

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Peter Francisco
NMR EMG**

Standard Aquaculture Lease Application
Suspended Culture of American oysters, blue mussels,
sea scallops, and sugar kelp
New Meadows River, West Bath

May 19, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Peter Francisco applied to the Department of Marine Resources (DMR) for a 20-year standard aquaculture lease on 5.39 acres.¹ The site, located east of Middle Ground, in the New Meadows River, West Bath, Sagadahoc County, Maine, is proposed for the cultivation of American/Eastern oysters (*Crassostrea virginica*), blue mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus*)², and sugar kelp (*Sacchrina latissima*) using suspended culture techniques.

1. THE PROCEEDINGS

A. Site History

The proposed site is in the New Meadows River to the east of Middle Ground, a sandbar that becomes partially exposed at low water (SR 3). Mr. Francisco has proposed two tracts for the lease; the East Tract parallels the West Bath shoreline, and the West Tract is located immediately east of Middle Ground (SR 2). The proposed East Tract is a modification to Mr. Francisco's existing experimental lease, NMR EMGx. If granted, Mr. Francisco's application for a two-tract standard lease would replace NMR EMGx.

This section of the New Meadows River contains several aquaculture leases and licenses. NMR EMGx was first issued to Mr. Francisco for a three-year term beginning June 1, 2015 and ending May 31, 2018. Since experimental leases for commercial purposes are non-renewable, before the lease expired Mr. Francisco needed to apply to convert the existing lease to a standard lease, or let the lease expire. An experimental lease holder may continue operating their site

¹ Applicant originally requested 5.5 acres. Based on the provided coordinates, DMR calculated the area at 5.39 acres.
² Sea scallops were referenced in the application as 'Ocean Scallop'.

until the Commissioner renders a final decision on the standard lease application, provided the application for the standard lease is received before the expiration of the experimental lease. Because Mr. Francisco's standard lease application was received on May 29, 2018, before his experimental lease expired on May 31, 2018, he has been able to continue operations on his existing lease site while DMR processes his standard lease application.

Before Mr. Francisco submitted his application for a standard lease, DMR became aware that Mr. Nelson Marass, who held Limited Purpose Aquaculture (LPA) licenses within the same section of the New Meadows River, also intended to apply for a standard lease, and that portions of their applications might overlap. In accordance with Chapter 2.07(1) an applicant is required to attend a pre-application meeting with "DMR staff and the harbormaster(s) and/or a municipal officer(s) or other designee(s) of the municipality(ies) in which the proposed lease is located to discuss the proposed application." Because of the potential overlap, DMR held a joint pre-application meeting with Mr. Francisco, Mr. Marass, and the West Bath Harbormaster.

The intent of the pre-application meeting was to allow Mr. Francisco and Mr. Marass a chance to consider each other's proposals and attempt to avoid a situation where the proposed lease sites overlapped, provide DMR an opportunity to provide feedback regarding overlapping applications to both applicants, and alert the West Bath Harbormaster about both applications and the potential overlap. When proposed aquaculture sites overlap the applications are considered 'competing lease applications' under DMR's Chapter 2.41 regulations. The pre-application meeting was held on March 24, 2017 and was attended by DMR staff (Jon Lewis and Amanda Ellis), both applicants, and Joe Vaillancourt, the West Bath Harbormaster. At the pre-application meeting, the applicants indicated that they both intended to apply for portions of the same area and were unable to reach a resolution regarding their proposed operations. Both Mr. Francisco and Mr. Marass indicated that they planned to move forward by submitting their respective applications. Mr. Marass subsequently held a scoping session on July 18, 2017, and Mr. Francisco held a scoping session on March 28, 2018.

DMR received an application from Mr. Marass, which was deemed complete on May 3, 2018. Mr. Francisco submitted his application to DMR on May 29, 2018. DMR sent Mr. Francisco a letter on August 1, 2018 notifying him that his application was incomplete and detailing the sections of his application that he needed to revise before it could be deemed complete. Mr. Francisco acknowledged receipt of DMR's letter, but he did not provide DMR with any of the information requested in the letter. DMR sent another letter to Mr. Francisco on January 16, 2019, requesting that he submit a revised application by March 1, 2019. On

February 12, 2019, DMR received a revised application from Mr. Francisco, which was deemed complete on March 6, 2019.

Once his application was deemed complete Mr. Francisco was notified that his proposal overlapped with portions of Mr. Marass' application. When DMR receives competing applications, they are processed in accordance with Chapter 2.41(3) of DMR's regulations. This regulation specifies that when DMR receives competing applications that are either in the same preference category or not in any category, they must be considered sequentially according to the date they were deemed complete. Since neither the application from Mr. Francisco nor Mr. Marass was in any preference category, DMR considered the application from Mr. Marass first, as it was deemed complete on May 3, 2018 while Mr. Francisco's application was deemed complete on March 6, 2019.

A hearing was held on Mr. Marass' application on August 20, 2019, and a decision granting Mr. Marass a lease for 2.30 acres was issued on December 5, 2019. With the proceedings on Mr. Marass' application closed, DMR sent Mr. Francisco a letter on December 10, 2019, notifying him of the final decision on Mr. Marass' application. The letter included a copy of the final decision on Mr. Marass' application and provided Mr. Francisco an opportunity to modify the boundaries of his proposal prior to DMR scheduling a public hearing on his application. The letter specified that DMR could only entertain a reduction to the footprint of the proposal and gave Mr. Francisco until January 13, 2020 to provide DMR with any reductions to the boundaries of the proposed lease site. On January 13, 2020, Mr. Francisco contacted Jon Lewis, the Aquaculture Program Director, and Amanda Ellis, a Hearing Officer with DMR, indicating he would like to move his proposed West Tract slightly north. Mr. Lewis reminded Mr. Francisco that the only change DMR could consider was a reduction in the proposed footprint, not a change in location. On January 21, 2020 Mr. Francisco contacted Mr. Lewis and Ms. Ellis with revised coordinates for the southeast corner of his west tract that eliminated the overlap with Mr. Marass' newly granted lease. DMR scheduled a hearing on Mr. Francisco's application for March 10, 2020.

Sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
Peter Francisco	Applicant
Jon Lewis	Aquaculture Program Director, DMR
Tim Morong, Frank Johnson	Members of the public, lobstermen
Nelson Marass	Member of the public, oyster farmer

State representative Jay McCreight and Town of West Bath Selectman Madelyn Hennessey also attended the hearing but did not provide testimony. Mr. Francisco described the proposed aquaculture activities, and Mr. Lewis described the site visit and details from DMR's site report. Mr. Morong and Mr. Johnson described their boating and fishing activity in the area, and Mr. Marass testified about the use and location of his LPAs in the area surrounding the proposed lease. The hearing was recorded by DMR, and the Hearing Officer was Flora Drury. The evidentiary record before DMR regarding this lease application includes the following:

1. Case file (CF)
2. Application (App)
3. Site Report (SR)

In considering of the current application from Mr. Francisco, DMR takes official notice of the decision dated December 5, 2019 granting lease NMR EMG2 to Mr. Nelson Marass, given the proximity and intertwined nature of the two applications. Evidence and details on the Marass decision and application may be found under the active leases section of DMR's aquaculture website³.

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant is proposing two lease tracts for the cultivation of American/eastern oysters, blue mussels, sea scallops and sugar kelp using suspended culture techniques. The East Tract runs parallel to the West Bath shore and is a modification to the applicant's existing experimental lease, while the West Tract is directly east of Middle Ground. The applicant proposes to culture oysters and scallops using bottom cages (each measuring 36" x 45" x 25" or 36" x 45" x 19"), that would be attached to longlines suspended ten feet below the surface of the water. The applicant proposes to deploy up to 96 cages, year-round, on the East Tract. The West Tract will contain up to 256 bottom cages, but cages would only be deployed between November and April of each year (App 6-7). On the East Tract only, the applicant also intends to grow oysters using floating bags (each measuring 18" x 34" 3 1/2" and containing Styrofoam floats on each side measuring 2" x 2" by 2") held in place by spreader bars and longlines. A maximum of six rows, with 8 lines per row, and up to 80 floating bags per line would be used (App 9). Blue mussels would be cultured along one thirty foot longline, with mussel dropper

³ <https://www.maine.gov/dmr/aquaculture/leases/decisions/index.html>

ropes spaced approximately four feet apart (App 10). The applicant proposes to culture mussels only on the East Tract, and the line would remain in place year-round (App 10). The applicant also proposes to deploy marine algae gear on both the East and West Tracts. Up to three, eight hundred-foot-long lines are proposed for the East Tract, and up to eight, six hundred-foot-long lines are proposed for the West Tract (App 11). Marine algae lines on the East Tract would be localized to the deepest water of the site, in the western portion of the tract (App 13). For each marine algae longline, the applicant is proposing to use 50lb plow anchors on each end, and one small mushroom anchor or concrete block in the middle (App 11). Longlines for marine algae will be deployed November through April across both tracts of the lease. At the hearing, Mr. Francisco testified that he would have moorings on the proposed site for his marine algae lines, however, this portion of testimony was not clear, and it was only upon questioning by the Hearing Officer that Mr. Francisco indicated he plans to leave moorings in place year-round (Francisco, Drury). Mr. Francisco referenced only 16 moorings in his testimony (Francisco, testimony). It is likely that the 16 moorings referenced are those proposed for the eight marine algae lines on the West Tract, as the application describes using a mooring on each end of a marine algae line (App 11). As such, there are likely 6 additional moorings proposed for the three lines of marine algae for the East Tract. Therefore, between the eight lines proposed for marine algae on the West Tract, and the three lines proposed for marine algae the East Tract, 22 moorings would likely be used to support marine algae culture and would remain in place year-round. The applicant has also proposed to use one 8'x 12' work float, which would be located on the north end of the East Tract (App 14).

According to the applicant, the floating bags containing oysters will be flipped approximately every 10 days to control fouling (App 18), and in addition to hand sorting oysters and scallops, a battery-operated sorter will be used for oysters. Most of the work would occur from one of three skiffs or a kayak, which are operated by an electric motor or rowed by hand (App 18). The applicant also intends to utilize two floats, which are located off the lease site, for sorting and washing. The work float proposed for the site would also be used for sorting and washing product (App 14). The applicant indicates they typically harvest oysters two days per week, but that can vary based on demand and that there is no regular harvest plan for scallops (App 18-19). Marine algae lines would be seeded in November and harvested by lobster boat or center console boat in April. By April 30th, the gear associated with growing marine algae (except for moorings and associated lines and buoys) would be removed from both tracts of the lease (App 19). Mussels would be grown on ropes attached to a long line and would be cleaned and harvested by hand (App 20).

B. Site Characteristics

On May 6, 2019, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting a standard aquaculture lease. The proposed site occupies subtidal waters off the eastern shore of the New Meadows River, and is located east of Middle Ground, a sandbar in the center of the river that becomes partially exposed at low water (SR 3). Uplands to the east of the proposed site are characterized by mixed forest and residential buildings, and DMR staff observed docks and moorings to the north and south of the proposal (SR 3).

Depths at the corners of the proposed lease tracts ranged from 10 to 21 feet. Correcting for tidal variation results in depths approximately 1.1 feet greater at the nearest high water. At mean low water, depths across the proposed lease would vary between approximately 2.4 and 13.4 feet (SR 3). The bottom of the lease site is comprised of soft mud (SR 3).

At mean low water, the northeast corner of the east tract is approximately 50 feet from the nearest point of land on the eastern shoreline, and the northwest corner of the west tract overlaps the shallow ascent to the Middle Ground sandbar (SR 5). If the proposed lease were to be granted, there would be approximately 265 feet between the east and west tracts (SR 5). Figure 1 shows the proposed lease tracts and surrounding area, the location of Mr. Marass' lease, and the location of active Limited Purpose Aquaculture (LPA) licenses in the area.

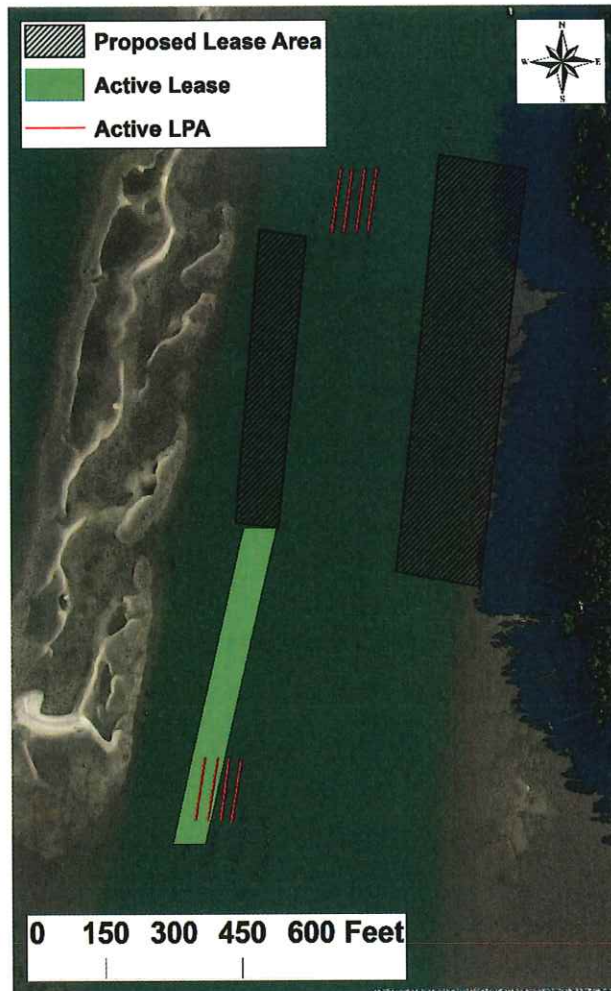


Figure 1: Proposed lease tracts and surrounding LPAs and lease NMR EMG2.

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 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 the number and density of aquaculture leases in an 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. Navigation

The main navigation channel in the New Meadows River is located to the west of Middle Ground, which acts as a natural barrier between the marked navigation channel and the proposed lease (SR 10). Because the proposed lease is located to the east of Middle Ground, boaters in the main channel are unlikely to be impacted by the proposed aquaculture activities.

DMR's site report notes that given the number of landowners along the West Bath shoreline to the east of the proposed lease, 'ample and frequent' navigation likely occurs in the area to the east of Middle Ground (SR 10). The site report also indicates there were several docks and moorings located near the proposed lease, with the closest dock located approximately 60 feet to the north of the proposed East Tract (SR 10). Comments received from the West Bath Harbormaster indicate that the proposed aquaculture activities would not affect navigation in the area⁴.

At the hearing, Mr. Marass testified that there are a total of 8 LPAs in the area held by either himself, his wife or his neighbor. Mr. Marass wondered if there would be an impact on navigation should Mr. Francisco's proposal be approved, and specifically questioned if navigation between the lease and existing LPAs would be an issue given their proximity to the proposed lease and existing uses of the area. However, Tim Morong, a lobsterman in the river, testified that he does not have a problem navigating around Middle Ground with the existing activity in the area, and upon questioning indicated that he would not have a problem navigating around the moorings Mr. Francisco has proposed to leave on the site year-round (Morong, testimony).

At the public hearing for Mr. Marass' proposal, several individuals indicated that there is significant vessel traffic to the east of Middle Ground, and that vessel traffic is from a diversity of boats including power boats, kayaks, rowing shells, and sailboats.⁵ Concern about navigation within this section of the New Meadows River was the main reason the northern tract of Mr. Marass' application, which had a similar location and footprint as Mr. Francisco's west tract application, was denied⁶. Figure 1 highlights the location of Mr. Francisco's proposal in relation to other existing aquaculture activity within the area; given the extent of aquaculture activity

⁴ CF: Harbormaster questionnaire signed by Joseph Vaillancourt on May 13, 2019.

⁵ Nelson Marass decision dated December 5, 2019.

⁶ Mr. Francisco's proposed West Tract overlaps a portion of the area of Mr. Marass' northern tract, which was denied.

and popularity of boating in this section of river, navigation may be impacted should the proposal by Mr. Francisco be approved.

As proposed, there is approximately 265 feet between the East and West Tracts, 69 feet between the northern end of the proposed West Tract and the nearest LPA, and approximately 132 feet between the northern end of the proposed East Tract and the nearest LPA. The site report notes that while smaller vessels may be able to navigate between the tracts without difficulty, larger vessels, vessels under sail, or multiple vessels transiting the area at the same time may have difficulty (SR 11). While Mr. Francisco is not proposing to have surface gear deployed on his west tract, or on the outer portion of his east tract year-round, he is proposing to leave his moorings and mooring buoys in place year-round (Francisco, testimony). Moreover, his proposed East Tract extends further into the channel than his current experimental lease, and approximately 75% of his proposed East Tract will contain floating bags and cages during the summer months (App 5).

The limited space between the LPAs and any of Mr. Francisco's moorings could pose a navigational challenge. In addition, Mr. Francisco's proposed reduction to his West Tract leaves only approximately 1.25 feet of space between his proposal and Mr. Nelson's lease. As a result, boaters wishing to access Middle Ground from this section of the river may be unable to do so during certain times of year. Given the popularity of this area for boating and the existing aquaculture lease and active LPAs in the immediate vicinity, the added effect of Mr. Francisco's proposal on top of the other aquaculture activity in the river could create navigational challenges for varying sizes of vessels, or those wishing to access the east side of Middle Ground.

The administrative record for the decision on Mr. Marass' application contains testimony from multiple individuals who felt navigation in the area would be negatively impacted if Mr. Marass' application was approved. The decision found that granting Tract 1 could create a navigational hazard in the area by diverting vessel traffic east of Middle Ground to the ~245 feet of space between Mr. Francisco's existing experimental lease, and Mr. Marass' proposed Tract 1. Therefore, Tract 1 was denied to allow for additional navigable area between the existing experimental lease and Mr. Marass' proposal⁷. Given the factual similarities between Mr. Marass' proposed Tract 1, which was denied, and Mr. Francisco's proposed West Tract, and because Mr. Francisco's proposed East Tract extends further into the channel than his current experimental lease, the same navigational concerns could exist in this case. However, there are substantial differences to the timing of operations and the amount of gear that would be present on Mr. Francisco's proposed West Tract that should be taken into consideration. While Mr.

⁷ Nelson Marass decision dated December 5, 2019.

Marass had proposed to have floating oyster cages at the surface during the summer months, and to sink cages to the bottom between November and January,⁸ Mr. Francisco has proposed that no gear would be deployed on any portion of the West Tract between May and November, apart from moorings and mooring buoys. Mr. Francisco is proposing to overwinter oysters in bottom cages, and culture marine algae on the West Tract and a portion of the East Tract between November and the end of April only. Because navigation through this area is likely not as heavy from November-April when Mr. Francisco will have most of his gear present on the West Tract, his proposal is less likely to interfere with navigation in the area than Mr. Marass' proposal. Mr. Francisco is proposing to have floating bags and oyster cages on the surface of his East Tract during the summer, but the outer 25% of this tract will not have surface gear (App 5), and the outer portion of this tract will be used only for culturing marine algae and overwintering oysters between November and April (App 5).

Given the popularity of this area for recreational boating, as is evident from the decision on Mr. Marass' lease application⁹, and the number of docks and moorings observed in the area (SR 3), the lease will be conditioned so that all gear must be removed from the West Tract, and all gear for culturing marine algae and overwintering cages must be removed from the East Tract between May 1 and November 1 each year. Moorings may remain in place but associated mooring chains, lines and buoys must be removed. Conditioning the lease in this manner will help ensure the entire West Tract and a portion of the East Tract are free of gear for boaters to use and navigate through during times of year when vessel traffic is likely the heaviest, but still allows for use of the lease site in the winter months for culturing seaweed and overwintering oysters. Should the leaseholder wish to place gear on the outer portion of the East Tract or any portion of the West Tract between May 1 and November 1, they would need to apply to DMR for an amendment and demonstrate that the navigational concerns identified by this decision are no longer relevant.

Because there will be no gear remaining on the outer portion of the proposed East Tract, or the West Tract, there will be more space available for boaters to navigate between the proposal and the active LPAs on the north end of the lease site during times of year when traffic is the heaviest. However, Mr. Francisco's revised coordinates for the West Tract leaves only approximately 1.25 feet of space between his proposed lease and Mr. Marass' existing lease (NMR EMG2). Should Mr. Francisco and Mr. Marass be operating on the locations at the same time, 1.25 feet is not likely to allow adequate space for both to maintain safe distances between

⁸ Nelson Marass decision dated December 5, 2019

⁹ Nelson Marass decision dated December 5, 2019

vessels and aquaculture gear. In addition, if Mr. Marass has yet to sink oyster cages to the bottom for overwintering and Mr. Francisco has already deployed seaweed longlines, access by other boaters to Middle Ground along this stretch of the river would be prevented. As such, the proposed West Tract will be further reduced along the southern boundary to allow for a year-round 50-foot navigation corridor to exist between Mr. Nelson's lease and the West Tract of Mr. Francisco's lease. This corridor ensures there is ample space between the two leases so as not to cause any interference and allows boaters to have reasonable access to Middle Ground during all times of year. Figure 2 shows the revised lease in relation to Mr. Marass' lease and active LPAs in the area.



Figure 2: Reduced lease area and surrounding LPAs and lease NMR EMG2

The revised coordinates for the lease are as follows, only those coordinates marked with an asterisk (*) have been modified from the applicant's original proposal:

Corner	Latitude	Longitude
EAST TRACT		
NW	43.872939° N	-69.891639° W
NE	43.872856° N	-69.890917° W
SE	43.870381° N	-69.891283° W
SW	43.870467° N	-69.891983° W
WEST TRACT		
NW	43.872486° N	-69.893131° W
NE	43.872444° N	-69.89275° W
SE*	43.870859° N	-69.892946 W
SW*	43.870855° N	-69.893305° W

In consideration of the condition described above, and the further reduction of the West Tract of the proposal, there should be adequate navigable area in consideration of the types of vessels and frequency of use within the area.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site must be marked in accordance with U.S. Coast Guard requirements.

B. Riparian Access

The proposed lease is located approximately 900 feet from the western shoreline of the New Meadows River. Due to this distance, as well as the barrier created by Middle Ground, the proposed lease should not interfere with riparian ingress and egress to the western shoreline (SR 10). The eastern shoreline of the New Meadows River, immediately adjacent to the proposed East Tract, is owned by the applicant (App 24). Docks and moorings were also observed along the west bath shoreline, to the north and south of the proposed lease (SR 3). These riparian landowners on the eastern shoreline of the river likely navigate near or through the proposed lease area to access the main channel within the New Meadows River due to the barrier created by Middle Ground (SR 10). Because the proposed lease has two tracts, one immediately adjacent to the West Bath shoreline, and the other immediately adjacent to Middle Ground, riparian landowners wanting to access the main channel in the river would need to navigate

between the two lease tracts when transiting between their properties and the main channel (SR 10). The proposed lease tracts are approximately 265 feet apart, and although smaller vessels should be able to move between the tracts without difficulty, this distance could pose difficulty for larger vessels or if multiple vessels are trying to transit through the area at the same time. As discussed in the navigation section of this decision, Mr. Francisco is not proposing to have surface gear on the West Tract or a portion of the East Tract between May and November, when use of the area is likely heaviest, but is proposing to leave moorings in place year-round. However, because the lease will be conditioned that all gear must be removed from specified areas between May 1 and November 1 each year, the entire West Tract and a portion of the East Tract will remain free of gear for riparian landowners to use and navigate through during times of year when vessel traffic is likely the heaviest. The harbormaster questionnaire received for this application¹⁰ indicates that riparian landowners within 1,000 feet of the proposed lease site are “OK” with the proposal. The harbormaster also indicated that there are permitted moorings within the boundary of the proposed site, but that the proposal is “OK’d by owners”.¹¹ Additionally, no testimony or comments were received from riparian land owners that would indicate concern with access to or use of their properties or moorings should the proposed lease be approved.

In consideration of the condition described under the navigation section of this document, and lack of evidence from riparian landowners indicating concern with the proposal, minimal impact on riparian ingress and egress is expected.

Therefore, I find that the aquaculture activities proposed for this site will not unreasonably interfere with riparian ingress and egress.

C. Fishing & Other Water Related Uses

During DMR’s visit to the site in May 2019, a lobster buoy was observed to the south of the proposed lease, and during a visit to the area in August 2018, DMR staff observed a lobster boat operating to the south of the proposed lease (SR 11). While DMR did not observe lobster buoys in the immediate vicinity of the proposed lease, it is possible that lobstermen fish in the area (SR 11). Because the proposed lease is entirely subtidal, it is unlikely to interfere with any shellfish harvesting that may occur within the intertidal areas (SR 11). Shellfish harvesters wishing to access Middle Ground may have difficulty doing so given the location of Mr. Francisco’s proposal and Mr. Marass’ lease. However, because of the reduction in the area for

¹⁰ CF: Harbormaster questionnaire signed by Joseph Vaillancourt on May 13, 2019

¹¹ CF: Harbormaster questionnaire signed by Joseph Vaillancourt on May 13, 2019

the West Tract as described in the navigation section of this document, shellfish harvesters will also be able to access Middle Ground via the navigation corridor. No recreational fishing was observed by DMR during the visit to the site (SR 11).

According to the West Bath Harbormaster, there is commercial and recreational fishing in the area, but the proposed aquaculture lease is unlikely to affect those activities¹². In the application, Mr. Francisco indicated that lobstering does occur in the area of the proposed lease site, along Middle Ground, and this is partly why he is not proposing any surface gear for that area between May and November (App 23). At the hearing, Tim Morong, and Frank Johnson, lobstermen who fish in the area, testified that Mr. Francisco considered the lobstering activity in the area when putting together his proposal, and they do not think it would cause any issues for them (Morong, Johnson, testimony).

Because there were no comments or testimony received to indicate commercial or recreational fishing will be unduly affected by the proposed lease operations, it is reasonable to assume that the proposed lease will not unreasonably interfere with commercial or recreational fishing in the area.

Other aquaculture uses. At the time of the hearing on this application, there were three active leases, and thirty-seven LPA licenses within one mile of the proposed lease site. Within 1,000 feet of the proposed lease site, there are 8 LPA licenses, lease NMR EMG2, as well as the applicant's existing experimental lease NMR EMGx. As discussed in the navigation section, there are approximately 69 feet between the northern end of the proposed West Tract and the nearest LPA, and approximately 132 feet between the northern end of the proposed East Tract and the nearest LPA. Because Mr. Francisco has not proposed year-round surface gear on the outer portion of the East Tract, or any portion of the West Tract, and because the lease will be conditioned to require gear to be removed during the summer months, there should be ample space for aquaculturists to work on their LPAs without interference. At the hearing, Mr. Marass testified that his, his wife's, and his neighbor's LPAs have been renewed through 2020, but his testimony did not express any concern about his ability to operate on his LPAs if Mr. Francisco's proposed lease was approved, only that the LPAs are there. No other comments or testimony was received from other lease or license holders in the area.

Based on the evidence, it is reasonable to conclude that the proposed operations will not unreasonably interfere with other aquaculture uses in the area.

Exclusivity. The applicant indicates that the portion of the lease parallel to Middle Ground would be open to all uses (including lobstering) from May 1st to October 31st each year

¹² CF: Harbormaster questionnaire signed by Joseph Vaillancourt on May 13, 2019.

but asks that dragging and shellfish harvesting be prohibited from November 1st through April 30th each year (App 23). However, there was no testimony presented to indicate that the applicant is concerned about dragging activity in the area, and because a fair number of moorings and buoys will be present from November through the end of April, draggers are likely to avoid the area during that time.

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

D. Flora & Fauna

According to data collected by DMR in 2002, the closest eelgrass bed to the proposed lease site was approximately 220 feet to the south. No eelgrass was observed during DMR's underwater assessment of the site in May 2019, or August 2018 (SR 15). The bottom of the proposed East Tract was comprised of soft mud and benthic microalgae. Mud snails were common in this tract, and a green crab and horseshore crab molt were also observed (SR 13). Along the West Tract, DMR observed a soft mud habitat with benthic microalgae and mud snails, and shells from softshell clams, hard clams, blue mussels, and European oysters were all observed (SR 13).

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located within Tidal Wading Bird and Waterfowl Habitat. The proposed lease is also located 2,180 feet to the north of the ¼ mile boundary around a documented bald eagle nest and is approximately 1,910 feet to the northeast of designated great blue heron habitat (SR 16).

DMR sent a copy of the application to MDIFW for their review and comment and they commented "there are no mapped resources of MDIFW jurisdiction in the proposed lease area; therefore, minimal impacts are anticipated."¹³ Based on this evidence, it appears the proposed lease 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 ecologically significant flora and fauna.

E. Public Use & Enjoyment

According to the site report, a designated "Coastal Island", owned by the Maine Bureau of Parks and Lands, is located approximately 1,000 feet from the proposed lease site at mean

¹³ CF: Email from R. Settele to C. Burke April 30, 2019

low water, and the proposed lease is unlikely to interfere with use of this publicly-owned land (SR 17). There are no other publicly-owned beaches, parks, docking facilities, or conserved lands owned by municipal, state, or the federal government within 1,000 feet of the proposed lease (SR 17).

The Hamilton Audubon Sanctuary, located 520 feet to the southeast of the proposed lease site, is held in conservation by the Maine Audubon Society and Kennebec Estuary Land Trust (SR 15). The Maine Audubon Society was provided notification of the proposed lease, and no comments were received.

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 intends to obtain stock from the following approved sources:

Source	Location	Species
Basket Island Oyster Company	Portland, Maine	American/Eastern Oyster
Muscongus Bay Aquaculture	Bremen, Maine	America/Eastern Oyster
Wild caught	on lease	Blue mussels
Pine Point Oyster Co.	Cape Elizabeth	Sea Scallop
Atlantic Sea Farms ¹⁴	Saco, Maine	Sugar Kelp

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, lighting is not anticipated except in the case of an emergency (App 18).

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

H. Noise

¹⁴ On the application, source of seed for sugar kelp is listed as Ocean Approved, which has since changed their name to Atlantic Sea Farms.

The applicant intends to access and work the site from skiffs and kayaks, and although those are often hand powered, the applicant has proposed to use two 7 1/2 horsepower gas motors and an electric motor (App 18). The applicant has also proposed to use a battery-operated sorter and washer, that would be located a few hundred feet to the northeast of the East Tract, inshore from the site (App 18). A tractor located on the applicant's adjacent shorefront property may also be used on harvest days (App 20). No comments or testimony was provided to indicate concern regarding noise that may emanate from the site.

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

I. Visual Impact

Per the site report: "the aquaculture equipment and vessels proposed by the applicant meet the visual impact standard as set forth in MDMR Regulation Chapter 2.37(A)" (SR 19).

Therefore, equipment and structures proposed for the lease site will comply with the visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. Given the condition related to timing of gear deployment and the reduction of the West Tract, the aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases 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, or docking facilities owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of 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 forgoing, the Commissioner grants Peter Francisco a lease in the amount of 5.29 acres for a term of twenty years for the cultivation of American/Eastern oysters (*Crassostrea virginica*), blue mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus*), and sugar kelp (*Saccharina latissima*) using suspended culture techniques. The lease shall be comprised of two tracts; the East Tract in the amount of 3.95 acres, and the West Tract, reduced to 1.31 acres by movement of the southeast and southwest corners northward. The final coordinates for the lease are:

Corner	Latitude	Longitude
EAST TRACT		
NW	43.872939° N	-69.891639° W
NE	43.872856° N	-69.890917° W
SE	43.870381° N	-69.891283° W
SW	43.870467° N	-69.891983° W
WEST TRACT		
NW	43.872486° N	-69.893131° W
NE	43.872444° N	-69.89275° W
SE	43.870859° N	-69.892946 W
SW	43.870855° N	-69.893305° W

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).¹⁵ 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.

The following conditions shall be incorporated into the lease:

- a. All gear, including mooring buoys and lines, but excluding moorings, must be removed from both the West Tract and the outer 50 feet of the East Tract between May 1 and November 1 of each year. Should the leaseholder wish to place gear within these locations during the time periods identified above, they must apply for an amendment to the lease and demonstrate that the navigational concerns relating to this condition are no longer applicable.
- b. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

7. REVOCAION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §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: _____

5/19/2020



Patrick C. Keliher, Commissioner
Department of Marine Resources

¹⁵ 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."