

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Hermit Island Oyster Company, LLC**

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

**NMR SPH**

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

Hermit Island Oyster Company, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 2.51<sup>1</sup> acres in Small Point Harbor, New Meadows River, Phippsburg, Maine. The proposal is for the suspended culture of eastern oyster (*Crassostrea virginica*) and European oyster (*Ostrea edulis*).

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on January 15, 2020, and a scoping session was held on November 30, 2020. DMR accepted the final application as complete on April 27, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of Phippsburg, riparian landowners<sup>2</sup> within 1,000 feet of the proposed site, and subscribers to DMR’s aquaculture email listserv. The hearing was scheduled for July 11, 2023. Notice of the hearing was published in the *Times Record* on June 9, 2023, and June 23, 2023. The public notice for the hearing indicated that the proceeding would be conducted in-person and directed interested persons to register for the proceeding if they intended to offer testimony or ask questions. It also directed interested persons to contact DMR for an intervenor application. No individuals registered to participate or intervene in the hearing.

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

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

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

<sup>1</sup> Applicant originally requested 2.56 acres. DMR calculations indicate Tract 1 is 1.89 acres and Tract 2 is 0.62 acres, totaling 2.51 acres.

<sup>2</sup> For purposes of notice, the Department defines “riparian owner” as a shorefront property owner, whose property boundaries are within 1,000 feet of the proposed site.

The evidentiary record before DMR regarding this lease application includes three exhibits introduced at the hearing and the testimony at the hearing. The evidence from these sources is summarized below.<sup>3,4</sup>

## **LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on May 30, 2023

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

### **A. Site Characteristics**

Part of the requested lease area has been leased to Christopher Sewall, owner/operator, President and sole member of applicant Hermit Island Oyster Company, LLC, through four limited-purpose aquaculture (LPA) licenses, SEW210, SEW313, SEW413, and SEW515, for the cultivation of eastern and European oysters using suspended culture techniques. SEW210, located in proposed Tract 2, and SEW313, located in proposed Tract 1, would be relinquished if this lease is granted.

On August 25, 2021, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR 2). The proposed lease area is comprised of two tracts approximately 275 feet apart separated by an intertidal sand/mud bar (App 14). The Hermit Island Partnership, with partners Christopher Sewall, owner of the applicant, and Christina Sewall, owns both Hermit Island and Tenants Island, the shoreline surrounding the proposed site. Tract 1 includes a former lobster pound and the adjoining salt creek which drains to the main harbor channel. A portion of this proposed tract is above mean low water but is located exclusively inside the former lobster pound (App 13)<sup>5</sup>. Tract 2, south of Tract 1, includes a shallow salt pond and adjoining drainage on the northern end of Tenants Island (App 14). The northern end of Tract 1 is predominantly mixed forest while the southern end of Tract 1 is adjacent to a lobster wharf and its associated docks. The shoreline of Tenants Island, south of Tract 2, is comprised of mixed forest, ledge, and marsh grass. This island appeared to be uninhabited and was used for storing lobster traps at the time of the site visit (SR 2).

At the time of DMR's site assessment on August 25, 2021, water depths at the proposed lease site ranged from 8 to 10 feet. Correcting for tidal variation derives water depths at the next high tide to be a

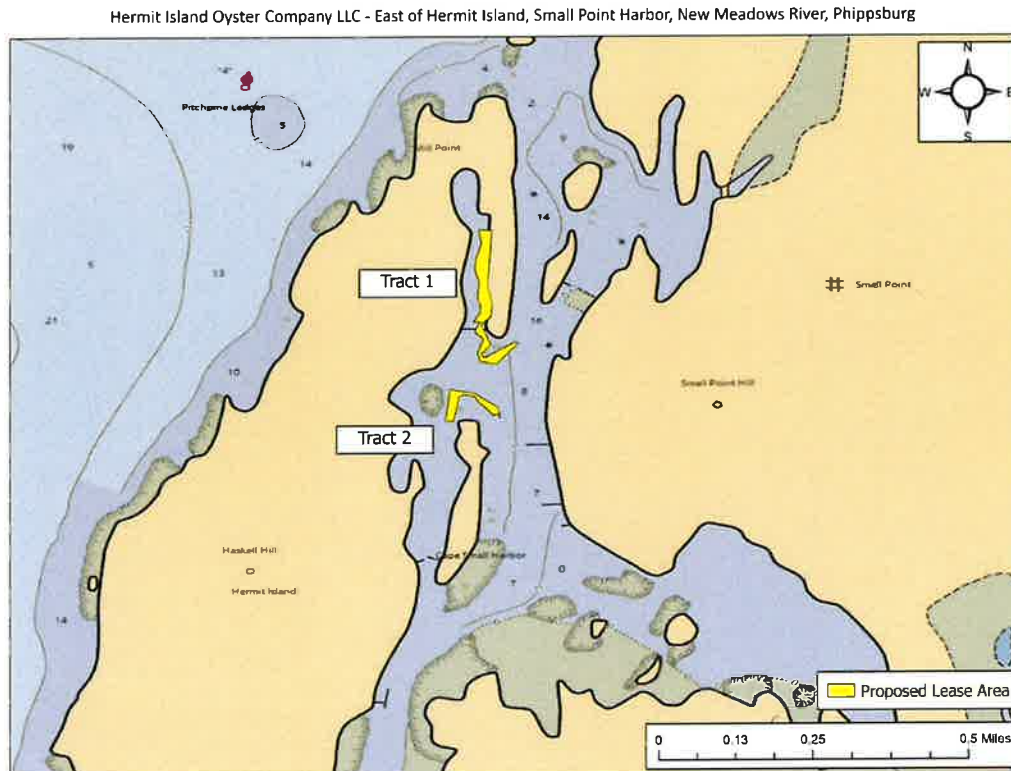
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<sup>3</sup> Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”

<sup>4</sup> In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

<sup>5</sup> Pursuant to DMR Regulations Chapter 2.10(3)(G) the Department requires written permission of every owner of intertidal land in, on, or over which the activity will occur. The applicant included written permission with the application materials.

range from 8.1 to 10.1 feet. Water depths at mean low water (MLW, 0.0 feet) range from 0.0 to 0.4 feet (SR 2).



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

## **B. Proposed Operations**

Shellfish would be cultivated in a combination of surface and seafloor cages, and bottom planted on both Tract 1 and Tract 2. Tract 1 would contain 8 longlines each with (10) 41”x37”x23” 4-bag or 68”x40”x22” 6-bag floating oyster cages and 2 blocks of (6) 47”x36”x12” bottom cages and 1 line of (40) 34.5”x18”x3” bottom bags. Tract 2 would contain 2 lines of floating oyster cages. One line of (25) 36”x36”x8.5” 2-bag floating oyster cages and one line of up to (10) 68”x40”x22” 6-bag floating oyster cages. An 8’x10’x3’ upweller and a 24’x24’ work float with yurt with a height of 14 ft would be used in Tract 1. Gear is intended to be deployed year-round on both tracts (App 24). Eastern oyster seed would be deployed in bags in the summer and bottom seeding would occur in the spring and fall. European oysters would be bottom seeded only using wild seed collected in April-May or September-October. Oysters would be harvested by rake, oyster tongs, or hand picking. Floating oyster cages would be sunk to the bottom in the winter, from approximately December 1 through March 31.

An 18 ft wooden scow barge with a 5 hp outboard would be the boat used on site. The power equipment proposed for the site includes the following:

<b>Equipment</b>	<b>Description</b>	<b>Months of Operation/Frequency of Use</b>
Oyster tumbler/grader	12-volt tumbler/grader to tumble and sort oysters	April to November for up to 14 days/year up to 8 hours/day
Electric motor	¾ hp to power the upweller	June to September up to 24 hours/day

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

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner 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.

**A. Riparian Access**

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

Tract 1 of the proposed lease site is located primarily within a former lobster pound. Proposed corners 7, 18, and 19 denote the dam to the intertidal pound. Within Tract 1, the applicant is proposing to use gear only within the bounds of the former lobster pound. There is no gear proposed for use, except the required boundary markers, within the southern portion of Tract 1, from proposed corners 7, 18, 19 south and east to proposed corner 12. This area of the proposal is intended to be bottom planted only.

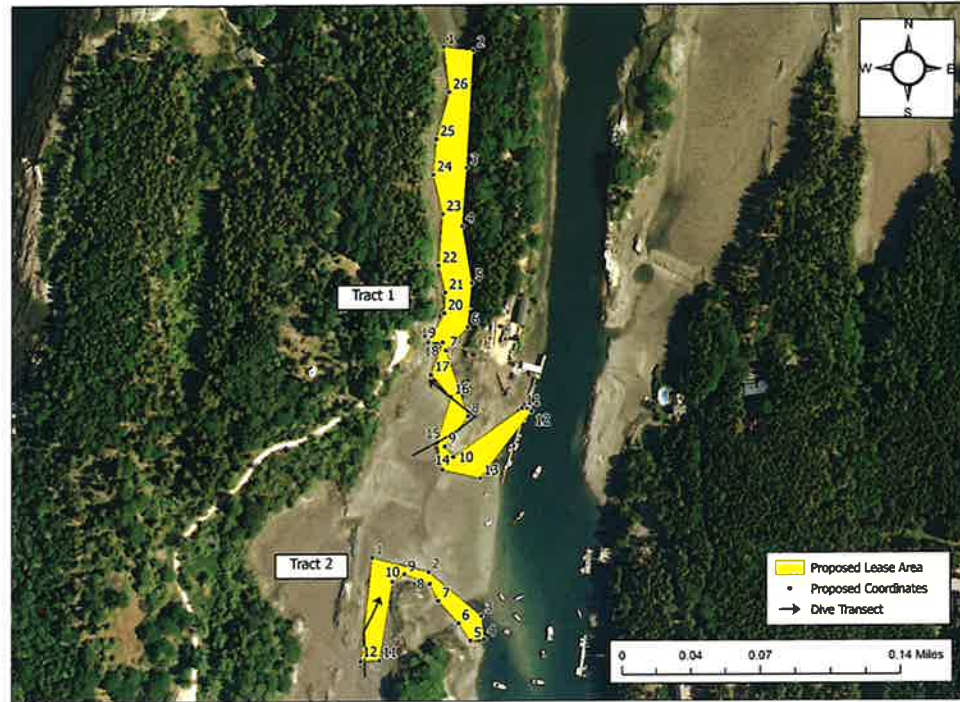


Figure 2: Proposed lease area with application corner numbers.

At the time of DMR’s site visit on August 25, 2021, it was observed that the eastern boundary of Tract 1, proposed corners 11 and 12, is adjacent to a float that is associated with a lobster wharf. DMR observed vessels transiting to and from this float during the site visit (SR 7).

Gear is proposed for use only within the western portion of Tract 2 between proposed corner 1 and proposed corners 11 and 12. Shellfish are intended to be bottom seeded only east of proposed corner 10 to proposed corner 4, the easterly boundary of Tract 2. During the site visit, DMR staff observed a mooring approximately 15 feet to the east of corner 3, Tract 2. This mooring was in use by a powerboat with an outboard motor (SR 8).

During the site visit on August 25, 2021, DMR observed three docks along the eastern shoreline of Small Point Harbor within the general vicinity of the proposed lease site. The dock nearest to the proposed site was located approximately 260 feet east of corner 4, Tract 2 (SR 8).

Hermit Island Company, Inc. owns both Hermit Island and Tenants Island, including the lobster wharf and docks and slips associated with Hermit Island Marina. The president of Hermit Island Company, Inc. is Christopher Sewall, who is owner/operator, President and sole member of applicant, Hermit Island Oyster Company, LLC. No testimony concerning riparian owners’ ingress and egress was given at the hearing. Based on the evidence, sufficient area remains for reasonable ingress and egress by riparian owners.

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

#### **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. DMR's site assessment states that Tracts 1 and 2 are located to the west of the navigable channel within Small Point Harbor. There is approximately 100-200 ft of navigable water at MLW between the easterly most corners (corner 12, Tract 1 and corner 4, Tract 2) and the easterly shore. The proposed lease occupies shallow water within Small Point Harbor and does not extend into the deeper, navigable channel. DMR observed a variety of vessels operating within Small Point Harbor, including commercial lobster boats, powerboats, and sailboats, during the August 25, 2021 site visit (SR 8). These vessels were observed operating within the deeper channel. No testimony concerning navigation was given at the hearing.

The Department finds that based on the record, the placement of the proposed project will still allow for adequate distances for navigation for typical vessels using Small Point Harbor. The applicant noted that the site would be marked in accordance with DMR regulations (White-Sewall).

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

#### **C. Fishing & Other Water-Related Uses**

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

**Fishing.** At the time of the Department's site assessment on August 25, 2021, DMR staff did not observe any shellfish harvesting within the proposed lease site (SR 8). No testimony concerning fishing was given at the hearing. Based on the record, it is unlikely that commercial or recreational fishing will be unreasonably impacted by the proposed activity.

**Other aquaculture uses:** There are two Limited Purpose Aquaculture (LPA) licenses within 1,000 feet of the proposed lease site (SR 8). Both LPA sites, SEW210 and SEW313, are held by Christopher Sewell, who is the owner/operator and sole member of Hermit Island Oyster Company LLC. If this proposal is granted, Mr. Sewell plans to relinquish both LPAs. No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Based on this

evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

**Other water-related uses.** The application states that frequent kayaking occurs in the summer months near Tract 2 (App 28). DMR observed kayakers in Small Point Harbor, though not within the proposed lease site (SR 8). Most open areas of the proposed lease would not contain surface gear and would be navigable. No testimony concerning other water-related uses was given at the hearing. Based on the record, it is unlikely that other water-related uses in the area will be impacted by the proposed activity.

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

**D. Flora & Fauna**

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

**Site observations.** On August 25, 2021, DMR staff conducted two SCUBA transects utilizing an underwater camera to assess the epibenthic ecology of the proposed lease. The observed bottom was both mud and shell rubble (SR 9). The relative abundance of epibenthic flora and fauna observed in the video transects is described below:

Species Observed	Abundance
Rockweed ( <i>Ascophyllum nodosum</i> )	Common
European Oyster ( <i>Ostrea edulis</i> )	Common
Periwinkle ( <i>Littorina</i> spp)	Common
Hard Clam ( <i>Mercenaria mercenaria</i> )	Rare
Green Crab ( <i>Carcinus maenas</i> )	Common
Blue Mussel ( <i>Mytilus edulis</i> )	Rare
Hermit Crab ( <i>Paguroidea</i> spp)	Common
Tunicate species (not classified)	Common
Atlantic Razor Clam ( <i>Ensis directus</i> )	Rare

**Eelgrass.** Historical records of eelgrass (*Zostera marina*) beds, collected in 1997 and 2022, indicate eelgrass presence approximately 1,000 ft to the northeast of the proposed lease. In addition, no eelgrass was observed during the DMR’s underwater site assessment on August 25, 2021 (SR 10).

**Wildlife.** According to GIS (Geographic Information System) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS, the proposed lease is located within an area designated as Tidal Waterfowl and Wading Bird Habitat (SR 11). Tidal Waterfowl and Wading Bird Habitat is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat. MDIFW did not submit comments on the proposal. Data collected by the United States Fish and Wildlife Service in 2022, indicates that the closest mapped Bald Eagle nesting site is over two miles to the northwest. No testimony concerning flora and fauna was given at the hearing. Based on this evidence, it appears that the proposed lease site will not interfere with the ecological functioning of the area.

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

#### **E. Public Use & Enjoyment**

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

There are no beaches, parks, docking facilities, or conserved lands owned by federal, state, or municipal government within 1,000 feet of the proposed lease site (SR 11). No testimony concerning public lands was given at the hearing.

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

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

The applicant will obtain seed from Muscongus Bay Aquaculture and Mook Sea Farm and the wild, which are approved sources of stock. The applicant is responsible for obtaining the appropriate licenses to harvest stock from the wild.

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

#### **G. Light**

According to the application, no lights would be used on the proposed lease site and work would only occur beyond daylight hours at low tide during the fall, winter, and spring or for an emergency that



required immediate attention (App 25). In cases of emergency that necessitated lighting 12-volt LED headlamps (350 lumens each) would be used (App 25). There was no testimony provided at the hearing to indicate there was concern regarding light associated with the proposed activities.

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

#### **H. Noise**

The applicant plans to use an 18 ft wooden scow barge with a 5 hp outboard motor to tend to all aquaculture activities within Small Point Harbor (App 24). The applicant also plans to use a 12-volt oyster tumbler/grader from April through November for up to a total of 14 days per year and up to 8 hours per day. A ¾ hp electric motor is proposed to power the upweller; it may run up to 24 hours per day from June through September. No generator, power washer, or other powered equipment would be used on site. The application indicates that all equipment is substantially below ambient noise levels in the working harbor (App 25). No testimony concerning noise was given at the hearing. Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

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

The applicant plans to use a variety of black soft mesh bags and wire cages on the proposed lease site. The applicant currently owns a float with a covered yurt that is 14 ft high and attached to land by a 33 ft aluminum gangway. This work float is located within the lobster pound in Tract 1 and would become part of the proposed lease site. In addition, the applicant is proposing to use an upweller, which would be attached to the work float and on site from May through October. At the hearing, the applicant stated the site will be properly marked, in accordance with the updated regulations (White-Sewall). No one offered testimony related to visual impacts and all the proposed gear and structures comply with DMR's visual impact regulations.

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

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

Based on the above findings, I conclude that:

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

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

#### **5. DECISION**

Based on the foregoing, the Commissioner grants the requested lease to Hermit Island Oyster Company for 2.51 acres for 20 years for the cultivation of eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

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

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A. §6072 (7-B).<sup>6</sup> Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. No conditions will be imposed on this lease.

**7. REVOCAION OF LEASE**

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

Dated: 11/27/23



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

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<sup>6</sup> 12 M.R.S.A. §6072 (7-B) states: “The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose.”