

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Nor'Easter Oyster Co.

Experimental Aquaculture Lease Application
Suspended and bottom culture of American Oysters
Johns River, South Bristol

Findings of Fact, Conclusions of Law, and Decision

Nor'Easter Oyster Co. applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease on 3.30 acres located northeast of Peabow Island and west of Foster Island, Johns River, South Bristol.¹ The proposal is for the bottom and suspended culture of American oysters (*Crassostrea virginica*), for the purposes of commercial research and development.

1. Proceedings

DMR accepted the final application as complete on July 10, 2023. Notice of the completed application and the 30-day public comment period was provided to state agencies, the Town of South Bristol, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. On July 18, 2023, DMR sent a Harbormaster Questionnaire to the Harbormaster for the Town of South Bristol, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations. On August 15, 2023, DMR received a letter from Cecil Burnham, the South Bristol Harbormaster at the time. Mr. Burnham did not submit the Harbormaster Questionnaire provided by DMR. Notice of the complete application and comment period was published in the *Lincoln County News* on July 20, 2023. Title 12 M.R.S.A. § 6072-A(6) provides that the Commissioner shall hold a public hearing if five or more persons² request a public hearing within the 30-day comment period. The comment period ended on August 19, 2023. Eighteen requests for a public hearing were received during the comment period, and DMR subsequently arranged for a public hearing to be held on August 12, 2025. Notice of the hearing and instructions on how to register to participate and how to apply for intervenor status were published in the July 10, 2025, edition of the *Lincoln County News*. At the close of the registration period on July 28, 2025, 27 members of the public had registered to participate in the hearing. DMR received three applications for intervenor status from Beth and Johnny Walker, Rachel Walker, and John Robinson. Beth and Johnny Walker applied jointly and later clarified that they are of no relation to Rachel Walker.

¹ Applicant originally requested 3.32 acres. MDMR calculations indicate the area is 3.30 acres.

² Title 12 M.R.S.A. § 6072-A (6) now requires 10 or more hearing requests to be received for the Commissioner to hold a hearing, however, at the time of this comment period, the requirement was five or more.

A. Decision on Applications for Intervenor Status

In their applications to intervene, Beth and Johnny Walker and Rachel Walker stated that if the lease were granted, there would be impacts on shoreline access to their properties, as well as impacts to activities conducted from their property, such as fishing, swimming, and boating.³ These 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 July 31, 2025, DMR granted full intervenor status to Beth and Johnny Walker and Rachel Walker. Due to the similarities of the impacts raised by these individuals, in accordance with Chapter 2.20(3)(B), to avoid repetitive testimony, or cumulative evidence or questioning, DMR consolidated the participation of Beth and Johnny Walker and Rachel Walker.

In his application to intervene, John Robinson stated that he currently uses the area for recreational fishing, navigation, wildlife observations, camping, clamming, and recreation. Mr. Robinson also stated that the proposal would potentially interfere with fishing, recreation, and navigation, and would potentially result in the harassment of protected marine mammals. DMR found that while Mr. Robinson alleged interference with fishing, recreation, navigation, and fauna, these potential impacts were not shown to be particularized and distinct from impacts to the general public. Therefore, on July 31, 2025, DMR denied intervenor status to John Robinson.

B. First Procedural Order and Pre-filings

On July 31, 2025, DMR issued the First Procedural Order to the applicant and intervenor (hereinafter referred to collectively as the “parties.”) The First Procedural Order outlined time limits for testimony and cross-examination of the parties and outlined the requirements for the pre-filing of exhibits—including a filing deadline of August 7, 2025—the deadline to object to proposed exhibits, and the designation of expert witnesses. Also on July 31, 2025, DMR sent all registered members of the public Hearing Participation Instructions via e-mail and mail. The instructions included rules regarding pre-filing proposed exhibits, including exhibits limits, filing format, and a filing deadline of 4:00 p.m. on August 7, 2025.

On August 7, 2025, the intervenor submitted their expert witness lists, pre-filed testimony, and 10 exhibits. At this time, intervenor Beth and Johnny Walker also objected to the consolidation of intervenors, arguing that the requirements of Chapter 2.20(3)(B), allowing consolidation, had not been met. They also objected to the limitation of 10 exhibits on the grounds that it exceeds the hearing officer’s discretion. The intervenor also separately filed nine additional exhibits as an offer of proof in connection with their objection to the limitation of 10 exhibits per party.

³ In Rachel Walker’s intervenor application, she clarified that the plot she was speaking for was owned by her father, and not her directly.

On August 7, 2025, the applicant pre-filed five exhibits. On August 11, 2025, the intervenor filed an objection to the applicant's proposed exhibits, stating that the exhibits needed to be authenticated by a witness, and because no witness list was filed by the applicant, the applicant would be unable to authenticate their exhibits. Additionally, the intervenor argued that applicant's proposed exhibits 1 and 2 violated section 2.A.2 and 2.A.3 of the First Procedural Order, which limited each party to 10 individual exhibits and prohibited consolidating materials in a manner that circumvented this requirement. The intervenor argued that because the applicant's proposed exhibits 1 and 2 were two halves of a PowerPoint presentation, and the slides contained multiple photographs, they should not be admitted. On August 11, 2025, the applicant responded to the objection, stating that the pre-filed PowerPoint presentation was intended to be used in support of their testimony. DMR ruled on these objections at the August 12, 2025, hearing.

On August 7, 2025, at 11:37 a.m., John Walker pre-filed three proposed exhibits. On August 7, 2025, at 4:22 p.m., Harry Walker pre-filed three proposed exhibits.⁴

Adam Rice and Jeffrey Poole registered to participate in the hearing as members of the public. Based on their participation in other aquaculture proceedings, DMR recognized that Adam Rice is a Selectmen in South Bristol and Jeffrey Poole is the Harbormaster. Chapter 2.31(5) establishes the order of hearing testimony with members of local government afforded the opportunity to testify before certain other stakeholders. Therefore, on August 1, 2025, DMR emailed Adam Rice and Jeffrey Poole, who had both registered to participate, asking if they intended to participate as a member of the public or in their capacity as municipal officials. Both Adam Rice and Jeffrey Poole stated they intended to participate in their capacity as municipal officials, Adam Rice as Selectmen and Jeffrey Poole as Harbormaster for the town of South Bristol.

C. Public Hearing

DMR conducted a hearing on August 12, 2025. At the hearing, DMR admitted applicant exhibits 1-5, intervenor exhibits 1-10, Beth Walker pre-filed testimony, Johnny Walker pre-filed testimony, intervenor expert witnesses' Curriculum Vitae, and John Walker exhibits 1-3 as exhibits. The hearing officer additionally permitted the intervenor to exceed the 10 exhibit limit established in the First Procedural Order and admitted intervenor exhibits 11-19. DMR did not admit Harry Walker exhibits 1-3 due to late filing.

At the beginning of the hearing on August 12, 2025, the hearing officer ruled on objections previously filed by the intervenor, concluding that the consolidation of intervenors was proper due to the similarities in concerns raised by the individuals and that consolidation would prevent repetitious testimony and questioning. The Hearing Officer noted that it was properly within the authority of the Hearing Officer

⁴ John Walker is a member of the public with no relation to intervenor Johnny Walker.

to place limits on exhibits offered by all parties, but reserved the right to rule on the admissibility of Walker exhibits 11-19 until the end of the hearing. The Hearing Officer denied the objection filed by the intervenor against the applicant's proposed exhibits, reasoning that DMR's requirement of filing a witness list was never intended to exclude the applicant or intervenor from providing testimony, and was intended to generate a list of any additional witnesses either party may call. Additionally, the Hearing Officer overruled the intervenor's objection filed against the applicant's exhibits 1 and 2, holding that the two exhibits were offered as a demonstrative aid during the applicant's testimony for efficiency given time limits.

Table 1 provides the list of individuals who provided sworn testimony at the hearing.

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

Name	Affiliation
Sean Corcoran, Jacqueline Clarke	Applicant
Beth Walker	Intervenor(s)
Chris Kincaid, Jason Krumholtz	Intervenor Expert Witnesses
Adam Rice	Municipal Official
Senator Cameron Reny	Elected State Official, Senate District 13
Cecil Burnham, Heidi Sproul, John Walker, Lawrence Lanpher, Harry Walker, David Osier, John Robinson, Kyle Markmann, Reginald House, David Fitch, Jeff Auger, Anne Langston Noll, Michael Dawson	Member(s) of the public

At the August 12, 2025, hearing, Jeffrey Poole, South Bristol Harbormaster, left the hearing before having the opportunity to testify during the municipal officials' portion of the hearing. On August 20, 2025, DMR received a letter from Adam Rice requesting that DMR allow a Harbormaster Questionnaire completed by Mr. Poole to be entered into the record, stating Mr. Poole intended to offer the questionnaire as an exhibit during his testimony, but needed to leave the hearing early due to health reasons from "excessive heat in the hearing room – caused by a prolonged failure of the air conditioning."

Additional DMR staff and members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Joshua Rozov. The record was closed at the conclusion of the hearing on August 12, 2025.

On August 20, 2025, Amanda Ellis, PhD, Director of DMR's Aquaculture Division, responded to this request via email, confirming receipt of the request and informing the town of South Bristol that in order to enter the Harbormaster Questionnaire into the record, DMR would need to reopen the record, which

would involve additional formal procedural steps. Dr. Ellis explained that it may take several weeks before DMR issued a decision on the matter.

On September 5, 2025, the intervenor joined Mr. Rice's request to reopen the record. The intervenor argued that because there is a strong regulatory preference in favor of municipal input during the leasing process and there were well documented circumstances that prevented the Harbormaster from providing testimony, it would be a reversible error to fail to reopen the record to include the Harbormaster Questionnaire and any related testimony.

On September 9, 2025, the applicant filed a response to the intervenor's motion arguing the request filed by South Bristol was made by Adam Rice, who was present and provided testimony at the hearing, and could have presented the information during his testimony. Additionally, the response argued DMR heard extensive testimony and received documentary evidence on all aspects of the Harbormaster Questionnaire from the hearing participants and from Cecil Burnham, who was the South Bristol Harbormaster at the time the initial Nor'Easter application was submitted, and who was present and provided testimony at the August 12, 2025, hearing.

D. Second and Third Procedural Orders

On September 23, 2025, DMR provided all parties with the Second Procedural Order, denying South Bristol's request to reopen the record in order to accept the Harbormaster Questionnaire. The Second Procedural Order reasoned that DMR's laws and rules provide multiple opportunities for a municipality to participate in the review of lease proposals. However, that participation needs to comply with applicable processes and deadlines. In this case, the town of South Bristol was given an opportunity to, and did, participate in both the comment period and the hearing. However, the Harbormaster Questionnaire was not submitted by the original August 19, 2023, deadline, nor did Mr. Poole pre-file the Harbormaster Questionnaire by the August 7, 2025, deadline established by the First Procedural Order. DMR rules Ch. 2 Section 2.21(6)(A) provides that "at the conclusion of the hearing the record shall be closed, and no other evidence or testimony will be allowed into the record, except by stipulation of the parties or as specified by the presiding officer." At the conclusion of the hearing on August 12, 2025, the record was closed and no parties requested that it remain open. DMR rules Ch. 2 Section 2.21(6)(B) gives authority to re-open the record in limited circumstances. The record may be reopened "to take additional evidence on specific issues where the Commissioner is not satisfied that they have all of the information necessary to make a decision." The Hearing Officer determined that at the hearing, extensive testimony was presented addressing the criteria DMR must evaluate in reaching a decision, and the Harbormaster Questionnaire completed by Mr. Poole and submitted by Mr. Rice after the record was closed is duplicative of information already in the record. Accordingly, the Hearing Officer declined to reopen the record to admit the proposed Harbormaster Questionnaire or any supplemental testimony.

On October 3, 2025, Rachel Walker, a member of the intervening party, independently submitted an additional motion to reopen the record to allow the Harbormaster Questionnaire and related testimony. Rachel Walker argued that not allowing the Harbormaster Questionnaire into the record failed to account for the consideration of riparian interests, and that DMR is required to admit the Harbormaster Questionnaire, not allowing the Harbormaster Questionnaire into the record would be a procedural error and due process violation. Intervenor Beth and Johnny Walker joined the motion on October 6, 2025.

On October 10, 2025, the applicant responded to the motion, arguing Rachel Walker had a procedural opportunity to join the August 20, 2025, request made by the town of South Bristol and since Rachel Walker did not, she waived her opportunity to argue the matter. Additionally, the applicant argued DMR had already rejected the same request being made by Rachel Walker in DMR's Second Procedural Order dated September 23, 2025.

On October 27, 2025, DMR issued its Third Procedural Order. The Third Procedural Order stated "pursuant to 5 M.R.S. § 9054(4), the intervenor decision issued on July 31, 2025, consolidated Rachel Walker as an intervenor with Beth and Johnny Walker. As a consolidated intervenor, Rachel Walker, Beth Walker, and Johnny Walker are expected to coordinate their filings." Therefore, DMR denied Rachel Walker's motion to reopen the record.

The evidentiary record regarding this lease application includes the application, DMR's site report dated December 18, 2024, and the case file. The evidence from each of these sources is summarized below.

A. List of Exhibits

1. Case file (CF)
2. Application (App)
3. DMR site report, issued on December 18, 2024 (SR)
4. Applicant Exhibit 1
5. Applicant Exhibit 2
6. Applicant Exhibit 3
7. Applicant Exhibit 4
8. Applicant Exhibit 5
9. B. Walker Exhibit 1
10. B. Walker Exhibit 2
11. B. Walker Exhibit 3
12. B. Walker Exhibit 4
13. B. Walker Exhibit 5
14. B. Walker Exhibit 6

15. B. Walker Exhibit 7
16. B. Walker Exhibit 8
17. B. Walker Exhibit 9
18. B. Walker Exhibit 10
19. B. Walker Exhibit 11
20. B. Walker Exhibit 12
21. B. Walker Exhibit 13
22. B. Walker Exhibit 14
23. B. Walker Exhibit 15
24. B. Walker Exhibit 16
25. B. Walker Exhibit 17
26. B. Walker Exhibit 18
27. B. Walker Exhibit 19
28. Beth and Johnny Walker Prefiled Testimony
29. Rachel Walker Prefiled Testimony
30. Chris Kincaid Prefiled Testimony
31. Jason Krumholz Prefiled Testimony
32. Intervenor Expert Witnesses Curriculum Vitae
33. John Walker Exhibit 1
34. John Walker Exhibit 2
35. John Walker Exhibit 3

The case file, application and site report are referred to in the decision with their designated abbreviations. Additional exhibits are referred to in the decision by their number as indicated in the list of exhibits.

2. Description of the Project

A. Site History

Based on DMR records, no prior aquaculture activities have occurred in the area of this proposed lease site.

B. Proposed Operations

The applicant proposes to culture American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. (App 2)

The applicant would split the proposed 520 foot by 276 foot proposed lease area into three sections as displayed in Figure 1. The eastern side of the proposal, labeled as “surface cages” in Figure 1, would be 271.25 feet⁵ by 276 feet and would be separated into two sections, north and south (Clarke Testimony). The sections would be separated by a 28-foot east to west corridor (Clarke Testimony). Each section would have 14 long lines with OysterGro cages attached, each long line being 124 feet long (Clarke Testimony). The long lines would be oriented north to south (App 22). Each long line would have a screw anchor attached on either end (App 23).

The middle section, labeled as “bottom planted” in Figure 1, would be 60 feet by 276 feet (Clarke Testimony). This section would be used as a navigation corridor through the proposal and have bottom planted seed without any bottom gear (Clarke Testimony).

The western side of the proposal, labeled as “bottom cages” in Figure 1, would be 188 feet by 276 feet (App 22). This section of the proposal would have mesh wire bottom cages (Corcoran Testimony). The bottom cages would be 24 inches by 48 inches by 6 inches (Corcoran Testimony).⁶ Bottom cages would be attached to a 276 foot long line with 2 feet between each cage (Corcoran Testimony).

⁵ Figure 1 marks this distance as 272 feet while the applicant’s testimony marked this distance as 271.25 feet. During cross examination, the applicant stated that the graphs were not to scale and purely for visualization (Clarke/Kallin).

⁶ The measurement was modified at the hearing, by the applicant, from the originally proposed 36” cage height proposed in the completed application.



Figure 1. Proposed gear layout (Exhibit 4 pg. 4)

Table 1. Power equipment proposed for the lease site

Equipment	Description	Frequency of Use
Power Washer	Used to clean cages	As needed, at most once a week
Electric Hauler	Used to bring bottom cages onboard vessel	Three days a week during harvesting periods

Seeding would occur from June through August (Clarke Testimony). Maintenance would occur up to five days a week for a maximum of 10 hours per day on site from May through November (Clarke Testimony; App 4). Cages and bags would be cleaned using the proposed power washer as needed, at most once a week (Clarke Testimony). The power washer would be battery powered (Clarke/Rozov).

Harvesting would occur up to three days a week (Clarke Testimony). Floating cages would be retrieved by hand and sorted by hand on the boat (App 5). Bottom planted oysters and bottom cages would be harvested via diving then sorted by hand on the boat (Clarke Testimony; App 5).

During the overwintering period, December through April, all gear would remain on site, and the floating cages would be sunk to the bottom of the proposal (App 5).

C. Site Characteristics

Description. The proposed lease site is in subtidal waters northeast of Peabow Island, in Johns River, South Bristol, in Lincoln County (SR 1).

DMR scientists conducted a site visit on May 29, 2024 (SR 2). DMR scientists observed a residential structure on the western side of Peabow Island (SR 2). DMR scientists also observed tidally exposed ledges located approximately 50 feet to the east and 90 feet to the southeast of the proposal with numerous harbor seals (*Phoca vitulina*) accompanied by young pups (SR 2-3). Three residential homes were visible from the proposal during the site visit: one approximately 700 feet to the northwest, one approximately 500 feet to the northeast, and one approximately 1,210 feet to the east on Foster Island (SR 2).



Figure 2. Harbor seals (*Phoca vitulina*) hauled out on a tidally exposed ledge approximately 580 feet southeast of the proposal.

DMR scientists observed the bottom characteristics of the proposed lease site via a remotely operated vehicle (ROV) (SR 2). Bottom characteristics were categorized using the Coastal and Marine Ecological

Classification Standard, a national standard for describing features of the marine environment (SR 2). Sediment information was determined based on visual analysis of the video (SR 2). The bottom of the proposed lease site is primarily composed of mud (SR 2).

DMR staff began collecting depths at the proposed site shortly before low tide at approximately 9:50 a.m. (SR 2). Measured depths at corners of the proposed lease site ranged from 3.7 to 6.8 feet (SR 2). Correcting for tidal variation derives water depths at the corners of the proposal at mean low water (MLW, 0.0 feet) to be from 3.6 to 6.7 feet (SR 2).

Growing Area Classification. Growing Area Classifications for bivalve shellfish are reviewed on an annual basis and subject to change. Classifications can also be updated at any time in response to changing environmental conditions, emergency situations, or other factors that impact water quality. If the lease is granted, it is the responsibility of the leaseholder to stay informed of and comply with harvest requirements applicable to the respective growing area.

The proposed lease is currently located within an area classified as Approved by the DMR Bureau of Public Health and Aquaculture (SR 13).

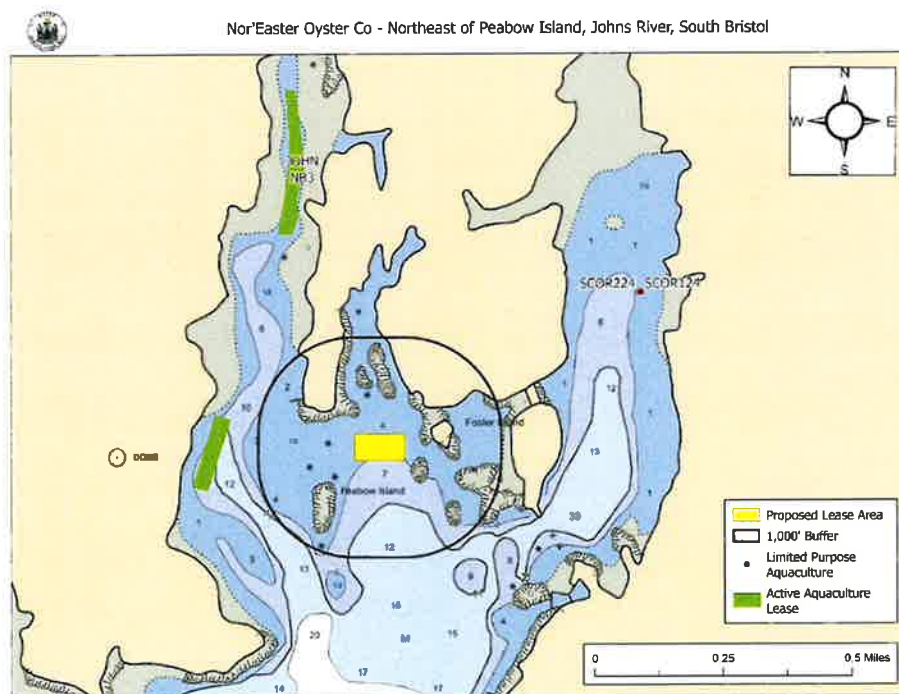


Figure 3. Proposed lease site and surrounding area.⁷

⁷ Unless otherwise noted, all maps and measurements in this report were created in ArcGIS Pro version 2.9 using digitized NOAA Nautical Charts or aerial imagery provided by ESRI (Firefly World Imagery).

3. Legal Criteria and Findings of Fact

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. § 6072-A and DMR Regulations. The statute and regulations provide that a lease for commercial aquaculture research and development or for scientific research may be granted by the Commissioner upon determining that the project will not unreasonably interfere with: the ingress and egress of riparian owners; navigation; fishing or other uses of the area; other aquaculture uses in the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; and public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.

A. Navigation

When examining this statutory criterion, the Commissioner considers whether the proposed lease will interfere with navigation. 12 M.R.S.A. § 6072-A(13)(B). The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area and consider the current uses of the navigational channels in the area. Chapter 2.37(1)(A)(2).

The proposal is located approximately 345 feet northeast of Peabow Island, 185 feet south of the nearest mainland shoreline, and 50 feet west of tidally exposed ledges at MLW (SR 5). There are additional tidally exposed ledges 175 feet west of the proposal and 95 feet north of the proposal which reduce the amount of navigable water in the area at lower tidal stages (SR 5). The nearest navigational marker is red navigational buoy “4” which is 4,110 feet south (SR 5).

The application states sailboats have been observed anchored south of the proposed lease site, and during the months of July and August the applicant observed two sailboats anchored approximately 200 feet to the south of the proposed lease site for approximately two days (App 7).

At the hearing, the applicant testified that the proposed site would not interfere with navigation in the area because it is not within any navigational channels and no structures would be deployed (Clarke Testimony).⁸ The applicant also stated navigation could still occur above the bottom cages on the western side of the proposal or through the 60-foot navigational corridor proposed in the center of the lease site (Corcoran Testimony).

⁸ By “structures,” the applicant was referencing floating infrastructure such as barges or floating platforms.

Intervenor Beth and Johnny Walker argued they would not be able to navigate their vessels over the bottom cages on the western side of the proposal due to low clearance in the water, stating they would only have 25 inches of clearance (Exhibit 28, pg. 6). The Walker arguments were pre-filed and based on the measurements that the applicant originally proposed in their completed application. Through statements by its representative at the public hearing, the applicant represented that the height of the cages would instead be three inches tall, with an additional three inches for a rope bridle on each cage (Corcoran Testimony). Under the revised height, individuals seeking to navigate over the submerged cages would have approximately 37 inches of clearance above the submerged cages on the western side of the proposed lease site. Additionally, the Walker's also argued they would be unable to use the proposed 60-foot corridor located in the middle of the proposed lease site because DMR regulations do not require aquaculture lease holders to distinguish areas of a lease that do and do not have bottom gear (Exhibit 28, pg. 6). Additionally, poor weather and various tides could make navigating a 60-foot channel even more difficult (Exhibit 28, pg. 6).

Intervenor Rachel Walker testified she navigates the area within the proposed lease approximately once every two weeks (R. Walker/Rozov). Rachel Walker testified that in her experience, navigating that area during low tide runs the risk of getting vessels stuck (R. Walker/Rozov). Rachel Walker observed a dinghy become stuck approximately 30 yards from the proposed lease boundary in 2024 (R. Walker Testimony). Rachel Walker testified that navigating the 60-foot corridor with her boat, a sailboat without a power motor, would not be possible if the lease were approved (Exhibit 29, pg. 4).

At the hearing, five members of the public testified to navigating, for recreational purposes in the area of the proposed lease site (Sproul Testimony; John Walker Testimony; Lanpher Testimony; Robinson Testimony; Fitch Testimony). The types of vessels testified as being used in the area ranged from kayaks to 20-foot center console vessels with outboard motors (Robinson Testimony).

While the applicant did note that the proposed lease site is not located in a navigational channel, Chapter 2 provides "[t]he Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area *and* consider the current uses of the navigational channels in the area." Chapter 2.37(1)(A)(2) (emphasis added). Therefore, a navigation analysis is not limited to only consideration of the effect on the proposal on navigational channels, but also considers existing uses of the area.

Given the testimony from both the intervenors and members of the public, the cove in which the proposed lease site is located is commonly used by vessels of various sizes for recreational navigation. MLW for the area is 3.6 feet, and tidal variations cause depths shallower than 3.6 feet. Using the new bottom cage measurements produced by the applicant at the hearing, there would be approximately 37 inches of clearance

from the bottom cages at low tide in the western section of the proposed area.⁹ While some vessels may be able to navigate in this area with a clearance of 37 inches, DMR's Chapter 2.80 marking requirements do not require lease sites to display information relating to the height of submerged gear or the amount of clearance. Without this information, a vessel navigating the area would see markers denoting the boundaries of an aquaculture site, but would not know the nature of the gear deployed in the area. Therefore, it is likely a prudent mariner would avoid the area of the lease site to avoid possible entanglement or collision. In their Response, Exceptions, and Comments (the Comments) on the draft report, the applicant faults DMR for not crediting testimony by the applicant and Jeff Auger, who both have extensive experience in aquaculture operations and testified that they have routinely navigated in areas with aquaculture operations at similar depths. (Applicant Comments, at 11-12). However, this extensive experience, and deep familiarity with aquaculture operations, makes these individuals' testimony not substantially representative of the experience of most recreational boaters, who may be less proficient in operating in shallow conditions and less familiar with the skill of navigating around submerged aquaculture gear. That skilled and experienced operators of commercial aquaculture sites may feel comfortable in navigating over submerged aquaculture gear in shallow conditions when operating with motorized vessels designed for this use does not negate the substantial public comment and testimony supporting the conclusion that due to the particular features of this site—such as the limited existing space for navigation, and the difficulties caused by shallow conditions—the addition of aquaculture cages and the additional activity accompanying a commercial aquaculture lease would unreasonably interfere with existing navigational uses which are largely undertaken by those without extensive experience in navigating through and operating on aquaculture leases.

Navigation through the 60-foot navigation corridor within the lease would not be possible for vessels without a motor depending on tidal stage and weather. Additionally, recreational navigation occurs throughout the entirety of the proposed lease area, not just within the 60-foot proposed corridor. While a navigational corridor may allow vessels to navigate from one side of the proposal to the other, it will not allow navigation throughout the entire area of this portion of Johns River, and thus would restrict the current established recreational uses of the area. Finally, vessels that need to navigate around the proposed lease site would likely be within 50 yards of known seal haul out areas. As will be discussed further in **Section 3(C)**, to mitigate disturbance, NOAA's general viewing guidelines state that for seals in the water or on shore, the public should remain at least 50 yards, or 150 feet, away.

DMR received testimony revealing that this area is used regularly for recreational navigation by hand powered, motorized and sail powered vessels. Testimony was also provided stating that due to the water depth in the area, vessels have previously become stuck during times of lower tides. A lease site in this location would

⁹ The applicant stated that the cages themselves are 3'' in height, and have an additional 3'' for a rope bridle that would be on top of the cages. For DMR's discussion and analysis, the rope bridle will also be considered part of the cages, bringing the total height of the cages to six inches.

reduce the navigable waters used for recreational navigation in the area, increase the risk of vessels becoming stuck or interacting with aquaculture gear, and potentially forcing vessels within 50 yards of known seal haul out areas. DMR concludes these collective impacts would result in unreasonable interference with existing navigational uses of the area.

Therefore, the aquaculture activities as proposed will unreasonably interfere with navigation.

B. Riparian Owners Ingress and Egress

When examining riparian access, the Commissioner considers whether the proposed lease will unreasonably interfere with the ingress and egress of riparian owners. 12 M.R.S.A. § 6072-A(13)(A). The Commissioner shall examine whether the riparian owners can safely navigate to their shore and consider the type of shore, the type of vessel that can reasonably land on that shore, the types of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures. Chapter 2.37(1)(A)(1).

During the site visit on May 29, 2024, DMR scientists observed four moorings and one dock in the vicinity of the proposal (SR 4). One mooring was located inside of the proposed lease boundaries near the center of the proposal (SR 4). This mooring was labeled “J. Walker” and was unoccupied at the time of the site visit (SR 4). Three other moorings were located 954 feet, 1,047 feet, and 1,133 feet northwest of the proposal (SR 4). Two of the moorings were labeled “Walker” and were unoccupied at the time of the site visit (SR 4). The third mooring was marked with a winter stick, which was unnamed (SR 4).

Intervenor Beth and Johnny Walk own the mooring that was observed in the middle of the proposed lease site (Exhibit 28, pg. 7). The application for this location was deemed complete by DMR on July 10, 2023 (App 1). Once an application is deemed complete, the public receives notice of the application, including the location of the proposal and the boundaries of the site. Additionally, Beth and Johnny Walker would have received personal notice via mail due to their status as riparian landowners, who own shorefront property within 1,000 feet of the proposal. Beth and Johnny Walker applied for their mooring permit on September 26, 2023 (CF – Walker Permit Scan 2023).¹⁰ At the hearing, Beth Walker testified that she and Johnny Walker purchased their property in November 2022. Beth Walker testified they were aware of the pending lease application when they submitted the mooring application on September 26, 2023, but had wanted a mooring in that location since “day one.” (B.Walker/Rozov).

¹⁰ Exhibit “CF – Walker Permit Scan 2023” is part of the Case File, which is public record, and the case file was entered into the record during the Hearing Officer’s opening statement. Copies of the document were also provided to the parties during the hearing.

However, in Beth and Johnny Walker's public comment submitted to DMR on September 6, 2023, which requested a public hearing and voiced concerns regarding a number of criteria DMR considers, one of them being ingress and egress, there is no mention of a mooring in the location or plans to place a mooring in the location (CF – Beth and Johnny Walker Public Comment). Beth and Johnny Walker testified they currently use this mooring for guests and their own canoe and dinghy (B.Walker/Rozov). The approximate water depth at this location at MLW is between 3.6 and 6.7 feet (SR 2).

The Nor'Easter Oyster Co. experimental lease application was deemed complete on July 10, 2023. Beth and Johnny Walker submitted a comment and hearing request on the proposal on September 6, 2023, which did not include any reference to an existing mooring, or plans to apply for a mooring. Then, on September 26, 2023, approximately seventy-eight days after the application was deemed complete and twenty days after they submitted a comment, Beth and Johnny Walker applied for their mooring permit. At the time of submitting their mooring application, Beth and Johnny Walker had notice of the proposed lease site for approximately two and a half months. Additionally, the mooring application submitted by Beth and Johnny Walker included a map of the area with what appears to be the boundaries of the proposed lease site hand drawn on it with their mooring placed in the middle of the site (CF – Walker Permit Scan 2023). Additionally, Beth Walker testified that the mooring is used primarily for guests and is not used for their own riparian ingress and egress. Finally, 38 M.R.S.A. § 3 establishes that "assignment of . . . mooring privileges does not confer any right, title or interest in submerged or intertidal lands owned by the State."

Based on the facts presented, it appears Beth and Johnny Walker were aware of the pending lease application at the time they applied for the mooring. Additionally, the map submitted with the original mooring application, suggests that Beth and Johnny Walker were aware of the proposed lease boundaries and nevertheless chose to place the mooring within those boundaries. The Department does not find credible Beth and Johnny Walker's testimony that they had plans for this mooring since November 2022. This is based on the absence of any reference to the mooring in the comments submitted to the Department on September 6, 2023, as well as the fact that the mooring application was not filed until after the lease application was deemed complete, despite their ownership of the property for ten months before the application was submitted.

While the Department will consider riparian owned moorings when analyzing riparian ingress and egress, the Department will not allow pending lease sites to be halted and applications to be denied on this basis if the evidence demonstrates that the lease application predates the mooring, that the riparian owners had ample notice of the pending lease site, and that the mooring appears to be placed in an attempt to create unreasonable interference with the lease decision criteria.

Therefore, this decision declines to consider the impact of the proposal based on impacts to this mooring.

During the Department's site visit, Department scientists observed one pier with a ramp approximately 840 feet northwest of the proposal, with the float unattached and stored on the shore (SR 4). Peabow Island had

one residential structure located on the western side of the island approximately 650 feet southwest of the proposal (SR 4). There was no dock observed during the site visit (SR 4). There is approximately 185 feet from the northwest corner of the proposed lease site to the nearest shoreline to the north and approximately 50 feet from the northeast corner of the proposed lease site to the nearest tidally exposed ledge to the east (SR 3).

The application states the proposed activities will not affect riparian ingress or egress in any way (App 7). At the hearing, the applicant testified there would be no unreasonable impact to riparian ingress and egress due to there being over 200 feet between the western boundary of the proposal and Peabow ledges (Corcoran Testimony). The area between the boundary and Peabow Ledge would be able to be used for access to the shoreline to the north of the proposal. Additionally, the applicant testified that any riparian landowner would be able to navigate over the bottom cages, stating that there would be approximately three feet of clearance for boats, or the riparian landowners could utilize the 60-foot wide north-south corridor within the lease boundary (Clarke Testimony).

In their testimony, the intervenor Beth and Johnny Walker argued the proposed lease site would block their only available boat launch for hand powered vessels on their property (Exhibit 28, pg. 14) (Figure 5). Beth Walker testified that this is the only reasonable spot on their property for a boat launch due to the rest of the property's shoreline being cliffs, and that this boat launch had been used since the previous owner owned the property (Beth Walker Testimony). However, the boat launch referred to is a location along the shoreline and appears to not be a physical structure, such as a dock or pier, built upon the shoreline. The Walker's argue they would be unable to use the proposed 60-foot corridor located in the middle of the proposed lease site because DMR's regulations governing site marking do not require site holders to distinguish areas of a lease that do and do not have bottom gear (Exhibit 28, pg. 6). Additionally, they contend, poor weather and various tides could make navigating a 60-foot channel more difficult and would not represent a practicable option for accessing their property (Exhibit 28, pg. 6).

The applicant suggests that riparian landowners could navigate over the bottom cages in the western portion of the lease site. The applicant also testified that their bottom cages would have a height of approximately six inches. With a MLW of 3.6 feet, or 43 inches, and a cage height of six inches, there would be a remaining depth of 37 inches to navigate.¹¹ MLW is 3.6 feet, however that figure represents the mean depth, and depths will be shallower than 3.6 feet depending on the tidal cycle. In events of tides below MLW (minus tides), the route over the bottom cages within the lease proposal may not be possible for ingress and egress. While MLW only represents depth at two points during the day, the time surrounding MLW will also have shallow depths

¹¹ Intervenor Beth and Johnny Walker's Prefiled Testimony states the clearance would be approximately 25 inches. This measurement was based on the original height of 18 inches for bottom cages given in the completed application. At the hearing, the height of the bottom cages was corrected by the applicant to be approximately 6 inches.

comparable to MLW. Additionally, as the time of MLW changes daily, this discussion does not represent a static time each day in which the area may be unnavigable but instead represents a constantly shifting time in which mariners would be unable to access the cove.

The applicant also suggests navigation around the proposal, using the 200 feet of water between the proposal's western boundary and the northern shoreline and Peabow Island. As will be discussed further in **Section 3(C)**, navigating on a route to the western side of a proposed lease site would take boaters within 150 feet of documented seal haul outs. Seals are a protected species under federal law pursuant to the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. §§ 1361-1423h. Due to the disruption this route would cause to a federally protected species, this navigational option is not a reasonable alternative.

Finally, the applicant also suggested using the 60-foot navigation corridor included in their proposal to travel north to south. As stated by the intervenor, DMR regulations do not require aquaculture sites to mark specifically where navigational corridors within leases are located. Additionally, if aquaculture work is being done within the corridor such as diving to harvest product, which is proposed to occur up to three times a week, passage from north to south would be restricted. While a condition in place requiring the marking of the navigation corridor and restricting the applicant from doing any aquaculture activities within the 60 feet channel may alleviate some of the concerns of unreasonable interference caused to riparian ingress and egress, they would not resolve concerns related to the feasibility of navigation within this corridor during inclement weather, particularly for vessels without a motor. Furthermore, as discussed in **Section 3(A)**, a navigational channel would not be adequate to prevent unreasonable interference with navigation in the area.

Therefore, the aquaculture activities as proposed will unreasonably interfere with riparian owner ingress and egress.



Figure 4. Walker Exhibit 7

C. Existing System Support

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

Site Observations. During the May 29, 2024, site visit, DMR scientists utilized a ROV to assess the epibenthic ecology of the proposed lease and the surrounding area (SR 8). The flora and fauna observed in the video are described in Table 2.

Species Observed	Abundance
Rockweed (<i>Ascophyllum nodosum</i>)	Common
Hermit crab (<i>Pagurus</i> spp)	Common
Sand shrimp (<i>Crangon septemspinosa</i>)	Common
Periwinkle (<i>Littorina</i> spp)*	Common
Colonial tunicate (likely Chain tunicate, <i>Botrylloides violaceus</i>)	Occasional

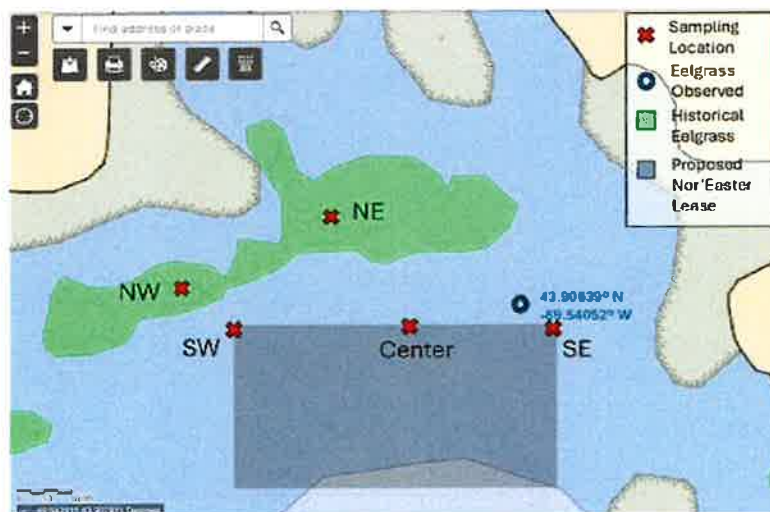
Species Observed	Abundance
Sugar kelp (<i>Saccharina latissima</i>)	Occasional
Crab (<i>Cancer</i> sp)	Occasional
European green crab (<i>Carcinus maenas</i>)*	Occasional
European oyster (<i>Ostrea edulis</i>)*	Occasional

Table 2. Species observed on underwater camera footage.

*indicates species observed in the surrounding area and not specifically within the proposal boundaries

Marine Vegetation. Historical records of eelgrass collected by DMR in 2010 indicated mapped eelgrass presence approximately 47 feet northwest of the proposal (SR 9). More recent records of eelgrass collected by the Maine Department of Environmental Protection (DEP) in 2023 indicated no mapped eelgrass presence within 1,000 feet of the proposal (SR 9). Based on 2023 data, the nearest mapped eelgrass is approximately 2,615 feet southeast of the proposal (SR 9).¹² During DMR’s site assessment, one individual eelgrass blade was observed floating on the surface of the water within the proposal boundaries entangled in the mooring line for mooring labeled “J. Walker” (SR 9). No eelgrass was observed attached to the seafloor on underwater camera footage within the proposal boundaries (SR 9). Additionally, based on 2010 records of eelgrass, which indicated mapped eelgrass presence approximately 47 feet northwest of the proposal, DMR did additional investigation of this area during the site visit and determined there was no eelgrass present in the vicinity of the proposal (SR 9).

The intervenor’s expert witness, Dr. Jason Krumholz, conducted an independent survey of the proposed site for suitability of eelgrass habitat on May 20, 2025 (Exhibit 31, pg. 5). Dr. Krumholz was hired by the intervenors to conduct the survey, which occurred almost a year after DMR’s assessment on May 29, 2024. The results of the survey were compiled into a report, which was admitted into the record



¹² Data obtained from The Maine Office of GIS “GISVIEW.MEDEP.Seagrass2023”. This is the most current record of mapped eelgrass within the vicinity of the proposal.

as Exhibit 31. Water and sediment were collected from five stations, three were located along the northern boundary of the lease site and two were within historic eelgrass beds to the north of the site. Figure 5 depicts the location of the sampling stations. The water samples were taken to assess pH, nitrate, nitrite, and ammonia. The sediment was tested to determine how suitable the substrate is for eelgrass growth, a measure referred to as sediment organic matter (SOM). The water samples indicate that the water quality could support eelgrass. The sediment conditions at the sampling stations were suitable for supporting eelgrass habitat.

Figure 5. Locations of Dr. Krumholz's samples

The expert witness also generated scores for the five test locations using the Eelgrass Habitat Suitability Index (EHSI), a model which scores a habitat for eelgrass suitability. The model assigns different percentages to certain environmental factors that generate a final score. The model weights are:

- Light= 30%
- Temperature = 20%
- SOM= 20%
- Dissolved oxygen= 10%
- Sediment grain size= 20%

The expert witness did not build a model for the location sampled and their report made assumptions about all other weights including grain size¹³, light, temperature, and dissolved oxygen. Based on these assumptions, the expert witness determined that all sites sampled would be considered suitable for eelgrass.

Dr. Krumholz also testified that the expert witness's divers collecting samples observed "patchy eelgrass, including shoots and rhizomes, immediately adjacent to the proposed lease area, but no eelgrass within the boundary of the proposal" (Exhibit 31, pg. 5). The expert witness acknowledged that the eelgrass is present within the area in question, it is "clearly not in optimal condition," and it is "very sparse and patchy," (Exhibit 31, pg. 5). The eelgrass observed by the expert witnesses' divers was located at the southeast corner of the proposed lease site.

DMR looks at eelgrass maps to determine if eelgrass was present in the area historically. However, DMR always either dives on the site or uses an ROV equipped with sonar to assess the presence and extent of eelgrass within the boundaries of a proposed site. During DMR's site assessment, no eelgrass was observed attached to the seafloor on underwater camera footage within the proposal boundaries. During the expert witness' site observations, only sparse eelgrass in sub-optimal condition was observed, and no visual

¹³ The grain size used in the report submitted and entered as Exhibit 31 was based on an assumption for grain size. At the hearing, Dr. Krumholz testified that he was unable to get test results for grain size back in time for the pre-filing deadline, but the assumption made regarding grain size in the report was correct.

survey documented eelgrass within the boundaries of the proposal. In 2010, the nearest eelgrass was approximately 47 feet to the northwest of the proposal. In 2024, during the DMR site visit, the eelgrass to the northwest of the proposal was no longer present and the nearest eelgrass was approximately 2,615 feet to the southeast of the proposal. While it is possible, as stated by the expert witness, that small patches were still present during the 2023 DEP data collection, it is clear the eelgrass in the area had diminished significantly.

Dr. Krumholz testified that the entire area received SOM percentages and EHSI scores that would indicate the area is appropriate for eelgrass growth. However, the report submitted by the expert witness states that the EHSI is a “rough approximation (as it was not developed for this site specifically and the dataset is incomplete)” (Exhibit 31, pg. 8). The scientific and methodological weaknesses in the report limit how confidently any of the conclusions drawn by the expert witness can be applied. For example, the EHSI model was not developed for this specific location, which is a significant limitation as eelgrass tolerances vary regionally. The report also relies heavily on assumptions. For example, light availability is weighted as 30% of the EHSI, which is also the largest component of the model. However, light was not directly measured, but assigned a score, by the expert witness of 90%. Assumptions, not measurements are also made for temperature, and dissolved oxygen. The report estimates eelgrass suitability largely from limited measurements and numerous assumptions.

Given the documented decline of eelgrass in the area through 2010 and 2023 mapping, and the fact that no eelgrass was observed within the boundaries of proposal DMR concludes that the proposed area does not currently host a significant eelgrass population and the aquaculture activities as proposed will not unreasonably interfere with marine vegetation in the area.

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (IFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is located approximately 77 feet to the east of mapped Tidal Waterfowl and Wading Bird Habitat (TWWH) (SR 10). On August 10, 2023, a Resource Biologist with IFW responded by email to a “Request for Agency Review and Comment” stating the proposed lease appears to be immediately adjacent to TWWH, but if eelgrass or suitable substrate for eelgrass is not present, minimal impacts to wildlife are anticipated for this project (CF – IFW Comment).

In IFW’s comment, they stated that minimal impacts to wildlife would be anticipated if suitable substrate for eelgrass was not present. Dr. Krumholz, expert witness for the intervenor, puts forth in his testimony that the substrate found in the vicinity of the proposed lease area is suitable for eelgrass growth. While the substrate may be suitable for eelgrass growth, it is important to note that substrate quality is not the only factor that contributes to eelgrass viability, and no eelgrass is present within the boundaries of the

proposed lease. Additionally, while IFW comments refer to a TWWH, no section of the proposed site is within the TWWH.

During the site visit, DMR scientists observed multiple species listed in Table 2. Tidally exposed ledges, located 580 and 670 feet southeast of the proposal, had numerous harbor seals (*Phoca vitulina*) with young pups hauled out on them (SR 11) (Figure 2). There were two additional tidally exposed ledges observed 50 feet and 90 feet east of the proposal (SR 11). There were no harbor seals hauled out on these ledges at the time of the site visit, but they had similar characteristics to the ledges where seals had been observed (SR 11).

The applicant testified they have seen seals hauled out around the proposed lease site but estimate the seals to be approximately 225 feet away from the proposed lease area (Corcoran/Rozov). These observations were made while the applicant was working in the adjacent Johns Bay area approximately two to five times a week from 7 a.m. to 5 p.m. (Corcoran/Ellis) The nearest John's River Oyster Company lease to this proposal is JOHN NB3, approximately 1,295 feet from the proposal.

Intervenor Beth and Johnny Walker testified that they regularly observe seals in and around the lease area, sunning on ledges and islands surrounding the lease area (Exhibit 28, pg. 13). Beth and Johnny Walker testified that they have observed gray seals, harbor seals, and harp seals in the area (Exhibit 28, pg. 13). At the hearing, Beth and Johnny Walker provided an annotated image depicting all locations around the proposed lease area in which they have personally observed seals (Figure 4). Throughout 2024, Beth and Johnny Walker observed seals located on Five Iron Island a total of 113 days and on Peabow Island a total of 58 days (Exhibit 28, pg. 15). Peabow Island is approximately 345 feet southwest and Five Iron Island is approximately 90 feet to the southeast (SR 3).

At the hearing, four members of the public testified to observing seals hauled out on the various ledges around the proposed lease area (Sproul Testimony; J. Walker Testimony; Lanpher Testimony; Fitch Testimony). One member of the public, a riparian landowner, testified to observing seals in this area of Johns River for the past 35 years (J. Walker Testimony). Additionally, J. Walker testified that he would observe approximately 18 to 20 new seal pups every year (J. Walker Testimony).



Figure 6. Walker Exhibit 10

Seals are a protected species under federal law pursuant to the Marine Mammal Protection Act (MMPA) of 1972, 16 U.S.C. §§1361-1423h. The MMPA prohibits the taking of protected marine mammal species without a permit. The term “take” includes harassment, which is defined, in part, as having the potential to disturb a marine mammal in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal in the wild.¹⁴ According to the National Oceanic and Atmospheric Administration (NOAA):

harbor seals haul out (rest) on rocks, reefs, beaches, and drifting glacial ice when they are not traveling and/or foraging at sea. They haul out to regulate their body temperature, molt, interact with other seals, give birth, and nurse their pups. These seals also haul out

¹⁴ Marine Mammal Protection Act, 16 U.S.C 1362(3)18(A).

in groups to avoid predators and spend less time being watchful for predators than those that haul out alone.¹⁵

To mitigate disturbance, NOAA's general viewing guidelines state that for seals in the water or on shore, the public should remain at least 50 yards, or 150 feet, away.¹⁶ In addition, the NOAA guidelines suggest that individuals should "[l]imit time spent observing individuals and groups of animals to 30 minutes or less."¹⁷ The guidelines further recommend that individuals should "[a]void approaching marine mammals when another watercraft is near. Multiple vessels are more likely to disturb marine mammals."¹⁸ DMR gives these recommendations by a federal agency with particular subject matter expertise in the field of marine animal safety great weight in assessing likely impacts from this proposal.

The northeast corner of the proposed lease is approximately 50 feet away from the nearest tidally exposed ledge to the east at MLW. The southeast corner is approximately 90 feet away from the nearest tidally exposed ledge to the southeast at MLW. The northwest corner is approximately 185 feet away from the nearest shoreline to the north at MLW. The southwest corner is approximately 345 feet away from the nearest shoreline to the southwest at MLW.

The applicant testified they would be on site three to five times a week for seeding, one to three times a week for harvesting, and one to five times a week for maintenance. This would bring the applicant to the lease site as many as five times a week to interact with aquaculture gear as close to 50 feet to seal haul outs to the east. Additionally, the boundary of the proposed lease to the north, west, and east would cause boaters who wish to navigate around the lease boundary to navigate closer to the shoreline to the north, likely bringing boaters within 150 feet of the shoreline.

The record demonstrates seals regularly haul out on these ledges, with testimony stating this has been observed for the past 35 years. Coming within 150 feet of the shoreline is likely to disturb the established seal population by causing disruption of behavioral patterns such as sheltering. Sheltering, or hauling out, serves an important biological function for the documented seal population near the proposed area. NOAA guidelines recommend that time spent in close proximity to marine mammals be limited to 30 minutes or less, and that individuals should avoid approaching marine mammals if other watercraft are around as multiple vessels are more likely to disturb the populations. The significantly increased intensity of use and human presence—with attendant noise impacts—that would result from this operation as well as the changes in existing navigational uses which would occur as a result of the need to travel around the proposed lease site and lead to increased human activity in close proximity to the established seal haul out

¹⁵ <https://www.fisheries.noaa.gov/species/harbor-seal>

¹⁶ <https://www.fisheries.noaa.gov/topic/marine-life-viewing-guidelines/guidelines-and-distances>

¹⁷ *Id.*

¹⁸ *Id.*

locations near the site, would not be in compliance with these guidelines and would result in negative impacts to the documented seal population and may result in increased stress to this population, or cause it to seek other, less established locations, for these activities. The frequency and duration of the proposed activities would not be compatible with the existing seal population's use of this area.

Due to the frequent aquaculture activities and change in navigation patterns that would occur within the recommended 50-yard NOAA viewing guidelines of a federally protected species utilizing documented haul out sites, there would be an unreasonable interference with the ability of the lease site to support existing fauna in the area.

Therefore, the aquaculture activities as proposed will unreasonably interfere with significant habitat and the ability of the lease site and surrounding areas to support existing ecologically significant fauna.

D. Fishing and Other Uses

When examining fishing and other uses, the Commissioner considers whether the proposed lease activities will unreasonably interfere with fishing or other uses of the area. 12 M.R.S.A. § 6072-A(13)(C). The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other uses of the area, including water-related uses of the area. Chapter 2.37(1)(A)(3).

Fishing. During the site visit, DMR scientists documented 11 lobster buoys in the vicinity of the proposal, with the nearest buoy being approximately 220 feet to the southeast (SR 6). DMR scientists also observed a buoy with an unknown purpose approximately 12 feet east of the proposal (SR 6). DMR scientists did not observe any active commercial or recreational fishing during the site visit (SR 6).

The application states there is no known commercial fishing in the area, and occasional recreational fishing from June through September (App 7). At the hearing the applicant testified that recreational fishing would be welcome in the lease site and anyone wishing to reach the shoreline for clamming activities could navigate through or around the proposal (Corcoran Testimony).

Throughout 2024, Beth and Johnny Walker observed 38 days of lobstering activity, 5 days of menhaden fishing activity, and five days of rockweed harvesting in the proposed lease site (Exhibit 28, pg. 2). Beth and Johnny Walker also provided exhibits depicting fishing in and around the proposed lease area (Exhibit 19-22). Intervenor Rachel Walker testified that the area of the proposed lease site has historically been used by herself and her family for recreational fishing (Exhibit 29, pg. 4).

At the hearing, three commercial menhaden fishermen, testified that they use the area in and around the proposed lease site for commercial fishing (Osier Testimony; House Testimony; Dawson Testimony). Additionally, seining boats of various sizes can fish shallower waters, such as where the proposed lease is located, by going into the shallow water without their gear deployed and flushing menhaden into deeper waters (Osier Testimony). Testimony was given that seine fishermen will not fish near aquaculture gear due to the risk of entanglement which can lead to damage or loss of seining gear (Osier Testimony). Exhibit 20 depicts three seining vessels with nets cast into the water. All three boats in Exhibit 20 were identified as seining boats within or around the proposed lease site by David Osier (Osier/Kallin). Mr. Osier testified to fishing for menhaden in this area (Osier Testimony). Multiple fishermen testified that they would no longer be able to seine in the area of the proposed lease site if the lease were to be granted (House/Kallin; Dawson Testimony). DMR finds credible and gives significant weight to the testimony of these individuals who are active fishermen, have familiarity with the area due to prior experience fishing in the location of the proposed site, and testified that aquaculture activities such as those proposed by the applicant would cause them to forego their preexisting use of the area for commercial fishing activities.

Given the testimony from the intervenors and members of the public, DMR finds that the proposed lease site is currently used for both commercial and recreational fishing. Due to bottom cages and floating cages throughout the lease site, and the MLW of 3.6 within the area of the lease, seining boats would not be able to utilize the area of the proposal if the proposal were approved, due to risk of gear entanglement. The area of the proposed lease site has been well documented as a common location for seine fishing. DMR finds the testimony of multiple commercial fisherman who presently use the site that the lease as proposed would interfere with their current use of the site area for fishing purposes, and fear of entanglement with the gear to be credible. The presence of an active aquaculture site would significantly limit or eliminate the amount of seining that could be conducted in the area. This would cause an unreasonable interference with existing commercial fishing uses in the area.

While the applicant stated that recreational fishing could happen within the lease site and clamming boats could navigate through or around the lease site, as discussed in **Section 3(B)** above, this proposal would cause an unreasonable interference with navigation for particular types of vessels which would make the suggested routes unreasonable to navigate for those activities, and additionally the site would be unsuitable for fishing activities within the confines of the proposed lease area as fisherman would avoid the site out of concern for entanglement with the aquaculture gear .

Therefore, the aquaculture activities as proposed will unreasonably interfere with fishing or other uses, including water-related uses of the area.

E. Other Aquaculture Uses

Pursuant to 12 M.R.S.A. § 6072-A(13)(C), in evaluating the proposed lease, the Commissioner shall take into consideration the number and density of aquaculture leases in an area. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area, the intensity and frequency of such uses, the degree of exclusivity required for each use as well as the number, size, location, and type of other aquaculture leases. Chapter 2.37(1)(A)(4).

There are no aquaculture leases or limited purpose aquaculture (LPA) sites within 1,000 feet of the proposed lease site (SR 7).

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

F. Source of Organisms to be Cultured

Pursuant to 12 M.R.S.A. § 6072-A(13)(E), in evaluating the proposed lease, the commissioner shall determine that the applicant has demonstrated there is an available source of organisms to be cultured for the lease site. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices. Chapter 2.37(1)(A)(6).

The applicant proposes to obtain American oyster (*Crassostrea virginica*) stock from Mook Sea Farm, Muscongus Bay Aquaculture, and Downeast Institute (App 2). These are all approved sources for stock. If the applicant is unable to obtain stock from these facilities, then it must come from another DMR approved source.

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

G. Interference with Public Facilities

When examining interference with public facilities, the Commissioner considers whether the proposed lease will unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, or docking facility owned by the Federal Government, the State Government or a municipal governmental agency. 12 M.R.S.A. § 6072-A(13)(F). Chapter 2.37(1)(A)(7) and 2.64(11)(A)).

The proposed lease is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments (SR 13).

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

4. Conclusions of Law

Based on the above findings, DMR concludes that:

- a. The aquaculture activities proposed for this site will unreasonably interfere with navigation.
- b. The aquaculture activities proposed for this site will unreasonably interfere with the ingress and egress of riparian owners.
- c. The aquaculture activities proposed will unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- d. The aquaculture activities proposed for this site will unreasonably interfere with fishing uses of the area.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with other aquaculture uses of the area.
- 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 unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal government.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities do not 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 denies the requested experimental lease to Nor'Easter Oyster Co. for 3.3 acres for three years for the culture of American oysters (*Crassostrea virginica*) using bottom and suspended culture techniques.

Dated: 9.8.2026



Carl J. Wilson, Commissioner
Department of Marine Resources