

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters LLC applied to the Department of Marine Resources (DMR) to change the gear authorization for existing standard lease CAS SP2, located southeast of Stockbridge Point in Casco Bay in the Town of Freeport, Cumberland County, Maine.

1. THE PROCEEDINGS

The application was submitted to DMR on August 23, 2022. The application was deemed complete by DMR on September 20, 2022. Notice of the application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of Freeport and its Harbormaster, and others on DMR's mailing list. No public comments were received. The evidentiary record before DMR regarding this lease amendment application includes five exhibits (see exhibit list below).

LIST OF EXHIBITS¹

1. Application for a change of species or gear authorization, deemed complete September 20, 2022
2. Executed lease document for CAS SP2 signed February 15, 2022
3. Original lease decision signed December 20, 2021
4. Original lease application, deemed complete January 9, 2020
5. Case file for the amendment application

2. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture lease amendments is governed by 12 M.R.S.A. § 6072 and Chapter 2.44 of DMR regulations. The statute and regulations provide that the Commissioner may grant amendments for the use of specific gear, species, and/or operational modifications on an existing lease site provided the proposed changes are consistent with the findings on the underlying lease application, do not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

¹ Exhibits 1-5 are cited below as: Amendment Application – “App”, Executed lease for CAS SP2 – “Exhibit 2”, DMR Decision on Lease CAS SP2 - “Exhibit 3”, Original Standard Lease Application for CAS SP2 – “Exhibit 4” and Case File – “CF”.

A. Original Lease Decision

On December 20, 2021, DMR granted lease CAS SP2 to Love Point Oysters LLC (Exhibit 3, page 14). DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the original decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Love Point Oysters LLC met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 3, page 14).

The original decision provided authorization to cultivate American/eastern oysters (*Crassostrea virginica*), using suspended culture (Exhibit 3, page 13). Semi-rigid floating mesh bags comprised the gear authorized for the suspended culture of shellfish on CAS SP2 (Exhibit 3, page 3). The decision authorized 34" x 23" x 5" semi-rigid floating mesh bags. From April through December bags float at the surface; while during the winter, from January through March, the applicant removes the product and gear on the CAS SP2 site.

In the original decision, the Commissioner established the following conditions governing the use of CAS SP2, as is allowed pursuant to 12 M.R.S.A § 6072 (7-B):

"All gear, except for anchors and associated buoys must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round."

In the executed lease document, the lease term for CAS SP2 was set for twenty years, beginning on December 20, 2021 and ending on December 19, 2041 (Exhibit 2, page 1).

B. Proposed Changes to Gear Layout and Findings

The leaseholder is requesting to add (128) 60" x 36" x 24" OysterGro 6-bag cages and (768) 35" x 18" x 3" HPDE mesh bags (App 12), which would be deployed inside the cages. The cages would be deployed in up to (8) 155-foot long strings each containing 16 cages (App 8). Each cage can hold 6 mesh bags (App 12). The cages and mesh bags are being requested to increase gear maintenance efficiency. The cages will last longer than the floating-bag system and will allow for defouling via flipping (App 3).

Originally, the leaseholder was granted authorization to deploy semi-rigid floating mesh bags in up to 16, 150-foot long sections, with each section containing up to 100 bags, deployed in two strings of 50 bags each and held parallel with a spreader bar (Exhibit 3, page 3). Each section of bags was spaced 48 feet apart, with 8 sections deployed in the northeastern half of site and 8 sections deployed in the southwestern half and a 100-foot wide corridor between the northeastern area and southwestern area of the site. As DMR Rule Chapter 2.44 (1) states that "the Commissioner shall not amend a lease in such a way that it materially alters the findings of the original decision, or would result in a change to the original lease conditions", this amendment application will be considered in light of the original decision and lease conditions.

The application proposes to replace the 8 sections deployed in the northeastern half of site with the 8 sections of OysterGro cages and retain 8 sections of the existing bags deployed in the southwestern half (App 8). The existing 100-foot corridor that currently separates the northeastern and southeastern areas would be reduced to 95-feet to accommodate the 155-foot long strings of new gear. The cages and bags would be on the lease site April 1 to December 31 (App 2).

The gear configuration from the application consists of (8) 155' long strings of floating cages in the northeast half of the site and (8) 150' long strings of floating bags in the southeastern half of the site. The result would be a reduction of the corridor by 5 feet to accommodate the longer lines. I find that this minor reduction in the size of the corridor does not materially alter the findings of the original decision. The amended lease gear would be up to 128 cages holding 768 HPDE mesh bags and up to 800 semi-rigid floating mesh bags compared to up to 1600 semi-rigid floating mesh bags for the original lease. I find that this gear change also does not materially alter the original lease findings. No public comments expressing concerns regarding the proposal were received by the Department; and the record from original application hearing contains no evidence that indicate the proposed change would be inconsistent with the findings on the underlying lease application and would not materially alter the findings of the original decision.

3. CONDITIONS

Based on the amendment discussed above, the condition specific to gear deployment that was imposed on lease CAS SP2 in the December 20, 2021 decision is still relevant and any authorization for gear changes would need to comply with the condition

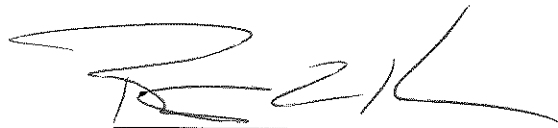
1. All gear, except for anchors and associated buoys must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round.

4. DECISION

Based on the foregoing, the Commissioner grants the request from Love Point Oysters LLC for the authorization to use OysterGro 6-bag cages and HPDE mesh bags on CAS SP2, deployed in the manner described in section 2.B, which alters the gear layout to a maximum of (8) 155' long strings of floating cages and (8) 150' long strings of floating bags, running northeast-southwest.

Dated: _____

1/05/23



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

Standard Aquaculture Lease Application
Suspended culture of American/eastern oysters
Casco Bay, Freeport, Maine

CAS SP2

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters LLC, applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 4.79¹ acres southeast of Stockbridge Point in Casco Bay, Freeport, Cumberland County, Maine. The proposal is for the suspended culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on September 24, 2019 and a scoping session was held on December 9, 2019. DMR accepted the final application as complete on January 9, 2020. A public hearing on this application was scheduled for October 26, 2021. Notice of the completed application and public hearing was provided to riparian landowners within 1,000 feet of the proposed site, state and federal agencies, the Town of Freeport, and subscribers to DMR’s aquaculture email listserv. Notice of the hearing was published in *The Forecaster* on September 23, and October 7, 2021. The public notice for the hearing directed interested persons to contact DMR to sign up to participate in the proceeding by October 11, 2021. Three members of the public registered to attend, and one indicated they would provide testimony at the hearing. No one intervened in this case. Additional members of the public, who did not register as specified in the hearing notice, attended the proceeding, and wished to testify. Because time and space allowed, the hearing officer allowed for the testimony from additional individuals, even though they had not met the registration requirement. The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson.

Sworn testimony was given at the October 26, 2021 hearing by the following witnesses:

Name	Affiliation
Cameron Barner and Ben Hamilton	Love Point Oysters LLC, applicant
Cheyenne Adams	Aquaculture Scientist, DMR Aquaculture Division
Amanda Moeser, Chad Coffin, Mike Brown	Members of the Public

Amanda Moeser, Chad Coffin, and Mike Brown have provided testimony at other lease hearings for sites within the vicinity of this proposal. In addition, Ms. Moeser was recently granted an aquaculture lease

¹ Applicant originally requested 4.78 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 4.79 acres.

site. Given the testimony provided and issues raised during this proceeding, DMR is taking official notice of the following final lease decisions and associated proceedings: Maine Source Seafood, final decision signed on May 26, 2021; Amanda Moeser, final decision signed on October 8, 2021; Wolfe Neck Oyster Company, LLC, final decision signed on October 19, 2021; and Harraseeket Oysters Co., final decision signed on October 25, 2021.

The evidentiary record before DMR regarding this lease application includes the exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.²

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report
4. PowerPoint presentation used by the applicant during the hearing
5. Proposed gear orientation, clarification about existing uses and exclusive use, and plans for Limited Purpose Aquaculture (LPA) licenses held by the applicant and family members
6. Map of vessel tracks through the proposed lease and surrounding area by Amanda Moeser
7. Pictures of a map shared by Mike Brown that identifies areas he has previously harvested European Oysters

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

DMR staff initially assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease on June 9, 2020 (SR 2). The proposed lease occupies subtidal waters south of Stockbridge Point and Bowman Island in Casco Bay, Freeport, Maine (SR 2). The nearby shorelines are partially rocky, with areas of extensive mudflats and exposed ledges to the west of the proposal at lower tidal stages (SR 2). Other Casco Bay Islands, including Crab, Moshier, and Little Moshier are located to the east and south of the proposed lease (SR 2). Docks and residential buildings are located along Stockbridge Point and Bowman, Crab, Moshier, and Little Moshier Islands (SR 2). During DMR's visit to the site on June 9, 2020, depths ranged from slightly over 2 feet at the north and east corners of the proposed to slightly under 2 feet at the west corner (SR 7). The measurements were taken between 9:00 a.m. and 9:15 a.m. with low tide predicted to occur at 8:46 a.m. with a height of -0.57 feet (SR 7). Correcting for tidal variation results in depths at the site between 11 and 12 feet at high tide and between 2 and 3 feet at mean low water (SR 7). The bottom of the proposed site is composed primarily of shell rubble and shell

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

hash, sitting atop mud (SR 7). Figure 1 shows the proposed lease area and approximate location of DMR's underwater video transect through the site.



Figure 1: Proposed lease area. Image taken from DMR's site report.

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*) on the proposed lease site using suspended culture techniques (App 1). The applicant proposes to deploy semi-rigid floating mesh bags, each measuring 34" x 23" x 5" (APP 6). Bags would be arranged in up to 16, 150-foot long sections, with each section containing up to 100 bags, deployed in two strings of 50 bags each and held parallel with a spreader bar (APP 8). A maximum of 1,600 bags would be deployed on the lease site (APP 6). Each section of bags would be spaced 48 feet apart, with 8 sections deployed in the northeastern half of site and 8 sections deployed in the southwestern half. A 100-foot wide corridor would separate the northeastern and southwestern areas of the site. From April through December bags would float at the surface; while during the winter, from January through March, the applicant proposes to remove half of the product and gear on the proposed site to a site near Crab Island, also in Freeport, Maine. The application for the site near Crab

Island is currently under review by DMR³. The remaining half of the product and gear would be sunk to the bottom of the proposed site. At the hearing, the applicant testified that sections of gear would be oriented in a southwest to northeast direction, and that the 8 sections closest to the southeastern boundary of the proposed site would remain and be sunk in place over the winter (Exhibit 5, Barner, Hamilton, testimony). According to the application, should the proposed lease near Crab Island not be approved by DMR, product removed from the site in the winter would be overwintered in a USDA licensed cold storage facility on land, and that regardless of where product is stored overwinter half of the gear on the site would be removed. Lease boundary markers, anchors and associated buoys, and the sections of proposed gear that would be submerged would remain on the site (APP 16).

The applicant's representatives testified that they expect to be on site for 3-5 days per week, that they plan to flip bags weekly, and that harvesting will occur by hand (Barner, Hamilton testimony). According to the completed application, oysters would be transferred from the proposed overwintering location south of Crab Island (if the site is approved) and placed onsite in April, and that new seed from proposed seed sources (certified hatcheries) would be placed on site in June and July (App 15). The applicant plans to service the site using a 19' Carolina Skiff (powered by a 50hp Honda outboard motor) and a 23' Seaway (powered by a 115hp Mercury outboard motor). No other power equipment or lights are proposed for the site (APP 19-20), nor does the applicant anticipate needing to be on site to work beyond daylight hours.

During the hearing, Mr. Barner and Mr. Hamilton testified that they are not requesting exclusive use of the site, and would be fine with individuals navigating through the lease site or harvesting any wild shellfish resource they might want to access so long as such activities do not cause damage to the deployed aquaculture gear (Exhibit 5, Barner, Hamilton testimony).

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; with navigation; with fishing or other uses of the area, taking into consideration other aquaculture uses of the area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with 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

³ A hearing on the additional proposed standard lease from Love Point Oysters, located in Freeport near Crab Island, was also held on October 26, 2021 and a decision is pending.

The proposed lease is in shallow waters between Stockbridge Point, Bowman, Crab, Lanes, Little Moshier, and Moshier Islands (SR 10). DMR's site report states that the rocky shorelines associated with Stockbridge Point and the surrounding area are located over 2,000 feet from the proposed site, and that intertidal flats extending over 3,500 feet south from Stockbridge Point are located immediately west of the proposal (ST 10). The site report also notes that there are some residential docks and properties along the shore, but that no docks or moorings were observed in the immediate vicinity of the proposed lease area during their visit to the site on June 9, 2020 (SR 10).

Given the distance between the proposed lease area and the nearby surrounding shorelines, ample room is likely available for riparian owners to navigate to and from their shorelines at high water (SR 10). At low water, the presence of extensive intertidal flats and shallow water depths are likely to pose a natural challenge to accessing these points, and as such the proposed lease is unlikely to create any increased difficulty in accessing these areas (SR 10).

No testimony was provided at the hearing to indicate there is concern about the proposed lease and riparian ingress and egress. Given the distance between the proposal and the nearest point of land, and because it appears access to the immediate shoreline is likely more limited by the presence of extensive mud flats and shallow water at low tide, it appears that riparian access will not be prevented or unduly affected by the proposed lease.

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

B. Navigation

The proposed site is located within Casco Bay, southwest of the marked channel that leads into the Harraseeket River (SR 10). DMR's site report notes that this channel experiences heavy recreational and commercial vessel traffic, especially during the summer months. However, the proposed lease is separated from the 24-foot contour line associated with the channel by approximately 2,900 feet of shallow water, and according to the NOAA Chart, water depths between the proposal and this channel are less than 5 feet at mean low water (SR 10).

An unmarked channel located to the west of the proposal leads to the Winslow Park Boat Launch. DMR's site report states that because this channel is located approximately 1,500 feet from the proposed lease, boats going to and from the boat launch are unlikely to be impacted by the proposal (SR 10).

Because of the shoal water surrounding the proposal to the north, east and south, and tidally exposed mudflats to the west, navigation within the general area is already naturally restricted to shallow draft vessels at lower tidal stages. This type of vessel should be able to maneuver around or through the proposed lease without significant issue (SR 10). The completed application stated that given the shallow nature of the area, most recreational boaters avoid the proposed lease site, but that some will navigate near the southeastern boundary during a high tide (APP 21). During the hearing, Amanda Moeser testified that she navigates through the proposed lease and in the general vicinity on the way to and from her aquaculture site near Lane's Island, and during the hearing Ms. Moeser submitted a map showing her

vessel tracks through the area (Mooser, testimony; exhibit 6). Her testimony indicated that as long as she is able to still transit through the area, while it may inconvenience her, she understood the need to find compromise in an effort to ensure the most uses of an area, and she was not ultimately opposed to the proposed lease (Mooser, testimony). The applicant has not requested exclusive use of the site, and in their testimony indicated they would be fine with individuals navigating through the proposed site if it were approved, and indicated Ms. Mooser should be able to continue to navigate through the site and between the proposed lines of gear (Barner, Hamilton, testimony). In addition, the proposed orientation of gear is consistent with Ms. Mooser's direction of travel, and as such she should still be able to navigate through the area if the lease were approved.

No other testimony was offered from members of the public to indicate there is concern regarding the proposed lease and navigation in the area.

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

C. Fishing & Other Uses

Fishing. During the June 9, 2020 visit to the site, DMR observed two harvesters collecting wild American/eastern oysters (*C. virginica*) in the intertidal area to the northwest of the proposal (SR 10). It does not appear that the proposed site would prevent access to these tidally-exposed mudflats (SR 10). Given the extensive mudflats in the area, these points are likely accessible from other directions besides directly through the proposed lease area. DMR's site report states that the site is shallow enough at low water to allow for the wild harvest of shellfish by rake, small drag, or by hand during extreme low tides, and European oysters (*Ostrea edulis*) were observed along the underwater transect conducted by DMR (SR 10). The applicant has not requested exclusive use of the site and testified that they would be fine with anyone harvesting wild product from within the boundaries of the site, so long as such an activity does not interfere with their gear (Barner, Hamilton, testimony). However, while commercial or recreational harvest of this resource would not be explicitly prevented by the proposal, the presence of the submerged and floating gear could limit this activity. Testimony provided from members of the public indicates that drag harvesting of European oysters would likely be prevented when gear is deployed on the site (Brown, Coffin, testimony).

During the hearing, Ms. Adams testified that DMR did observe European oysters within the boundary of the site. According to Ms. Adams, the transect they conducted through the center of the proposal showed that there were isolated pockets of European oysters in the center of the site, and that European oysters were more common within the western half of the proposed area than in the eastern half, but that only one transect was conducted (Adams, testimony). Chad Coffin and Mike Brown attended the hearing and testified that they are local wild shellfish harvesters, and that the area proposed by the applicant has been used for the harvest of wild European oysters in the past (Brown, Coffin, testimony). Mr. Brown testified that while the applicant has proposed to remove half of their gear in the winter, half would remain which would mean it would not be possible to drag for European oysters in that portion of

the site, which directly impacts his ability to harvest product (Brown, testimony). The applicant has proposed to remove gear from the northwestern portion of the site from January through March and has proposed to sink in place the gear on the southeastern portion of the site during that time. Per DMR regulations Chapter 14.10, the wild harvest of European oysters is permissible only between September 16 and June 14 of each year. Mr. Coffin testified that most of the European oyster harvest does not typically occur until January, but if there was a market and demand, both he and Mr. Brown indicated they would harvest before January and that in years past they have harvested from November and into April. (Coffin, Brown, testimony). Their testimony also indicated that given the depth and muddy bottom of the site, they would typically choose to drag harvest in this particular spot, and that the proposed spacing of the sunken gear would not be sufficient for them to drag between lines of proposed gear, but that if gear were removed, they would be able to drag around anchors the applicant has proposed to leave on site year round (Brown, Coffin, testimony).

Mr. Brown's testimony indicated that any negative impact to his ability to harvest wild European oysters is a significant impact on his business and that with the recent addition of a number of aquaculture leases in the area, he has less and less available open space in which to harvest product (Brown, testimony). His testimony also indicated that while there has not been a market for European oysters in the previous few years, he made many trips to and near the proposed site between 2015 and 2018 or 2019, and if a buyer called asking for European oysters he would harvest as soon as the call came (Brown, testimony). As discussed above, Mr. Brown and Mr. Coffin indicated that when there is a market, calls may start in November, but testimony from this hearing and others⁴ indicates most of the harvest for European oysters occurs between January-April. At the hearing, Mr. Brown shared a map (introduced as exhibit 7) showing where he has previously harvested oysters. The map is a nautical chart that shows intertidal areas and other features and has hand drawn marks indicating areas of harvest and shows that the area directly north and west of the proposed lease have been routinely harvested by him in the past. However, it appears that the area where the majority of the proposed lease would be located does not contain any marks.

DMR's Commissioner recently signed a decision, granting Harraseeket Oyster Co, LLC a standard aquaculture lease approximately 230 feet to the north of the site proposed by Love Point Oysters, LLC. The Harraseeket Oyster lease will have suspended and/or submerged gear on site year-round, and DMR also observed a European oyster resource within the boundaries of that site. However, at the hearing on that application, Harraseeket Oyster proposed to eliminate an area of their proposal that contained the highest density of European oysters. During the hearing on that application, Mr. Coffin testified that he did not feel the activities proposed by Harraseeket Oyster would negatively impact his activities as a wild shellfish harvester in the area.⁵ Information from the Harraseeket Oyster final decision indicates that

⁴ Mr. Brown and Mr. Coffin have previously testified at other lease hearings in and around Freeport regarding their wild shellfish harvesting activities.

⁵ Final Decision on standard aquaculture lease application from Harraseeket Oyster Co., LLC; signed by DMR Commissioner on October 25, 2021.
https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/ExecutedDecision_CASSP_HarraseeketOyster.pdf

depths at that site are between 2-3 feet at mean low water, similar to the proposed site contemplated in this decision. However, while depths at the sites are similar, the Harraseeket site is closer to land, and the applicant had proposed to reduce their lease footprint thereby eliminating the area of the site that contained the highest density of observed European oysters. While the aquaculture activities proposed by the applicant here are similar to those of Harraseeket Oyster Company, and both sites would have gear deployed year round, it is possible the slight differences in location, bottom composition, and proposed gear deployment make one site more amenable to hand harvest vs. drag harvest. Testimony from both Mr. Brown and Mr. Coffin indicates the preferred method of harvest in and near the proposal contemplated by this decision is drag harvest (Brown, Coffin, testimony).

Other recent lease decisions near Lanes Island, including for Maine Source Seafood, Amanda Moeser, and Wolfe Neck Oyster Company, indicate there is a wild European Oyster resource near Lanes Island, and Mr. Brown and Mr. Coffin similarly provided testimony at some of those lease hearings but not at others regarding their harvesting activities⁶. In some instances, testimony provided indicated there would be an impact to the wild harvest of European oysters, and in others there would not be an impact. As discussed above, slight differences in depth, bottom composition, gear orientation and specific activities occurring on each site likely dictate if hand harvesting or drag harvesting of a wild shellfish resource would be able to co-exist with aquaculture activities. However, in each of the above mentioned cases, the decisions signed by DMR's Commissioner detail that based on the evidence, the aquaculture operations in those cases could co-exist with the wild European Oyster harvest, and that because leaseholders did not request exclusive use in any of those cases, the harvest of wild product could continue from within the boundaries of the leases. In the Maine Source Seafood case, a condition was included restricting when gear could be deployed on the site to ensure the most compatible uses of the area.

Upon questioning, Mr. Brown indicated that if gear is removed from the site during winter, it does make the area more accessible to wild European harvest, but that any gear on the site during the allowable European oyster season could be a hinderance. The applicant has proposed to remove half of the gear from January through March, while some gear would still be submerged on site during the open European oyster season, which runs from mid-September until mid-June. As discussed above, testimony indicated that harvesting for European oysters could begin in November or earlier, but that it typically has not started until January. Testimony that Mr. Brown and Mr. Coffin provided at the Maine Source Seafood hearing, for a site near Lanes Island, indicated that most of the European oyster harvest in the area occurs between January and April⁷. Upon being questioned, Mr. Coffin indicated that the area proposed by Love Point Oysters, LLC does have European oysters within it, but he described that there are not a 'ton' of oysters right in this particular spot. Mr. Coffin further detailed that it can be an

⁶ Final decision on a standard lease application from Maine Source Seafood, signed on May 26, 2021.

https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/EXECUTEDDECISION_CASLI_MaineSourceSeafood.pdf

Final decision on a standard lease application from Amanda Moeser, signed on October 8, 2021.

https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/ExecutedDecision_10082021Moeser_.pdf

Final decision on a standard lease application from Wolfe Neck Oyster Company, LLC, signed on October 19, 2021.

https://www.maine.gov/dmr/aquaculture/leases/decisions/documents/ExecutedDecision_CASLI3_WolfeNeckOyster.pdf

⁷ Testimony provided at the Maine Source Seafood lease hearing, conducted on March 16, 2021.

important area as the resource is somewhat dynamic and European oyster beds change, so the area could become more important in the future (Coffin, testimony). Mr. Coffin also indicated that while this particular spot is a little muddier than most that he would typically drag harvest in, and that he might not choose to harvest from that spot regularly, when the weather gets really cold, the muddy areas can be some of the only places the European oysters survive and that the applicant having some gear removed does help in terms of the impact on his ability to harvest that spot (Coffin, testimony).

In their testimony, the applicant indicated they would accommodate the harvest of European oysters from within the proposed boundaries as they're not requesting exclusive use, but that they are also trying to plan for the future, and having the ability to sink some gear was part of that plan (Barner, testimony). Testimony indicates this site would be drag harvested, not hand harvested, and the presence of submerged gear on some of the site from January through March means a wild European oyster resource could not be drag harvested during that time; but the applicant has not requested that wild shellfish harvesting be prohibited from within the boundaries of the site. As such, hand harvest would not be precluded. Ms. Adam's testimony indicated that along the 1 transect conducted through the center of the site, the western portion of the site contained more European oysters than the eastern section, where the applicant has proposed to keep gear year round (Adam's testimony). Mr. Brown and Mr. Coffin both indicated that the European oyster resource is dynamic, and there can be areas of high density and areas with low density but that it can change, and all areas are important (Brown, Coffin, testimony). Mr. Coffin's and Mr. Brown's testimony indicate that the proposed lease and surrounding area may be important for harvesting.

Based on the testimony and evidence provided, and to accommodate the most possible uses of the area, the lease, if approved, will be conditioned that all gear, except for anchors and associated buoys, must be removed from the site between January 1st and March 31st each year. Given Mr. Brown and Mr. Coffin both testified at this proceeding, and others, that most of the European oyster harvest does not begin until January, this allows for compatible uses as the area will be open and free of gear between January 1 and March 31. If individuals would like to harvest European oysters outside of the January-March timeframe, the harvest of product by hand would not be prevented. While testimony was provided that indicates drag harvesting is the preferred method at this location, neither Mr. Brown nor Mr. Coffin indicated that hand harvesting would not be possible. In addition, DMR regulations Chapter 2.45(2)(B) provide that DMR consider possible conflicts with new or existing uses of the lease area during the period of renewal. As such, if the lease is granted, at the time of renewal, the use of the area as it pertains to the wild harvest of European oysters may be reevaluated, and the need for the condition limiting the amount of gear on site from January-March can be assessed.

No lobster buoys were observed by DMR within the proposed lease boundaries during visits to the site on June 9, 2020, but some lobstering activity was observed in the deeper water to the northeast and southeast of the proposal (SR 10). The application indicated that two lobstermen fish in the area between May and November, but typically set gear in the eelgrass beds located outside of the proposed lease

boundaries (APP 21). The shallow nature of the site makes it unlikely to be heavily used by lobstermen (SR 10).

During the July 9, 2020 visit to the proposed site, recreational hook and line fishing was observed at the mouth of the Harraseeket River (SR 11). DMR's site report notes that while the proposed gear may make it more difficult for recreational fishermen to operate within the site, the applicant has not asked that this activity be excluded from the lease boundaries, and this activity would be able to continue along the boundaries of the proposal (SR 11). The completed application states that recreational fishing does occasionally occur near the proposed site in June, July, and August but recreational anglers typically fish more than 500 feet away from the proposed site (APP 21). No testimony was offered regarding lobster or recreational fishing in the area.

Other aquaculture uses: At the time DMR published the site report, in September 2020, there were 24 Limited Purpose Aquaculture (LPA) licenses, and one active lease, within one mile of the proposed lease (SR 11). At the hearing, Ms. Adams testified that there are now currently 2 active leases, 3 leases that have been approved by DMR but are not yet executed, and 41 LPA licenses within 1 mile of the proposed lease (Adams, testimony). The closest aquaculture to the site is the approved, but not yet executed lease, held by Harraseeket Oyster Company, located approximately 230 feet to the north.

According to the applicant's testimony and information contained within Exhibit 5 submitted by the applicant, if the proposed lease is granted, LPAs held by Christian Barner (who is affiliated with Love Point Oysters) will be relinquished. These LPAs included licenses: CHBA121, CHBA221, CHBA321, and CHBA421. Regardless if the lease is approved or not, two other LPAs held by Cameron Barner, one of the owners of Love Point Oysters (the applicant) will be relinquished at the end of 2021. These include LPA licenses: CBAR120 and CBAR220 (Barner, Hamilton, testimony; exhibit 5)

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area; and that the proposed lease site, in combination with the other aquaculture sites in the area, will not unreasonably interfere with other applicable decision criteria.

Other water-related uses: DMR's site report does not detail other water-related uses of the proposed lease area. The application indicates that kayaking and paddle boarding are common in the area during the summer months (APP 21). DMR did not receive any testimony or evidence to suggest that the proposed site would interfere with other water related uses of the area.

Therefore, given the condition related to the timing of gear deployment, 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

Site observations. DMR scientists conducted a drop camera transect through the proposed lease area on June 9, 2020. The bottom of the proposed site is composed of mud, topped with shell rubble and shell hash (SR 13). European oysters were observed in the site, as were colonial tunicates and various brown marine algae species (SR 13). As discussed above, based on the video transect, Ms. Adams'

described that the amount of European oysters on the site increased along the transect from east to west (Adams, testimony).

Eelgrass. Data collected in 2018 by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that eelgrass beds with coverage ranging from 40 to 70% were located approximately 285 feet to the east of the proposal, and there are mapped eelgrass beds to the north and south (SR 15). No rooted eelgrass was observed in the underwater transect conducted by DMR on July 9, 2020, and given the shallow nature of the site, DMR staff were able to directly observe the bottom of the site during their site visit and no eelgrass was noted (SR 15).

Wildlife. During DMR's visit to the site on June 9, 2020, terns, eider ducks, herring gulls, and a great blue heron were observed in the general vicinity of the proposed lease (SR 16). Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease borders but does not overlap mudflats listed as tidal waterfowl and wading bird habitat (SR 16). A bald eagle nest is located over 4,000 feet from the proposed lease. Bald eagles are protected by the Federal Bald and Golden Eagle Protection Act (SR 1), however, the proposed lease is located well outside of the 660 foot recommended buffer surrounding a nest. DMR sent a copy of the lease application to MDIFW for their review and comment, and they indicated that "minimal impacts to wildlife are anticipated for this project."⁸ No testimony was provided at the hearing to indicate there is concern regarding the proposed activities and the flora and fauna in the area.

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

The proposed site is located within 1,000 feet of intertidal lands associated with Winslow Park and Campground; a municipally-owned facility located to the northwest of the proposal (SR 17). The park hosts camping facilities, as well as a public boat ramp and dock accessible from mid to high tidal stages (SR 17). According to DMR's site report, extensive mudflats are located between the proposed lease area and the Winslow Park and Campground shoreline. The mudflats are located within 1,000 feet of the proposal, but the campground's rocky shoreline is more than 1,880 feet away, and due to this distance, it is unlikely the proposal would interfere with the use of the campground (SR 17). The boat ramp is located more than 3,000 feet from the proposal, and a deeper channel that leads into this facility is more than 1,000 feet to the west of the proposed lease area. As such, this area is also unlikely to be impacted (SR 17). No testimony was provided to indicate there was a concern regarding the proposed lease activities and interference with the use of these facilities.

⁸ CF: Email from R. Settele to C. Burke on January 27, 2020.

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 lists Muscongus Bay Aquaculture and Mook Sea Farm as sources of stock for American oyster seed (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 lighting is proposed for the site (APP 17). In their testimony, Mr. Barner and Mr. Hamilton indicated they do not intend to work on the site after dark (Barner, Hamilton, 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, the only power equipment used on the site would be the outboard motors on the boats used to service the site (APP 17). The boats proposed for use on the site are a 19-foot skiff powered by a 50-horsepower, 4 stroke outboard motor that the applicant anticipates will be used 3-5 days per week, and a 23' Seaway powered by a 115 horsepower, 4 stroke outboard motor that will be used to help transfer gear during the early and late season (APP 16). The completed application also stated that boat engines will be turned off whenever possible to conserve fuel and reduce noise (APP 17). No testimony was provided to indicate there is concern about the proposed activities and noise.

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 semi-rigid floating mesh bags on the site. 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. Given the condition related to the amount and timing of gear deployment, 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 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. 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 Love Point Oysters, LLC for 4.79 acres, for twenty years for the cultivation of American/eastern oysters (*Crassostrea virginica*) 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).⁹ Conditions are designed to

⁹ 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

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. The following conditions have been imposed on this lease:

1. All gear, except for anchors and associated buoys must be removed from the site between January 1st and March 31st each year. Corner markers and associated lines and moorings are permitted to remain on site year-round.

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: 12-20-21


Patrick C. Keliher, Commissioner
Department of Marine Resources

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.”