

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Hermit Island Oyster Company, LLC**

Standard Aquaculture Lease Application  
Suspended Culture of eastern oysters  
New Meadows River, Phippsburg, Maine

**NMR SPH2**

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

Hermit Island Oyster Company, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 0.62 acres in The Branch, Small Point Harbor in the New Meadows River, in Phippsburg, Maine. The proposal is for the suspended culture of eastern oysters (*Crassostrea virginica*).

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on January 15, 2020, and a scoping session was held on November 11, 2020. DMR accepted the final application as complete on April 30, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of Phippsburg, riparian landowners<sup>1</sup> within 1,000 feet of the proposed site, and subscribers to DMR’s aquaculture email listserv. The hearing was scheduled for July 11, 2023. Notice of the hearing was published in the *Times Record* on June 9, 2023, and June 23, 2023. The public notice for the hearing indicated that the proceeding would be conducted in-person and directed interested persons to register for the proceeding if they intended to offer testimony or ask questions. It also directed interested persons to contact DMR for an intervenor application. No individuals registered to participate or intervene in the hearing.

Sworn testimony was given at the July 11, 2023, hearing by the following witnesses:

<b>Name</b>	<b>Affiliation</b>
Christopher Sewall	Hermit Island Oyster Company, applicant

Additional DMR staff and members of the public attended the hearing but did not offer testimony. No representatives from the municipality, federal, or other state agencies attended the proceeding. The hearing was recorded by DMR. The Hearing Officer was Lisa White.

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<sup>1</sup> For purposes of notice, the Department defines “riparian owner” as a shorefront property owner, whose property boundaries are within 1,000 feet of the proposed site.

The evidentiary record before DMR regarding this lease application includes three exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.<sup>2,3</sup>

## **LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on June 5, 2023

## **2. DESCRIPTION OF THE PROJECT**

### **A. Site History**

A portion of the requested lease area has been utilized by Christopher Sewall, owner/operator, President and sole member of Hermit Island Oyster Company, LLC, via a Limited Purpose Aquaculture License (LPA) beginning in 2013 (SEW413). Since 2013, Christopher Sewall has cultivated American/Eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) through suspended cultivation techniques using oyster cages and bags.

### **B. Site Characteristics**

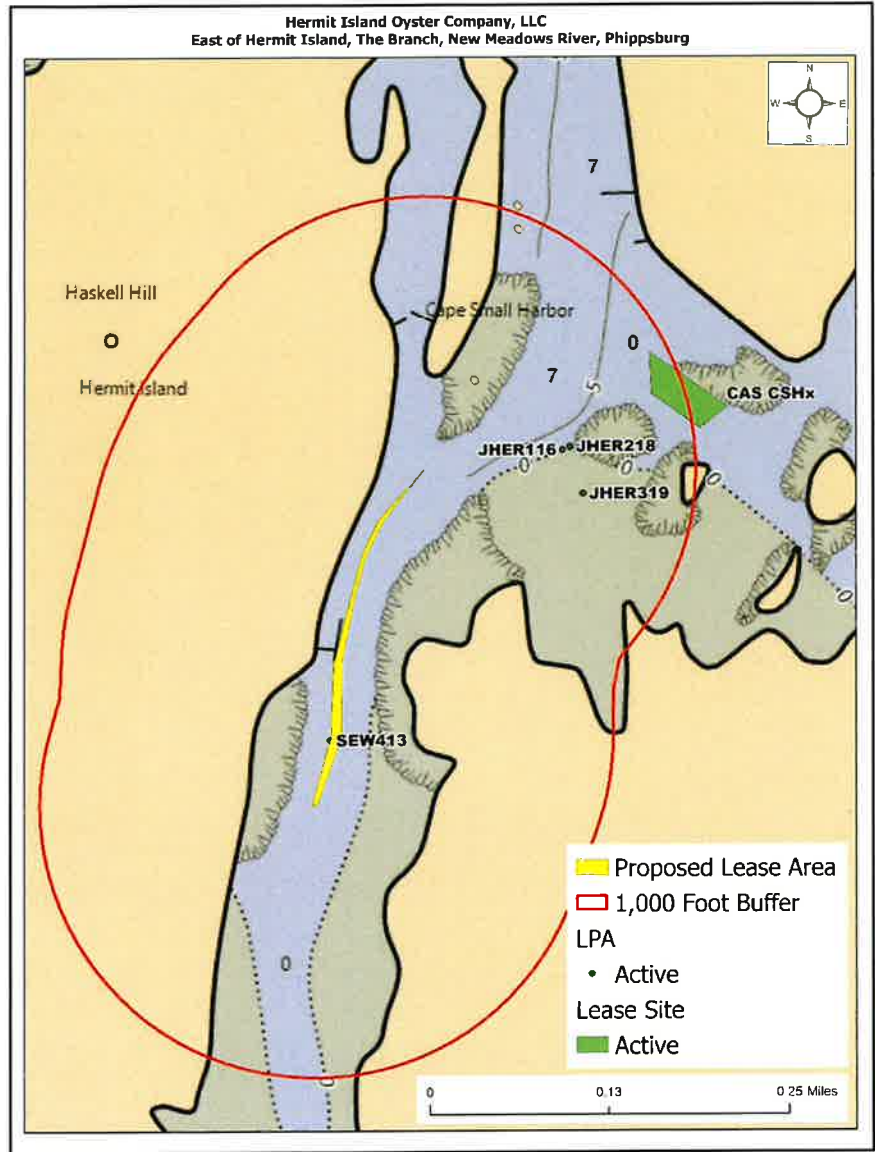
On August 25, 2021, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR 2). The proposed lease site occupies subtidal waters on the eastside of Hermit Island in Phippsburg. The shoreline surrounding the proposal is rocky, low-lying ledges with forested uplands on both Hermit Island and the mainland shoreline.

The area around the site is currently classified by DMR's Water Quality Classification program as "open/approved for the harvest of shellfish." At the time of the DMR's site assessment in 2021, water depths within the proposed lease site ranged from nine feet to twenty feet. Department staff observed the depths of the proposed lease site at approximately 12:15PM. Correcting for tidal variation derives water depths at high tide to be a range from 10.7-21.7 feet and depths at mean low water to range from 0.03-11.03 feet. The bottom of the proposed lease area is composed of soft mud with shell hash and shell rubble. Occasional submerged rock ledges and small boulders, as well as land based organic matter such as leaves, acorns, and small pieces of wood were also observed (SR 3).

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

<sup>3</sup> In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.



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

**C. Proposed Operations**

The applicant would culture Eastern oysters (*Crassostrea virginica*) on the proposed lease site using suspended culture techniques (App 1-2). The applicant proposes (6)-155’ long, 5/8” thick nylon lines (long line) with 10 oyster cages attached to each line. Each oyster cage would be a maximum of 68”x40”. Each oyster cage would be attached to the long line by 4’ of 3/8” sinking line. Each long line would be secured to the seabed with 50’ of 5/8” nylon line on either end of the long line with 150lb mushroom anchor at the bottom (App 11).

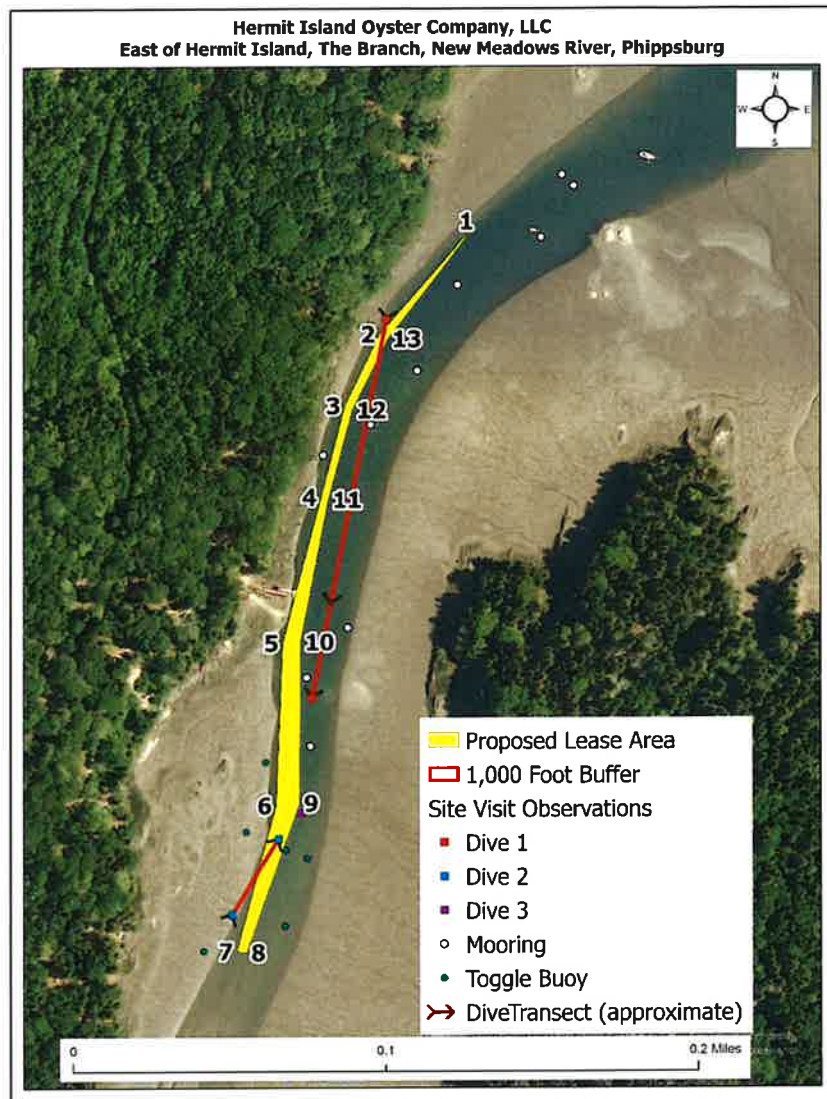
The applicant anticipates seeding the site in June-October and harvesting on site from April-November. The applicant would get to the proposed lease site with an 18' scow barge equipped with a 5-horsepower outboard motor. The applicant would use a 12-volt oyster tumbler to grade the oysters on-site on the scow barge. The power equipment proposed for the site includes the following:

<b>Equipment</b>	<b>Description</b>	<b>Months of Operation/Frequency of Use</b>
12-volt Oyster Tumbler	12-volt Battery powered	Approximately 42 days between the months of April-November for up to 8 hours at a time
5 hp outboard motor	Outboard motor on 18' scow barge used to get to proposed lease site	Will be used to get to proposed lease site during the active period of April-November

**Figure 2.** Labeled corners of proposed lease site. Image taken from DMR's site report.

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

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



**Figure 2.** Labeled corners of proposed lease site. Image taken from DMR’s site report.

**A. Riparian Access**

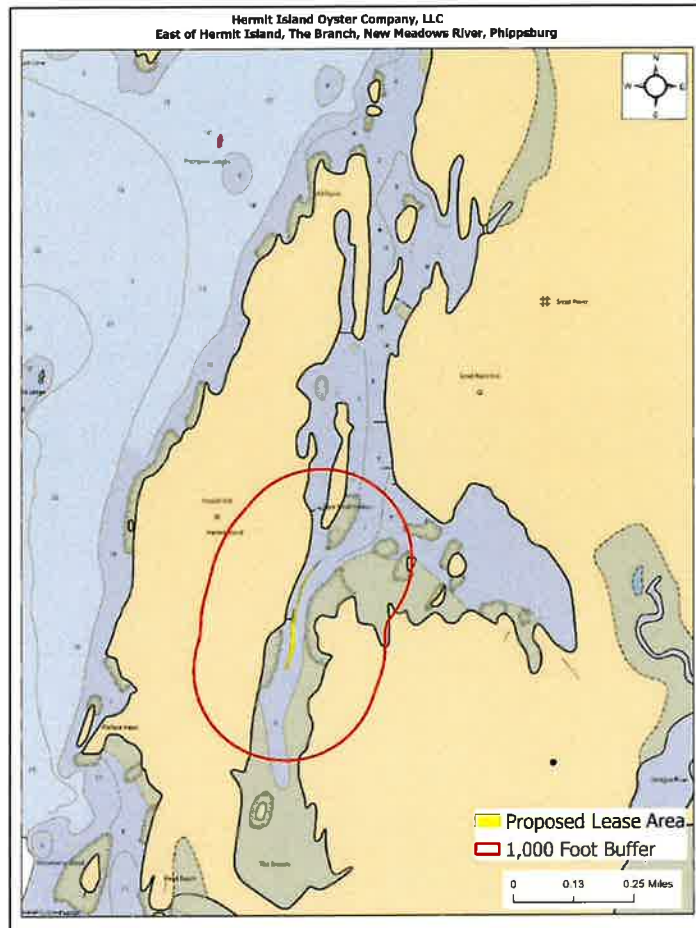
DMR’s Chapter 2 regulations require the Commissioner to examine whether riparian owners can safely navigate to their shore. In examining riparian owner ingress and egress, the Commissioner “shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures.” Chapter 2, § 2.37.

During the DMR site assessment on August 25, 2021, DMR observed one dock on the eastern shoreline of Hermit Island and three intertidal docks to the south of the proposed lease site. Eleven moorings were observed near the proposed lease site. Some of these moorings were occupied with either

sailboats or small outboard powered motorboats. (SR 6-7). Hermit Island Company, Inc. is the owner of the dock observed on eastern shoreline of Hermit Island. The president of Hermit Island Company, Inc. is Christopher Sewall, who is owner/operator, President and sole member of applicant, Hermit Island Oyster Company, LLC. During DMR's site assessment, twelve residential buildings were observed along the southern shoreline of the New Meadows River. No testimony concerning riparian owners' ingress and egress was given at the hearing.

The proposed site is located to the western side of the New Meadows River, along land owned by Hermit Island Company, Inc. One other riparian landowner is present along the shoreline to the east of the proposed lease area. DMR did not receive any comments from the public about impacts to riparian access. The boats observed in the area are kayaks, canoes, sailboats, and small power boats (App 19). DMR's site assessment states there is approximately 50-100 feet of navigable water between the eastern boundary of the proposal and the eastern edge of the channel at MLW (SR 7). Due to the limited presence of docks in the area and the small size of the boats used to access these docks the Department finds that sufficient area remains for reasonable ingress and egress by riparian owners.

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



**Figure 3.** Proposed lease area, navigation channels, and channel markers.

## **B. Navigation**

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area.

The proposed site occupies shallow water in the southern portion of Small Point Harbor known as The Branch, with the only access to it being from the north. DMR's site assessment states the proposed site is on the western side of the narrow channel. At mean low water (MLW), there is approximately 50-100 feet of navigable water from the eastern boundary of the proposal and the eastern edge of the channel. Additionally, there is no outlet to open water at the southern edge of the channel. DMR's site assessment states approximately 75 feet would remain between corner 8 of the proposed lease and the shoreline (SR 5).

During DMR's site assessment on August 25, 2021, staff observed three sailboats and small outboard powered motorboats moored in the area. The Cape Small Harbor mooring field, housing 25-30 moorings, is located approximately 600 feet to the northeast of the proposed lease area. At the time of the site assessment, DMR observed multiple people kayaking in The Branch.

A Harbormaster Questionnaire was sent to the Town of Phippsburg, but no response was received. No one offered testimony about navigation at the hearing.

The Department finds that based on available information and hearing testimony, the placement of the proposed project will still allow for adequate distances for navigation for typical vessels using The Branch.

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

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

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area.

**Fishing.** At the time of the DMR's site assessment on August 25, 2021, one lobster (*Homarus americanus*) trap buoy was observed in the general vicinity of the proposal (SR 8). Underwater video footage showed lobster burrows, at least one lobster, quahogs (*Mercenaria mercenaria*), and European oysters. DMR staff did not observe any shellfish harvesting during the site assessment.

No testimony concerning fishing was given at the hearing. Based on the record, it is unlikely that commercial or recreational fishing will be unreasonably impacted by the proposed activity.

**Other aquaculture uses:** Four Limited Purpose Aquaculture (LPA) licenses and one lease is located within 1,000 feet of the proposed lease site. LPA SEW413 is within the boundaries of the proposed lease site and is held by Mr. Sewell. The LPA would be relinquished if this lease is granted. Additionally, the experimental lease CAS CSHx is within 1,000 feet of the proposed lease area but is also held by the applicant, Hermit Island Oyster Company, LLC. LPAs JHER116, JHER218, and JHER319 are all located within 1,000 feet to the northeast of the proposed site (Figure 1).

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Access to, and navigation around, the nearby aquaculture sites is unlikely to be impacted by the proposal due to all access to The Branch from New Meadows River being from the north. The proposed lease site would not need to be passed to access the



existing LPAs from New Meadows River or Cape Small Harbor. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

**Other water-related uses.** At the time of DMR’s site visit, “people were observed kayaking in The Branch and there were people observed tending boats on nearby moorings using rowboats and standup paddleboards,” (SR 7). The application also notes that kayaking occurs frequently in the summer within 500 feet of the proposed lease boundary (App 19). No testimony concerning other water-related uses was given at the hearing. DMR’s site assessment states there is approximately 50-100 feet of navigable water between the eastern boundary of the proposal and the eastern edge of the channel at MLW (SR 7). This would provide enough space for kayaking, rowboats, and standup paddleboards in The Branch and around the proposed lease site. The Department finds that ample area for recreational use of the waters will remain if the project is approved.

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

**D. Flora & Fauna**

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna.

**Site observations.** DMR staff conducted SCUBA and drop camera transects to assess the epibenthic ecology of the area. The observed bottom was primarily soft mud sediment with shell hash and shell rubble. Some areas of the bottom were covered in a thin layer of green algae. Other organisms were noted occasionally and are listed below:

Species Observed	Abundance
Rockweed ( <i>Ascophyllum nodosum</i> )	Occasional
European oysters ( <i>Ostrea edulis</i> )	Occasional
Tunicate species (not classified)	Occasional
Periwinkle ( <i>Littorina</i> spp)	Common
Hard Clam ( <i>Mercenaria mercenaria</i> )	Occasional
Green Crab ( <i>Carcinus maenas</i> )	Common
Blue Mussel ( <i>Mytilus edulis</i> )	Rare
Hermit Crab ( <i>Paguroidea</i> spp)	Common
Horseshoe crab ( <i>Limulus polyphemus</i> )	Rare
Rock crab ( <i>Cancer irroratus</i> )	Occasional
Lobster ( <i>Homarus americanus</i> )	Rare

Little Skate ( <i>Leucoraja erinaceus</i> )	Rare
Rock Barnacle ( <i>Semibalanus balanoides</i> )	Occasional

**Eelgrass.** According to historical data collected in 1997 and 2022, there has not been a historical presence of eelgrass within the proposal or the immediate vicinity. In 1997, the nearest documented presence of eelgrass (*Zostera marina*) was approximately 1800 feet to the north. Data from 2022 indicates that the nearest eelgrass was even further from the site than what was identified in 1997 (SR 12).

**Wildlife.** According to GIS data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the southern portion of the proposed lease is located within designated Tidal Wading Bird and Waterfowl Habitat (TWWH) and the northern portion of the proposed lease is located approximately 60-100 feet west of TWWH. Furthermore, on September 9, 2021, a MDIFW wildlife biologist responded by email to a “Request for Agency Review and Comment” stating that “to minimize impacts to wildlife, it is recommended that all structures and activities located in subtidal areas have greater than 1 meter (3 feet) of water depth at low tide” (SR 14). MDIFW did not attend the public hearing to provide testimony. In providing their recommendation, MDIFW used mapped habitat types which does not speak to the actual resources present in the proposed area. Because of this, DMR finds that MDIFW’s recommendation was not specifically tailored to the proposed lease area and DMR is not persuaded that the implementation of the recommendation is necessary at this time.

No testimony concerning flora and fauna was given at the hearing. Based on this evidence, it appears that the proposed lease site will not impact the ecological functioning of the area.

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

**E. Public Use & Enjoyment**

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government.

There are no beaches, parks, docking facilities, or conserved lands owned by federal, state, or municipal government within 1,000 feet of the proposed lease site (SR 15). No testimony concerning public lands was given at the hearing.

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

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

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

The applicant will obtain seed from Muscongus Bay Aquaculture and Mook Sea Farm. These hatcheries are approved by DMR.

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

#### **G. Light**

According to the application, no lights would be used on the proposed lease site and work would only occur beyond daylight hours at low tide during the fall, winter, and spring months or for an emergency that required immediate attention (App 17). In cases of emergency that necessitated lighting, 12-volt LED headlamps would be used (App 25). There was no testimony provided at the hearing to indicate there was concern regarding light associated with the proposed activities.

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

#### **H. Noise**

The applicant plans to use an 18-foot wooden scow barge with a 5 hp outboard motor, which would be used to get onsite every day, and a 12-volt oyster tumbler/grader. The applicant estimates that the tumbler/grader would be used approximately 42 days a year during the months of April-November, for up to 8 hours at a time (App 16). No generator, power washer, or other powered equipment will be used on site. The application indicates that the equipment would operate substantially below the ambient level of the working harbor (App 25). No testimony concerning noise was given at the hearing. Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

#### **I. Visual Impact**

The applicant plans to deploy a variety of floating oyster cages and soft mesh bags. Floating cages would have black floats with forest green vinyl coating. Lease markers were proposed to be white in the original application. At the hearing, however, the applicant stated the site will be properly marked in accordance with the updated marking regulations (White-Sewall). Cages would be sunk to the bottom in the winter months, approximately December 1 through March 31. The gear proposed by the applicant complies with DMR's height and visual impact limitations.

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

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

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. The aquaculture activities proposed will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of stock to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

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

#### **5. DECISION**

Based on the foregoing, the Commissioner grants the requested lease to Hermit Island Oyster Company, LLC for 0.62 acres for 20 years for the cultivation of eastern oysters (*Crassostrea virginica*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

**6. CONDITIONS TO BE IMPOSED ON LEASE**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072 (7-B).<sup>4</sup> Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. No conditions will be imposed on this lease.

**7. REVOCAION OF LEASE**

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

Dated: 11/27/23

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

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<sup>4</sup> 12 MRSA §6072 (7-B) states: “The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.”