

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCE
Aquaculture Lease Transfer Application
Suspended and Bottom Culture of Shellfish
Broad Cove, Yarmouth, Cumberland County

Knudsen Holdings LLC
Mimi's Oysters LLC
CAS BC2

Findings of Fact, Conclusions of Law, and Decision

Knudsen Holdings, LLC applied to the Department of Marine Resources (DMR) to transfer the lease CAS BC2 to Mimi's Oysters, LLC. The lease site is 3.59 acres and authorized for the suspended and bottom culture of American/eastern oyster (*Crassostrea virginica*). The lease is in Broad Cove, Yarmouth, Cumberland County. The current lease expires on October 1, 2027.

1. Procedural History

DMR received the transfer application on December 12, 2024, and accepted it as complete on January 16, 2025. Notice of the completed application and 30-day comment period was published in the *Northern Forecaster* on February 20, 2025. DMR also provided notice of the completed application and the 30-day comment period to the Town of Yarmouth and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state agencies, and to subscribers of DMR's aquaculture list-serve. The comment period ended on March 22, 2025. One comment was received from the Maine Department of Inland Fisheries and Wildlife (IFW). The lease transfer process does not require a public hearing, and DMR did not hold a hearing on this application. The administrative record before DMR regarding this lease transfer application includes the materials listed below.

A. List of Materials

Description	Date	Citation in Decision
Complete Transfer Application	01-16-2025	AR-1
Comment from IFW	03-07-2025	AR-2
Inspection Report	09-10-2024	AR-3

B. Site History

The site originated as a 1.8-acre, three-year experimental lease issued to Peaks Island Shellfish, LLC for the suspended culture of American/eastern oyster (*Crassostrea virginica*) on February 5, 2013. During the term of the experimental lease, on June 20, 2013, Peaks Island Shellfish changed its corporate

name to Basket Island Oyster Company, LLC. On October 2, 2017, a ten-year standard lease, incorporating the original experimental lease, was granted to Basket Island Oyster Company, LLC. The standard lease was for 3.59 acres and included the addition of bottom culture techniques.

On September 27, 2022, the Department approved a transfer application submitted by Basket Island Oyster Company transferring the lease to Restorative Aquaculture, LLC. On September 17, 2024, Restorative Aquaculture, LLC changed its corporate name to Knudsen Holdings, LLC.

2. Statutory Criteria

Aquaculture lease transfers are governed by 12 M.R.S.A. § 6072(12-A) and by Chapter 2.60 of DMR's rules, which provide that the Commissioner may grant a transfer of an aquaculture lease if: the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A); the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. § 6072(8); the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

A. Aggregate Lease Holdings

Chapter 2.60(3)(D) of DMR's regulations provides that a lease may be approved if "the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres."

According to the transfer application, Mimi's Oysters, LLC, currently holds no other aquaculture leases (AR-1, 3). If the transfer is granted, Mimi's Oysters, LLC would only hold this site, which is 3.59 acres in size.

Therefore, if the lease transfer is granted, it would not cause Mimi's Oysters, LLC to hold leases covering an aggregate of more than 1,000 acres.

B. Speculative Purposes

Pursuant to 12 M.R.S.A. § 6072(12-A)(B)(3), to grant a lease transfer, the Commissioner must determine that the transfer is not for speculative purposes. Chapter 2.60(3)(C) of DMR's regulations provides that in determining whether a transfer is for speculative purposes, DMR must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term."

On September 27, 2022, the lease was transferred from Basket Island Oyster Company, LLC to Restorative Aquaculture, LLC. The 2022 transfer decision found that aquaculture had occurred over the

prior term, and the lease was not being transferred for speculative purposes. On September 17, 2024, Restorative Aquaculture, LLC changed its corporate name to Knudsen Holdings, LLC. The current lessee, Knudsen Holdings, LLC, stated in the transfer application that the site was seeded with American/eastern oysters in the spring and summer of 2022 and harvested at various times in 2022 and 2023 (AR-1, 2). The transfer application, which was received on December 12, 2024, states that harvesting was planned for 2024, but the growing area¹ was reclassified, and harvesting was not possible as originally planned (AR-1, 4). The application stated that harvesting would resume once the area is reopened.

CAS BC2 is in the growing area, WI, CA5. On August 16, 2024, the growing area where the lease is located was downgraded due to seasonal pollution. It is unlawful to take or possess any oysters in the growing area, including the lease, from July 1 through December 31 each year.² However, harvest would be permitted from the lease, during the seasonal closure, with a relay permit from DMR's Growing Area Program. A relay permit has been granted, by DMR's Growing Area Program, for the lease site, so harvest can occur during the seasonal closure. In addition, the seasonal closure does not preclude the lease holder from tending the site, during the portion of the year when the seasonal closure is not in effect. Additionally, according to the most recent DMR site inspection conducted in 2024, gear was deployed on site and aquaculture activities occur (AR-3).

The record demonstrates that the current lessee has conducted aquaculture activities in the lease area during the lease term.

Therefore, the lease is not being transferred for speculative purposes.

C. Change of Holder and Issuance Criteria

Title 12 M.R.S.A. § 6072(12-A)(B)(1) and Chapter 2.60(3)(A) of DMR's regulations provide that in order to approve a transfer application, DMR must determine the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

The issuance criteria 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, with considerations for other aquaculture uses of the area; the ability of

¹ Because molluscan shellfish (those that have a hinged shell, such as clams, mussels, oysters, quahogs, etc.) are filter feeders, the quality of the waters in which they grow is a key factor in determining whether they are safe to eat. DMR's Growing Area Program, evaluates all shellfish growing areas in the state of Maine to determine their suitability for harvest. This program is guided by standards specified by the National Shellfish Sanitation Program (NSSP) Model Ordinance, which DMR has adopted through rulemaking. Each commercially harvested growing area is assigned a "classification" according to the results of its evaluation. The evaluation process helps ensure that that growing areas continue to meet the standards associated with their classification, to modify classifications when needed, and to notify the responsible agencies about identified and potential pollution sources.

² The closure also applies to other shellfish species, but the site is only authorized for American/eastern oyster (*Crassostrea virginica*), so only that species is referenced.

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 lease transfer is only a change in lease holder, not in operation; therefore, the transferee is required to operate the site according to currently authorized operating plans and procedures. DMR received one comment from IFW stating that minimal impacts are anticipated (AR-2). There is no evidence in the administrative record, or reason to believe, that the change in lease holder would violate any of the lease issuance criteria.

Therefore, the transfer of ownership to a new lessee does not violate any of the lease issuance criteria.

D. Preference Guidelines

Title 12 M.R.S.A. § 6072(12-A)(B)(2) and Chapter 2.60(3)(B) of DMR's regulations state the Department must consider if a transfer is intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. § 6072(8).

At the time that this application was deemed complete, DMR had not received any competing applications for this lease site. DMR is not in receipt of any other applications for this lease site.

Therefore, the transfer is not intended to circumvent the preference guidelines.

3. 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). 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 transferee is responsible for complying with all existing lease conditions. The existing conditions on this lease are:

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Dragging and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site.
- c. The use of a power washer at the lease site is prohibited.

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

4. Conclusions of Law

Based on the above findings, DMR concludes that:

- a. The transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1000 acres;
- b. The transfer is not for speculative purposes;
- c. The proposed lease transfer does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A) and;
- d. The transfer is not intended to circumvent the intent of 12 M.R.S.A. § 6072(8).

Accordingly, the evidence in the record supports the conclusion that the proposed lease transfer meets the requirements for the granting of a lease transfer set forth in 12 M.R.S.A. §6072(12-A) and in DMR Rule Chapter 2.60.

5. Decision

The Commissioner grants the application of Knudsen Holdings, LLC to transfer the aquaculture lease CAS BC2 to Mimi's Oysters, LLC. The transferred lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by subsequent DMR decisions.

6. 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.

7. Date and Signature

Dated: 10.21.25



Carl J. Wilson, Commissioner
Department of Marine Resources

LIMITED LIABILITY COMPANY

STATE OF MAINE

CERTIFICATE OF AMENDMENT
(for a Maine LLC)

Restorative Aquaculture, LLC

(Name of Limited Liability Company)

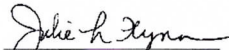
Filing Fee \$5

Charter Number: 20213141DC

Filing Number: 20240919214460071 Pages: 3

Form: LNME Fee Paid: \$50

Filing Date: 09/18/2024 12:00AM


Deputy Secretary of State

A True Copy When Attested By Signature


Deputy Secretary of State

A

Deputy Secretary of State

Pursuant to 31 MRSA §1532, the undersigned limited liability company executes and delivers for filing this certificate of amendment:

FIRST: The name of the limited liability company has been changed to (if no change, so indicate)

Knudsen Holdings LLC

(A limited liability company name must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.," "LLC," "L.C.," or "LC" or, in the case of a low-profit limited liability company, "L3C" or "l3c." – see 31 MRSA 1508)

SECOND: The date of filing of the initial certificate of formation: October 21, 2020
(date)

THIRD: Designation as a low profit LLC (Check only if applicable):

☐ This is a low-profit limited liability company pursuant to 31 MRSA §1611 meeting all qualifications set forth here:

- A. The company intends to qualify as a low-profit limited liability company;
- B. The company must at all times significantly further the accomplishment of one or more of the charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as it may be amended, revised or succeeded, and must list the specific charitable or educational purposes the company will further;
- C. No significant purpose of the company is the production of income or the appreciation of property. The fact that a person produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and
- D. No purpose of the company is to accomplish one or more political or legislative purpose within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of 1986, or its successor.

FOURTH: Designation as a professional limited liability company (Check only if applicable)

- ☐ This is a professional limited liability company* formed pursuant to 13 MRSA Chapter 22-A to provide the following professional services:

(type of professional services)

FIFTH: Complete only if there is a change to the registered agent information.

The Registered Agent is a: (select **either** a Commercial or Noncommercial Registered Agent)

- ☐ Commercial Registered Agent CRA Public Number: _____

(Name of commercial registered agent)

- ☐ Noncommercial Registered Agent

(Name of noncommercial registered agent)

(physical location, not P.O. Box – street, city, state and zip code)

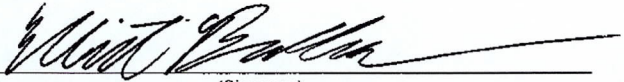
(mailing address if different from above)

SIXTH: Pursuant to 5 MRSA §§105.2 or 108.3, the registered agent listed above has consented to serve as the registered agent for this limited liability company.

SEVENTH: Other changes this certificate of amendment makes to the certificate of formation as most recently amended or restated are set forth in Exhibit ____ attached and made a part hereof.

****Authorized person(s)**

Dated September 17, 2024



(Signature)

Elliot Brake, Authorized Person

(Type or print name and capacity)

(Signature)

(Type or print name and capacity)

***Examples** of professional service limited liability companies are accountants, attorneys, chiropractors, dentists, registered nurses and veterinarians. (This is not an inclusive list – see 13 MRSA §723.7)

****Pursuant** to 31 MRSA §1676.1, this Certificate of Amendment **MUST** be signed by a person authorized by the limited liability company.

The execution of this certificate constitutes an oath or affirmation under the penalties of false swearing under 17-A MRSA §453.

Please remit your payment made payable to the Maine Secretary of State.

Submit completed form to:

**Secretary of State
Division of Corporations, UCC and Commissions
101 State House Station
Augusta, ME 04333-0101
Telephone Inquiries: (207) 624-7752**

Email Inquiries: CEC.Corporations@Maine.gov

DEPARTMENT OF MARINE RESOURCES

Basket Island Oyster Company, LLC, Transferor
Aquaculture Lease Transfer Application

Restorative Aquaculture, LLC, Transferee
September 20, 2022

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**1. THE PROCEEDINGS**

Basket Island Oyster Company, LLC applied to the Department of Marine Resources (DMR) to transfer the lease CAS BC2 to Restorative Aquaculture, LLC. The lease site is 3.59 acres and is in Broad Cove, Yarmouth, Cumberland County. The lease was initially issued for 1.8 acres on February 5, 2013 to Peaks Island Shellfish, LLC for a three-year experimental lease (CAS BC). On June 20, 2013, Peaks Island Shellfish changed its corporate name to Basket Island Oyster Company, LLC. The standard lease (CAS BC2) was issued on October 2, 2017 for 3.59 acres and replaced the experimental lease CAS BC. CAS BC2 is authorized for the cultivation of American/Eastern oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. The current lease expires on October 1, 2027.

The transfer application was received on March 23, 2022 and accepted as complete on June 24, 2022. Notice of the completed application and 30-day comment period was published in the northern edition of the *Forecaster* on July 28, 2022. DMR also provided notice of the completed application and the 30-day comment period to the Town of Yarmouth and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state agencies, and to subscribers of DMR's aquaculture list-serve. During the comment period, DMR received one comment. A lease transfer does not require a hearing, so no hearing was held.

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer upon determining that:

- a) the change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated
- b) the transfer is not intended to circumvent the preference guidelines for treatment of

competing applications

- c) the transfer is not for speculative purposes; and
- d) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

A. Effect of Lessee Change on Lease Criteria

As part of the transfer application, transferees must provide documentation demonstrating that they have the financial and technical capacity to operate the lease site. Restorative Aquaculture, LLC has experience in aquaculture and is familiar with Maine's aquaculture rules and laws. As part of the application, Angel Wilson, Compliance Specialist, demonstrated that Restorative Aquaculture, LLC has the financial capacity to operate the lease should the transfer be granted.¹

On August 22, 2022, the Maine Department of Inland Fisheries (MEIF&W) submitted comment that minimal impacts to wildlife are anticipated for this project.

DMR did not receive any other comments concerning the lease transfer. Based on a review of the record there is no evidence to indicate that a change in lease holder would otherwise violate the original criteria for granting a standard lease.

Therefore, I find that the change in the identity of the lessee does not violate any of the issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

B. Effect on Preference Guidelines

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

Therefore, I find that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8).

C. Speculative Purposes

DMR Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." Based

¹ Letter from Evolve Bank & Trust through Mercury indicating that Restorative Aquaculture, LLC has an account in good standing. Letter saved to case file and dated May 27, 2022.

on the transfer application and a review of DMR's records, Basket Island Oyster Company, LLC has conducted aquaculture activities on the lease site during its term.

Therefore, I find that the lease transfer is not for speculative purposes.

D. Acres Leased by Transferee

In accordance with rule and statute, the proposed transfer cannot result in the transferee being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. Matthew Odlin, the CEO and sole shareholder for Restorative Aquaculture, LLC, is also associated with companies that hold two aquaculture leases. If the transfer is granted, Restorative Aquaculture, LLC would hold 3.89 acres and its sole shareholder, Matthew Odlin, would hold 10.07 acres.²

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

3. Conclusions of Law

Based on the above findings, I conclude that:

- a) The change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated;
- b) The transfer is not intended to circumvent the preference guidelines for treatment of competing applications
- c) The transfer is not for speculative purposes; and
- d) The lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 M.R.S.A. §6072(12-A) and Chapter 2.60 of DMR's regulations, this transfer may be granted.

4. Decision

Based on the foregoing, I grant the requested transfer of CAS BC2 from Basket Island Oyster Company, LLC to Restorative Aquaculture, LLC. The term of the lease is not affected by the transfer. All provisions of the existing lease shall continue in full force and effect, including the conditions noted below unless modified by this decision. The lessee shall pay the State of Maine

² According to Department records, Matthew Odlin is the President of Running Tide Technologies, LLC the sole shareholder of MID WCx2, which is 3.21 acres and MID Gix, which is 2.86 acres.

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's regulations.

5. Conditions

The existing conditions on this lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- b. The use of a power washer at the lease site is prohibited; and
- c. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

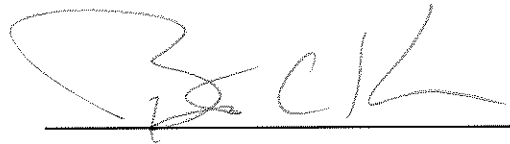
Condition "a" which pertains to site markings is contemplated in existing rule and is a requirement of all lease agreements. Therefore, condition "a" will be removed.

6. Monitoring and Revocation of Lease

In accordance with 12 M.R.S.A. §6072(11), DMR shall monitor the lease on an annual basis. The Commissioner may initiate revocation proceedings if the lease holder fails to comply the provisions set forth in 12 M.R.S.A. §6072(11) and applicable rule.

Dated: _____

9/27/22



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

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Lessee: Basket Island Oyster
Company, LLC**

Acronym: CAS BC2

Standard Aquaculture Lease Application
Suspended and bottom culture of American/
Eastern oysters, Broad Cove, Casco Bay,
Yarmouth

Docket # 2017-05

October 2, 2017

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Basket Island Oyster Company LLC., applied to the Department of Marine Resources ("DMR") for a ten-year standard aquaculture lease on 3.59 acres¹ located in Broad Cove, Casco Bay, Yarmouth, Cumberland County, Maine for the cultivation of American/Eastern oysters (*C. virginica*) using suspended and bottom culture techniques. DMR accepted the application as complete on May 15, 2017. A public hearing on this application was held on September 13, 2017 at the Yarmouth Town Hall in Yarmouth, Maine. No one intervened in this case.

1. THE PROCEEDINGS

Notices of the hearing and copies of the application and DMR site report were provided to state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Town of Yarmouth and the Yarmouth Harbormaster, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the northern edition of the *Forecaster* on August 10, 2017 and August 24, 2017 and in the August edition of the *Commercial Fisheries News*.

Sworn testimony was given at the hearing by: Mark Green representing Basket Island Oyster Company, LLC.; Jon Lewis, DMR Aquaculture Program Lead; Robert Byron, Town of Yarmouth Harbormaster and Shellfish Warden; Merle Nelson, a resident of the Town of Cumberland; and Barbara Horton a riparian landowner in the Town of Yarmouth. The applicant described his proposed project. Mr. Lewis described the site visit and presented a videotape of the bottom. Mr. Byron described aquaculture activity in the Town of Yarmouth and Broad Cove. Ms. Nelson thanked the Department for conducting a hearing. Ms. Horton thanked the Department for conducting a hearing and thanked the applicant for explaining his aquaculture operations.

¹ Applicant originally requested 4 acres and the Department verified the coordinates and determined the site was 3.68 acres. However, the acreage was reduced to 3.59 acres to accommodate for an eelgrass bed as described in section 3(D) of this decision.

Each witness was subject to questioning by the Department, the applicant, and members of the public. No other representatives of federal, state, and local government agencies indicated their presence at the hearing.

The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis.

The evidentiary record before the Department regarding this lease application includes three exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from all of these sources is summarized below.²

LIST OF EXHIBITS³

- a. Case file
- b. Application signed and dated
- c. DMR site report dated

2. DESCRIPTION OF THE PROJECT

A. Site History

The proposed standard lease would, in part, replace CAS BC a 1.8-acre experimental lease. The lease was originally issued on February 5, 2013 to Peaks Island Shellfish, LLC for the cultivation of American/eastern oysters (*C. virginica*) using suspended culture techniques. On June 20, 2013, Peaks Island Shellfish, LLC changed its corporate name to Basket Island Oyster Company, LLC. The term of the experimental lease expired on May 1, 2016, but according to 12 M.R.S. §6072-A(20), the lease remains in effect pending the Commissioner's decision on the proposed standard lease. Mr. Green testified that the proposed lease site would encompass the existing experimental lease and that the additional acreage would be used for bottom culture techniques.

Four limited-purpose aquaculture licenses (LPAs) are located within the boundaries of the proposed lease site. The LPAs were issued to Jeanne Gulnick on May 19, 2017 for the cultivation of American/eastern oysters (*C. virginica*) using bottom culture techniques. The LPAs have been utilized as part of Basket Island Oyster Company, LLC operations (Green/Ellis). Mr. Green testified that if the proposed lease is granted the LPAs would be terminated (Green/Ellis).

B. Site Characteristics

On June 2, 2017 DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting an aquaculture lease. The proposed lease site occupies shallow subtidal waters in the center of Broad Cove in Yarmouth (SR 2). Although the proposed site is located in the Town of Yarmouth waters, Broad Cove is also bordered by the Town of

² In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.

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

Cumberland. At mean low water, the distance from the northwestern corner of the proposed lease site (corner E) to the western, or Cumberland shore of Broad Cove is ~1,030 feet (SR 5). The distance, at mean low water, from the southeastern corner of the proposed site (corner A) to the eastern, or Yarmouth shore of Broad Cove is ~1,315 feet.⁴ Except for a deeper channel in the center of Broad Cove, wide areas of intertidal mud flats lie between the site and uplands. During low tide, over 70 acres of mudflats are exposed in the head of the Cove (SR 2). Water depths, at mean low water, range from 1.3 feet at corner C of the proposed site to 2.5 feet at corner B of the proposed site (SR 4).



Figure 1: Depicts the proposed lease area, which includes the existing experimental lease CAS BC.

The uplands are comprised of rocky shorelines that give way to mixed forests (SR 2). Several houses are present along the shoreline (SR 2). The bottom of the proposed site is characterized by soft mud except for the middle of the western half of the propose site, which is comprised of sand (SR 5). The western section of the proposed lease contains large densities of bivalve shells (SR 5). The shells observed with greatest frequency include European oyster (*Ostrea edulis*), blue mussel (*Mytilus edulis*), soft-shelled clam (*Mya arenaria*), northern quahog (*Mercenaria mercenaria*), and razor clam (*Ensis directus*) (SR 5).

⁴ Distances are based on aerial imagery.

The proposed lease is an area currently classified by the Department's Water Quality Classification program as "conditionally approved for the harvest of shellfish" (SR 6). This means that shellfish cannot be harvested between June 1 and October 31, dates inclusive (SR 6).

C. Proposed Operations

The applicant proposes to cultivate American/eastern oysters using a combination of bottom and suspended culture techniques. Nearly 75% of the proposed acreage will be dedicated to bottom planting, which means most of the proposed lease area will contain no gear except for marker buoys (SR 2). The eastern most section of the proposed lease will be used for suspended culture. Eight longlines, oriented north to south, will each hold a maximum of thirty wire mesh cages for a total capacity of 240 cages (App 6). However, Mr. Green testified that there will be no more than 80 cages deployed on the proposed site at any given time. The cages are secured to the longlines by a 10-foot tether line (App 8). The cages measure 48" x 36" x 9" and will be placed on the bottom of the site, but kept six inches off the ocean floor by two wire mesh legs (SR 2). The cages will be used for product grow-out and when the oysters have reached the appropriate size they will be removed from the cages and seeded on the bottom of the proposed site (App 9). Harvesting will be conducted by hand whenever possible, but oyster rakes or a small dredge may be used when hand harvesting is not feasible (App 9). Gear will remain on the proposed site throughout the winter months (Green/Ellis).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in an area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, and mass.

A. Navigation

The site report notes the following:

The proposed lease site is not within major navigation channels and is over 300 feet to the north of the deeper channel that extends into Broad Cove. Due to the shallow nature of the proposed lease site, few vessels are likely to navigate the area when the tide is low. At high tide, vessels in the area would have over 1,000 feet on all sides of the proposed lease site in which to navigate (SR 7).

Much of the proposed site will be utilized for bottom culture, which will enable mariners to navigate throughout much of the proposed area as the tides allow (SR 7). Mr. Green testified that at mid and high tides vessels can traverse the proposed lease site. Mr. Byron testified that he did not have any concerns with the proposed operations interfering with navigation (Byron/Ellis).

Based on the evidence, it is reasonable to conclude that navigation in the area will not be unduly affected by the presence of the proposed lease site.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with navigation. Aquaculture lease sites are required to be marked for navigation purposes in accordance with U. S. Coast Guard requirements.

B. Riparian Access

During the site visit, staff observed five moorings, including one owned by the applicant, within 1,000 feet of the proposed lease site (SR 6). The closest mooring to the site, other than the one owned by the applicant, was approximately 480 feet to the south of the proposed site (SR 6). The site report notes the following:

It is unlikely that the proposed lease will interfere with riparian ingress and egress to and from the moorings observed due the fact that there is room for navigation around the lease site at high tide, and because the proposed lease site would likely be avoided by most mariners at low tide due to its shallow nature (SR 6).

Department staff also observed approximately 18 docks within the vicinity of the proposed lease (SR 6). The closest dock is located ~1,300 feet to the east of the proposed lease site (SR 6). The site report notes the following:

It is unlikely that the proposed lease will interfere with riparian ingress and egress to and from docks in Broad Cove. There is ample room for navigation around the lease site at high tide and the majority of docks in the head of Broad Cove are inaccessible at low tide (SR 6).

Given the shallow nature of the proposed lease area, it is likely that riparian owners navigating in the Cove would utilize the deeper channel to the southwest of the proposed lease site (SR 6). Mr. Byron testified that he did not have any concerns with the proposed site interfering with riparian ingress and egress (Byron/Ellis). No one else offered testimony regarding riparian ingress and egress.

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

C. Fishing & Other Uses

The application notes that soft shell clams are harvested along the shores of Broad Cove on a limited basis and that the proposed lease site is 3,000 feet away from any known harvest areas (App 10). During the site visit, staff observed some European oysters along the bottom of the proposed lease site (SR 7). However, the harbormaster for the Town of Cumberland indicated that he had not observed anyone harvesting European oysters in the area except on existing aquaculture sites (SR 7). Given the shallow water depths at the proposed site it is unlikely that the area is utilized by commercial lobstermen (SR 7). Mr. Green testified that fishing for striped bass (*Morone saxatilis*) on the proposed lease site would be permitted.

Exclusivity. The applicant requests that shellfish harvesting within the boundaries of the proposed lease site be prohibited (App 12). This restriction is reasonable in order 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 (7-B). A condition reflecting this restriction will be included in the lease.

Other aquaculture leases. Besides the LPAs held by Ms. Gulnick and the experimental lease held by Basket Island Oyster Company, LLC the closest aquaculture site to the proposed lease is located ~890 feet to the north. The site is an LPA and is issued for the suspended culture of American/eastern oysters (*C. virginica*).⁵ It is reasonable to conclude that the proposed operations are unlikely to negatively affect existing aquaculture uses in the area.

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other uses of the area. The lease must be marked in accordance with DMR Rule 2.80⁶

⁵ LPA acronym, **PER107**

⁶**2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.

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

D. Flora & Fauna

Site observations. During the site visit, Department staff observed several species of marine flora and fauna including: European oyster (*Ostrea edulis*), blue mussel (*Mytilus edulis*), common periwinkle (*Littorina littorea*), red beard sponge (*Microcitoma porifera*), and harbor seals (*P. vitulina*) (SR 9).⁷ Department staff observed eelgrass within the southeastern corner of the proposed lease. The site report notes the following:

On June 2, 2017 eelgrass beds extended approximately 30 feet from Corner A along the proposed lease site's eastern boundary. The applicant proposes to populate this area with wire mesh cages placed on the ocean floor for the suspended culture of American/eastern oysters. This could inhibit the growth of eelgrass that currently populates the area (SR 11).

To prevent aquaculture gear from being deployed over the eelgrass bed and ensure compliance with the 25-foot setback required by the Army Corps of Engineers, the southeastern corner of the proposed site will be reduced in area by 75' x 55' as depicted in Figure 2 (SR 11). The reduction will modify the total size of the proposed area from the original calculated size of 3.68 acres to 3.59 acres. The applicant has been notified of the changes to the proposed lease boundaries and is amenable to the reduction in acreage.⁸

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⁷ For a complete list of observed species and their relative abundance see page 9 of the site report.

⁸ CF, email correspondence from DMR staff to applicant dated June 30, 2017.



Figure 2: Proposed lease area depicting the eelgrass reduction in the southeastern corner.

Fisheries & wildlife. DMR sent a copy of the lease application to the Maine Department of Inland Fisheries and Wildlife (MDIF&W) for their review and comment. The area surrounding the proposed lease site is designated as Tidal Waterfowl and Wading Bird Habitat by MDIF&W (SR 10). MDIF&W commented that they do “not have any concerns with this project.”⁹

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

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⁹ CF, email correspondence from MDIFW staff to C. Burke dated June 20, 2017.

E. Public Use & Enjoyment

According to the site report, “there are no public docking facilities or beaches within 1000 feet of the proposed lease” (SR 14). However, the site report notes:

A parcel of land owned by the Town of Cumberland, known as the Broad Cove Reserve, is located on the western shore of Broad Cove. A public-access pier extends from the Broad Cove Reserve approximately 2,400 feet to the southwest of the proposed lease site. The town maintains a well-marked channel to this pier and is in the process of developing a nearby mooring field (SR 14).

DMR staff contacted the Cumberland harbormaster to determine whether the proposed operations would affect the pier and the development of the mooring field (SR 14). The harbormaster indicated that the proposed lease site would not interfere with the pier or mooring field (SR 14).

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

F. Source of Organisms

The application indicates that the source of stock for this proposed lease site is Mook Sea Farms located in Walpole, Maine (App, 1).

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

G. Light

The application indicates that no lights will be used at the proposed lease site and operations will take place during daylight hours (App 9). Night work would only occur in case of emergency (App 9).

Therefore, I find that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The applicant intends to use a tumbler, generator, and electric hoist on the proposed site (App 9). The tumbler is used each week and is powered by a gasoline generator (App 3, SR 15). The application notes that the generator uses “four stroke technology and is quiet” (App 9). The hoist is used daily and is powered by battery (App 9, SR 15). As indicated on the application, Mr. Green had originally intended to use a power washer on the proposed site to clean gear (App 9). However, Mr. Green testified that since submitting the application he has decided not to utilize a power washer on the proposed site. Mr. Green testified that gear will be cleaned off the proposed site at a land based facility (Green/Ellis). A condition prohibiting the use of a power washer will be included in

the lease. The applicant intends to conduct work at the proposed site from a 24" Carolina Skiff and a 30" x 14" motorized work barge (SR 15). The applicant testified that the work barge will be used periodically and is powered by a 20 h.p., four-stroke engine. Mr. Green testified that the types and levels of noise likely to originate from the proposed lease are similar to what occurs currently on the existing experimental lease.

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

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

I. Visual Impact

Mr. Green testified that the tops of some of the cages may be visible periodically during low, or drain tides. The cages will be green or black in color (SR 15). The applicant testified that the work barge will be moored, periodically, to the south of the proposed lease site. No other structures will be placed on the site, other than any navigational aids that may be required. Given the color of the gear and the fact that the work barge is not a permanent feature of the site, it appears the proposed equipment will blend into the surroundings as much as possible.

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

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- 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 (*C. virginica*) to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. Given the condition prohibiting the use of a power washer at the lease site, the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of 3.59 acres to Basket Island Oyster Company, LLC. for ten years for cultivating American/Eastern oysters (*C. virginica*) using suspended and bottom culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2) (A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 MRSA §6072 (7-B)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.

¹⁰ 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."

- b. Dragging and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site.
- c. The use of a power washer at the lease site is prohibited.
- d. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: _____

10/2/2017



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