

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Pleasant Cove Oyster Farm

Standard Aquaculture Lease Application
Suspended Culture of Shellfish
Damariscotta River, Boothbay, Maine

DAM PC

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Pleasant Cove Oyster Farm applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 5.90¹ acres in Pleasant Cove in the Damariscotta River, in Boothbay, Maine. The proposal is for the suspended culture of American oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on February 5, 2020 and a scoping session was held on August 20, 2020. DMR accepted the final application as complete on October 22, 2020. A pre-hearing conference was held remotely on July 6, 2022. During the pre-hearing conference, general hearing guidelines, procedures for applying for intervenor status, and requirements for pre-filed testimony were reviewed. No applications for intervenor status were received by the Department. A public hearing on this application was held on July 27, 2022. Notice of the completed application and public hearing was provided to state and federal agencies, the Town of Boothbay, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in the *Boothbay Register/Wiscasset Newspaper* on June 23 and July 7, 2022. The public notice for the hearing indicated that the proceeding would be conducted both in-person and remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. Eighteen individuals registered to participate in the hearing, including 14 that indicated an intention to provide testimony. Of the fourteen, two did not attend or provide testimony².

¹ Applicant originally requested 6.26 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 5.90 acres.

² S.Xiao registered to participate in the proceeding in-person. However, this individual later contacted DMR to inquire about participating remotely, and they were provided details on how to attend via the online Microsoft Teams platform.

Sworn testimony was given at the July 27, 2022 hearing by the following witnesses:

Name	Affiliation
Clay Gilbert and Greg Johnston	Pleasant Cove Oyster Farm, applicant
Cheyenne Adams	DMR Marine Scientist
Marcy Nelson	DMR Aquaculture Division Director
Susan Wilson	Interested person
Sally Kent	Interested person
Drew Peck	Interested person
Erica Peck	Interested person
John Clark	Interested person
Barbara Lloyd	Interested person
Donald McDowell	Interested person
Sloiman Matari	Interested person
Marie Hayward	Interested person
Bruce Glabe	Interested person
Sarah Xiao	Interested person
Caroline Tyson	Interested person
Jennifer Betts	Interested person

Colin Greenan, with the United States Army Corps of Engineers (ACOE) also attended the hearing and participated in cross-examination. Additional DMR staff and members of the public attended the hearing either in person or remotely but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes thirteen exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.³

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report, issued on May 20, 2021

³ Exhibits 1, 2, 3, and 4 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”, Site Report Addendum – “SRA”.

4. DMR Site report addendum, issued on July 25, 2022
5. Applicant exhibit A-1, copies of navigational charts and aerial photographs
6. Applicant exhibit 3, Conservation easement for Dana B. Jefferson, Barry P. Jefferson, and Suzette B. Jefferson
7. Applicant exhibit 4, Conservation easement at Carlisle Point (Sally S. Kent)
8. Applicant exhibit A-6, Honda generator decibel chart photo
9. Sally Kent exhibit 1, Address to the Department and marked aerial photographs
10. Donald McDowell exhibit 1, marked aerial photograph
11. Drew Peck exhibit 1, Supply and Demand – Aquaculture Policy and Oyster Economics
12. Drew Peck exhibit 2, Navigation – Pleasant Cove Recreational Traffic
13. Drew Peck exhibit 3, Aquaculture and Conservation – Avoidable Conflict with Conservation Trusts

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On December 11, 2020 and July 22, 2022, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR/SRA). The proposed lease site occupies subtidal waters in Pleasant Cove in Boothbay. The shoreline surrounding the proposal is mostly rocky, with mixed forest uplands throughout Pleasant Cove. To the east of the proposed lease area is the main navigational channel of the Damariscotta River and the South Bristol shoreline is along the eastern shore of the river (SR 2).

At the time of the Department's site assessment in 2020, water depths within the proposed lease site ranged from 15.8 feet to 25.0 feet, sloping deeper on the eastern side of the proposed lease area. Depth measurements were collected using a transom-mounted depth sounder. Department staff observed the depths of the proposed lease site at approximately 9:50 am. Correcting for tidal variation derives water depths approximately 3.1 feet higher at the nearest high tide (18.9 to 28.1 feet) and approximately 7.1 feet lower at mean low water (8.7 to 17.9 feet) (SR 6). The bottom of the proposed lease area is composed of soft mud sediment (SR 7).

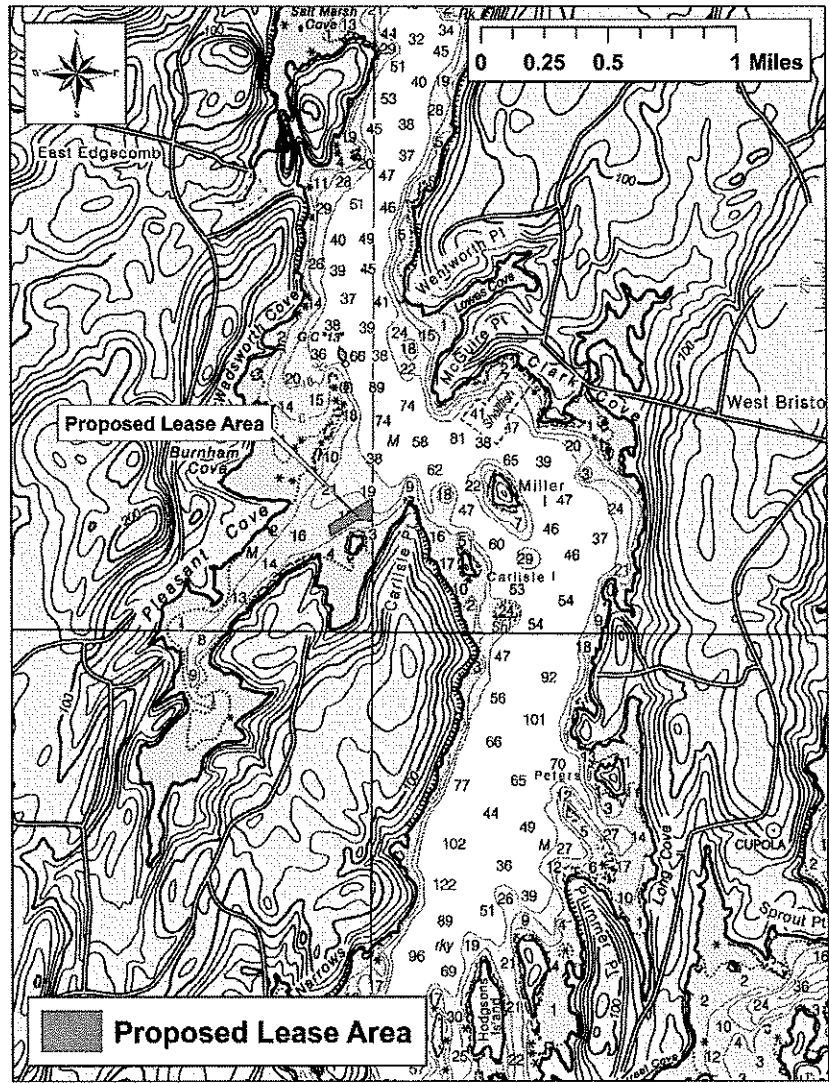


Figure 1: Proposed lease site and surrounding area. Image taken from DMR’s site report.

Application Coordinates (WGS84) – 5.90 acres

<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>	
1	43° 55' 21.50" N	69° 35' 12.49" W	<i>then 220.21 feet at 165.15° True to</i>
2	43° 55' 19.40" N	69° 35' 11.70" W	<i>then 635.63 feet at 58.92° True to</i>
5	43° 55' 22.68" N	69° 35' 04.29" W	<i>then 294.24 feet at 93.96° True to</i>
6	43° 55' 22.50" N	69° 35' 00.28" W	<i>then 240.56 feet at 9.41° True to</i>
4	43° 55' 24.85" N	69° 34' 59.76" W	<i>then 220.61 feet at 346.24° True to</i>
3	43° 55' 26.96" N	69° 35' 0.50" W	<i>then 1,036.96 feet at 238.19° True to 1</i>

B. Proposed Operations

The applicant proposes to culture American oysters (*C. virginica*) on the proposed lease site using suspended culture techniques (App 1). A total of 1,728 oyster cages (40.5" x 67.5" x 20.5"), 10,368 mesh bags (40" x 22" x 4"), 100 wooden floating trays (24" x 36" x 4"), 100 floating bags (36" x 30" x 4") and 50 crates (32" x 20" x 15") are proposed for the site (App 6). Two 20-foot by 20-foot floats will also be used on-site. Floating devices will be deployed in twenty rows in lengths from 110 to 960 linear feet. Rows may contain multiple gear types, however, no more than 1,728 devices will be deployed at one time. The project configuration is a polygon with sides of 220-feet, 1,040 feet, 220-feet, 242-feet, 294-feet, and 642-feet (App 12). Some gear may be submerged from January to March, however portions of the gear may remain on the surface year-round (App 21, Gilbert testimony).

The applicant anticipates seeding the site in May through July. Routine tending, maintenance, and harvest activities will occur year-round with staff on-site multiple days each week (App 20). Oysters will be harvested by boat or skiff, sorted and sized by hand or tumbler, and then transported off-site (App 20). A tumbler powered by a 2,000-watt generator is proposed to be used on the site, approximately three to four days a week, most often in the summer months (Gilbert testimony). The applicant intends to utilize a boat or skiff for tending and harvesting oysters (App 21).

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.

At the time of DMR's second site assessment, a total of fifteen docks, 23 boat moorings, a moored float, and a boat ramp were observed within the cove (SRA). A variety of watercraft were observed on moorings, including a sailboat and motorboats. Approximately 15 of the observed moorings in the cove did not host a watercraft at the time of DMR's site assessment in July 2022. Additionally, several paddlecraft, motorboats, and towable tubes were observed on multiple docks and floats in the cove. The nearest observed mooring was approximately 300 feet to the south of the proposal and was being used by a Tidewater motorboat in the 15 to 25 foot range. The nearest observed dock was approximately 410 feet to the southwest of the proposal, which had an inflatable dinghy tied off nearby (SRA 2). Based on these distances, DMR staff conducting the site review reported that if the lease was granted, adequate space would likely remain for access to these structures.

During DMR's site assessment on December 11, 2020, several residential buildings were observed along the northwestern and southeastern shorelines of Pleasant Cove. Some sections of the northwest shoreline in Pleasant Cove consist of gravel beach that could facilitate shore landing. DMR's site assessment stated that if granted, it is unlikely the proposed lease area would significantly hinder riparian ingress and egress via shore landing in this area. The assessment stated shore landing on Little Huckleberry Island, which appears to be uninhabited with no access infrastructure, approximately 150 feet to the south of the proposal at the nearest point, may be more constricted than other areas.

During the hearing, Sally Kent presented an image (Figure 1 of Exhibit 9) depicting her historic route of ingress and egress to her mooring and dock as well as a projected path of ingress and egress in the event the project is installed. The image depicts current routes of ingress and egress that are generally parallel to the shoreline. Ms. Kent stated the proposed project would force her to use a route more perpendicular to the shoreline and would require entering the main channel and negotiating marine traffic, often traveling at high speeds, within the channel. Additionally, Ms. Kent stated that the project as proposed may impede emergency services trying to access the surrounding lands. According to the site report, the closest point of the lease boundaries is located approximately 410 feet from the Kent dock and approximately 300 feet from the Kent mooring (SRA 2). Testimony by other riparian owners focused on navigation and other water-related uses.

The Department finds that while customary routes of ingress and egress may be affected, and some course adjustments may be necessary to avoid the project, 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 the Damariscotta River is heavily traveled year-round by commercial and recreational mariners. The proposed lease occupies subtidal waters within Pleasant Cove and is approximately 440 feet to the west of the Damariscotta River's marked navigational channel. The site assessment states that if the proposed lease were granted it would not impede vessel flow within the main channel (SR 10).

Although no vessels were observed underway during DMR's site assessment on December 11, 2020, during the subsequent site assessment two motorboats were observed leaving the cove, one of which returned and was observed towing individuals on a tube between the shallow subtidal and intertidal area of the cove to the southwest of the proposal, and the center of the mouth of the cove to the north of the proposal. Two kayaks were observed launching from shore over 3,000 feet to the southwest of the proposal, and a remote-controlled model boat was also observed in the same area.

DMR's site assessment states the proposal does not prevent vessel access to Pleasant Cove, although those mariners attempting to access Little Huckleberry Island and some sections of Carlisle Point would likely need to alter their original course slightly (SR 10). The site assessment states approximately 390 feet and 410 feet would remain between the eastern and western boundaries of the proposed lease, respectively, and the shoreline of Carlisle Point, which is likely adequate for the number and type of vessels that may access the point via shore landing. Additionally, the site assessment states access to Little Huckleberry Island by the type of vessels capable of shore landing is unlikely to be prevented by the proposal, if granted, but it is likely that mariners would need to alter their original course to circumnavigate the proposed lease area.

Testimony offered during the public hearing indicated significant concerns about the impact of the proposed project on navigation. Drew Peck submitted a navigation study entitled "Navigation – Pleasant Cove Recreational Traffic," dated July to August 2021 (Peck Exhibit 2). Using a camera mounted on his pier located to the west-southwest of the project site, Mr. Peck recorded vessel traffic using or transiting Pleasant Cove (excluding vessels transiting within the center channel and repeat transits) on days with a UV index averaging >5.0. According to the study, the daily average was 18.58 vessels recorded.

In addition, testimony offered by several persons stated that the cove is used heavily by sailboats (both monohull and catamaran), some of which use the cove to anchor overnight, and recreational boats that raft together and subsequently tube or waterski. Testimony given stated existing obstacles in the area, including commercial fishermen (presumably fishing for menhaden with seine nets), a sandbar, tidal

changes, and the aforementioned rafted vessels already restrict navigation within Pleasant Cove and that the addition of the project would make navigation more difficult, especially for vessels under sail. No concerns with respect to navigation for commercial vessels were offered at the hearing.

During his testimony, Clay Gilbert stated that navigation was one of the factors considered when the project site was chosen. The applicant submitted several copies of navigational charts and aerial photographs to illustrate that several other areas within the Damariscotta River have natural width limitations that are more restrictive than the proposed site, but still allow for safe navigation (Exhibit A-1).

The Department finds Pleasant Cove hosts considerable marine traffic with some constrictions, both natural and anthropogenic. However, the Department finds that more than 500 linear feet of navigable water, as measured from the project corner to the 17-foot contour line, will remain for vessel passage to and from Pleasant Cove if the project is installed as proposed. The Department finds that based on available information and hearing testimony, the placement of the proposed project will still allow for adequate distances for navigation, often in excess of the other navigable areas on the river, for typical vessels using Pleasant Cove including vessels under sail.

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

C. Fishing & Other Uses

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

Fishing. At the time of the Department's site assessment on December 11, 2020, approximately four lobster (*Homarus americanus*) trap buoys were observed in the general vicinity of the proposal. Additionally, the main navigational channel of the Damariscotta River, to the east of the proposed lease area, exhibited moderate lobstering activity. The nearshore lobster fishery in Maine takes place during the summer and fall seasons due to the annual migration and molt cycle of lobsters.

Although evidence of clams (castings and siphons) was occasionally observed and European oysters (*Ostrea edulis*) were rarely observed during the underwater assessment, there did not appear to be commercially exploitable quantities of either. Moreover, the proposed lease site is likely too deep to facilitate commercial shellfish harvest by hand or rake. The report states the proposed lease, if granted, would not hinder the ability of harvesters to access the nearby tidally exposed mud flats, where the commercial harvest of shellfish is more likely to occur (SR 10).

During the July 22, 2022 Department site visit, heavy lobster fishing activity was observed in the marked navigation channel more than 1,000 feet from the proposal. The nearest lobster-style buoy observed was approximately 80 feet to the southeast of the proposal. Department staff observed what appeared to be a commercial fishing vessel on a nearby mooring. A recreational hook and line angler was also observed near Carlisle Point (SRA).

No testimony concerning fishing was given at the hearing. Due to the location of the existing lobster fishing activity and the depths at the project site, it is unlikely that commercial or recreational fishing will be impacted by the proposed activity.

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

Other aquaculture uses: Twelve Limited Purpose Aquaculture (LPA) licenses and three leases are located within one mile of the proposed lease (SR 10). Four of the LPAs are located within the proposed lease boundaries and are held by Clay Gilbert, a shareholder of Pleasant Cove Oyster Farm, The LPAs are approved for the suspended culture of American oysters and will be terminated if the proposed lease is granted (App 23). The nearest aquaculture site not associated with the application, LPA LKNA420, is approximately 1,045 feet to the north and is approved for the suspended culture of American oysters. Access to, and navigation around, the nearby aquaculture sites is unlikely to be impacted by the proposal, if the lease were to be granted.

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. During the Department's site visit on July 22, 2022, DMR staff observed recreational activities including tubing and kayaking in the Cove. One vessel towing a tube was observed to the southwest and north of the proposed project site. Additionally, a variety of watercraft, including paddleboards and canoes, were observed at nearby residences. At the hearing, several persons testified that the Cove is a popular destination for a variety of watersports, including waterskiing, due to the warm water temperatures and favorable wind conditions. In addition, testimony was offered that non-resident vessels raft in the Cove and occasionally launch smaller sailboats upon arrival. Ms. Kent testified that the existence of LPAs near Little Huckleberry Island has rerouted some users, including waterskiers, to enter nearshore waters that contain potentially dangerous obstacles.

The Department finds that sufficient evidence of heavy recreational use of the waters near the project site exists in the record. However, the Department also finds that ample area for recreational use of the waters will remain if the project is approved. The Department finds that the burden for safe

passage and recreation lies with the resource user and the approval of this proposal will not impede all options for safe recreation.

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 December 11, 2020, MDMR staff conducted SCUBA and drop camera transects to assess the epibenthic ecology of the area. The observed bottom was entirely soft mud sediment and primarily dominated by brown benthic microalgae. Other organisms were noted occasionally and are listed below:

Species Observed	Abundance
Benthic Microalgae	Abundant
Horseshoe Crab (<i>Limulus polyphemus</i>)	Occasional
Crab molts (<i>Cancer sp.</i>)	Rare
Cerianthid Anemone (<i>Cerianthus borealis</i>)	Rare
Rockweed (<i>Ascophyllum nodosum</i>)	Rare
European Oyster (<i>Ostrea edulis</i>)	Rare
Clam castings	Occasional

Eelgrass. According to historical data collected by DMR in 2005, the nearest documented presence of eelgrass (*Zostera marina*) is more than 1,000 feet to the north of the proposed lease site. Additionally, no eelgrass blades, nor evidence of eelgrass rhizomes, were observed during DMR’s underwater assessment on December 11, 2020 (SR 13).

Wildlife. On December 11, 2020, various gulls (*Larus sp.*) and long-tailed ducks (*Clangula hyemalis*) were observed in the general vicinity of the proposal. Additionally, Canada geese (*Branta canadensis*) were observed onshore and a gray seal (*Halichoerus grypus atlantica*) was noted in the water near the proposal. During the July 22, 2022 site visit, observed wildlife included 2-3 harbor seals (*Phoca vitulina*) hauled out on the ledge to the north of the proposal, one harbor seal pup swimming in the general

vicinity of the proposal and near the inner reaches of the Pleasant Cove, two great blue herons (*Ardea herodias*) flying in the inner reaches of the cove, and several terns (*Sterna sp.* or *Sternula*) fishing throughout the cove.

According to Geographic Information System (GIS) data maintained by the U.S. Fish and Wildlife Service and available through the Maine Office of GIS, the 660-foot protective buffer associated with the nearest bald eagle (*Haliaeetus leucocephalus*) nest is located >2,200 feet east of the proposed lease site. Although bald eagles are no longer considered a species of special concern in Maine, they are protected under federal law by The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) of 1940. The nearest bald eagle nest is significantly farther away from the proposal than the USFWS-mandated 660 feet (SR 12).

Additionally, according to GIS data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the intertidal areas to the north and south of the proposal, as well as toward the head of Pleasant Cove, is designated Tidal Wading Bird and Waterfowl Habitat (TWWH) that is considered Significant Wildlife Habitat under Maine's Natural Resource Protection Act. At the nearest point, the proposed lease area is approximately 310 feet from designated TWWH. Furthermore, on November 20, 2020, a MDIFW wildlife biologist responded by email to a "Request for Agency Review and Comment" stating that "minimal impacts to wildlife are anticipated." (SR 12)

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. The nearest conserved land, Little Huckleberry Island, is 150 feet to the south of the proposal and is held in private conservation by Coastal Rivers Conservation Trust (SR 14). Although privately-owned conserved lands are not included in the decision criteria for granting standard leases, as per MDMR Regulations Chapter 2.37(1)(A), access to this island was considered under navigation.

Mr. Peck and Susan Wilson stated that several parcels near the project site are held in conservation easements that prohibit the construction of a pier. Concerns were expressed that such easements make an area more enticing to aquaculture activities and therefore may increase commercial development which is counter to the intent of the easements. As stated above, privately-owned conserved lands are not considered under the decision criteria.

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

F. Source of Organisms

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

The applicant will obtain American oyster seed stock for the lease site from Muscongus Bay Aquaculture in Bremen, Maine, Mook Sea Farm in Walpole, Maine, and/or DEI in Beals, Maine (App 2). These hatcheries are approved by DMR.

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

G. Light

According to the application, no lights would be used on the proposed lease site and no work would occur beyond daylight hours, except for an emergency that required immediate attention such as damage from debris or a storm (App 22). However, at the hearing, the applicant clarified that if needed, flashlights or the lighting system integrated into his lobster boat may be used (Gilbert testimony). 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

According to the application, an electric power washer and a tumbler/grader will be used on site to clean and sort oysters. Both will be powered by 2,000-watt generator (App 22). According to the application, the generator will not be stored on-site and will be placed in a wooden housing to reduce noise. At the hearing, the applicant testified that the generator will be run up to one hour per day, 3-7 days per week, predominantly in the summer months (Gilbert testimony). The applicant also stated generator use is

only anticipated during daylight hours. During the hearing, Sloiman Matari questioned if DMR regulations limited the hours of operation for noise-generating equipment and if such regulations would be appropriate. Testimony concerning the noise generated by the applicants' vessel was also given by Mr. Matari at the hearing. However, Chapter 2.37(1)A(9) expressly exempts watercraft while underway.

The applicant offered Exhibit 8, "Honda generator decibel chart photo" at the hearing to demonstrate the noise levels produced by various models of Honda generators. The six models' output range from 58 to 76 dB. During the hearing, the applicant indicated the model chosen for this project is anticipated to generate 59 dB. The applicant further indicated that according to Exhibit 8, this noise level is less than normal human speech. Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

I. Visual Impact

The applicant plans to deploy oyster cages, bags, trays, and crates as described in Section 2B, above. According to the application, two 20-foot wide by 20-foot long floats will also be utilized. The floats will measure approximately 30-inches high (App 10). With the exception of marker buoys and poly/go deep balls, the gear will be green, gray, black, or brown in color. The gear proposed by the applicant complies with DMR's height and visual impact limitations.

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

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

- f. The applicant has demonstrated that there is an available source of American oyster seed 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 Pleasant Cove Oyster Farm for 5.90 acres for twenty years for the cultivation of American oysters (*Crassostrea virginica*) using suspended culture techniques. Final approved coordinates for this lease are provided in Section 2A above. 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).⁴ 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 have been imposed on this lease.

⁴ 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."

7. REVOCACTION 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: 10/6/22



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