

According to the application, twelve-volt LED lights are mounted on the bow of the boats for night navigation. Additionally, there are interior lights in the shed on the pontoon boat. The application states the shed lighting does not illuminate the surrounding area (App 36).

The uses of exterior lighting for navigation is exempt from Chapter 2.37(1)(A)(8) requirements. The use of interior lighting that does not illuminate the surrounding area is not limited by Chapter 2.37(1)(A)(8).

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

I. Noise

When examining noise, the Commissioner considers whether the proposed lease will result in unreasonable impact from noise at the boundaries of the lease site. 12 M.R.S.A. §6072(7-A)(G). Compliance with noise regulations is evaluated including the requirement that the applicant demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities. Chapter 2.37(1)(A)(9).

According to the application, a gas-powered transfer pump and pressure washer will be used on-site, as well as an electric tumbler. The pump and tumbler will be used five days per week for approximately 6-8 hours per day and the pressure washer will be used two days per week for approximately four hours per day. The outboard motors used on-site will be four-stroke with low noise outputs (App 35).

In response to a question from DMR, the applicant stated that the pump is enclosed in a box that mitigates noise. No mitigation measures are proposed for the pressure washer. The applicant stated that no feedback has been registered with them concerning the noise and that pressure washer use would be minimal because the lease operations now utilize cages that can be flipped to dry and remove biofouling (Hassler testimony).

In response to a question from DMR, Andrew Wood of IFW stated he did not have any data on noise impacts on least terns, and therefore, could not speculate as to the effects (Wood testimony).

Because no noise mitigating measures are proposed for the pressure washer and due to the proposed lease's location in Essential Habitat, if the lease is approved, use of the pressure washer on-site will be prohibited. If the applicant wishes to amend the lease at a later date to add a pressure washer, they will need to consider and propose mitigation for impacts from noise.

Therefore, considering the use of a noise mitigating box on the pump, the tumbler being electrically powered, and the fact that the use of the pressure washer is not approved, reasonable measures will be taken to mitigate noise impacts associated with the lease activities and will not result in unreasonable impacts.

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

J. Visual Impact

When examining visual impact, the Commissioner considers whether the proposed lease is in compliance with visual impact criteria relating to color, height, shape and mass. 12 M.R.S.A. § 6072(7-A)(H). Compliance with visual impact regulations including building profiles, height limitations, roof and siding materials and color are evaluated. Chapter 2.37(1)(A)(10).

According to the application, most visible gear will be black, with the exception of one white and one orange buoy between every 30-cage rope kit (App 27). The application states that the shed on the pontoon boat will be blue, however, the photographs submitted with the application show the shed has considerable amounts of white as well, including the doors and trim (App 24-25). According to the application, the shed will be 9-feet in height (App 22).

In response to a question from DMR at the hearing, the applicant confirmed that if the project is approved, all surface gear including the shed but excepting corner marker buoys, will comply with the approved colors so anything that is currently proposed as white or orange will either be gray, black, brown, blue, or green (Hassler 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 lease site as proposed will comply with DMR's visual impact criteria.

4. Conclusions of Law

Based on the above findings, DMR concludes that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of riparian owners.
- 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, including water-related uses of the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with other aquaculture uses of the area.
- e. As conditioned, 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 federal, state, or municipal government.
- g. The applicant has demonstrated that there is an available source of stock 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 as approved 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 will comply with the visual impact criteria.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities as approved and conditioned by this decision, 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 a Standard lease to Saltwind Seafarm, LLC for 2.31 acres for twenty years for the suspended culture of American/Eastern oysters (*Crassostrea virginica*). The granted lease coordinates are contained in the Appendix to this decision. 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 Chapter 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. Lease 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) and Chapter 2.37(B). Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while addressing the ability of the lease site and surrounding area to support ecologically significant flora and fauna, and preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. The following condition shall be incorporated into the lease:

1. All gear from the lease activities must be placed and maintained in greater than three feet of water, as measured at MLW. The applicant shall measure and record water depths twice per year, in April or May and September or October. Measurements must be taken at each corner of the lease boundaries as well as at each end and middle point of every string of gear deployed. The depths at the float and pontoon boat must also be measured. These measurements must be taken at the lowest predicted tide during daylight hours for April/May and September/October as shown on a published tide chart for the Scarborough area. Photograph(s) must be taken showing the gear arrangement at the time of the measurements. This information must be recorded and retained by the lease holder for inspection. If at any time a depth at the site of deployed gear is found to be less than three feet at MLW, said gear must be moved to deeper water within 24 hours. If an unforeseen circumstance prevents timely movement, the applicant must contact DMR within the 24-hour window to request an extension. The applicant must record the date and type/quantity of gear moved as part of the compliance record.

7. Revocation of Lease

The Commissioner may initiate revocation proceedings and revoke the lease upon determining, pursuant to 12 M.R.S.A. §6072(11), that no substantial aquaculture or research has been conducted over the course of the lease, that the lease activities have been conducted in a manner substantially injurious to marine organisms or public health, or that any condition of the lease or any minimum lease maintenance standard contained in Chapter 2.75, has been violated.

Dated: _____

8.13.26



Carl J. Wilson, Commissioner
Department of Marine Resources

Appendix

Granted Lease Coordinates

<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>
1	43.54917°	-70.34115° then 649 feet at 340° True to
2	43.55084°	-70.34200° then 194 feet at 320° True to
3	43.55125°	-70.34247° then 236 feet at 032° True to
4	43.55180°	-70.34200° then 61 feet at 136° True to
5	43.55167°	-70.34185° then 136 feet at 190° True to
6	43.55130°	-70.34192° then 785 feet at 157° True to
7	43.54932°	-70.34075° then 119 feet at 245° True to 1

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Matthew Hassler
and
Robert Willette**

Experimental Aquaculture Lease Application
Suspended culture of American/Eastern oysters
Nonesuch and Scarborough Rivers

SCAR NRx
October 9, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Matthew Hassler and Robert Willette applied to the Department of Marine Resources for an experimental aquaculture lease comprised of two tracts totaling 3.2 acres¹ located in the Nonesuch and Scarborough Rivers, Scarborough, Cumberland County, Maine, for the cultivation of American/Eastern oysters (*Crassostrea virginica*) using suspended culture techniques. DMR accepted the application as complete on January 11, 2018. No requests for a public hearing were received during the comment period and no hearing was held.

1. THE PROCEEDINGS

Notice of the application, and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Scarborough, and others on the Department's mailing list. Notice of the application and comment period was published in the *Southern Forecaster* on February 16, 2018.

The evidentiary record before the Department regarding this lease application includes the application, the Department's site report dated August 17, 2018, and the case file. The evidence from these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed lease is to explore the commercial feasibility of oyster production using suspended culture techniques (App 3). From spring through fall, the applicants will cultivate oysters using a combination of floating cages and bags secured to longlines (App 3). During the winter months, the bags and cages will be removed from the site

¹ Tract 1 is 1.88 acres, Tract 2 is 1.33 acres.

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

and the oysters will be transferred to a land-based facility for refrigeration (App 3). If the applicants are unable to refrigerate the oysters during the winter, they will submerge the cages on the bottom of the proposed lease site (App 3).

C. Site Characteristics

On July 19, 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 is in the Nonesuch and Scarborough Rivers. The uplands are marshlands, which are comprised primarily of saltmarsh grass (*Spartina alterniflora*) (SR 2). The shoreline is composed of sand (SR 2). The bottom of the proposed site consists of sand and shell hash (SR 9). The proposed lease is in an area classified by the Department's Water Quality program as "approved for the harvest of shellfish" (SR 9).

The applicants intended for the entirety of the site to be subtidal (App 2). However, at the time of the site visit portions of the proposed site occupied the intertidal (SR 8). Based on historical aerial images of the area and staff observations, the intertidal, subtidal, and upland substrate are dynamic and subject to frequent shifts (SR 2). Therefore, portions of the proposed lease area may fluctuate between intertidal and subtidal. The dynamic nature of the area makes it difficult to demarcate sections of the proposed lease, via coordinates, that would consistently remain subtidal or intertidal throughout the term of the experimental lease (SR 4).

The distinction between subtidal and intertidal is important, because intertidal lease sites are subject to certain permission requirements. For example, applicants are required to obtain the written permission of every owner of intertidal land in, on or over, which the experimental activity will occur, and the Commissioner may not lease areas in the intertidal zone without the permission of the municipal officers, provided the municipality has an authorized shellfish conservation program.³

To address the dynamic nature of the site, while also providing for aquaculture activities in subtidal areas as originally requested, the applicants will only be permitted to deploy gear and conduct aquaculture activities in the subtidal portions of the proposed site. As the site changes and the substrate shifts, the applicants may need to alter their gear configuration and operations to ensure all aquaculture activities remain subtidal. A condition reflecting this requirement will be included in the lease.

3. STATUTORY CRITERIA & FINDINGS OF FACT

³ See Chapter 2.64 (2)(C)(6) and 2.64 (6), and 12 MRSA §6072(3)

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

The Scarborough Marsh Wildlife Management area, which is owned by the Maine Department of Inland Fisheries and Wildlife (MDIFW) surrounds the proposed lease area (SR 9). In their review of the proposal, MDIFW did not object to the lease, but indicated that the lands within the Scarborough Marsh Wildlife Management Area cannot be used for access, the storage of equipment, or other activities affiliated with the proposal. There are no riparian access points located within 1,000 feet of the proposed lease site (SR 9). The site report indicates that state managers and members of the public will be able to access the uplands, if the lease is granted (SR 9).

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

B. Navigation

Staff observed motorized vessels navigating in the Nonesuch and Scarborough Rivers during the site assessment conducted on July 19, 2018 (SR 10). During this assessment, kayakers were also observed paddling through each of the proposed lease tracts (SR 10). Except for a small portion of Tract 2, each proposed tract is located within narrow waterways outside the main navigational channels (SR 10). Boats navigating in the Scarborough and Nonesuch Rivers would not be hindered by the proposed lease (SR 10). Vessels that deviate from the main navigational channel are naturally encumbered by shallow depths, which characterize the narrow channel where the proposed lease is situated (SR 10). During the appropriate tidal stages, shallow draft vessels would be able to navigate between the proposed tracts and the shoreline (SR 10). The site report notes: “at low tide and maximum gear layout, vessels would

likely avoid the narrow waterways occupied by the proposed lease. However, a variety of other routes would be available to these boaters” (SR 10).

The closest public launches are Seavey Landing, which is located ~2,600 feet to the north of the proposal; and Pine Point Boat Launch, which is located ~2,300 feet to the south of the proposal (SR 9). Moorings are located near the Pine Point Boat Launch. Considering these distances, the proposed lease site will not interfere with navigation to and from the launches or moorings.

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 Uses

During the site visit, staff did not observe any fishing activities in the immediate vicinity of the proposed lease area (SR 10). Staff did observe clam harvesters in other sections of the Nonesuch and Scarborough Rivers (SR 10). Harvesters would still be able to dig to the intertidal areas immediately adjacent to the proposed lease site, as the Department is conditioning the lease so that all aquaculture activity is restricted to subtidal areas.

The Department did not receive any comments from fishermen or other user groups regarding the lease proposal. Based on the absence of comments it is reasonable to conclude that fishermen and others do not have concerns about the proposed activities.

Exclusivity. The applicants are not requesting exclusive use of the proposed site.

Other aquaculture leases. There are two aquaculture leases and one Limited Purpose Aquaculture (LPA) license within 1,000 feet of the proposed lease (SR 10).⁴ The lease and LPA holders were sent notification of the proposal and they did not submit any comments.

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

D. Flora & Fauna

Site Observations. During the site visit, Department staff observed a variety of marine flora and fauna including mud snails (*Nassarius sp.*), hermit crabs (*Pagurus sp.*), sea lettuce (*Ulva sp.*) and red algae (*Rhodophyta sp.*) (SR 11). Double-crested cormorants (*Phalacrocorax auritus*), herring gulls (*Larus argentatus*), sandpipers (*Tringa sp.*), common terns (*Sterna*

⁴ See page 10 of the site report for a complete list of aquaculture sites within one mile of the proposed lease.

hirundo), and least terns (*Sterna antillarum*) were also observed near the proposed lease site (SR 13). Historical eelgrass (*Zostera marina*) data collected in 2001, indicate that no eelgrass beds were within one mile of the proposed site (SR 14). Staff did not observe any eelgrass during the site visit (SR 14).

Fisheries and Wildlife. Data maintained by MDIFW, indicates that the proposed lease overlaps with Essential Habitat for the Piping Plover (*Charadrius melodus*), which is listed as an Endangered Species under the Maine Endangered Species Act (SR 13). The area also overlaps with designated habitat for the Salt Marsh Sparrow (*Ammodramus caudacutus*), a species of special concern in Maine (SR 13). In addition, the proposed lease overlaps with Tidal Wading Bird and Waterfowl Habitat, which is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat (SR 13).

The Department sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated the following:

This site is located within an area mapped as both Essential Habitat and Tidal Waterfowl and Wading Bird Habitat. Based on the location of this site, there will be *partial* impacts to each of these resources. However, due to the location of the site in the lower, wider section of the river, we do not anticipate significant impacts to State Endangered least terns.⁵

Although they indicated partial impacts to the resources identified above, MDIFW did not object to the proposed lease, or describe any significant interference that the proposal might have on the surrounding wildlife.

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

Although the proposal is within 1,000 feet of the Scarborough Marsh Wildlife Management Area, which is owned by MDIFW, publicly owned conserved lands are not part of the decision criteria for experimental leases. There are no beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site (SR 15).

⁵ CF: Email from J. Perry to A. Ellis dated August 22, 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 this proposed lease site will be obtained from Mook Sea Farm, in Walpole, Maine (App 1). This is an approved source of seed stock.

Therefore, the applicant has demonstrated that there is an available source of oysters 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 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, taking into consideration the number and density of aquaculture leases 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/Eastern oysters (*Crassostrea 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 3.2 acres to Matthew Hassler and Robert Willette, 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 lessee⁶; 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/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. 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)⁷. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. 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. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
- C. The lessee can only deploy gear and conduct aquaculture activities in the subtidal portions of the lease site.

7. REVOCATION OF EXPERIMENTAL LEASE

⁶ 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.”

⁷ 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.”

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:

10/7/18



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