

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Pemaquid Mussel Farms, LLC**

Standard Aquaculture Lease Application  
Suspended Culture of Shellfish  
Frenchman's Bay, Bar Harbor, Maine

**EAST GL**

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

On January 12, 2006, the Maine Department of Marine Resources (DMR) issued an 8.03-acre lease to Tim Levesque. The lease, designated EAST GL, was issued for suspended culture of blue mussels (*Mytilus edulis*) east of Googins Ledge in Frenchman's Bay, Mount Desert Narrows, Bar Harbor, Hancock County. After lease issuance, the Department authorized the culture of kelp (*Saccharina latissima*), the addition of Pemaquid Mussel Farms, LLC as a co-lessee, and the use of sinking mussel rafts on the lease site. The lease was renewed for a period of ten years to January 11, 2026.

Pemaquid Mussel Farms, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 31.66<sup>1</sup> acres in Frenchman's Bay, Mount Desert Narrows, in Bar Harbor, Maine. The proposal is for the suspended culture of blue mussels (*Mytilus edulis*) and includes the 8.03-acre site EAST GL. If the lease is approved, the proposed lease area and the acreage of EAST GL would be combined into a single lease and retain the site identifier EAST GL<sup>2</sup>.

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on March 9, 2020, and a scoping session was held on November 19, 2020. DMR accepted the final application as complete on April 1, 2021. Notice of the completed application and public hearing was provided to state and federal agencies, the Town of Bar Harbor, 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 *Ellsworth American* on March 23 and April 13, 2023. The public notice for the hearing indicated that the proceeding would be conducted in-person and directed interested persons to register in order to provide testimony or ask questions during the proceeding. No applications for intervenor status were received by the Department. A public hearing on

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<sup>1</sup> Applicant originally requested 32 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 31.66 acres.

<sup>2</sup> The application contained a signed statement dated February 23, 2021 from Tim Levesque indicating he is a shareholder in Pemaquid Mussel Farms, LLC and he acknowledges that if a new lease is granted, it would be solely in the name of Pemaquid Mussel Farms.

this application was held on May 2, 2023. Six individuals registered to participate in the hearing, including five that indicated an intention to provide testimony. Of the five, two did not attend or provide testimony.

Sworn testimony was given at the May 2, 2023, hearing by the following witnesses:

Name	Affiliation
Carter Newell and Tim Levesque	Pemaquid Mussel Farms, applicant
Kathleen Rybarz and Jerilyn Bowers	Members of the public

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 Maria Eggett.

On May 11, 2023, the Commissioner opted to re-open the hearing record to request materials from the Maine Department of Environmental Protection (DEP) concerning the sinking and salvage of the applicant's barge in January 2022. After receiving that information and affording the applicant an opportunity to respond to the information, the record was closed on June 13, 2023. The evidentiary record before DMR regarding this lease application includes eight exhibits introduced at the hearing and the record of testimony at the hearing, the materials from DEP and the applicant's response hereto. The evidence from all sources is summarized below.<sup>3</sup>

#### **LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on December 16, 2022
4. Applicant exhibit 1, Powerpoint presentation
5. Kathleen Rybarz exhibit 2, written comments
6. Kathleen Rybarz exhibit 3, A spatially explicit ecosystem model of seston depletion in dense mussel culture, Grant, Bacher, Cranford, Guyondet, and Carreau, 2008.
7. Kathleen Rybarz exhibit 4, Photograph and specifications of 1977 Pepper 15
8. Kathleen Rybarz exhibit 5, DMR map of shellfish closures
9. Kathleen Rybarz exhibit 6, DMR map of clam flat closures
10. Kathleen Rybarz exhibit 7, Four photographs of boating activities in the project vicinity
11. Jerilyn Bowers exhibit 8, written comments
12. DEP Oil & Hazardous Materials Report B-26-2022
13. Email correspondence with DEP Oil & HAZMAT responder dated May 16, 2023

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

14. Applicant response to DEP information, via email dated June 12, 2023

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

### **A. Site Characteristics**

On September 1, 2021, and May 25, 2022, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR). The site is located near the eastern end of Mount Desert Narrows. The Mount Desert Island (MDI) shoreline is south of the proposal and is primarily ledge and hosts a mixed forest upland with residential buildings and a few small rocky beaches around Leland Point. Frenchman Bay is southeast of the proposal. The mainland and Town of Lamoine are north of the proposed lease area and host a forested shoreline with residential properties, Lamoine State Park, and Lamoine Beach (SR 2).

On September 1, 2021, DMR staff collected depth measurements at approximately 2:30 PM using a transom-mounted depth sounder; the tide was ebbing. Depths ranged from 83.8 to 96.9 feet at the proposed lease corners. Correcting for tidal variation derives water depths at the next high tide that range from 86.0 to 99.1 feet. Water depths at mean low water (MLW, 0.0 feet) range from 76.5 to 87.4 feet (SR 7).

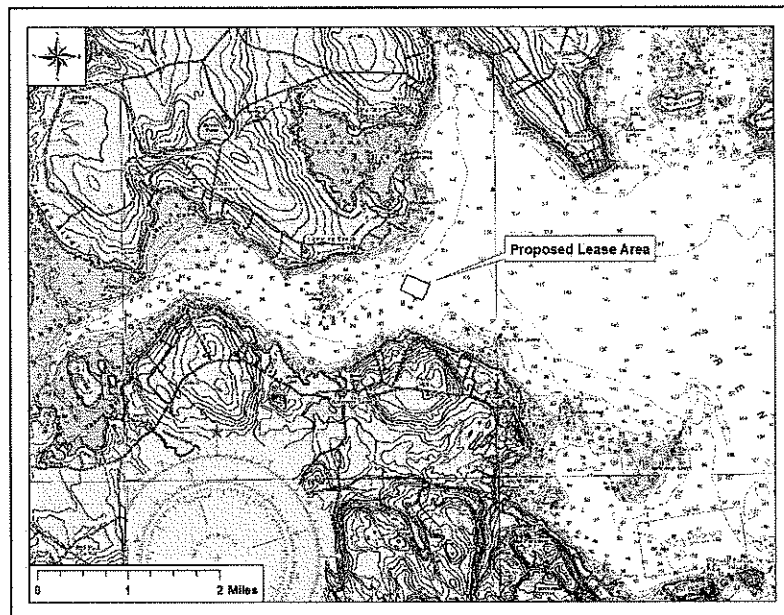


Figure 1: Proposed lease site and surrounding area. Image taken from DMR site report.

## **B. Proposed Operations**

The applicant proposes to culture blue mussels (*M.edulis*) on the proposed lease site using suspended culture techniques (App 1 and 2). A maximum of 32 submersible mussel rafts (50-feet by 40-feet) with 450 pegged 45-foot-long ropes per raft are proposed for the site. Six buoys will be used per raft, and for each 8-raft array, an additional nine lease marking buoys will be deployed (App 4). An eight-raft configuration will be approximately 8-acres in size (Newell testimony).

The applicant anticipates installing the coiled ropes on the mussel rafts in late June. The ropes will be uncoiled in the fall and mussels will attain market size after 1.5 to 2 years. Routine tending, maintenance, and harvest activities will occur year-round, 4-5 days per week for approximately six hours per day (Newell testimony). The rafts would be submerged in the winter and raised in the spring by displacing the water in the floats using an air compressor or scuba tank. Mussels would be harvested using a 60-foot barge. Mussels would be removed from the ropes, cleaned and graded, then taken to shore (App 7). The applicant intends to also utilize a 60-foot vessel and a 20-foot skiff in site operations (App 5).

## **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. Additionally, applicants are required to demonstrate adequate financial capacity and technical capability as part of the application process.

### **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.

Although several houses were noted along the nearby shorelines, the Lamoine and Mount Desert Island shorelines are approximately 2,500 and 1,910 feet from the proposal at the nearest points, respectively. Therefore, there is likely sufficient space for riparian landowners to navigate around the proposal and access their shorelines at any tidal stage. There are several moorings in the general vicinity, suggesting consistent vessel traffic by riparian landowners in the area. From observations made during the site visit on September 1, 2021, and other visits to the area, DMR is aware of various mooring fields within the vicinity of the site. There is a mooring field southwest of the proposal in Salisbury Cove, a mooring field northwest of the proposal near the Lamoine State Park boat ramp, a mooring field near Morris Yachts boat ramp, and several other scattered moorings along the nearby shorelines. Given the distances between these moorings and the proposal, it is unlikely that the proposed lease site would interfere with their use (SR).

A Harbormaster Questionnaire was sent to the Harbormaster for the Town of Bar Harbor on May 7, 2021. No response was received. During the public hearing, no one offered testimony or evidence regarding riparian ingress and egress.

DMR finds that 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. According to the site report, the proposal is located approximately in the middle of Eastern Bay, between the Lamoine and Mount Desert Island shorelines. On September 1, 2021, vessels under sail were observed to the southeast of the proposal, near the Gouldsboro shoreline. Additionally, two kayakers were observed paddling near the site and briefly transiting through the proposal (SR 10).

Although limited vessel traffic was observed on the day of the site visit, the site report notes that it is likely the general vicinity experiences moderate to heavy commercial and recreational traffic. This is supported by the fact that three small mooring fields and several scattered moorings were observed in the area, and two actively used boat ramps are located to the west of the proposal in Mount Desert Narrows. Commercial and recreational vessel traffic from both Lamoine State Park and Morris Yachts boat ramps, and vessels from all three mooring fields, would be required to either pass by the proposed lease site or

transit under the Trenton Bridge in order to reach waters beyond Mount Desert Narrows. Passage under Trenton Bridge is limited by both water depth and bridge height, and therefore may not be an option for all vessels and/or at all tidal stages. Therefore, it is expected that mariners frequently navigate past the proposed lease area (SR 10).

The flow of vessel traffic, as indicated by the NOAA navigational buoys, is likely to primarily pass between the proposed lease footprint and the Mount Desert Island shoreline. Vessel traffic from the direction of Raccoon Cove would be expected to transit primarily between the Lamoine shoreline and the proposal. The expected flow of vessel traffic is largely confirmed by available Automated Identification System (AIS) data for 2021 (SR 10). However, not all vessels are equipped to collect AIS data, so it is possible that smaller recreational and commercial vessels transit the area in greater frequency or in closer proximity to the lease than is represented by AIS data (SR 10).

Testimony offered during the public hearing indicated concerns about the impact of the proposed project on the navigation. Kathleen Rybarz testified that the proposed lease would adversely impact man-powered and sailing vessels since it would be more difficult to avoid the area without an engine due to the typical winds and currents in the area (Rybarz Exhibit 2). Ms. Rybarz stated she utilizes the boat launch at Lamoine State Park as well as a mooring north of Hadley Point (Rybarz Exhibit 2). Jerilyn Bowers testified that the proposed expansion would create a navigational hazard for recreational and commercial boaters in the area, including vessels moored off of Lamoine State Park. Ms. Bowers stated she commutes to the MDI Biological Laboratory and the lease expansion would disrupt the direct course she currently uses (Bowers Exhibit 8).

Eastern Bay likely hosts considerable vessel traffic. However, DMR finds that more than 1,500 linear feet of navigable water, as measured from the proposed north and south project corners to approximately 25 feet of water at MLW, would remain for vessel passage around the lease site. This would allow sufficient maneuverable area for vessels in transit or recreating in the area.

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

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

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

**Fishing.** During DMR's site assessment on September 1, 2021, staff observed moderate to high abundance of lobster (*Homarus americanus*) trap buoys to the north/northeast of the proposal. Additional

lobster trap buoys were observed in moderate abundance to the east of the site and in low abundance, although still present to the south and west. One lobster trap-style buoy was observed within the proposed lease site, with two additional buoys on the proposed lease boundary, and five more in the immediate vicinity. Finally, three lobster fishing vessels were observed operating to east/northeast of the site at the time of DMR's site assessment. No lobsters were observed within the proposed lease boundaries on the drop camera transect videos. The lobster fishery in Maine follows the annual migration and molt cycle of lobsters and may be more prevalent in the area during other times of the year than when the site assessment was conducted. Moreover, the applicant is currently operating a standard lease, EAST GL, within the proposed lease footprint, which may deter a certain amount of nearby lobster fishing effort in order to avoid the potential for gear entanglement. Jonah crabs (*C.borealis*) were observed occasionally throughout the drop camera transect videos (SR 12).

In her testimony, Ms. Rybarz stated that the project as proposed would interfere with clam and mussel harvesting in the area. Ms. Rybarz stated the anticipated increase in sediment released due to the mussel production will adversely impact the clam beds (Rybarz testimony). During cross-examination of the applicant, Ms. Rybarz asked how often debris falls off (into the surrounding waters) during harvesting. The applicant testified it is a common occurrence, but mackerel (*S.scombrus*) often show up to feed during those times. The applicant also stated that due to the moderate current at the site, some of the sediment disperses over a large area while the organic material is consumed or deteriorates. The applicant stated the residual shells create bottom habitat for lobsters and crabs (Newell testimony).

No commercial lobstermen provided testimony during the hearing. Due to the lack of robust existing lobster fishing activity in the immediate project area, and the project location, it is unlikely that commercial or recreational fishing will be impacted by the proposed activity. The testimony provided by Ms. Rybarz concerning possible impacts to clam and mussel resources was speculative. Based on depths and currents at the proposed site it is unlikely the proposed site and operations will unreasonably interfere with those resources. No commercial clam or mussel harvesters provided testimony during the hearing. No testimony was provided concerning impacts to recreational fisheries.

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

**Other aquaculture uses:** The applicant's active lease site EAST GL is located within the proposed lease boundaries and would be replaced if the proposal were granted. There are three limited purpose aquaculture (LPA) licenses within one mile of the proposal which are approved for the suspended culture of sea scallops.

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 there are no other uses, such as kayaking and swimming, in the project vicinity. However, during his testimony, the applicant stated that when approached by kayakers, they often gave them bags of mussels (Newell testimony). The site report states that since the proposed lease site is relatively deep and exposed, it is expected that the majority of recreational activities in the area such as swimming and recreational fishing would remain closer to shore (SR 13).

In her testimony, Jerilyn Bowers stated the lease as proposed will interfere with a long-term phytoplankton study by MDI Biological Laboratory, Woods Hole Oceanographic, and Florida Fish and Wildlife Conservation Commission. The monitoring and research program is being conducted in upper Frenchman's Bay. Ms. Bowers stated the project may contribute nutrients to the bay, which in turn could cause an algal bloom (Bowers Exhibit 8).

Based on the record, including the applicant's own testimony, individuals kayak within the area. However, given the depths and location of the proposed site it is likely that other water-related activities, such as swimming, occur closer to shore. If the proposed site is granted, there would be ample area for kayaking or other water-related uses of the area. DMR finds Ms. Bowers' testimony concerning the potential impacts to the phytoplankton research is speculative.

**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 May 25, 2022, DMR staff conducted drop camera transects to assess the epibenthic ecology of the area. The observed bottom was primarily soft mud sediment, with occasional drift rockweed, crabs, northern sea stars, and *Beggiatoa sp.*. Additionally, abundant mysid shrimp and burrows were observed throughout the transects (SR 14).



**Table 4.** Species observed during DMR drop camera transect on May 25, 2022.

Species Observed	Abundance
Mysid shrimp (species unknown)	Abundant
Burrows	Abundant
Drift rockweed ( <i>Ascophyllum nodosum</i> )	Occasional
Jonah crab ( <i>Cancer borealis</i> )	Occasional
Northern sea star ( <i>Asterias rubens</i> )	Occasional
<i>Beggiatoa sp.</i>	Occasional

**Eelgrass.** The most recent historical eelgrass (*Zostera marina*) data, collected by DMR in 2008, indicate that the closest eelgrass presence is a small, low-density bed approximately 2,000 feet to the south of the proposal, along the Mount Desert Island shoreline. No live or drifting eelgrass was observed during the drop camera transects. Additionally, eelgrass beds are typically observed in shallower water than the proposed lease site, which allows for adequate light penetration to support photosynthesis. Therefore, eelgrass beds are not expected to occur at the proposed lease site (SR 16).

**Wildlife.** During DMR’s site assessment on September 1, 2021, staff observed double crested cormorants (*Phalacrocorax auritus*) and Canada geese (*Branta canadensis*) in the general vicinity of the proposal.

According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS, the proposed lease is located partially within tidal wading bird and waterfowl habitat (TWWH). Shorebird habitat and a bald eagle nest are located in the general vicinity, but at distances greater than 3,700 feet from the proposal. TWWH and shorebird habitat are both defined under Maine’s Natural Resource Protection Act (NRPA) as Significant Wildlife Habitat.

On May 19, 2021, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment”, stating total exclusion nets should have a maximum mesh size of 6 inches with 3-millimeter twine or larger for excluding eiders and a maximum mesh size of 4 inches with 3-millimeter twine or larger for excluding scoters. The comment goes on to recommend that boats and barges not ground out on reefs, aquatic beds, or mudflats, but considering the depth of the proposed lease area that is unlikely to occur. Finally, the comment recommends minimizing the project footprint to the extent practical. If the proposed northwestern boundary were shifted southeast by ~150 feet, the site would no longer be within Significant Wildlife habitat (SR 12).

On cross-examination, the Department asked if the applicant was aware of the MDIFW recommendations for net and twine sizing. The applicant stated they are implementing the recommendations for the site (Newell testimony). DMR will include a condition requiring the holder to implement a 4-inch mesh size with associated twine specifications.

For reasons described later in this decision, DMR is reducing the footprint of the proposed site. The reduced size would remove most of the project overlap with TWWH. Based on the size reduction and the required implementation of MDIFW's netting recommendations, 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 closest conserved land to the proposal is Lamoine Beach, which is approximately 3,250 feet to the northwest and is held in public conservation by the State of Maine.

Hearing testimony concerning the potential for navigation issues in relation to Lamoine State Park are discussed in the navigation section above.

Considering the distance of the proposal from the state-owned beach, it is unlikely to prevent the continued use of this conserved land (SR 19).

**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 source stock from the wild via spat that settles on the ropes at the site (App 2). This manner of stock collection is 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 except as required by the U. S. Coast Guard. The application also states no work would occur beyond daylight hours (App 10). This was reiterated by the applicant during cross-examination by the Department.

**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, power washers, an air compressor, the vessel engine/hydraulic pumps and motors, a crane, declumper, brush machines, conveyors, graders, and water pumps will be used on site to harvest and process mussels (App 9). The main vessel engines, fitted with cowl mufflers, will power all equipment, with the exception of the air compressor (Newell testimony). At the hearing, the applicant testified that power washing will occur year-round, 5-6 hours per day, 2-3 days per week (Newell testimony). Noise generating activities will cumulatively occur roughly 4-5 days per week for approximately six hours per day, with the exception of the air compressor. The applicant testified the air compressor will be used 10-12 hours per year (Newell testimony).

The use of the main vessel engines equipped with cowl mufflers is likely to mitigate some of the noise generation on-site. DMR finds the use of the air compressor, for which no noise suppression is proposed, will be minimal. 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 is proposing to use wooden rafts with black flotation and some steel components. According to the application and hearing testimony, the applicant will paint buoys or purchase new buoys to ensure that all except for boundary markers will be gray in color (App 6, Newell testimony). 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. OTHER CONSIDERATIONS**

Applicants are required to demonstrate adequate financial capacity and technical capability as part of the initial application process. 12 M.R.S.A. §6072(5) states “the Commissioner shall review the application and set a hearing date if the commissioner is satisfied...the applicant has the financial and technical capability to carry out the proposed activities”. Regulation requires the applicant to submit information about their financial and technical capability including the cost estimates of the project, documentation from financial institutions, and a resume or other information about their qualifications to conduct aquaculture. This information is reviewed by DMR prior to scheduling a hearing. However, this initial review is not intended as a final determination of financial and technical capability. 12 M.R.S.A. §6072(7-A) states the Commissioner “*may* [emphasis added] grant the lease if the proposed lease meets” the criteria. This allows for the consideration of additional information, as it relates to statute or regulation, that comes to light prior to, or during, a hearing to be considered when making a final lease determination. The following issues related to the applicant’s financial and technical capability were found to be relevant and additional information on both was added to the case file after the application was deemed complete.

##### **A. Financial Capacity:**

DMR requires each applicant submit detailed cost estimates of the planned aquaculture activities and a letter from a financial institution confirming the applicant has an account in good standing. The application estimates an additional \$1.8 million in capital would be necessary to fully construct the operation (App 17). Pursuant to regulation, the application also includes letters from banking and community development financial institutions indicating Pemaquid Mussel Farms, LLC has accounts in good standing or access to capital.

At the hearing, DMR asked the applicant to detail the sequence and projected timeline for expanding operations if the lease were granted. Mr. Newell stated the cost for eight rafts was approximately \$1 million. At maximum capacity the site would have 32 rafts over the term of the lease, which based on the price of 8 rafts could cost \$4 million. He stated those funds were currently not available, but there were investors interested in the project. Mr. Newell also stated they could potentially add eight rafts per year, but that adding eight more rafts to the site (for an increase to 16 total acres) would be “pretty big for us to handle” with the current infrastructure. He further testified that an expansion beyond 16 rafts may take 5-10 years, or it may never happen. Mr. Newell then clarified that he felt there was an 80% probability of full build-out within ten years of a lease being granted.

In this case, Mr. Newell did not provide a clear development plan for the proposed 31.66 site. His testimony was contradictory noting, at first, that the requested acreage may never be utilized. He then later stipulated that most of the site may be utilized within ten years of the lease being granted. Granting the lease site for the requested acreage without a clear plan for utilization results in the holder potentially occupying area where substantially no aquaculture activities occur. It also results in the holder occupying an area that could have otherwise been utilized by others. It amounts to speculative use of the area, which is precluded by other laws and rules under DMR's jurisdiction.

Mr. Newell also testified that funding for full buildout was not immediately available, but investors were interested in the project. The application indicates that the company does have access to capital and accounts in good standing. Therefore, it is possible that Mr. Newell may be able to gradually deploy a limited amount of new rafts as investment opportunities are explored but there is no capital to expand to the full capacity.

In consideration of these issues, DMR finds the applicant has demonstrated adequate funding to expand the existing EAST GL site by approximately 8 acres for a total of 15.99 acres. The revised coordinates for the new 15.99-acre lease area are provided below. DMR will also reduce the lease term from the requested 20 years to 10 years. The reduced lease term will allow the holder to demonstrate adequate buildout.

**Revised Coordinates – 15.99 Acres**

<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>
1	44.448935° N	-68.269750° W then 494.8 feet at 206° True to
2	44.447719° N	-68.270592° W then 1398.0 feet at 116° True to
3	44.446086° N	-68.265747° W then 495.7 feet at 26° True to
4	44.447296° N	-68.264881° W then 1404.5 feet at 295° True to 1.

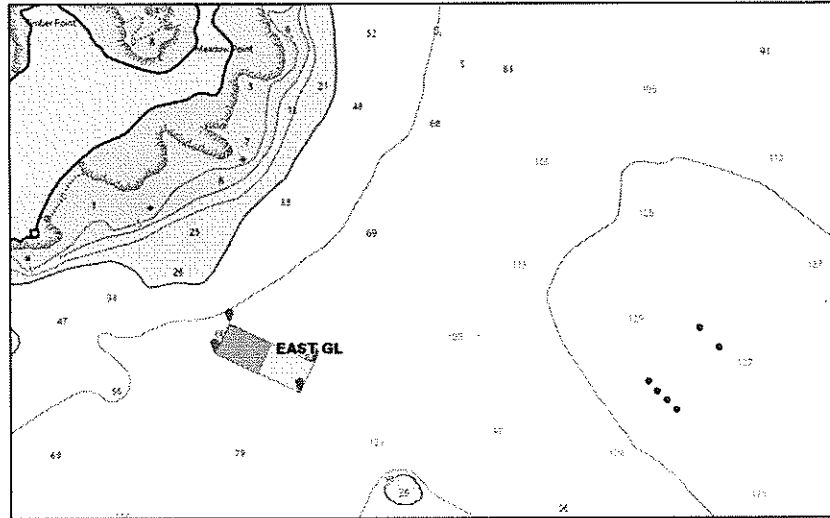


Figure 2: Revised Lease Layout. Image generated by DMR staff.

### Technical Capability:

Prior to the hearing, it came to DMR's attention that a barge associated with operations on EAST GL and the proposed site had sunk. During cross-examination, DMR asked Mr. Newell about the incident. Mr. Newell testified that a 22-year-old barge, the Mumbles, took on water during a storm and sunk. Mr. Newell stated the barge was refloated, emptied of oil, and placed on a trailer. The barge has since been rebuilt and relaunched. Mr. Newell stated the DEP and the United States Coast Guard were notified and participated in the salvage efforts. No representatives from either agency attended the hearing.

In accordance with Chapter 2.31(6)(A), after the hearing ends the record is closed and no other evidence or testimony is allowed into the record. However, Chapter 2.31(6)(B) allows DMR to re-open the record to take additional evidence on specific issues. On May 11, 2023, DMR reopened to the record to request any materials relating to the spill response from DEP, on this specific issue, as they did not attend the hearing. DEP provided a spill report (B-26-2022) that states the vessel<sup>4</sup> sank at its mooring with over 100 gallons of diesel fuel aboard. The report states it took more than a month for the vessel to be floated and righted. A vacuum truck was utilized to remove 10.93 tons of diesel prior to the vessel being removed from the water for repairs. In a follow-up email, a representative from the DEP stated numerous factors delayed the salvage, including weather, vessel size, and owner delays.

The applicant was given the opportunity to comment on the information received from the DEP. Mr. Newell submitted comments on the DEP follow-up email dated June 12, 2023. In the comments, Mr. Newell stated the vessel was found sunk after a storm with 80 knot winds, and gale force winds and drift

<sup>4</sup> The DEP spill report refers to the Mumbles as a fishing vessel. The applicant indicated it is a barge. Therefore, the terms are used interchangeably in this decision.

ice delayed the salvage operation. Mr. Newell also stated he did not observe an oil sheen when the vessel sunk. The email from Mr. Newell details the repairs completed on the Mumbles, for a total cost of \$600,000.

After reviewing the report and associated correspondence, DMR is not imposing any specific conditions or restrictions based on the sinking and salvage of the barge. The sinking appeared to be the direct result of a storm and the situation was ultimately resolved with the appropriate authority although owner delays were cited as a factor in the length of time it took to address the issue. The reduced acreage and lease term will allow the holder to improve their ability to maintain barges or similar structures before possibly applying for a larger project in the future.

## **6. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that, as reduced in size in accordance with this decision:

- 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. Given the reduction in lease size and the lease condition regarding the size of the predator net mesh, 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 blue mussels 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.

## 7. DECISION

Based on the foregoing, the Commissioner grants a lease to Pemaquid Mussel Farms, LLC for 15.99 acres for ten years for the cultivation of blue mussels (*Mytilus edulis*) using suspended culture techniques. The reduced lease term is intended to provide the applicant with the opportunity to demonstrate that they have the capability to expand acreage at a future time. Final approved coordinates for this lease are provided in Section 4 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.

## 8. 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>5</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.

1. Unless modified by DMR in writing, exclusion netting must have a maximum mesh size of 4 inches with 3-millimeter twine or larger for excluding sea ducks.

## 9. REVOCATION 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: \_\_\_\_\_

8/31/23



Patrick C. Keliher, Commissioner  
Department of Marine Resources

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<sup>5</sup> 12 MRSA §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."



**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Aquaculture Lease Renewal Application  
Suspended culture of mussels & kelp  
Eastern Bay, Bar Harbor

**Tim Levesque & Pemaquid**  
**Mussel Farms, LLC**  
**Lease EAST GL**  
Docket #2015-21-R  
February 5, 2016

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Tim Levesque and Pemaquid Mussel Farms applied to the Department to renew the aquaculture lease EAST GL for a period of ten years to January 11, 2026. The 8.03-acre lease is issued for suspended culture of blue mussels (*Mytilus edulis*) and kelp (*Saccharina latissima*) located east of Googins Ledge in Eastern Bay, Bar Harbor, Hancock County, Maine. This lease was initially issued on January 12, 2006. Since the lease was issued, the Department has authorized the culture of kelp, the addition of Pemaquid Mussel Farms, LLC, as a co-lessee, and the use of sinking mussel rafts on the lease site.

### **1. PROCEDURE**

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Mount Desert Islander* on October 22, 2015, and in the November, 2015 edition of *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. No comments and no requests for a hearing on this application were received by the Department during the comment period.

### **2. STATUTORY CRITERIA**

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

#### **A. Compliance with lease**

The review of the records of this lease discloses that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

**Therefore, I find** that the applicant has complied with the lease agreement during its term.

**B. Best interest of the State of Maine**

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

**Therefore, I find** that it is in the best interests of the State of Maine to renew this lease.

**C. Aggregate lease holdings**

According to DMR records, Tim Levesque holds no other leases. Pemaquid Mussel Farms, LLC, of which he is a co-owner, holds only lease PEN STH2 on 1.86 acres.

**Therefore, I find** that the renewal of this lease will not cause either lessee to lease more than 1,000 acres.

**D. Speculative purposes**

Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” It is clear from annual reports filed with DMR by the lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

**Therefore, I find** that the lease is not being held for speculative purposes.

**3. LEASE CONDITIONS**

The following conditions were applied to the lease by the original decision:

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

Lease conditions are normally carried over to the renewed lease. Because the Department is no longer placing permissive conditions on leases, the first condition will be replaced with language providing that other public uses that are not inconsistent with the lease purposes are permitted, as provided in DMR Rules Chapter 2.37 (1) (B). In making this revision, the

Department intends to make no substantive change in the public uses of the waters that are permitted to continue within the lease boundaries.

Therefore, the conditions that apply to the new lease are:

1. The lease area shall be marked in accordance with U.S. Coast Guard requirements and the Department of Marine Resources regulations Chapter 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

**4. DECISION**

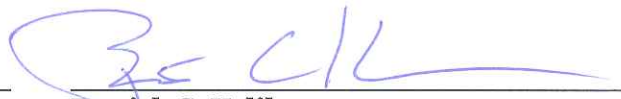
The Commissioner of Marine Resources grants the application of Tim Levesque and Pemaquid Mussel Farms to renew aquaculture lease EAST GL for a period of ten years, to January 11, 2026. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

**5. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072 (11) and DMR Rule Chapter 2.42 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: \_\_\_\_\_

2/5/14



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