

**STATE OF MAINE  
DEPARTMENT OF MARINE  
RESOURCES**

**Whiskey Stones, LLC  
HARP LHx**

Experimental Aquaculture Lease Application  
Suspended Culture of American Oysters  
Harpowell, Maine

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

Whiskey Stones, LLC applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located in Harpswell Sound, east of Dogs Head, Harpswell, Cumberland County. The proposed lease is 0.481 acres and is for the suspended cultivation of American oysters (*Crassostrea virginica*).

**1. THE PROCEEDINGS**

The application was deemed complete by DMR on January 8, 2021. Notice of the completed application and the 30-day public comment period was provided to state and federal agencies, riparian landowners, the Town of Harpswell and its Harbormaster, and others on DMR’s mailing list. Notice of the application and comment period was published in the February 1, 2021 edition of *The Times Record*. Pursuant to 12 M.R.S.A. §6072-A(6), public hearings for experimental leases are optional unless DMR receives five or more written requests for a public hearing during the comment period. During the comment period for this application, DMR received fifteen comments, including six requests for a public hearing. Accordingly, a public hearing was scheduled. DMR’s site report was issued on August 30, 2021.

The public hearing on this application occurred on October 20, 2022. Public notice of the hearing was initially published in *The Forecaster* on September 15, 2022 and published a second time on September 29, 2022. Notice of the hearing was also provided to riparian landowners within 1,000 feet of the proposed site, the Town of Harpswell, other state and federal agencies, and subscribers of DMR’s aquaculture email list-serve.

As indicated on all notices of the hearing, persons who wished to ask questions of the parties or offer testimony were required to register. DMR received requests to provide sworn testimony from three people; however, these requests were withdrawn prior to the hearing and were confirmed during the hearing. Sworn testimony was given at the October 20, 2022, hearing by the following witnesses:

| <b>Name</b>                           | <b>Affiliation</b>                         |
|---------------------------------------|--|
| Whiskey Stones, LLC<br>Darcie Couture | Applicant                                  |
| Cheyenne Adams                        | Marine Scientist, DMR Aquaculture Division |
| Tom Cloutier                          | Local Lobsterman                           |

Members of the public, DMR staff, and Assistant Attorney General Katherine Tierney, asked general questions of the applicant and others who provided testimony.

The hearing was recorded by DMR. The Hearing Officer was Hannah Brazier. The evidentiary record before DMR regarding this lease application includes four exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.<sup>1</sup>

**LIST OF EXHIBITS<sup>2</sup>**

1. Case file
2. Application
3. DMR site report
4. Applicant’s presentation – DC1

**2. DESCRIPTION OF THE PROJECT**

**A. Site Characteristics**

DMR staff assessed the proposed lease site and the surrounding area on June 10, 2021, in consideration of the criteria for granting an experimental aquaculture lease. The

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<sup>1</sup> In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

<sup>2</sup> Exhibits 1, 2, 3, and 4 are cited below as: Case file – “CF”; Application – “App”, site report – “SR”, applicant’s presentation – “DC1”. Other exhibits are cited by number.

proposed lease occupies subtidal waters east of Dogs Head and west of a narrow peninsula near Lumbos Hole in Harpswell Sound, in the Town of Harpswell (SR, 2). According to the site report, the proposal is located approximately 45 and 340 feet from the shoreline to the east and west, respectively, at mean low water from their nearest points (SR, 7). The adjacent shorelines are composed of ledge. The peninsula's uplands to the east host a mixed forest; houses are located to the northeast of the proposal. A mixed forest and residential structures were also observed on Dogs Head Island, to the west of the proposal.

The site report characterized the bottom of the proposed lease site as semi-firm mud (SR, 6). At the time of DMR's site assessment, corners of the proposed lease site ranged in depth from approximately 18.2 to 23.4 feet, increasing in depth from east to west (SR, 6). Correcting for tidal variation derives water depths approximately 8.32 feet lower (9.88 to 15.08 feet) at mean low water (SR, 6). The proposed site area also contains four existing Limited Purpose Aquaculture (LPA) licenses, DCOU519, DCOU619, MDAV119, and MDAV219, held by Darcie Couture and Mark Davis, which are to be relinquished if the proposed lease is granted (App, 11). During the hearing, DMR staff stated that since the license holder for MDAV119 and MDAV219 was not present to verify and consent to the relinquishment of those LPAs, a letter would need to be received by DMR prior to any issuance of a decision. The LPA license holder of MDAV119 & MDAV219 sent a letter to the Department, dated October 25, 2022, surrendering the LPAs if this lease were to be granted.

## **B. Proposed Operations**

The applicant proposes to culture American oyster (*Crassostrea virginica*) using floating ADPI plastic mesh bags (25" x 34" x 3.5") (App, 16). Bags would be deployed along (4) 592-foot-long strings (SR, 2). The applicant proposes to deploy up to 197 ADPI bags per string, resulting in a total of 788 ADPI bags onsite at maximum capacity (SR, 2). There will be approximately 6 feet of open space between each line, which are oriented in a north-south direction (App, 29). The applicant indicated that the proposed project is for commercial research purposes to determine if siting a farm in an area that receives regular wave action from local hydrography will reduce or eliminate the need for the additional

labor used to manually tumble the shellfish used to improve market quality (App, 7). Each string will be secured by a total of seven 50-lb mushroom anchors, at approximately 150-foot intervals (App, 29).

All gear will remain onsite year-round, but it will be submerged approximately 3-feet below the water's surface when ice is present during the winter months (App, 8). During the hearing, Cheyenne Adams asked the applicant to explain the proposed process to sink the gear during the winter months. The applicant stated that she intends to use standard sized cinder blocks and only as many as they need to be able to bring the gear down (Couture/Adams). When asked what the estimated number of cinder blocks would be, the applicant stated, "maybe 10-per line, if they are spaced out – which would be approximately 40 cinder blocks at most," (Couture/Adams). The site would be visited for routine maintenance as needed, with an expected frequency of 1-2 days per week from March to May, and 3-4 days per week from June to October, decreasing to 1-2 days during the winter months (App, 8). According to the application, the site would be serviced by a small skiff when conducting routine maintenance/flipping of the bags and sorting and grading will take place on a small lobster boat (App, 9). No other powered equipment is proposed nor is any equipment proposed to be stored on-site (App 9). During the hearing, Cheyenne Adams asked the applicant if she was aware that she was required to have a Memorandum of Understanding (MOU), with DMR's Bureau of Public Health, for biotoxin testing at the site in the event of a shellfish closure (Adams/Couture). The applicant stated that she was aware of the requirements and if sampling was required, she would use Bigelow Laboratories for her samples (Couture).

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

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other water related uses of the area, taking into consideration other aquaculture uses in 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, or docking

facilities owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is available source of organisms to be cultured on the lease site.

**A. Riparian Access**

DMR staff conducted a site visit on June 10, 2021. The proposed lease is located east of Dogs Head, and parallel to a peninsula that runs down the eastern side of Harpswell Sound (SR, 8). According to DMR’s site report, the distance from the northeastern most corner of the site to the nearest mainland shoreline is approximately 100 feet to the east, while the nearest mainland shoreline from the southeastern most corner of the site is approximately 80 feet (SR, 7). The nearest point of mainland shoreline between the boundary of the northeastern most and southeastern most corners is approximately 45 feet (SR, 8). According to the site report, this distance would likely preclude larger vessels from navigating between the proposal and the shoreline, if granted (SR, 8).

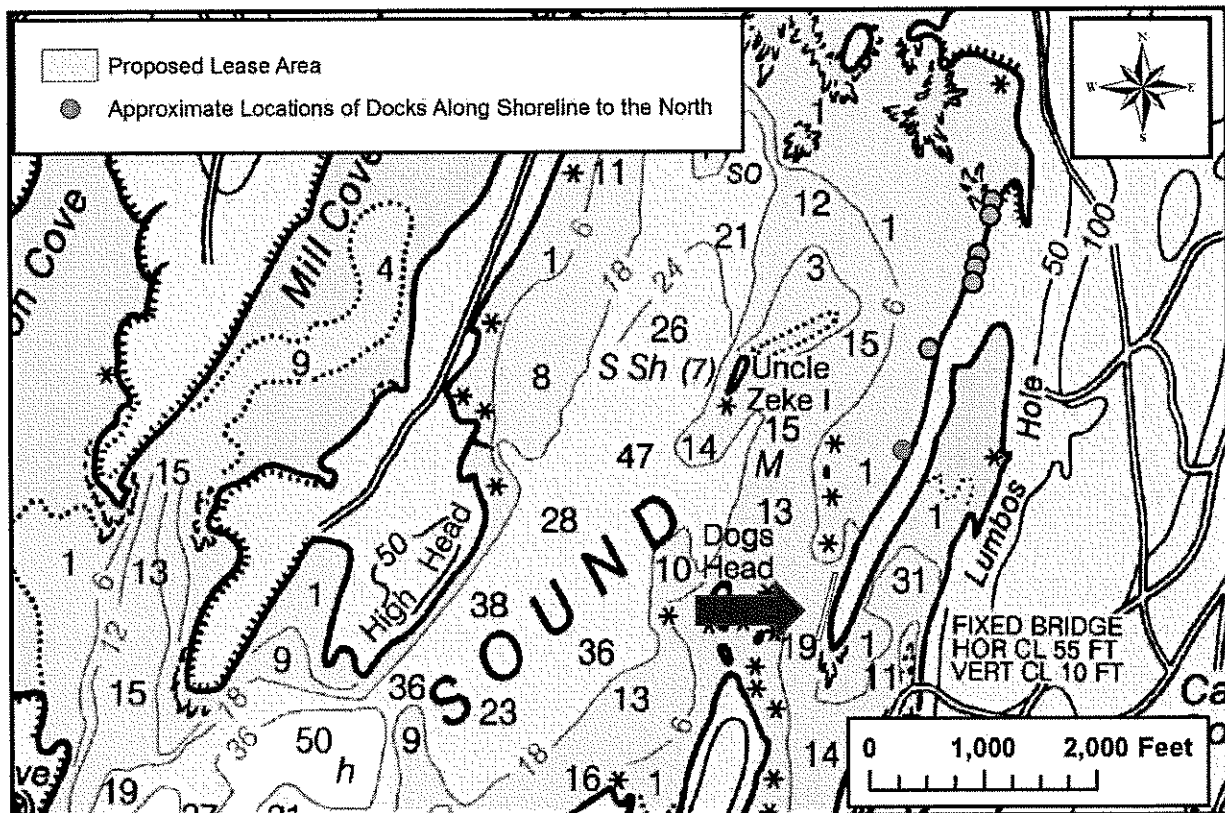


Figure 1: Approximate locations of docks to the north of the proposal. Image taken from DMR site report.

During the site visit, no docks were observed immediately adjacent to the proposal, and approximately 7 docks were located along this peninsula to the north of the proposal (SR, 8; Figure 1). The closest of these docks was observed 1,220 feet to the north/northeast, with motorized and hand powered vessels attached (SR, 8). Given the shallow nature of the water to the north and west of this dock, is it likely accessed from the south, especially at low water (SR, 8). DMR staff noted that if all docks along this peninsula are accessed primarily from the south, some of the area in which vessels likely navigate to access these shorefront parcels would be occupied, as the proposal is located approximately 180 feet from a ledge that acts as a natural barrier to navigation in the area (SR,8).

During the hearing, Cheyenne Adams asked the applicant to describe the use of the dock closest to the site. The applicant stated that she has seen a boat or kayaks use the dock (Couture/Adams). Ms. Couture stated that she has not seen them come in past the existing farm but thinks that they go out and around the ledge to access their dock (Couture/Adams). It appears that the presence of ledge to the north of the site impacts vessel traffic patterns in the area. DMR's site report indicates that if the size of the proposal were reduced by shifting the northern boundary approximately 100 feet to the south, approximately 250 feet would remain available for navigation to the northern most shorefront access point and that this distance would be similar to what is naturally available for navigation between the peninsula and the ledge to the west (SR, 8).

Additionally, during the comment period, DMR received several comments from concerned riparian landowners expressing concern over being able to access their property and moorings within Lombos Hole, particularly members of the Lombos Property Owners Association. Additionally, Mark Gilbert submitted written comment expressing concern over the potential for the proposed site to limit or restrict any future use of the west shoreline of the peninsula for any dock installation (Gilbert, CF). However, Mr. Gilbert did not provide any evidence that he or any other riparian landowner had intentions of installing a pier. During the hearing, no comments or testimony were received referencing these concerns.

### **Discussion**

In accordance with 12 M.R.S.A. §6072-A(7-A)(A), DMR must determine whether the proposed lease will unreasonably interfere with the ingress and egress of riparian

owners. The regulatory standard contained in Chapter 2.37(1)(A)(1) specifies, in part, that DMR must consider the following:

The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. The Commissioner shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.

In this instance, commercial and recreational boating are common in the area. The types of watercrafts utilized in the area include kayaks, motorboats, sailboats, and lobster boats. Some members of the public submitted comments demonstrating that they regularly traverse within the channel to the west of the proposed lease area using a variety of watercraft including sailboats and powerboats. However, these members of the public did not provide testimony during the public hearing.

According to the site report, the nearest point to the mainland shoreline from the NE corner marker is approximately 100 feet to the east, while the nearest point from the SE corner marker is approximately 80 feet (SR, 7). The site report also indicates that at the closest point on the eastern boundary, the proposed lease is located approximately 45 feet from the aforementioned peninsula at mean low water and that if the lease were to be granted, this distance would likely preclude larger vessels from navigating between the proposal and the shoreline (SR, 8). During the hearing, no comments or testimony were received from riparian landowners over concerns of the ability to access their shorefront properties nor were any comments received regarding the desire to install a dock (currently or in the future).

Docking facilities are also located elsewhere nearby the proposal. According to aerial photographs, Dogs Head hosts a single dock on the western side of the island and as the proposal is located east of Dogs Head, the proposed lease would not interfere with use of this access point (SR, 9). During DMR's site visit on June 10, 2021, moorings and docks were also observed on the northern tip of Orr's Island and in Lumbos Hole (SR, 9). As the peninsula nearby where the proposal is located separates it from these docks and moorings, the proposed lease is unlikely to directly interfere with their use (SR, 9).

During all proceedings, the Harpswell Harbormaster did not express concerns regarding the potential impact of the proposed activities on riparian ingress and egress.

Based on the hearing record, there is no evidence to suggest that vessels would be precluded from navigating within the 45 feet of navigable area between the western shoreline and eastern boundary of the proposed lease site. However, ledge and water depths to the north of the site influence how vessels access certain points. It is likely that the proposal, if granted as applied for, would impede riparian ingress and egress to and from existing shorefront access point north of the proposed lease site.

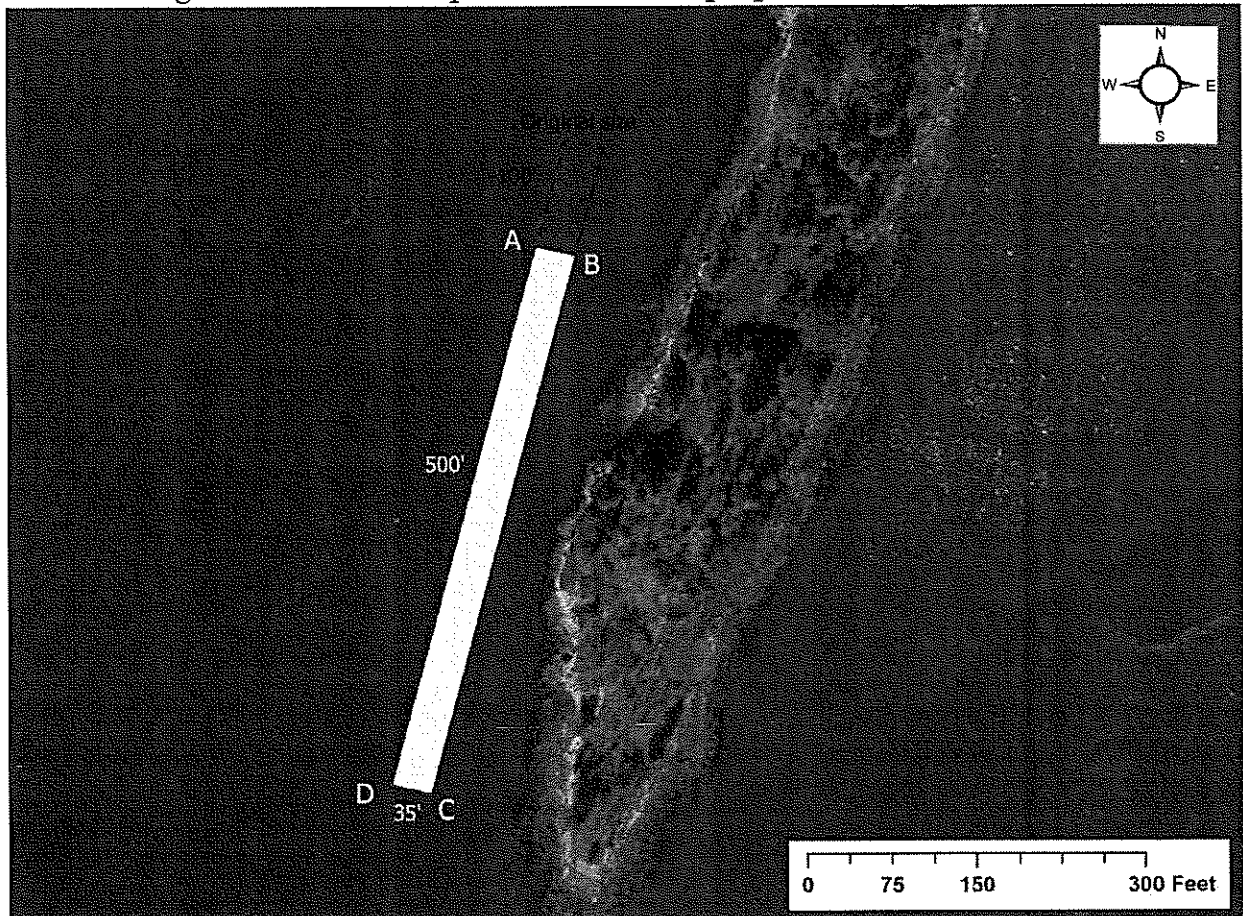


Figure 2. NW & NE boundary modified by DMR. Image generated by DMR staff.

Pursuant to the recommendation in the site report, DMR will move the NW (Point A) and NE (Point B) corners 100-feet to the south as depicted in the figure above.<sup>3</sup>

<sup>3</sup> The coordinates for each corner are as follows: NW 43.7976942, -69.9483311; NE 43.7976751, -69.9482041



The reduction at the NW and NE corners provides additional navigable area above the proposed site for the riparian landowner(s) along the western shoreline of the peninsula. In consideration of this modification, the closest dock is now approximately 1,320 feet from the proposed lease site, with 250 feet of navigable waters to be able to access the dock. **Therefore**, with this reduction, the aquaculture activities proposed for this site will not unreasonably interfere with riparian ingress and egress.

## **B. Navigation**

The proposed lease is located east of Harpswell Sound, which is used primarily for recreational and commercial purposes. As the proposed lease area is separated from the main channel in Harpswell Sound by Dogs Head, Uncle Zeke Island, and several other ledges, it is unlikely to interfere with vessel traffic operating north to south in Harpswell Sound (SR, 10). Vessels operating between Harpswell Sound and points to the east, such as Long Cove, Lumbos Hole, or Gun Point Cove would travel between the narrow peninsula east of the proposal, and Dogs Head (SR, 10). Long Cove is a traditional storm anchorage and hosts moorings and docking facilities. There is a narrow channel between Orrs Island and Sebascodegan Island that connects Harpswell Sound to Gun Point Cove within the vicinity of the proposed lease which likely experiences regular navigational activity, especially in the summer months (SR, 10).

During the comment period, DMR received multiple comments regarding navigation. In written comments submitted to the Department, individuals expressed concerns regarding the narrowing of the channel, navigating to, from and around the Orr's Island Bridge, their ability to navigate through the channel on their sailboats with the increased size of the site, the presence of additional gear, wind variability and the hazards the site creates to sailors in the narrow channel and navigating the channel at night. However, during the public hearing, none of the individuals that provided these comments testified to their concerns.

The peninsula near the proposed lease site, and Dogs Head to the west, are separated by approximately 445 feet, at mean low water. As the proposal is located parallel to the peninsula, approximately 350 would remain for navigation between the lease boundaries and Dogs Head to the west, at mean low water, if the proposal were

granted (SR, 10). Based on DMR's site report, this distance is likely adequate to accommodate all navigational activity in the area. Additionally, based on the proximity of the bridge to the proposed site, DMR anticipates that the proposed site will not influence boat traffic to or from the Orr's Island Bridge through the narrowing of the channel (SR, 10). Furthermore, the Harpswell Harbormaster did not express concerns regarding the proposed activities' impact on navigation.

During the hearing, the applicant stated that she is requesting a 0.481-acre lease, but only 0.122 acres of the site will be occupied by gear at the surface of the water given the layout of the gear. (Couture, DC1). DMR Staff calculated the total area that will be occupied by gear within the proposed lease site and determined that approximately 0.2 acres of the site will be occupied with gear on the site. This number includes the 6-foot gap between each set of strings, as it is unlikely that motorized boat traffic will utilize this space. Specifically, on the east and west boundaries, there will be a 10-foot gear free area from the inside of the proposed lease boundaries to the first row of gear. There will also be a four-foot gear free area inside the north and south boundaries to the ends of each longline.

During the winter months, the applicant proposes to submerge the deployed gear and longlines 3 feet below the surface of the water by hanging cinder blocks from the horizontal line, which could pose a navigational hazard and create a risk of entanglement and damage to vessels navigating in the area since the gear would not be easily seen from the surface. The proposal to hang cinder blocks from this longline could be especially hazardous for vessels with propellers (SR, 11). If the proposal is granted, it will be important that the gear is well-marked when deployed in the overwintering position. During her testimony, Ms. Adams expressed concern over the potential navigational hazard that the proposed submerged gear can create and emphasized the need for the applicant to keep the site clearly and thoroughly marked during the winter months (Adams, testimony). Hearing Officer Hannah Brazier and Cheyenne Adams asked the applicant how she intended to mark the site during the winter months. The applicant stated that she intended to mark the site on the corners and along the center of the site with yellow go-deep buoys (Couture/Brazier & Adams).

Tom Cloutier, a local lobsterman in the area, provided testimony that the existing LPAs, within the boundaries of the proposed site, have not proposed any navigational

issues for him, as he navigates and fishes the channel using a 33-foot lobster boat, and he does not believe that this proposed lease will have any effect on his activities as the proposed lease is to the east of the channel (Cloutier, testimony).

Based on review of the relevant evidence and consideration of the standards governing navigation, the proposed lease site will not unreasonably interfere with navigation. **Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with navigation as long as the applicant marks the site in accordance with Chapter 2.80 of DMR regulations

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

**Fishing.** During DMR's site visit on June 10, 2021, approximately four lobster buoys were located nearby the proposal, with additional buoys located nearby the ledge to the north of the proposal, and in the main channel to the west (SR, 11). During another site visit on August 19, 2021, to reassess lobstering activity, no buoys were observed within the proposed lease bounds.

Multiple floats, some of which were observed holding lobster fishing gear, including punts and dinghies, were observed to the southeast of the proposal on June 10, 2021 (SR, 11). According to the Harpswell Harbormaster, these floats are located on municipal-owned land, and are leased to commercial fishermen by the Town of Harpswell. The proposed lease is unlikely to directly impact the use of these floats as they are located over 700 feet away. No other commercial or recreational fishing was observed within or nearby the proposed lease site, although it is possible that recreational hook and line fishing occurs in the vicinity of the proposed lease (SR, 11). Based on the Department's observations during the two site visits, and the absence of public comments or testimony expressing concern regarding interference with fishing, it is reasonable to conclude that there are no concerns regarding the potential effect of the proposed lease on commercial and recreational fishing activities in the area.

**Other aquaculture uses.** There are 22 LPA aquaculture licenses located within one mile of the proposed lease. Based on their proximity to the lease site and lack of public comment or testimony expressing concern regarding interference with existing

aquaculture sites in the area, it is reasonable to conclude that there are no concerns regarding any potential interference with existing aquaculture uses in the area.

The closest aquaculture sites to the proposal are four LPA licenses located within the proposed lease boundaries. Two of these LPA licenses (DCOU519 & DCOU619) are held by Darcie Couture, the sole owner of Whiskey Stones LLC, and the other two LPA licenses (MDAV119 & MDAV219) are held by Mark Davis, with Darcie Couture listed as an assistant. According to the application, all four LPAs, DCOU519, DCOU619, MDAV119, and MDAV219, will be relinquished if the proposed lease is granted (App, 11). Written permission has been received by DMR staff from Mr. Davis indicating his intentions to relinquish his LPA's if the experimental lease is granted. The closest aquaculture operation to the proposal is standard lease HARP DH, which is located over 1,000 feet to the southwest (SR, 12).

**Other water-related uses.** During the review period, DMR did not receive any comments detailing other water-related uses. The applicant noted that kayaking may occur in the area, but she has not observed any within the area (App 10, Couture, testimony). Based on the absence of public comments or testimony, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on other water-related uses of the area.

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

#### **D. Flora & Fauna**

During the site visit on June 10, 2021, DMR observed eider ducks (*Somateria mollissima*), great blue herons (*Ardea herodias*), and double crested cormorants (*Phalacrocorax auritus*) (SR, 12). Harbor seals (*Phoca vitulina*) were observed hauled out on a ledge located approximately 370 feet to the west of the proposal (SR, 12). This distance complies with the National Marine Fisheries Service (NMFS) viewing



Figure 3. Aerial image of the proposed site and its location to ledge outcroppings in the area.

guidelines that recommend remaining a minimum of 50 yards (150 feet) from harbor seals (SR, 12). During the public hearing, Jacqueline Norman indicated that there are two outcroppings of rocks (ledge) and asked Cheyenne Adams if she knew which outcroppings were observed to contain the harbor seals hauled out (Norman/Adams, testimony). Ms. Adams clarified that the site visit occurred in 2021 and the notes did not specify upon which ledge outcropping the seals were hauled out. (Adams, testimony). J. Norman noted that during an abnormally high tide, there is one outcropping of ledge closest to the site that the harbor seals haul out

and pointed it out on an aerial image of the site provided by DMR staff (Figure 3). Based on measurements by DMR staff, the outcropping closest to the southwestern most corner is approximately 370 feet away, while the closest outcropping to the northwestern most corner is approximately 180 feet away. Each distance complies with the viewing guidelines set forth by NMFS. If the lease was granted, Ms. Couture would need to comply with laws and rules governing marine mammals.

Historical eelgrass data collected by DMR indicated that, in 2018, the nearest eelgrass to the proposed lease was 25 feet east of the site. This distance is in accordance with Army Corps of Engineers federal regulations 33 CFR 320 – 332. Additionally, no eelgrass beds were observed during the underwater assessment conducted on June 10, 2021 (SR, 13).

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicated that the proposed lease is located approximately 350 feet from Tidal Wading Bird and Waterfowl Habitat, which is defined under Maine’s Natural Resource Protection Act as Significant Wildlife Habitat (SR, 12). DMR sent a copy of the application to MDIFW for their review and comment, to which MDIFW responded stating “minimal impacts to wildlife are anticipated for this project.”

Based on the evidence that the proposed lease does not interfere with historical eelgrass beds or mapped wildlife habitat, and because DMR’s site report does not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem, it appears that the proposed aquaculture activities for this lease site will not interfere with the ecological function 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 lease is located approximately 810 feet to the northwest of a municipally owned parcel given the title “Devil’s Back/Morgan’s Cove” (SR, 15). This parcel hosts public access trails, the use of which would not be impacted by the proposal. This parcel also hosts several docking facilities which are leased by the Town of Harpswell to individuals. Due to their distance from the proposal, use of the docks should not be directly impacted by the proposal.

During the comment period and public hearing, DMR did not receive any comments or testimony regarding public use and enjoyment. Based on the lack of public comments, and the project’s location in relation to public facilities, it is reasonable to conclude that there are no concerns regarding the effect the proposed lease may have on

public use and enjoyment. DMR finds that public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal governments will not be unduly affected by the proposed application.

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

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

The applicant intends to source oyster seed from Muscongus Bay Aquaculture in Bremen, Maine. This source is approved by DMR.

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

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

1. Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site, as modified by DMR, will not unreasonably interfere with the ingress and egress of any riparian owner.

2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.

3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

4. 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.

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

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

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-A.

## **5. DECISION**

Based on the foregoing, the Commissioner grants the requested experimental lease of 0.402 acres to Whiskey Stones, LLC, for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee<sup>4</sup>; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessee 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. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (s) 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**

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<sup>4</sup> DMR Rule 2.64 (14) provides:

“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”



The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 MSRA §6072-A (15)<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 purpose of the lease. DMR will require the applicant to mark the boundaries with buoys that are in accordance with DMR regulations, Chapter 2.80.

**7. REVOCATION OF EXPERIMENTAL LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: 4/11/03



Patrick C. Keliher, Commissioner  
Department of Marine Resources

<sup>5</sup> 12 MRSA §6072-A (15) provides that:

“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. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”