

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**David Wilson  
CAS LRx**

Experimental Aquaculture Lease Application  
Suspended Culture of Shellfish  
Casco Bay, Long Reach, Harpswell, Maine

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

David Wilson applied to the Department of Marine Resources (DMR or Department) for a three-year experimental aquaculture lease located in Long Reach, in Casco Bay, Harpswell, Cumberland County. The proposed lease is 3.94-acres and is for the suspended cultivation of quahogs (*Mercenaria mercenaria*), soft-shelled clams (*Mya arenaria*), and Atlantic razor clams (*Ensis directus*).<sup>1</sup>

**1. THE PROCEEDINGS**

DMR accepted the application as complete on March 25, 2022. Notice of the application and the 30-day public comment period was provided to state agencies, riparian landowners within 1,000 feet of the proposed site, the Town of Harpswell and its Harbormaster, and others on DMR's mailing list. Notice of the complete application and comment period was published in the April 15, 2022, edition of *The Forecaster*. Title 12 M.R.S.A. § 6072-A(6) provides that the Commissioner shall hold a public hearing if ten or more persons request a public hearing within the 30-day comment period. Twelve requests for a public hearing were received during the comment period; therefore, a hearing was scheduled for and held on May 20, 2024. Notice of the hearing was provided to state agencies, riparian landowners within 1,000 feet of the proposed site, the Town of Harpswell and its Harbormaster, and others on DMR's mailing list. Notice of the hearing and instructions on how to register to participate and how to apply for intervenor status were published in the April 19, 2024, and May 3, 2024, editions of *The Times Record*. At the close of the registration period, eight members of the public had registered to participate in the hearing, with six members of the public indicating that they wished to provide testimony.

By the close of the registration period, the Department received one application for intervenor status from Andrew Davis, whose shorefront property boundaries are within 1,000 feet of the proposed lease site. Mr. Davis's application to intervene stated that if the lease were granted, it may have direct impacts on his ingress/egress, recreational navigation, and fishing and other uses of the proposal area. The alleged impacts are germane to the criteria DMR must legally consider when evaluating an experimental lease proposal, and if the lease were granted it is possible those impacts could be direct and substantial. Therefore, on May 8, 2024, DMR granted full intervenor status to Andrew Davis.

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<sup>1</sup> Applicant originally requested 4.00 acres. MDMR calculations indicate the area is 3.94 acres.

On May 8, 2024, the Department issued a Procedural Order pursuant to Chapter 2.29 of the Department of Marine Resources regulations. The procedural order stipulated a 30-minute time limit for applicant and intervenor testimony, as well as a 15-minute time limit for the applicant and intervenor to cross examine the other party. The procedural order also required the applicant and intervenor to pre-file any proposed exhibits by 5:00pm on May 15, 2024. The applicant and intervenor were limited to 10 exhibits, each not to exceed 10 pages.

On May 9, 2024, the Department issued Participation Instructions to all members of the public who registered to participate in this hearing. These instructions stipulated a 3-minute time limit per person for public testimony, as well as a 10-minute time limit for the collective group of public participants to cross examine each party to the proceeding. The participation instructions also required members of the public to pre-file any proposed exhibits by 5:00pm on May 15, 2024. Members of the public were limited to 2 exhibits, each not to exceed 10 pages. The participation instructions provided that testimony should not be pre-filed.

At the time of the filing deadline, the Department received four proposed exhibits from the intervenor. The Department also received pre-filings from three members of the public: Scott Cowger, Katherine Chatterjee, and Nancy Freeman. Scott Cowger and Katherine Chatterjee also provided a copy of their testimony at this time. The applicant and intervenor were provided with copies of all filings in advance of the hearing.

During the hearing, DMR excluded the pre-filed testimony from Scott Cowger and Katherine Chatterjee, in accordance with the limits on pre-filed testimony established by the participation instructions. At the end of the hearing, DMR moved to exclude Andrew Davis Exhibits C-9, D-1, D-2, D-4, and D-5 as unduly repetitive. Davis objected to the exclusion of Exhibits C-9, D-1, D-2, and D-4 stating that they showed proximity of the proposal to his land. DMR elected to allow these exhibits into the record and excluded Exhibit D-5 without objection as unduly repetitive. DMR admitted Andrew Davis Exhibits A, B, C, and D-1 through D-4, Scott Cowger Exhibits 1-4, Nancy Freeman Exhibits 1 and 2, and Katherine Chatterjee Exhibits 2-5 into the record.

At the close of the record, the evidentiary record regarding this lease application includes the application, DMR's site report dated April 9, 2024, the case file, the pre-filings from Davis, and the pre-filings by members of the public as discussed above. The evidence from each of these sources is summarized below.<sup>2</sup>

## **LIST OF EXHIBITS**

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<sup>2</sup> These sources are cited, with page references, as App (Application), CF (case file), and SR (site report).

1. Case file
2. Application
3. DMR site report, issued on April 9, 2024
4. Andrew Davis Exhibits A, B, C, and D-1 through D-4
5. Scott Cowger Exhibits 1-4
6. Nancy Freeman Exhibits 1 and 2
7. Katherine Chatterjee Exhibits 2-5

Sworn testimony was given at the May 20, 2024, hearing by the following witnesses:

<b>Name</b>	<b>Affiliation</b>
David Wilson	Applicant
Andrew Davis	Intervenor
Scott Lindsay	MDIFW Staff
Karen Carlisle, Kathleen Davidson, Scott Cowger, Nancy Freeman, Katherine Chatterjee	Registered Members of the Public

### **Response to Improper Notice**

In testimony, Scott Cowger raised concerns that the hearing was improperly noticed and requested that the hearing be postponed and rescheduled (Cowger Testimony). Cowger cites 12 M.R.S.A. § 6072(6)(a), “personal notice of the hearing is required to be given [to] . . . any interested parties that have provided a written request for notification.” Cowger states that he delivered eight letters to the DMR office requesting notice for himself and seven other individuals but did not receive notice of the hearing (Cowger Testimony).

Mr. Cowger’s hearing request, dated April 21, 2022, states: “We request a formal public hearing be held on [Mr. Wilson’s lease proposal]. We would like the opportunity to present testimony to be considered during your review of the above application. Please let us know the time and location of the public hearing” (CF - Cowger Hearing Request). On October 18, 2023, Mr. Cowger emailed DMR to follow-up on the scheduling of the public hearing and asked: “will you [DMR], be notifying the authors of those letters by email when the public hearing is scheduled?” On October 19, 2023, DMR responded to Mr. Cowger and clarified laws and rules governing notice of lease hearings and that persons can enroll to receive notice of the hearing via GovDelivery. On October 19, 2023, Mr. Cowger stated “I have signed up for the notices through govdelivery.com.”

As this is an experimental lease application, it is governed by 12 M.R.S.A. § 6072-A. Notice requirements under 12 M.R.S.A. § 6072-A(7) do not require personal notice to be given to individuals who request it.

If 12 M.R.S.A. § 6072(6) were to apply, all notice requirements under the § 6072(6) were met. 12 M.R.S.A. § 6072(6)(A) states that, notwithstanding notice procedures provided by 5 M.R.S.A. § 9052(1)(A) of the Maine Administrative Procedure Act, “personal notice of the hearing is required to be given only to the lessee and the known riparian owners, the municipal officers of the municipality or municipalities in which or adjacent to which the lease is located and any interested parties that have provided a written request for notification.” GovDelivery is an online email subscription service offered by DMR in which users can subscribe to receive news and information alerts. When subscribing to DMR’s GovDelivery service, users are prompted to select topics for which they would like to receive updates and notices. These topics include Notices of Regulations and Hearings, and Aquaculture Notices, which may be further refined by geographic region. In his communications with DMR regarding notice of the hearing, Mr. Cowger stated that he had subscribed for notices through the GovDelivery service.

On April 19, 2024, notice of the hearing was delivered via the GovDelivery service. Although Mr. Cowger alleges he never received the notice, he communicated to DMR staff that he had subscribed to DMR’s GovDelivery service (Scott Cowger 4). In addition, Mr. Cowger registered to participate in the hearing, provided pre-filed exhibits for consideration, and appeared and testified at the hearing.

Accordingly, DMR concludes that the notice procedures complied with statutory requirements.

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

### **A. Proposed Operations**

The purpose of the proposed experimental lease site is to determine if the site is suitable for growing product and if the site is viable to pursue for a standard lease (App 5). The applicant is proposing to culture shellfish by either planting the seed on the bottom of the proposal or by using soft grow bags (App 5). The applicant would start with bottom culture but would move products into nylon bags if predation became a concern (Wilson/Rozov). If protection from predation is needed, the applicant would use 3’ x 4’ soft nylon bags (App 14). These bags would be staked into the mud on each corner (Wilson/Davis). The bags would be attached together with zip ties and all bags would be tied to 1/2 inch sinking rope (App 30). The applicant testified that these bags would eventually be covered by sediment in the mud (Wilson/Davis). If additional protection from predators is needed, the applicant would create cages of chicken wire over the mesh bags (Davis/Wilson). If necessary, there would be two rows of ten chicken

wire cages, with the nylon grow bags stored in the cages (App 27). There would be eight 2' x 4' PVC collection boxes, in two groups of four boxes in the NE and SE corners, to collect product (App 26 & 29).

Seeding in the proposal would take place from August to the end of October (Wilson/Rozov). The applicant would keep the gear in the proposal year-round, only removing the gear in winter months if risk of ice occurs (App 6). Tending and harvesting of the shellfish would happen year-round (App 5). The applicant would be on the proposal up to seven days a week for seeding, harvesting, and routine maintenance (App 6). Harvesting would be done by either bull raking or pulling up bags from the bottom of the proposal, or by hand harvesting (App 6). Solar powered gear was originally applied for in the application, but the applicant testified that they no longer intended to use any type of solar power (Wilson/Davis).

A portion of the proposed site is within the intertidal zone, and the town of Harpswell has a shellfish conservation program in accordance with 12 M.R.S.A. § 6671. Therefore, pursuant to 12 M.R.S.A. § 6072-A(8) and (11), the applicant is required to obtain consent from the municipal officers and from the owners of any upland parcels adjacent to the intertidal lands in question (SR 7). This permission was provided with the application (App 18-19, 38).

#### **a. Airboat**

The applicant proposes to access the site via airboat, a flat-bottomed vessel that is typically powered by a high-horsepower engine that drives an aircraft style propeller. The engine and propeller are affixed above the waterline making airboats ideal to access areas with shallow water when compared to a vessel rigged with an outboard motor. Based on the Department's experience and observation airboats are used throughout this and surrounding areas by wild shellfish harvesters to access flats and other shallow water areas. They may also be used by municipalities and law enforcement agencies.

The Department received a comment from a member of the public that noise from the airboat would be loud and disruptive and it should be limited or otherwise restricted. The lease decision criteria for experimental lease proposals are contained in 12 M.R.S.A. § 6072-A(13). While standard lease proposals are subject to the noise criterion contained in 12 M.R.S.A. § 6072 (7-A) and Chapter 2.37(1)(A)(9), experimental lease proposals are not. If the experimental lease is granted, it would expire after three years unless the applicant elected to file an application to convert all or a portion of the site to a standard lease. Such an application would be subject to analysis of the standard lease decision criteria, including the noise criterion. Lease holders that utilize airboats are required to comply with applicable

provisions in law that may apply to the use of airboats.<sup>3</sup> Any DMR-imposed limitations or restrictions governing the use of an airboat would be based on the applicable criteria and evidence in the record.



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

## **B. Site Characteristics**

On July 26, 2023, DMR scientists assessed the proposed lease area. DMR scientists arrived on site at approximately 1:57pm (SR 2). The proposed lease area is located along the western side of a shallow

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<sup>3</sup> The Legislature enacted a law relating to airboat noise limits. P.L. 2024, ch. 583 (effective Mar. 28, 2024), to be codified at 12 M.R.S. A. § 13068-A(10-A).

cove in intertidal waters approximately 182 feet from the shore at mean high water (MHW) (SR 2). Water depths for the proposal were determined to be between 2.3 and 3.7 feet (SR 2). Correcting for tidal variations derives depths at mean low water (MLW) to be 0 feet (SR 2). The surrounding area is comprised of rocky shoreline with forested uplands (SR 2). There is a residential area along the western shore of the cove with approximately 12 houses in the general proximity of the proposal (SR 2). The bottom of the proposed lease area is mud with clam shell rubble (SR 3).

### **3. STATUTORY CRITERIA & FINDINGS OF FACT**

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. § 6072-A. This statute provides that a lease may be granted by the Commissioner 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 water related uses of the area, taking into consideration other aquaculture uses in the area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments. The Commissioner must also determine that the applicants have demonstrated that there is available source of organisms to be cultured on the lease site.

#### **A. Riparian Access**

Before granting a lease, the Commissioner must determine that the proposed project “will not unreasonably interfere with the ingress and egress of riparian owners[.]” 12 M.R.S.A. § 6072-A(13)(A). In examining riparian owner ingress and egress, the Commissioner “shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures.” Chapter 2, § 2.37(1)(A)(1).

The proposed lease area is in Long Reach, in Casco Bay, Harpswell. During the site visit on July 23, 2023, DMR staff observed five piers within 1,000 feet of the proposal (SR 5). Four of the piers were along the western shore of the cove, and all had docks attached to them (SR 5). One pier was along the eastern shore and did not have a dock associated with it (SR 5). The nearest dock to the proposal was located approximately 158 feet to the southwest of the proposal (SR 5). There was one mooring observed within 1,000 feet of the dock, approximately 905 feet south (SR 5).

A Harbormaster Questionnaire was received from the Harpswell Harbormaster, dated May 10, 2022. The Harbormaster indicated that “riparian landowners should still have reasonable access to and from their property both by vessel and by foot” (CF – Harbormaster Questionnaire).

The nearest dock is 158 feet to the southwest of the proposal. This dock is owned by the intervenor, A. Davis (Davis/Ellis). At the hearing, Davis raised concerns that the location of the proposal would

impact his ability to access his dock from the north (Davis Testimony). Davis testified that he uses a 26' boat with two motors (Davis Testimony). Davis testified that, due to the location of his dock in the intertidal area, he already needs to wait until after low tide to utilize his boat and dock (Davis Testimony). Davis testified that if this proposal were granted, he would need to wait longer after low tide to utilize his boat, because he would need to navigate around the proposal (Davis Testimony). Currently, Davis travels directly north from his dock, across the intertidal area, to access the navigational way (Davis Testimony). This route currently cuts directly through the footprint of the proposal. If this proposal were granted, Davis stated he would need to alter this route by first traveling south, to get around the proposal, before then traveling north (Davis Testimony). Davis stated that it would be possible for him to access his dock by first traveling south past his dock before turning around, but that Long Reach gets shallower to the south (Davis/Rozov).

Davis expressed concern about needing to wait longer after low tide to utilize his dock and boat, due to needing to first travel south before turning north and navigating around the proposal. The southern boundary of the proposal is approximately 158 feet northeast of Davis's dock. With this distance between the dock and the proposal boundary, it is reasonable that a boat, such as one described by Davis, would be able to utilize the 158 feet of distance to the north of the dock to navigate east into the deeper navigational way before then continuing to navigate north, which would avoid needing to navigate south into shallower waters. Additionally, Davis testified that navigating south before then turning north in the navigational way was possible from his location, as was going south past his dock before turning around and approaching his dock from the south when returning from boating. Based on the evidence, the proposal may alter Mr. Davis's preferred navigational routes, but these impacts are not unreasonable.

Davis testified that there are other docks associated with multiple houses to the south of his property, and that the boats associated with these docks use both the intertidal area and the deeper water in the center of Long Reach to travel north (Davis/Wright). This testimony reveals that the waters of Long Reach to the south of Davis's property are still navigable, as multiple docks and boats are present to the south of his property.

Although Davis voiced concerns that Long Reach does get shallower towards the south, there is testimony on the record that there are multiple docks to the south of Davis's dock in Long Reach, that these docks are accessed by motorboat, and that the motorboats are able to travel in Long Reach, south of Davis's property. Because the area between Davis's dock and the proposed boundary, as well as the navigable waters to the south of Davis's dock are sufficient to provide access to existing riparian owners, this proposal would not cause unreasonable interference with ingress and egress of riparian owners.

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



## **B. Navigation**

When examining navigation, the Commissioner considers whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. 12 M.R.S.A. § 6072-A(13)(B). In examining navigation, the Commissioner “shall consider the current uses and different degrees of use of the navigational channels in the area in determining the impact of the lease operation.” Chapter 2, § 2.37(1)(A)(2).

The proposal is located partially in intertidal waters near the western shore of Long Reach (SR 5). Based on aerial imagery, there is a narrow channel approximately 90-100 feet to the east of the proposal at MLW (SR 5). During DMR’s site assessment, DMR staff observed four moorings to the south of the proposal at the southern end of the navigable waterway (SR 5). DMR staff also observed a jet ski and an airboat navigating to the north of the site (SR 5).

A Harbormaster Questionnaire was received from the Harpswell Harbormaster, dated May 10, 2022. The Harbormaster indicated this proposal would cause little to no disruption to navigation in the area (CF – Harbormaster Questionnaire).

At the hearing, testimony was provided that boats traveling in Long Reach utilize both the intertidal areas and the deeper navigational way in the center of Long Reach (Davis/Wright). While the proposal might cause vessels to seek alternate routes instead of taking a more direct route through where the proposal is located, there is approximately 629 feet between the eastern side of the proposal and the eastern shoreline of Long Reach, which could still be utilized for navigation. This would provide adequate space for the volume and type of watercraft that operate in the area. Additionally, smaller vessels such as canoes, kayaks, paddleboards, and appropriately sized motorized boats would still be able to navigate in the area between the western boundary of the proposal and the western shoreline of Long Reach. This area is approximately 182 feet at its narrowest point (SR 4). With the area between the eastern boundary of the proposal and the eastern shoreline of Long Reach still adequate for motorboats to navigate, and the area between the proposal and the western shoreline of Long Reach still adequate for smaller watercrafts and certain motorized boats, this proposal would not interfere with navigation in the area.

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

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

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other uses of the area. 12 M.R.S.A. § 6072-A(13)(C); Chapter 2.37(1)(A)(3). In examining fishing and other uses, 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).

**Fishing.** During the site visit conducted on July 23, 2023, DMR staff did not observe any fishing activities (SR 6). The applicant states that commercial pogy [Atlantic menhaden, *Brevoortia tyrannus*] fishing occurs in the channel to the east of the farm in the summer months (App 7). This has been observed to occur around four times a month (Wilson/Rozov). Additionally, the applicant has observed recreational striped fishing in the channel to the east of the proposal (App 8).

Davis submitted two exhibits depicting recreational fishing in the area (Davis Exhibit A-4 & A-5). Davis testified that he had observed commercial shellfishing in the area but was unable to determine if this activity occurred within the boundaries of the proposed lease. (Davis/Ellis).

In response to the Harbormaster Questionnaire, the Harbormaster indicated there has historically been commercial and recreational shellfish harvesting in the area, but currently the location does not have adequate shellstock for this activity.

While commercial and recreational fishing does occur in Long Reach, no evidence was provided to show that commercial or recreational fishing occurs within the boundary of the proposal or near the boundary of the proposal in a manner that would be interfered with by the proposed lease. The observed pogy fishing did not occur within the boundary of the proposal (Wilson/Rozov). Davis Exhibit A-4 depicts fishing from the Davis’s dock, approximately 158 feet from the proposal. Davis Exhibit A-5 depicts fishing on Davis’s boat and does not depict any notable landmarks that would signify that this activity is taking place within the proposal boundaries. The proposed lease would not limit fishing activity from boats in the deeper waters of Long Reach or along shorelines, as there is approximately 182 feet between the western boundary of the proposal and the western shoreline of Long Reach.

Therefore, it is reasonable to conclude that the proposed lease would not unreasonably interfere with commercial or recreational fishing.

**Other uses.** During the site visit, Department staff observed an airboat and jet ski to the north of the proposal area (SR 6).

The applicant also stated that he has observed recreational boating and kayaking activity in the area (App 8). The applicant has also observed recreational canoeing and powerboating in the area (Wilson/Davis). The applicant testified that these activities can be seen about five times a week (Wilson/Rozov).

Davis submitted evidence depicting boating and swimming activities that occur in the area (Davis Exhibits B-2, 3, 5 through 9 & C-1 through 8). Davis also testified to the presence of kayaking, canoeing, swimming, and boat tubing occurring in the area (Davis Testimony). Davis expressed concerns about kayakers or people wading through the mud at low tide and injuring themselves on gear that has been buried by sediment (Davis Testimony).

In response to the Harbormaster Questionnaire, the Harbormaster indicated occasional recreational boating occurs in the area, but such activity is limited due to the area being intertidal.

While boating in smaller watercrafts, such as kayaks and canoes, does occur in the area around the proposal, the proposal would leave approximately 182 feet between the western proposal boundary and the western shoreline of Long Reach, leaving adequate room for these crafts to navigate the area. Additionally, over 600 feet would remain from the proposal to the eastern shoreline of Long Reach, leaving enough room for watercrafts of multiple different sizes to pass the proposal unimpeded. As for the safety concerns raised by Davis, related to wading or swimming, the lease, if granted, would have to be marked in accordance with Chapter 2.80. In accordance with those requirements, there would be yellow marking buoys denoting the lease area. Boaters and swimmers in the area would be able to identify the boundaries of the site and avoid entering the area where gear would be located.

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

#### **D. Other Aquaculture Uses**

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

There are no active aquaculture leases or Limited Purpose Aquaculture sites within 1,000 feet of the proposal (SR 7).

No testimony regarding interference to other aquaculture activities in the area was given at the hearing.

**Therefore**, the activities proposed for this site will not unreasonably interfere with other aquaculture uses of the area.

#### **E. Flora & Fauna**

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna. 12 M.R.S.A. § 6072-A(13)(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, § 2.37(1)(A)(5).

On July 26, 2023, DMR staff conducted a transect of the proposal using a drop camera to assess the epibenthic ecology of the proposed lease (SR 8). No epibenthic flora or fauna was observed on underwater footage (SR 8).

During DMR’s site visit, no eelgrass (*Zostera marina*) was observed (SR 8). Records of seagrass collected in 2022 indicate that there is no mapped eelgrass within 1,000 feet of the proposal (SR 8). The nearest mapped eelgrass is over 3.4 miles to the south (SR 8).

During the site visit, DMR observed a great blue heron (*Ardea herodias*), double-crested cormorants (*Nannopterum auritum*), common terns (*Sterna hirundo*), osprey (*Pandion haliaetus*), a bald eagle (*Haliaeetus leucacephalus*), and striped bass (*Morone saxatilis*) (SR 9).

There is a documented bald eagle nest approximately .84 miles to the northwest of the proposal. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the entire proposed lease is located within Tidal Waterfowl and Wading Bird Habitat (TWWH). On May 16, 2022, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment”, stating that “to avoid impacts to this habitat and the birds that depend on them, we recommend relocating the lease outside of this resource.”<sup>4</sup>

At the hearing, Scott Lindsay, wildlife biologist with MDIFW, testified that, after reviewing the site report and application with other staff members of MDIFW, the agency no longer believed that the proposal would need to be relocated (Lindsay/Ellis). Lindsay testified that although the proposal is located within an area designated as TWWH, there are additional factors beyond the habitat designation to help inform a final recommendation (Lindsay Testimony). When deciding if an activity would adversely impact wildlife in the area, MDIFW evaluates whether the activity would take away a specific quality of the area that wildlife needs to survive and cannot be found elsewhere in the area (Lindsay Testimony). The specific quality here, mudflats, will not be impacted due to the large number of mudflats still accessible to the wildlife surrounding the proposal (Lindsay/Rozov). In MDIFW’s final assessment, because there are no eelgrass

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<sup>4</sup> Email correspondence between MDIFW and DMR.

beds or mussel beds present and there are extensive mudflats adjacent to the proposal, this site will not cause an “irreparable impact to habitat such that it will have a quantifiable effect on birds of the wildlife species that use it” (Lindsay Testimony).

Concern over how this activity, including using an airboat to access the site, would impact wildlife in the area was voiced by members of the public (Carlisle Testimony). MDIFW wildlife biologist testified that an airboat, as well as any boat down to a kayak, might elicit a response from birds in the area, but the response elicited will vary in intensity of response, as well as vary from bird to bird (Lindsay/Cowger). Lindsay testified that this is a developed coastline, and wildlife can adapt provided the habitat itself is not being impacted (Lindsay Testimony). Additionally, the use of airboats currently exists in Long Reach (Davis Exhibit B-10; SR 6) and the use of airboats is regulated by MDIFW.

Based on the evidence that there are no eelgrass beds in the area and testimony from MDIFW that the proposal would not have an adverse impact on wildlife in the area, DMR concludes that the proposed aquaculture activities for this lease site will not interfere with the ecological function 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.

#### **F. Public Use & Enjoyment**

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, or docking facility owned by the Federal Government, the State Government, or a municipal government. 12 M.R.S.A. § 6072-A(13)(F); Chapter 2, § 2.37(1)(A)(7); Chapter 2, § 2.64(11)(A).

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 10).

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

#### **G. Source of Organisms**

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source’s biosecurity, sanitation, and applicable fish health practices. 12 M.R.S.A. § 6072-A(13)(E); Chapter 2.37(1)(A)(6).

The applicant proposes to obtain hard clam (*M. mercenaria*) stock from Muscongus Bay Aquaculture, Downeast institute, and Mook Sea Farm (App 2). Mook Sea Farm and Downeast Institute are not

currently approved hatcheries for hard clam stock. Therefore, the applicant may only obtain hard clam stock from Muscongus Bay Aquaculture or another DMR approved hatchery.

The applicant proposes to obtain soft-shelled clam (*M. arenaria*) stock from Muscongus Bay Aquaculture, Downeast Institute, and Mook Sea Farm (App 2). Mook Sea Farm and Muscongus Bay Aquaculture are not currently approved hatcheries for soft-shelled clam stock. Therefore, the applicant may only obtain hard clam stock from Downeast Institute or another DMR approved hatchery.

The applicant proposes to obtain Atlantic razor clam (*E. directus*) stock from Downeast Institute. Downeast Institute is not currently an approved hatchery for razor clam stock and there are no approved sources of stock for razor clam. The applicant has not demonstrated an approved source for this species. Therefore, it will not be authorized if the lease is granted. However, if the lease is granted and an approved source becomes available, prior to the expiration of the lease, the holder may request a source review. The review must be requested by the applicant in writing and include the name of the approved source. If DMR approves the request, then the applicant may deploy razor clams. If the lease is granted, a condition will be added accordingly.

**Therefore**, the applicant has demonstrated that there is available source of stock for hard clam and soft-shelled clam to be cultured for the lease site but has failed to demonstrate that there is an available source of razor clams for the lease site.

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

Based on the above findings, the Department concludes that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.
4. The aquaculture activities proposed for this site will not unreasonably interfere with other aquaculture uses in the area.
5. 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.

6. 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.

7. The applicant has demonstrated that there is available source of stock for hard clam and soft-shelled clam to be cultured for the lease site but has failed to demonstrate that there is an available source of razor clams for the lease site.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities, with the exception of cultivation of Atlantic razor clams, 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 3.94 acres to David Wilson, 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 lessee<sup>5</sup>; 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 suspended cultivation of quahogs (*Mercenaria mercenaria*) and soft-shelled clams (*Mya arenaria*). 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 square feet 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(12)(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-A(15) and Chapter 2.64(11)(B). Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while

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<sup>5</sup> 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.”

preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.  
The following condition is imposed on this lease:

1. If an approved source of Atlantic razor clam becomes available prior to the expiration of the lease, the holder may request a source review, in writing, which must include the name and address of the approved source. Razor clams may not be deployed unless and until the lease holder receives written authorization from DMR.

#### **7. REVOCATION OF EXPERIMENTAL LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) that no substantial aquaculture or research has been conducted on the site over the course of the lease, that aquaculture has been conducted in a manner substantially injurious to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: \_\_\_\_\_

12/19/24

\_\_\_\_\_  
Patrick C. Keliher, Commissioner

Department of Marine Resources