

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Krista Tripp**

**WES BC**

Lease Expansion Application  
Suspended Culture of Oysters  
Weskeag River  
South Thomaston, Maine

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

The applicant, Krista Tripp, is requesting a 0.22-acre expansion to Tract 1 of existing standard lease WES BC. The site is 0.967-acres located in South Thomaston in the Weskeag River and is comprised of five tracts. The proposed expansion is for the suspended culture of American/Eastern oysters (*Crassostrea virginica*).

WES BC was originally granted to Paul Desaulniers on July 28, 2004, for a period of ten years and was subsequently renewed on July 28, 2014, for a period of ten years, ending on July 27, 2024. On December 18, 2018, the lease was transferred to Krista Tripp for the remainder of the original lease term. On August 24, 2020, DMR granted a gear amendment to add helix anchors, plastic floats, and plastic bags/cages to the lease site.

**1. THE PROCEEDINGS**

DMR accepted the expansion application as complete on September 1, 2022. Notice of the completed application was provided to state agencies, riparian landowners within 1,000 feet of the lease site, the Town of South Thomaston, and subscribers to DMR's aquaculture email listserv. Notice of the completed application was published in the *Courier-Gazette* on September 29, 2022. Provisions set forth in 12 M.R.S.A. §6072 (12-C) provide for a 30-day comment period. Lease expansions are not adjudicatory proceedings. Two comments from the public were received.

The evidentiary record before DMR regarding this lease expansion application includes three exhibits (see exhibit list below).<sup>1</sup>

**LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on February 26, 2024

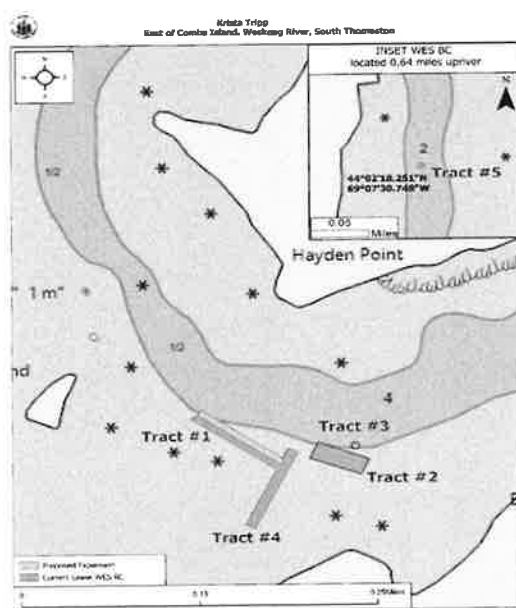
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<sup>1</sup> Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

## 2. DESCRIPTION OF THE PROJECT

### A. Proposed Expansion

The applicant proposes a 0.22-acre expansion to Tract 1 (Figure 1). The proposed expansion would add two consecutive 175-foot lines with a maximum of 200 bags that measure 20-inch by 40-inch or 40.5-inch by 36-inch by 9-inch wire cages plus buoys and anchors (App 7). The additional line and associated lease would be used to culture American oysters at various stages of growth (App 11). The cages/bags will rest on the sea floor during the winter months (App 8).



**Figure 1:** Vicinity map. Image taken from DMR site report.

### B. Site Characteristics

The proposed lease expansion is located on the Weskeag River approximately 476 feet east of the northern point of Combs Island. On October 12, 2023, DMR scientists assessed the proposed lease site, arriving on-site at approximately 10:15 AM.

DMR began collecting depths at the proposed site at approximately 10:15 AM. The tide was rising with the next high tide predicted to occur at 10:18 AM. Depths were collected at the proposed expansion corners and determined to be between 11.2 and 15.7 feet. Correcting for tidal variations derives water depths to be approximately 1.9 to 6.4 feet at mean low water (MLW, 0.0 feet) (SR 2).

DMR observed the bottom characteristics of the proposed lease site via a remotely operated vehicle (ROV). Bottom characteristics were categorized using the Coastal and Marine Ecological

Classification Standard (CMECS), a national standard for describing features of the marine environment. The bottom of the proposed lease site is primarily composed of mud and shell rubble (SR 2).

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

Pursuant to 12 M.R.S.A §6072 (12-C)(E), a lease expansion may be granted by the Commissioner upon determining that it would satisfy the criteria set forth in 12 M.R.S.A. §6072 (7-A). This statute provides that a lease may be granted by the Commissioner upon determining that the project will not unreasonably interfere with: the ingress and egress of riparian owners; 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.

In addition, Chapter 2.61(4) provides that the expansion must be consistent with the Commissioner's findings on the underlying lease application in accordance with Chapter 2.37(A), it does not violate any of the conditions set forth in the original lease, the lease expansion is not for speculative purposes; and the expansion will not cause the applicant to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

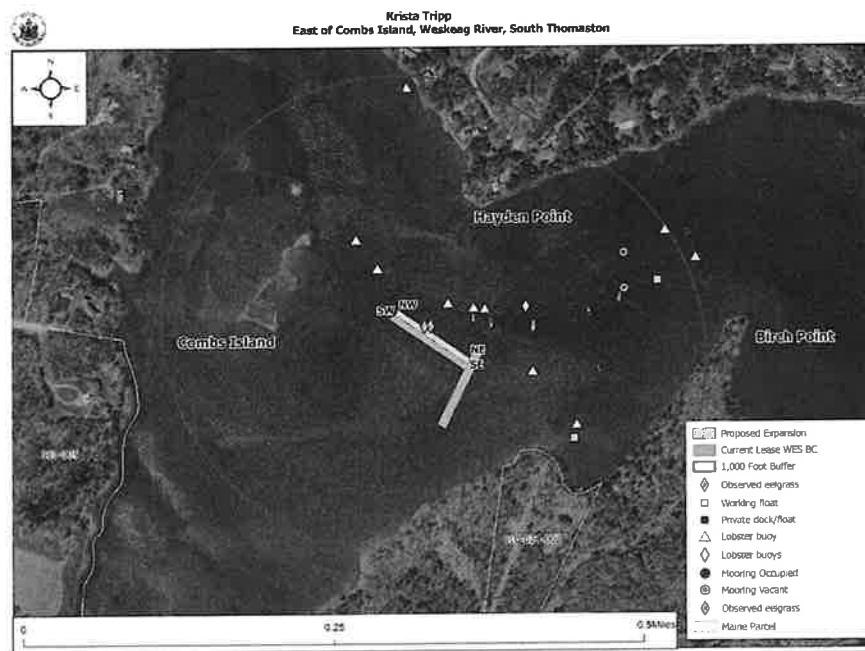
#### **A. Riparian Access**

The statute and regulations governing aquaculture leasing require the Commissioner to examine whether riparian owners can safely navigate to their shore (12 M.R.S.A. § 6072(7-A)(A); Chapter 2.37(1)(A)(1)). In examining riparian owner ingress and egress, the Commissioner "shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures" Chapter 2.37(1)(A)(1).

The northwest corner of the proposed expansion extends 12.4 feet into the charted navigational channel (SR 5). During the site visit on October 12, 2023, DMR observed approximately seven occupied and two unoccupied moorings in the vicinity of the proposed expansion. The two nearest moorings were each occupied with a commercial fishing vessel and were approximately 161 and 235 feet north of the proposed expansion. Additionally, DMR observed a working float located 550 feet southwest from the proposed expansion and a working lobster floating dock 862 feet northeast from the proposed expansion. The floating dock appeared to be associated with lobster fishing activity. In addition to the two working structures, DMR also

observed four private recreational docks in the northern vicinity of the proposed expansion with the closest being located 458.7 feet north of the proposed expansion (SR 4-5).

Figure 2 depicts the location of observed moorings, docks, floats, and lobster trap buoys in relationship to the proposed lease expansion. The figure was generated using georeferenced aerial photographs provided by the Maine Office of Geographic Information Systems (MEGIS). Based on the imagery, at least four commercial vessels and a small powerboat (skiff) are moored within the area.



**Figure 2:** Proposed expansion area with site visit observations and certain parcel boundaries displayed. Image taken from DMR site report with parcels added for purposes of this decision. <sup>2</sup>

Barry Baudanza, a riparian owner, who also commercially fishes in the area, submitted comments stating that the proposed expansion may impact his ability to access his moorings, dockage, and storage<sup>3</sup> (Baudanza email). Mr. Baudanza did not provide the size or type of vessels that he moors in the vicinity of the lease or where the mooring, dock, or storage infrastructure are located in relationship to the proposed expansion. The closest observed mooring to the proposal is 161 feet to the north and the closest observed work float is 550 feet to the southwest. According to the riparian landowner list, Mr. Baudanza owns parcel 10-34-002, which is ~207 feet at mean low water from the proposed expansion. This parcel is depicted in Figure 2. Ervine Curtis, another riparian

<sup>2</sup> For clarity purposes, only Tracts 1 and 4 of WES BC are displayed in this figure.

<sup>3</sup> Mr. Baudanza indicated that he stores live lobsters in the area for future markets.

owner, submitted a comment stating that the proposed expansion will be placed in an area he uses to navigate to and from his property (Curtis email). According to the riparian landowner list, Mr. Curtis owns parcel 10-005, which is ~144 feet from the proposed expansion at mean low water. This parcel is also depicted in Figure 2.

### **Discussion**

In this case, the applicant is proposing to expand the proposed site into a navigational channel toward existing moorings and other infrastructure. The gear would include up to 200 hundred floating cages that would be deployed on the surface of the water during most of the year. The cages would be sunk to the bottom of the site during the winter months. One riparian landowner submitted a comment stating that the proposed expansion would occupy the route they currently take to access their property. Another riparian landowner stated that the proposal may hinder their ability to access moorings, docks, or other infrastructure.

The area contains at least seven active moorings, two work floats, and four docks. Based on the comments and site report observations, the area is utilized for commercial fishing and aquaculture with riparian landowners also regularly traversing the area to access property, moorings, or other structures. It is likely that the expansion of the lease to within 161 feet of a mooring would restrict the approach to that mooring. In addition, it would likely limit the ability of riparian owners to access their shorefront property as it would expand into the navigational channel which is already occupied by moorings, work floats, and lobster buoys.

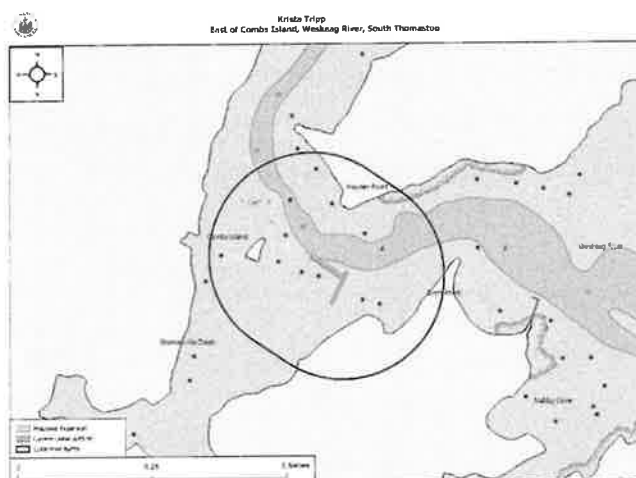
**Therefore**, the aquaculture activities proposed for this site would unreasonably interfere with the ingress and egress of any riparian owner.

### **B. Navigation**

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

According to NOAA navigational charts, the proposed expansion is located almost entirely within charted intertidal waters (Figure 3). During the site assessment, DMR scientists measured water depths within the boundaries of the proposed expansion. DMR measurements indicate depths within the proposed expansion are from 1.9 to 6.4 feet at MLW, therefore the proposed expansion is located within subtidal waters. The NW corner of the proposed expansion is located 12.4 feet into the charted navigational channel. There is 216.2 feet of available channel to the northeast of the proposed expansion at MLW. Water depths within the channel adjacent to the proposed expansion are charted at 0.5 feet at MLW (SR 5).

Based on the NOAA chart, DMR would expect that most navigation would occur in the marked channel as water depths around the proposed site and surrounding nearshore areas are shallow. Based on the aerial imagery provided by MEGIS, commercial vessels and moorings appear to be concentrated in the marked navigational channel where water depths are deeper. This is supported by observations in the site report, which depict several moorings, work floats, and lobster buoys within the channel (SR 4). Some of the moorings were occupied by commercial vessels at the time the site visit occurred (SR 4).



**Figure 3:** Navigational channels in the vicinity of the proposed lease area.<sup>4</sup>

As noted in section 3A of this decision, DMR received a comment from a riparian landowner who regularly navigates in the area (Curtis email). Given the boundaries of the existing lease, the riparian landowner stated that his ability to navigate is already limited to a small area near existing gear. The riparian landowner expressed concerns that granting the expansion would completely block the portion of the river he uses to navigate to his home and generally close off the cove, and that navigating in the area at night, as the landowner currently does, would be particularly dangerous due to the risk of collision with the applicant's gear (Curtis email).

### **Discussion**

The applicant is proposing to deploy up to 200 floating cages in the expanded area. The cages would be suspended on the surface of the water year-round except for the winter months. The northwest corner of the proposed expansion, if approved, would be located 12.4 feet into the charted navigational channel. The overall usable channel in this instance is 216.2 feet, so the expansion as proposed would

<sup>4</sup> For clarity purposes, only Tracts 1 and 4 of WES BC are displayed in this figure.

reduce that usable channel by almost 6 %. This channel is already occupied by moorings, work floats, and lobster buoys as shown in Figure 2. In addition, deeper waters are limited to the main navigational channel as shown in Figure 3. At least one individual who regularly navigates in the area noted that the expansion would completely block the route he takes to access his property and restrict access to sections of the cove. Based on the record, the expansion as proposed would significantly reduce navigable area in a portion of the Weskeag River that is already constrained.

**Therefore**, the aquaculture activities proposed for this site would unreasonably interfere with navigation.

### C. Flora & Fauna

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

**Site observations.** DMR utilized an ROV to assess the epibenthic ecology of the proposed lease. Epibenthic flora and fauna observed in common abundance on underwater footage is included below in Table 1.

**Table 1.** Common species observed using underwater camera footage.

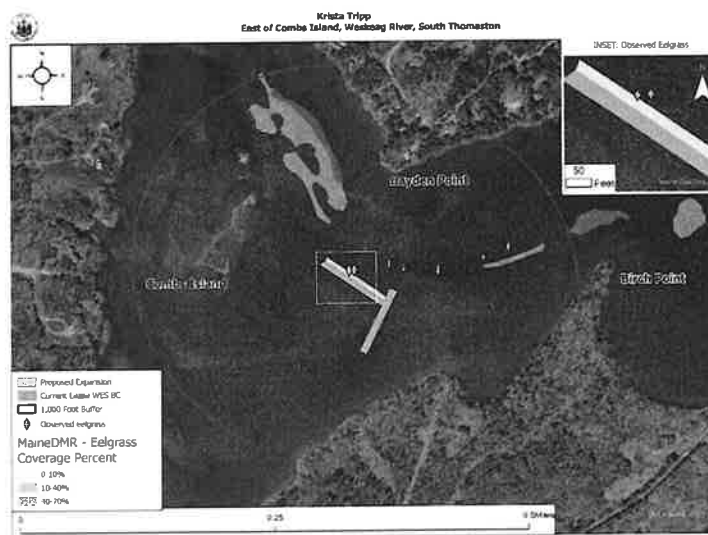
Species Observed	Abundance
Hermit Crabs ( <i>Pagurus spp.</i> )	Common
Rhodolith Substrate	Common
Pancake Batter Tunicate ( <i>Didemnum vexillum</i> )	Common
Eelgrass ( <i>Zostera marina</i> )	Common
Green Crab ( <i>Carcinus maenas</i> )	Common
Periwinkle snails ( <i>Littorina spp.</i> )	Common
Dog whelk ( <i>Nucella lapillus</i> )	Common

**Wildlife.** According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is located partially within mapped tidal waterfowl and wading bird habitat. Data collected by the United States Fish and Wildlife Service in 2022 by aerial nest survey shows no mapped bald eagle (*Haliaeetus leucocephalus*) nesting site within the vicinity of the proposed expansion (Figure 6).

During DMR's site assessment, scientists observed double-crested cormorants (*Nannopterum auritum*), an osprey (*Pandion haliaetus*), a bald eagle (*Haliaeetus leucocephalus*), sandpipers (*Calidris sp.*) a common loon (*Gavia immer*), a great blue heron (*Ardea herodias*), Bonaparte's gulls (*Chroicocephalus Philadelphia*), and herring gulls (*Larus argentatus*) in the general vicinity of the proposed expansion.

On October 12, 2022, a Wildlife Biologist with MDIFW responded by email to a "Request for Agency Review and Comment", stating that minimal impacts to wildlife are anticipated.<sup>5</sup>

**Eelgrass.** The application states that there is no eelgrass within or around the proposed lease area (App 13). Observations by the applicant were made throughout 2021 on foot and within a rowboat at low tide (App 13). Historical records of eelgrass collected by DMR in 2010<sup>6</sup> indicate areas of established eelgrass within 1,000 feet of the proposed expansion. The nearest mapped eelgrass is approximately 168.6 feet to the north (Figure 4). During the site visit, sporadic rooted blades of eelgrass were observed consistently throughout the expansion area. DMR also observed denser patches of established eelgrass near the boundary of the existing lease and the proposed expansion.



**Figure 4.** Mapped eelgrass (*Z. marina*) in the vicinity of the proposed expansion<sup>7</sup>.

**Discussion.** Eelgrass beds form an important marine and estuarine coastal aquatic habitat. Eelgrass provides shelter for juvenile fish, and invertebrates, is a site for primary settlement of the larvae of some bivalve mollusks and invertebrates, and in certain locations helps to stabilize unconsolidated

<sup>5</sup> Email correspondence between MDIFW and DMR

<sup>6</sup> Data obtained from The Maine Office of GIS "GISVIEW.MEDMR.Eelgrass". This is the most current record of mapped eelgrass in the vicinity of the proposal.

<sup>7</sup> For clarity purposes, only Tracts 1 and 4 of WES BC are displayed in this figure.



sediments and shorelines. The proposed expansion is located in water depths that DMR would expect to support eelgrass growth/development. DMR observed rooted eelgrass during the site assessment, at a density and level of establishment that indicates the proposed expansion area is supporting a viable eelgrass stand.

Physical disturbance and shading may negatively impact the health of established eelgrass stands. The expansion proposes 200 additional cages or bags, which would result in direct shading of the viable eelgrass as well as the deployment of gear including anchors which are likely to physically impact the bed. Given these factors, the proposed operations will unreasonably interfere with the ability of the lease site and surrounding areas to support eelgrass.

**Therefore**, the aquaculture activities proposed for this site would unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

#### **D. Visual Impact**

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

No additional support structures are proposed. According to the application, if approved, red or yellow toggles would be used in the expanded area. Chapter 2.37(1)(A)(10) requires all equipment to be of a color that does not contrast with the surrounding area, namely grays, blacks, browns, blues, and greens. Therefore, the colors proposed do not comply with DMR's visual impact standards for gear.

**Therefore**, the equipment utilized on the proposed lease site would not comply with the DMR's visual impact criteria.

#### **E. 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 (12 M.R.S.A. §6072(7-A)(C); Chapter 2.37(1)(A)(3)). Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area (Chapter 2.37(1)(A)(4)).

**Fishing.** During the site assessment, DMR observed approximately ten lobster buoys within 1,000 feet of the proposed expansion. In addition, a cluster of three lobster buoys was observed in the vicinity of the expansion proposal. Recreational fishing was not observed at the time of the site visit (SR 6).

A riparian owner submitted comments stating that the proposed expansion may encroach on his commercial fishing gear including access to moorings, dockage, and storage (Baudanza email). The

comment does not contain enough information about Mr. Baundanza's fishing activity to make a finding about unreasonable interference with that activity. For example, it is unclear if and how the proposed expansion would impact the deployment of lobster traps. Mr. Baundanza's concerns related to riparian ingress and egress are addressed in section 3A of this decision.

**Therefore**, DMR is unable to determine if the aquaculture activities proposed for this site would unreasonably interfere with fishing.

**Other aquaculture uses:** The applicant currently operates WES BC which is comprised of four nearby tracts and an additional fifth tract 0.62 miles upriver. WES BC is the only aquaculture lease site within 1,000 feet of the proposed expansion. There are no limited purpose aquaculture (LPA) sites within 1,000 feet of the proposed expansion (SR 6).

**Other water-related uses.** The application states there is occasional kayaking in the area (App 13). No public comments were received regarding potential impacts to other water-related uses in the area.

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

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

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

The proposal is not within 1,000 feet of any beach, park, docking facility, or conserved lands owned by federal, state, or municipal governments (SR 10).

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

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

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

The source of stock identified in the original decision was Pemaquid Oyster Company in Waldoboro, Maine. The applicant has not identified a new source of stock in the expansion application.

Pemaquid Oyster Company is not currently an approved hatchery for oyster stock. DMR is aware that Pemaquid Oyster Company holds leases, but those are in the Damariscotta River, which is a restricted area due to MSX. Because the Damariscotta River is a restricted area, oysters could not be sourced from any aquaculture sites within the Damariscotta River for deployment in the Weskeag River. Therefore, if the lease expansion were approved, the applicant would be required to obtain stock from a DMR approved source.

**Therefore,** the applicant has not demonstrated that there is an available source of stock to be cultured for the lease site.

#### **H. Light**

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

According to the application, no additional lights would be used on the proposed lease site.

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

#### **I. Noise**

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

According to the application, no additional noise would be generated at the site.

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

#### **J. Original Lease Conditions**

The following conditions were applied to the original lease decision:

1. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80.
2. Navigation, recreational boating and fishing shall be allowed in open areas of the lease.

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

If granted, the proposed lease expansion would not violate any of these conditions which are specific to site marking and allowable uses in the lease area. If the expansion were granted, it would be subject to these same conditions.

**K. Speculative Purposes**

Chapter 2.61(4)(C) of DMR's regulations provides that in determining whether an expansion is proposed for speculative purposes, DMR must consider "whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." The application states that the site is used as a "grow site" before the oysters are moved to other sites (App 38).

**Therefore**, since the site is currently utilized for aquaculture, the lease is not being expanded for speculative purposes.

**L. Aggregate Holdings**

According to DMR records, this is the only lease currently held by the applicant.

**Therefore**, if approved, the lease expansion would not cause the applicant to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

**4. CONCLUSIONS OF LAW**

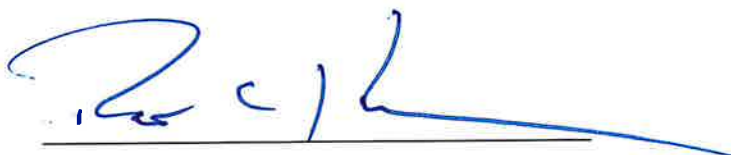
The evidence in the record demonstrates that the proposed aquaculture activities do not satisfy all the requirements for granting a lease expansion as set forth in 12 M.R.S.A §6072(12-C). Since the application fails to satisfy all the criteria, it must be denied.

**5. DECISION**

Based on the foregoing, the application of Krista Tripp for an expansion of lease WES BC is denied.

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

9/3/24



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