

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Tightrope Seafarms, LLC
BHB SP2**

Standard Aquaculture Lease Application
Bottom culture of American/eastern oysters
Blue Hill Salt Pond, Blue Hill, Maine

May 24, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Tightrope Seafarms, LLC. applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on two tracts, totaling 7.01¹ acres south and southeast of Carleton Island in the Blue Hill Salt Pond, Blue Hill, Hancock County, Maine. The proposal is for the bottom culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on February 26, 2019, and a scoping session was held on July 11, 2019. DMR accepted the final application as complete on September 5, 2019. A public hearing on this application was scheduled for March 2, 2021. Notices of the completed application and public hearing were provided to state and federal agencies, the Town of Blue Hill, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in the *Village Soup* on January 28, and February 25, 2021. Due to the COVID-19 pandemic, and to limit any potential public health risks associated with gathering in groups, DMR elected to conduct the hearing remotely, using a virtual meeting platform². The public notice for the hearing indicated that the proceeding would be conducted remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. No one intervened in this case.

Sworn testimony was given at the March 2, 2021 hearing by the following witnesses:

Name	Affiliation
Evan Young	Tightrope Seafarms, LLC; applicant
Cheyenne Adams	DMR Aquaculture Scientist
Alison Dibble	Member of the public

Additional DMR staff and members of the public attended the hearing and asked questions of the applicant but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis.

¹ Applicant originally requested 7.25 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 7 acres.

² The Department of Marine Resources uses Microsoft Teams for all virtual conferencing, so this was the platform used for the Maine Source Seafood remote hearing.

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

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On May 14, 2020 DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR 2). The applicant has requested a lease in two tracts (App 1). According to the site report, the separation between Tract 1 and Tract 2 would allow for a navigation channel in the deeper water between the tracts (SR 2). Tract 1 is 3.24 acres and occupies subtidal waters near the southern shoreline of Carleton Island in the Blue Hill Salt Pond (SR 2). Carlton Island hosts a sand beach and rocky shoreline that leads to an uninhabited, mixed forest upland. Blue Hill Neck is to the southeast, and open waters of Blue Hill Salt Pond are to the south and southwest (SR 2). To the west/southwest of Tract 1 is an unnamed island owned by Maine's Department of Inland Fisheries and Wildlife that supports a bald eagle nest (SR 2). Tract 2 is 3.77 acres and occupies subtidal waters southeast of Carleton Island, near the western shoreline of Blue Hill Neck (SR 2). The Blue Hill Neck shoreline comprises a small gravel beach and mixed rocky and muddy intertidal zone with undeveloped, mix forested uplands. The Sedgewick and Blue Hill mainland shorelines are to the west (SR 2). Figure 1 shows the proposed lease and surrounding area.

During their visit to the site on May 14, 2020, DMR staff observed the bottom of the site using drop camera transects and visual observations from aboard kayaks and found that the bottom of the proposed Tract 1 is comprised of firm sandy mud, shell hash and shell rubble, while Tract 2 is comprised of soft mud sediments (SR 10). During DMR's visit to the site the tide was in the late ebb, slack low, and early flood stages and the entire site was observed to remain subtidal through the low tide stage (SR 10). Based on personal communication with the applicant, low tide in the salt pond occurs about 3 hours after predicted low tide for Blue Hill Harbor (SR 10). During the site visit, depths at Tract 1 ranged from 1.5 feet along the northern border. In Tract 2, during the site visit, depths were estimated to range from 1.5 feet along the proposed eastern border to 2.5 feet at the proposed northwest corner (SR 10). According to the application, the tidal range at the proposed sites is approximately 4-5' due to the constriction of water at the Salt Pond Falls (App 4).

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

The proposed site is located within Growing Area EF and is currently classified as 'open/approved' by the DMR Bureau of Public Health for the harvest of shellfish.

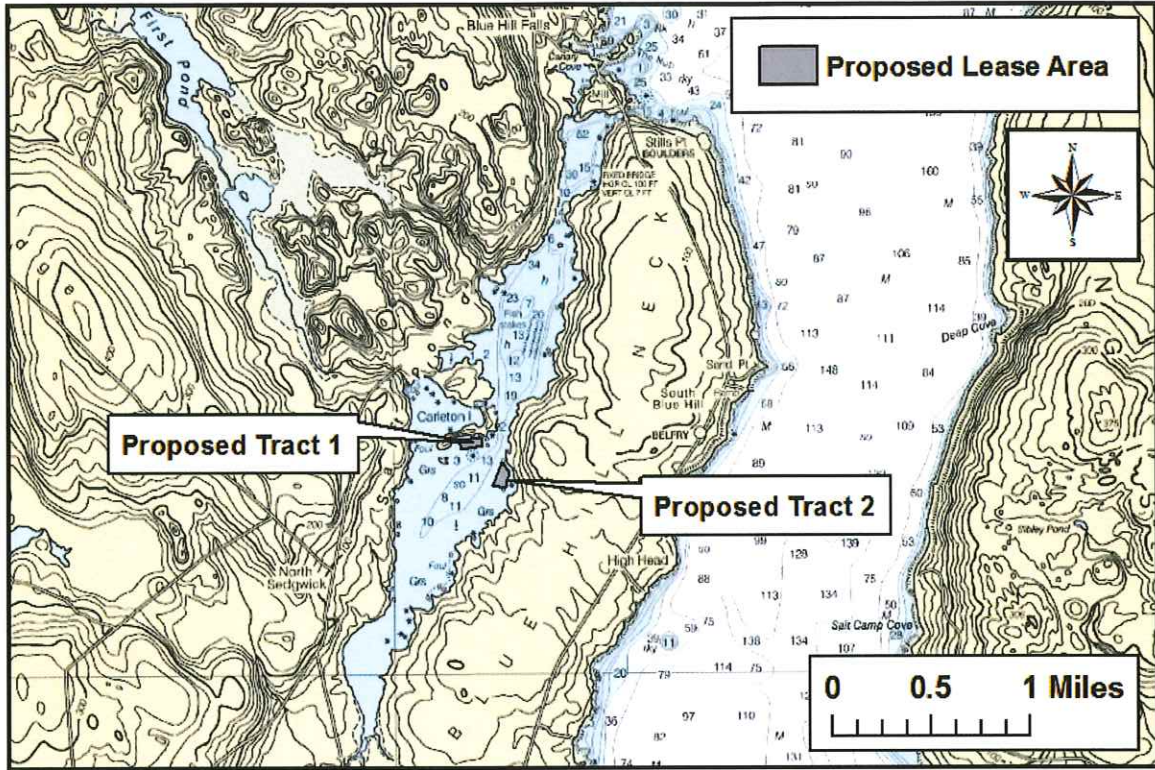


Figure 1: Proposed lease site and surrounding area. Figure taken from DMR's site report.

B. Proposed Operations

The applicant proposes a twenty-year lease term to culture American/eastern oysters using bottom culture techniques (App 1). As the application is for the bottom culture of oysters, no gear is proposed to be deployed on the lease site, except for required corner marker buoys. According to the application, oysters will be planted on the bottom of the lease from mid-summer to late fall, and visual monitoring of the lease will occur daily (App 3). To plant the oysters, the applicant intends to use a hinged table mounted on the bow of a boat, so that as the boat moves through the site, oysters are shaken off at a rate that allows for the appropriate stocking density (App 3). The applicant intends to harvest oysters by dive, hand tools, or via a small dredge (no more than 3' in width). Harvesting will occur every 3-6 days year-round, except for when ice prevents it (App 3). According to the application, the main predators of oysters on the proposed lease are starfish, rock crabs, and green crabs. While not observed during the site visit, the application indicates that sea stars and crabs are present in the area and that these populations would be controlled by diver, rake, drag or crab trap (App 3). The applicant would be required to obtain any appropriate licenses for these proposed fishing activities.

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

During DMR's visit to the site on May 14, 2020 no moorings, docks, or other structures indicating shoreline access were observed in the vicinity of the proposed lease (SR 14). Carleton Island, which is next to the proposed Tract 1, is uninhabited. The undeveloped Blue Hill Neck shoreline is near the proposed Tract 2 (SR 14). As the proposed lease is for bottom culture only, and no surface gear is proposed for the lease, riparian owners should be able to freely navigate through either tract of the proposed lease (SR 14). During periods when the applicant is actively working the site (planting or harvesting) individuals may need to navigate around the applicant. Therefore, it does not appear that the proposed activities will impact shore landing or access to riparian property if the lease were granted.

During the hearing, no testimony was offered to indicate that riparian ingress or egress was a concern. Given that the evidence in the site report indicates access to the shoreline should not be impeded by the proposal, and because the applicant is proposing only bottom culture, riparian ingress and egress is not likely to be hindered by the proposed activities.

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 Blue Hill Salt Pond. During DMR's visit to the site, no boat traffic was observed in the Salt Pond except for the applicant (SR 14). There are no marked navigation channels within the salt pond, but deeper water available for navigation is in the pond's center, between the applicant's proposed two tracts. The proposal would occupy the shallower water and the space between the tracts would allow for vessels to move within the deeper water channel (SR 14). However, since no surface gear is proposed for the site, vessels would be able to freely navigate throughout the proposed lease, and the proposal should not impact navigation within other areas of the salt pond. When

the applicant is actively working the site, mariners may have to navigate around the activities, but these activities are expected to be localized and not in constant duration, which would allow the majority of navigation within the salt pond to continue unimpeded. In addition, according to the site report, public access to the salt pond is limited to a footpath located near the southern tip of the salt pond that is managed by the Blue Hill Heritage Trust (SR 14). According to Allison Dribble's testimony, an additional public access point, that became available about two years ago, also exists on the east shore of Sedgwick, well south of the proposed activities (Dribble, testimony). Navigation to and from these points will likely not be impacted by the proposal, as they are not located near either of the proposed tracts, and no surface gear is proposed.

No testimony was provided at the hearing to indicate there is concern about the proposed aquaculture activities and an impact to navigation in and around the salt pond.

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

C. Fishing & Other Uses

Fishing. The application indicated that commercial harvest of soft-shell clams (*Mya arenaria*), blood worms (*Glycera dibranchiate*), and sand worms (*Nereis virens*) occurs within the Blue Hill Salt Pond, in the intertidal areas nearby the proposed lease (App 4). According to DMR's site report, the shallow depth of the proposed lease site would allow for clam or worm harvesting by hand, rake or small drag during low tidal stages, and DMR's observations of the site indicate that hard clams were rarely observed but worm and clam castings were commonly observed within Tract 1 of the proposed lease (SR 14). While the applicant is requesting exclusive use of the site, and commercial harvesters would no longer have access to the bottom of the proposed lease, extensive intertidal flats would remain available for harvest outside of the proposed lease area (SR 14). According to the applicant, no lobster or crab fishing occurs within the area surrounding the proposal (App 4), and none was observed by DMR during their visit to the area on May 14, 2020 (SR 14).

No testimony was provided from fishermen at the hearing to indicate there is concern about the proposed lease or potential impact on the commercial harvest of clams, worms, or other species.

Other aquaculture uses: There are 2 Limited Purpose Aquaculture licenses (YOU112 and YOU212) and 1 standard aquaculture lease within 1 mile of the proposed lease site. Standard lease BHB SP totals 19 acres across 3 tracts and is approved for the suspended culture of shellfish. Both Limited Purposed Aquaculture license, as well as lease BHB SP are held by the applicant, or by Evan Young, the President of Tighrope Seafarms, LLC. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. During the site visit on May 14, 2020, DMR staff did not observe other water-related uses of the proposed lease area. During the hearing, questions and testimony offered indicated that canoeing and watching the eagles present on a nearby nest is popular in the salt pond. According to DMR's site report, a bald eagle's nest is present on an unnamed island to the west/southwest

of the proposed Tract 1, and approximate 0.2 acres of Tract 1 overlap with the 660 foot U.S. Fish and Wildlife Service recommended buffer surrounding an eagles nest (SR 19). The eagles nest will be further discussed later in this document, but because the applicant is proposing bottom culture only, and as discussed above, impacts to navigation are not expected, water related activities such as canoeing and observing the eagles should not be impacted by the proposal.

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

D. Flora & Fauna

Site observations. DMR scientists conducted four drop-camera transects within the proposed lease site. The bottom of proposed Tract 1 is composed of sand, firm mud, and shall hash/rubble, while the bottom of proposed Tract 2 is soft mud (SR 15). The club tunicate was observed in abundance across both proposed tracts, while American oysters (that were planted by the applicant), and common periwinkles were also observed in abundance in Tract 1 (SR 15).

Eelgrass. Data collected by DMR in 2008 indicate that eelgrass beds were located approximately 5 feet to the east of the proposed Tract 1, and historical data from 1996 indicate that eelgrass beds were located within the proposed Tract 1 (SR 17). During DMR's visit to the site on May 14, 2020 no eelgrass was observed within either tract of the proposed site or in the general vicinity of the proposal (SR 17). Because the applicant has not proposed to deploy any gear, the aquaculture activities proposed are unlikely to prevent expansion of eelgrass into the site due to shading (SR 17). The applicant has proposed to harvest oysters by diver, hand tool or small dredge. If eelgrass beds were to establish in the site, harvesting via rake or dredge could negatively impact the eelgrass. As such, DMR recommends that, if eelgrass does establish within either tract of the site, the applicant avoid using hand tools or a dredge on any eelgrass beds. At the hearing, the applicant testified that he has not seen eelgrass in the area in the 20 years he has been working in the salt pond, but if eelgrass established in the site he would be willing to avoid harvesting via those methods and could use divers at high water instead.

Because no eelgrass was observed to be present during DMR's site visit, the lease, if granted, should not adversely impact eelgrass within the proposed site.

Wildlife. A bald eagle (*Haliaeetus leucocephalus*) nest is present on the unnamed island to the west/southwest of the proposed Tract 1 (SR 19). According to DMR's site report, this nest was last monitored in 2018, and was observed to be intact with a mating pair (SR 19). While they are no longer considered a species of special concern in Maine, bald eagles are protected by the Federal Bald and Golden Eagle Protection Act (16. U.S.C. 668-668c). A small portion of the SW corner of proposed Tract 1 is within the 660-foot U.S. Fish and Wildlife Service recommended buffer surrounding the nest. Figure 2 shows the location of the proposed lease tracts and the overlap with the 660 foot eagle's nest buffer. Because no gear is proposed for the site, a United States Army Corps of Engineers (USACE) permit is not required for the proposed activities. However, email correspondence between DMR and USACE indicate that a typical recommendation on a lease site where there is overlap with the 660-foot buffer around a bald eagle's nest

would be to restrict activities occurring within that buffer to between August 16th and January 31st each year. During questioning, members of the public and DMR questioned the applicant about the bald eagle's nest and if he'd be willing to comply with the 660-foot buffer around the eagle's nest. The applicant testified that he could avoid activities within the buffer zone during the restricted time and would consider planting the site so that they can attempt to completely avoid the buffer area during the restricted time. The applicant indicated he enjoys seeing the eagles and does not want to see them go away either (Young, testimony). As such, the lease will be conditioned to prohibit aquaculture activities from occurring within the 0.2 acre section of the SW corner of the proposed Tract 1 that overlaps with the 660 foot buffer around the eagle's nest between February 1st and August 15 each year. If it is determined that the nest is not active, or should become inactive, the applicant could apply to the Department to have this conditioned removed from the lease.

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed Tract 2 is located within Tidal Wading Bird and Waterfowl Habitat (SR 19). The Department sent a copy of the lease application to MDIFW for their review and comment and MDIFW recommended that any boats used in the operations are not ground out on reefs, aquatic beds and mud flats but that "minimal impacts to wildlife are anticipated for this project."⁴ The applicant did not indicate that they intend to utilize any portion of the intertidal or to ground out their boats on reefs, beds or mud flats. In addition, follow up communication with MDIFW indicates that they do not have any concerns about the applicant's plan to harvest via dredge⁵.

Given the condition related to limiting activity on a small section of Tract 1 during the eagle's breeding season, 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.

⁴ CF: Email to C. Adams from R. Settele dated June 4, 2020.

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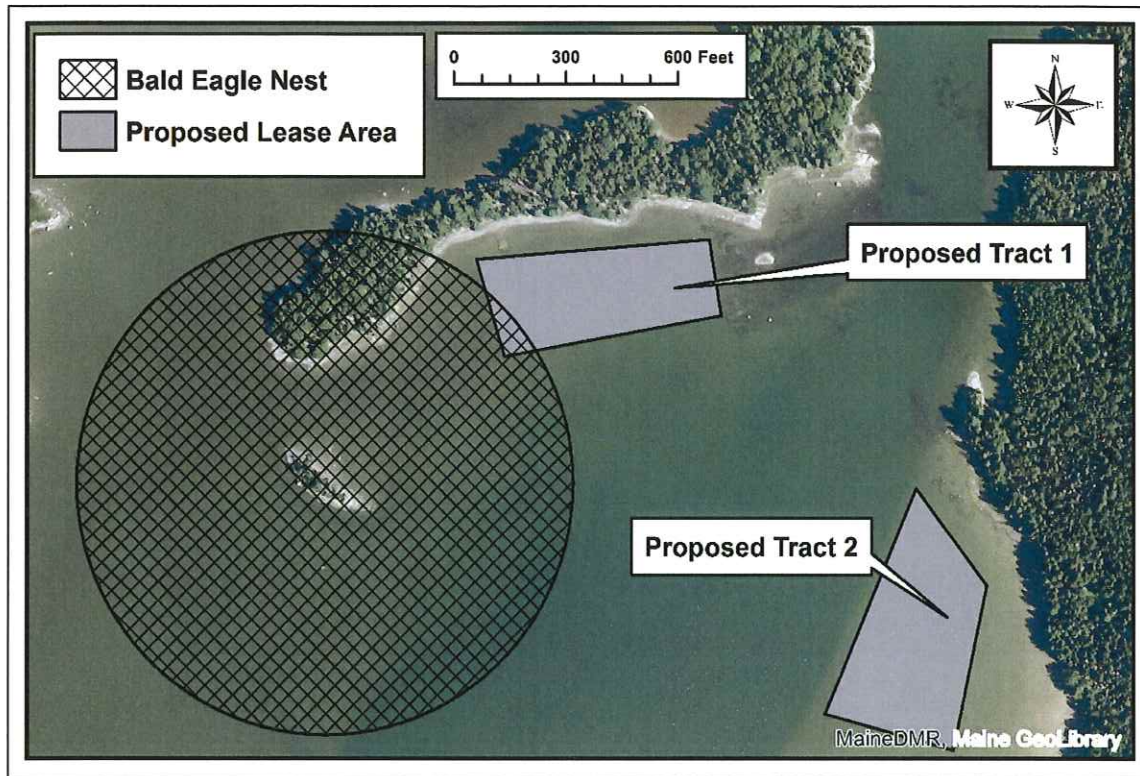


Figure 2: Proposed lease tracts and the 660 foot buffer around the bald eagle’s nest. Figure taken from DMR’s site report.

E. Public Use & Enjoyment

There are no beaches, parks, or docking facilities, owned by the federal, state, or municipal governments within 1,000 feet of the proposed site (SR 10). Tract 1 of the proposed lease is located about 500 feet northeast of an unnamed island owned by MDIFW. However, because the applicant is proposing bottom culture only, and no gear will be deployed on the site, there will likely be minimal impacts to public use of this island (SR 20). No testimony was provided at the hearing to indicate there is concern about public use and enjoyment of the unnamed island or other areas of the salt pond. Testimony from Ms. Dribble indicated people like to canoe in the Salt Pond and enjoy watching the eagles, but, as discussed elsewhere in this decision, these activities should not be prevented by the lease.

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 seed stock for this proposed lease site as Mook Sea Farm in Walpole, Maine, and Muscongus Bay Aquaculture, located in Bremen, Maine (App 1). These hatcheries are both approved sources 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, there would be no lights used on the proposed lease. Except for a breakdown or emergency, work will only occur during daylight hours (App 3). 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, a 24' Carolina Skiff or similar boat will be used to plant oysters, and to transport divers or crew to rake and drag oysters. In addition, a battery-operated pot hauler would be used to haul in the drag or bags of harvested oysters (App 3). At the hearing, there was no testimony offered to indicate there is concern about levels of noise from within the boundaries of the proposed lease site. Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

I. Visual Impact

The applicant is not proposing to deploy any gear. Aside from the required corner marker buoys the lease will not have any gear or structures present on it.

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. Given the condition related to the bald eagle's nest buffer zone, 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 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 Tightrope Seafarms, LLC. for 7.01 acres, for twenty years, and for the cultivation of American/eastern oysters (*Crassostrea virginica*) using bottom 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 \$500.00, 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).⁶ 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 have been imposed on this lease:

1. Planting, harvesting, or other maintenance of the lease site is prohibited from occurring with the 0.2 acre section of the SW corner of Tract 1 that overlaps with the 660-foot buffer around the eagle's nest between February 1st and August 15th each year. If it is determined that the nest is not active, or should become inactive, the applicant may apply to the Department to have this condition removed from the lease.

⁶ 12 M.R.S.A §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A §6072 (11), that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: _____

5/24/21



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