

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Frenchman Bay Oyster Company, LLC**

**SULL II**

Standard Aquaculture Lease Application  
Suspended and bottom culture of oysters  
Sullivan Harbor, Sorrento, Maine

**August 24, 2021**

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

Frenchman Bay Oyster Company, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 5.82<sup>1</sup> acres south and west of Ingalls Island in Sullivan Harbor, Town of Sorrento, Hancock County, Maine. The proposal is for the suspended culture and bottom culture of American/eastern oysters (*Crassostrea virginica*).

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on January 23, 2019 and the scoping session was held on February 26, 2019. DMR accepted the final application as complete on October 10, 2019. Notice of the completed application was sent to riparian landowners, the Town of Sorrento, and other state agencies. DMR's site report was published on October 23, 2020. A public hearing was scheduled for August 9, 2021. Notice of the hearing was published in the July 8, and 29, 2021 editions of the *Ellsworth American*. Notice of the hearing was also sent to riparian landowners, the Town of Sorrento, subscribers of DMR's email list-serve, and other state agencies as required by law.

The public hearing was held, as scheduled, on August 9, 2021. No one intervened in this case. Sworn testimony was given at public hearing by the following witnesses:

<b>Name</b>	<b>Affiliation</b>
Graham Platner	Frenchman Bay Oyster, LLC, applicant
Cheyenne Adams	DMR Aquaculture Scientist

Mr. Platner described the proposed operations and answered clarifying questions. Ms. Adams presented DMR's site report and answered questions about the site visit. Notice of the hearing specified that persons

<sup>1</sup> The applicant originally requested 5.85 acres. However, DMR calculations based on the provided coordinates indicate the proposed site is 5.82 acres.

Mr. Platner described the proposed operations and answered clarifying questions. Ms. Adams presented DMR's site report and answered questions about the site visit. Notice of the hearing specified that persons interested in participating in the proceeding needed to complete an online registration form no later than 5:00 p.m. on July 25, 2021. Three persons registered to participate in the hearing by the specified deadline: Louis Sutherland, Harbormaster, Town of Sorrento; Emily Cushman; and Aleksandar Cook. The registration form required individuals to indicate if they intended to provide testimony. Ms. Cushman was the only person who registered to testify. Ms. Cushman did not attend the hearing, but later sent DMR an email identifying herself as a riparian landowner who supported the proposed application.<sup>2</sup>

Several members of the public who did not register to participate in the hearing attended the proceeding. Everyone in attendance was given the opportunity to ask questions and offer testimony. No person in attendance offered testimony. However, Jock Crothers who is listed as the Vice-President of Frenchman Bay Oyster Company, LLC [see App 34] asked Mr. Platner questions about the use of the power washer and other noise generating equipment. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis. The evidentiary record before DMR regarding this lease application is summarized below.<sup>3</sup>

#### LIST OF EXHIBITS

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

## 2. DESCRIPTION OF THE PROJECT

### A. Site Characteristics

DMR assessed the proposed lease area, in consideration of the criteria governing standard leases, on July 7, 2020. The proposed lease comprises three tracts, to the south and west of Ingalls Island (SR 2). The proposed lease tracts are separated by two tidally exposed ledge and sand bars (SR 2). Figure 1 depicts the location of the proposed lease tracts, which are labeled [and referred to in this decision] as the

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<sup>2</sup> Emily Cushman is not listed by name on the riparian landowner list, which is based on municipal tax records. However, individuals with the surname Cushman are listed as owners. Although not expressly listed as a riparian landowner, Emily Cushman may be affiliated with one or more other listed riparian owners.

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

Northern Tract, Central Tract, and Southern Tract. The Northern Tract is 2.00 acres in size, the Central Tract 2.97 acres, and the Southern Tract is 0.84 acres (SR 10).

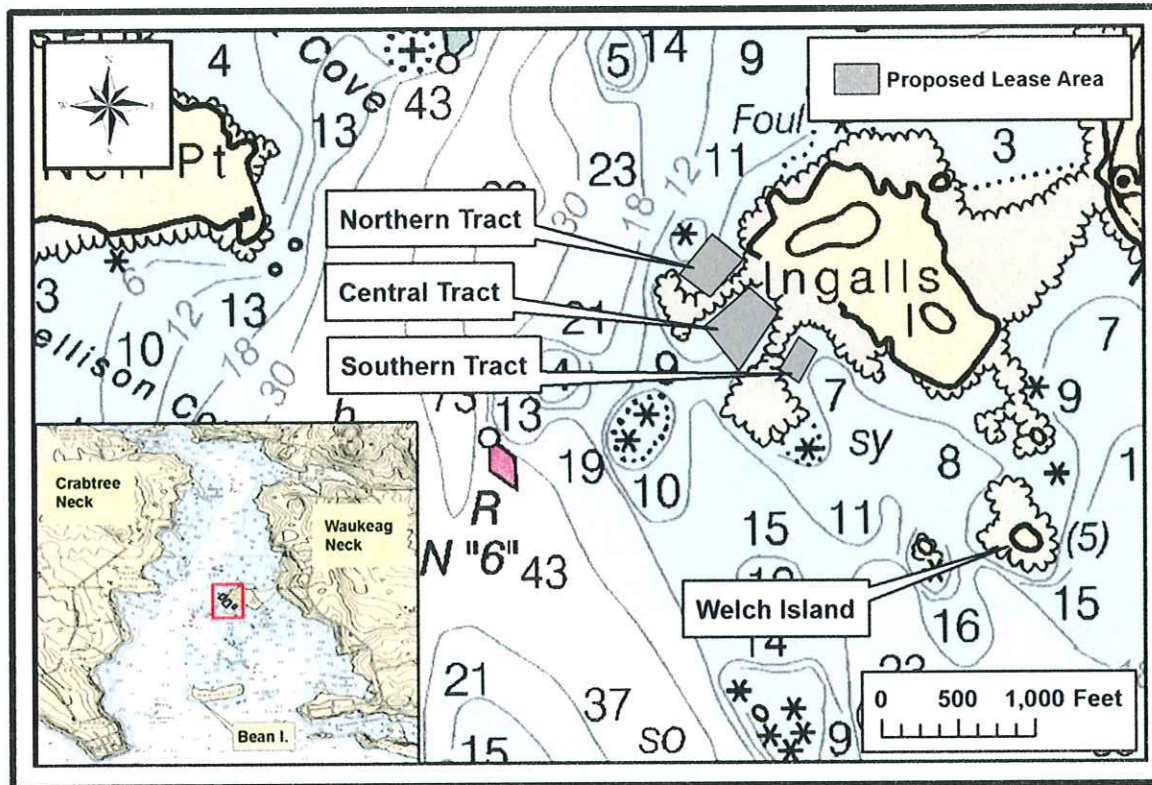


Figure 1: Vicinity map of the proposed lease area with labeled lease tracts. Image from Site Report.

The Ingalls Island shoreline is to the northeast of the proposed lease area and is characterized by ledge and beaches interspersed with marsh grass (*Spartina alterniflora*) (SR 2). The uplands are primarily mixed forest and a residential building and dock were observed near the southern point of Ingalls Island (SR 2). Waukeag Neck is located to the east of the proposed site, Bean Island to the south, and Crabtree Neck to the west (SR 2, Figure 1 above).

Figure 2 includes the labeled corners of each of the proposed tracts using low tide aerial imagery. At mean low water, Corner E of the Northern Tract is ~25 feet from a sand beach, corner E of the Central Tract is ~15 feet from a tidally exposed sandbar, and corner W of the Southern Tract is ~50 feet from a tidally exposed sandbar (SR 11 and 12).



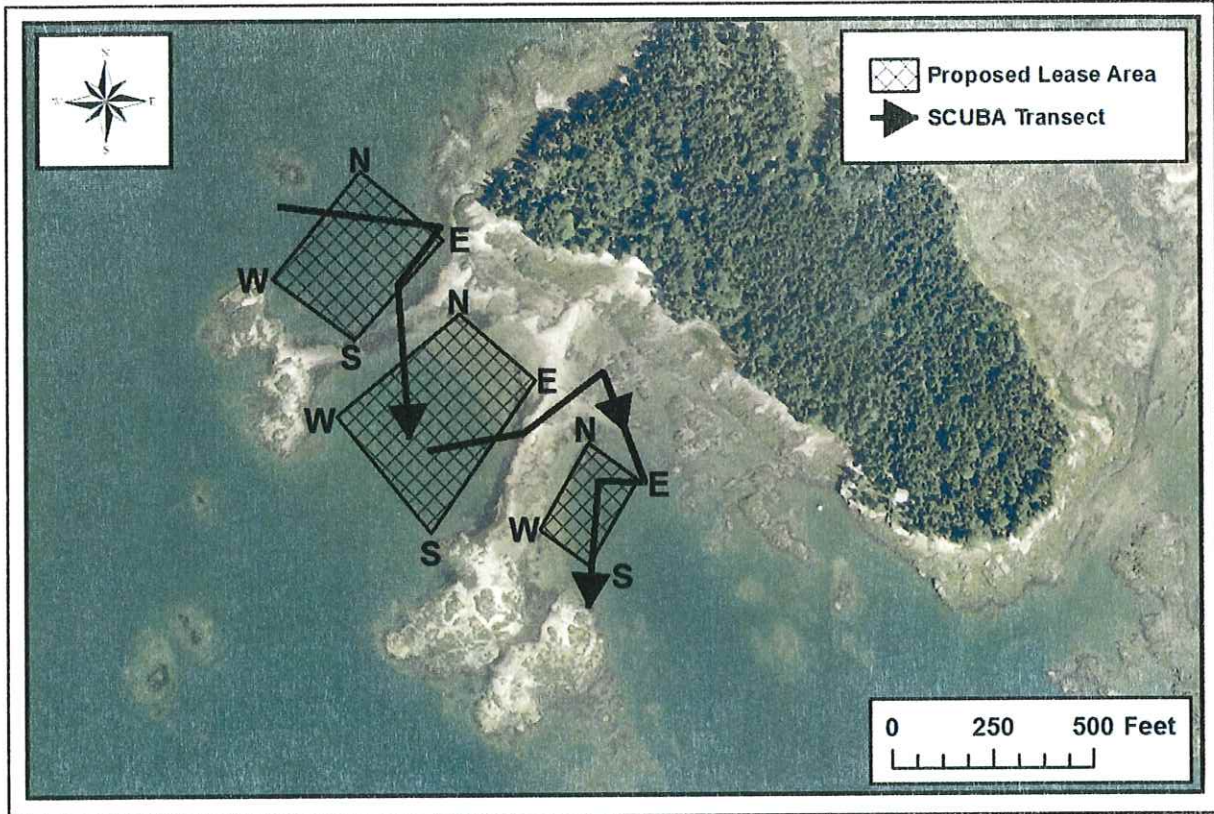


Figure 2: Labeled corners of the proposed lease tracts including the approximate SCUBA dive transects. Image from Site Report.

DMR staff observed the bottom characteristics of each proposed lease tract via SCUBA transect (SR 8). The Northern Tract was composed of bedrock, mud, shell rubble, cobble, and muddy gravel (SR 8). Substrate within the Central Tract contained mud, shell rubble, shell hash, mussel reef, and boulder (SR 8). The bottom of the Southern Tract comprised mud, muddy gravel, bedrock, mussel reef, shell hash, and shell and rubble (SR 8).

**B. Proposed Operations**

Mr. Platner testified that the proposed lease site would expand existing aquaculture operations as he and one of his business partners, Jock Crothers hold Limited Purpose Aquaculture (LPA) licenses within and adjacent to the proposed lease site. The applicant proposes to culture American/eastern oysters (*C. virginica*) using suspended and bottom culture techniques (App 1). The Northern Tract would contain a maximum of 16 longlines that measure 120 feet in length (App 8). The longlines would be spaced 25 to 30 feet apart and would be oriented in a southwest to northeast direction within the boundaries of the proposed tract (App 8, SR 2). The Central Tract would contain 8 longlines that measure 200 feet in

length and 14 longlines that measure 120 feet in length (App 9). The longlines would be oriented in a northwest to southeast direction within the boundaries of the Central Tract (SR 2).

Oyster Gro Cages<sup>4</sup> would be secured to each of the longlines with the number of cages varying depending upon the length of the line (App 8 and 9). For example, the longlines measuring 200 feet in length would hold up to 20 Oyster Gro Cages and the longlines measure 120 feet in length would hold up to 10 cages (App 9). The maximum number of cages proposed for the lease site is 460 (App 6). The Southern Tract would be used for bottom planting throughout the year and to sink cages during the winter months (App 7). At the public hearing, the applicant clarified that during the winter months most gear, except for ten cages, would be sunk in place on the respective lease tracts or consolidated and overwintered on the Central Tract. However, if the lease is granted, gear may be moved to the Southern Tract for overwintering depending upon operational needs. The ten cages not immediately sunk to the bottom would hold oysters that the applicant anticipates harvesting throughout the holiday season. Once the holiday season has ended, the ten cages would be removed from the proposed site and taken to the upland facility owned by the applicant (App 16).

The site would be seeded in July and August and when it reaches a certain size some of the product would be free planted on the bottom of the Southern Tract, while the remaining product would be cultured in the floating cages (App 15). The application referenced the possible future use of seasonal equipment including a float, tumbler, and sorting tables (App 15). Specifically, "within 5 years, a pontoon boat will be rigged for operating a tumbler/grader, which will be utilized approximately twice per operating season" (App 15). The application indicated that the pontoon boat or "work float" would be moored within the lease site and that an 1800-watt generator or solar array would be used to power the tumbler/grader. The application did not contain a rendering of the pontoon or work float.

The application also included the use of a power washer, which Mr. Platner clarified would be utilized from July through September [the window of time referenced in the application as the operating season]. The applicant estimated that the power washer would be used for a total of three days during this time for up to 8 hours a day. Wooden housing would be constructed around the generator to help reduce noise (App 17). The power washer would be operated from one of the boats used to access and service the proposed site. Mr. Platner indicated that he has communicated the possible use of the power washer with the owners of Ingalls Island. If the lease is granted, Mr. Platner would operate the power washer when the landowners are not visiting the island, or if they were visiting the island and he felt that

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<sup>4</sup> The application indicates that wooden trays may also be utilized. However, Mr. Platner testified that wooden trays are no longer being proposed, so they are not contemplated as part of this decision.



he needed to use the power washer he would talk with them about his plans to use the power washer, first (Platner/Crothers).

Product would be harvested by hand from the cages and tongs or a diver would be utilized to harvest product on the Southern Tract (App 15). The harvested oysters would be cleaned on the proposed lease site, except during inclement weather (App 15). If the weather is not conducive to cleaning, product would be taken to the applicant's upland facility for further processing (App 15).

**Discussion:**

In this instance, the application did not include renderings or a substantive description of the pontoon or work float. At the public hearing, Mr. Platner clarified that the terms pontoon and work float were used interchangeably in the application to refer to a work platform that would support a tumbler/grader and sorting tables. When asked to provide the dimensions of the pontoon/work float, Mr. Platner estimated that it would not exceed 25 feet in length. Mr. Platner indicated that it would likely be moored on the site for up to three days at a time during the growing season.

At the hearing, Mr. Platner clarified that he included the tumbler/grader and work float in the application so that it could be deployed as part of the permitted lease activities. If the lease is granted, the tumbler/grader and associated float would not be deployed for at least five years. Mr. Platner testified that he was not sure how frequently the tumbler may be utilized, but possibly weekly during the growing season. Mr. Platner testified that it is hard to estimate the frequency of use because it is difficult to predict how operations may initially evolve. There was not enough information provided with the application or at the hearing to fully evaluate the use of the tumbler/grader and float in consideration of applicable lease criteria. In addition, it seemed that the plans regarding the use of the tumbler/grader and associated float could continue to evolve and it was difficult for Mr. Platner to provide specific details regarding the frequency of use once deployed. Although Mr. Platner provided some general information about the work float, it was unclear where on the site the float would be deployed, what materials may be used to construct the float, etc. Based on the record, the proposed deployment of this equipment and associated float could benefit from further development.

If the lease is granted, it will not initially authorize the use of a tumbler/grader and the associated float. The tumbler/grader and float were presented as part of the application, but DMR needs additional details about the equipment and structure before possibly authorizing their use. Therefore, if the lease is granted, the holder can apply to add a tumbler/grader and float to the site via a lease amendment. As part of the amendment application process, the lease holder would need to provide associated schematics and a description of how the equipment would be utilized and where the float would be located within

the lease site. Riparian landowners, the municipality, and other stakeholders would also have an opportunity to review the amendment application and provide feedback on the proposed changes.

Applying for an amendment (if the lease is granted) would also provide the lease holder with additional time to develop plans associated with the possible deployment of a tumbler/grader and any associated work platform. This would provide specific information to DMR and other stakeholders regarding how frequently the tumbler/grader would be utilized, measures taken to mitigate noise generated by the equipment, the dimensions of the float, where the float would be located, how long the float would be moored within the boundaries of the lease site, and other pertinent information.<sup>5</sup>

### **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 the July 7, 2020 site assessment, DMR staff observed a dock, outhaul, and stairs leading to the water on the southern end of Ingalls Island (SR 12). It is likely that the dock, outhaul, and stairs are associated with an observed residence and outbuilding on the island (SR 12). The outhaul mooring buoy and the Southern Tract are ~430 feet apart and separated by tidally exposed ledges (SR 12).<sup>6</sup> Given

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<sup>5</sup> Mr. Platner indicated that his answers to the questions DMR asked about frequency of use were contingent upon operational capacity at least five years into the future. The uncertainty of operational capacity within five years made it difficult for Mr. Platner to provide substantive details related to the float or how frequently certain equipment would be used. If the lease is granted, applying for an amendment at a later in point in time may better reflect operations and avoid a situation where the applicant commits to an operational plan now, which could change within the next 5 years, if the lease is granted.

<sup>6</sup> In Figure 2 of the site report, the dock and outhaul are next to each other, which (given the distance) suggests that access to the dock would not be impacted either, if the lease is granted.



this distance and the tidally exposed ledges, it is unlikely that the proposed lease site would interfere with access to the outhaul (SR 12).

As noted in section 2.A of this decision, the proposed site is close to the shoreline of Ingalls Island and associated tidally exposed sand bars. These distances coupled with the deployment of surface gear may limit access to Ingalls Island in certain areas (SR 12). For example, the longlines on the Central Tract would be parallel to the shoreline, which at lower tidal stages would preclude access to a section of shoreline and sandy beach between two tidally exposed sandbars (SR 12). At mean low water, corner E of the Northern Tract is ~25 feet from a small beach that could be utilized for shore landing (SR 12). If the lease was granted, some vessels may still be able to navigate within the area to access the beach, but the ~25 feet may not accommodate larger vessels or be an adequate amount of space during inclement weather (SR 12).

If the lease was granted, it is likely that access to the tidally exposed sandbar between the Northern and Central Tracts would be limited to the ~75 feet between corner W of the Central Tract and ledge to the northwest (SR 12). In addition, the ~15 of area between corner W of the Northern Tract and ledge to the west could hinder access to the tidally exposed bar from the north for various types of vessels especially during inclement weather conditions (SR 12). In the summer months, vessels could transit through the Southern Tract to access a tidally exposed bar between the Central and Southern Tracts (SR 12). However, due to shallow water depths, access may be limited during the winter months when cages are deployed on the bottom of the Central and Southern Tracts (SR 12). During low water, the remainder of Ingalls Island contains ledge outcroppings, which may preclude shore landing (SR 12).

On November 5, 2019, Louis Sutherland, Town of Sorrento Harbormaster, returned a completed Harbormaster Questionnaire to DMR. The Harbormaster Questionnaire is sent to each municipality by DMR and is an opportunity for the Harbormaster to provide their assessment of how the proposed site may affect certain lease criteria. Mr. Sutherland, who also attended the public hearing, indicated in the Harbormaster Questionnaire that the proposed site would not affect the ability of riparian owners to access their property.

DMR provided notice of the completed application and public hearing to the riparian landowners. During the hearing, no testimony was provided from riparian landowners, or others, indicating that riparian ingress or egress was a concern. Mr. Platner testified that he has a relationship with the riparian landowners and has communicated his proposed plans with them. Given the absence of testimony on this criterion, it is unlikely that riparian landowners have concerns about their ability to



access Ingalls Island if the proposal is granted. Based on the evidence, it appears that riparian access to Ingalls Island will not be precluded or unduly affected by the proposed lease.

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

### **B. Navigation**

The proposed lease site is more than 1,500 feet to the east of the closest navigational channel (SR 12). Rocks and shoal water lie between the proposed lease site and the navigational channel (SR 12). The proposed lease tracts are either adjacent to or between tidally exposed ledges and bars, which are natural barriers to navigation within the area (SR 12). At higher tidal stages, some vessels may be able to navigate over the ledges and bars, but given the proximity to Ingalls Island and the presence of ledges and bars it is likely that vessel traffic is limited within the area (SR 12). If the proposed lease is granted, it is unlikely to interfere with vessel traffic in the general vicinity (SR 12).

During the site visit, DMR staff observed kayakers near Welch Island, which is located to the southeast of Ingalls Island (SR 13). According to the application, kayakers and paddleboarders are frequently observed in the area as they are interested in the existing LPA operations (App 23). Vessels operating under paddle may be able to navigate between the longlines, which are spaced 25 to 30 feet apart (SR 13). However, it is possible that individuals may avoid the Northern and Central Tracts, because the longlines would be parallel to common points of entry (SR 13). During the summer months, there would be no gear on the Southern Tract, so vessels operating under paddle could traverse throughout that area (SR 13).

In the Harbormaster Questionnaire, Mr. Sutherland indicated that the proposed lease site would not impact navigation within the area. During the hearing, no testimony was provided to indicate that navigation would be unduly impacted if the lease was granted.

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

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

**Fishing.** DMR staff observed 16 lobster (*Homarus americanus*) trap buoys in the immediate vicinity of the proposal and 7 additional trap buoys within or on the boundaries of the proposed lease area (SR 13). Two vessels were also observed hauling traps in the vicinity of the proposal and one of the vessels deployed traps within the Northern Tract and within the boundaries of an existing LPA site (SR

13). A moderate amount of lobstering activity was seen in the general area with heavy lobstering activity observed to the north of Ingalls Island (SR 13). One lobster was observed in the Central Tract during the SCUBA transect of the proposed site (SR 13). The site report indicates that if the lease is granted, it may displace some commercial fishing effort.

The site report also indicated that a variety of other commercially harvested species were observed during the site assessment including green sea urchins (*Strongylocentrotus droebachiensis*), soft-shell clams (*Mya arenaria*), and blue mussels (*Mytilus edulis*). Given the rocks, ledges, and tidally exposed sandbars in the area it is unlikely that drag harvests occur in the area, but dive harvest may occur within the boundaries of the proposed site (SR 14). Commercial clam harvesting is expected to occur on the intertidal bars between the proposed lease tracts (SR 14). The application indicates that the proposed lease would not impede access to the intertidal bars (App 24). However, given some of the distances between the corners of the proposed site and intertidal bars access may be limited (SR 14, see section 2.A of this decision for distances).

Mr. Platner testified that he has seen two clambers access the intertidal sand bars, but that their use of the area is infrequent. The clambers use canoes or boats to access the area at lower tidal stages and haul their vessels onto the bar between the Southern and Central Tracts. Mr. Platner testified that he talked with both clambers about the proposed equipment layout. Based on those conversations, Mr. Platner felt that the proposed operations would not impede the ability of clambers to access intertidal areas. Mr. Platner further clarified that harvesters appear to land their vessels near the Southern Tract and then walk along the Ingalls Island shoreline to access the bar between the Central and Northern Tract and other intertidal areas. The bar between the Southern and Central tracts is accessible during summer months when no gear is deployed on the Southern tract; during winter months when submerged gear may be onsite, and at lower tidal stages when water depths are shallow, access to the bar can likely still occur in the ~100 feet of space between the S corner of the Southern tract and the tidally exposed ledge.

The applicant is not requesting exclusive use of the area, so fishing would be permitted within the boundaries of the lease site (App 24). Mr. Platner testified that the buoys belonged to two lobstermen who fish within the area and that he knows both fishermen. Mr. Platner indicated that the fishermen are aware of the proposed lease site and that he would continue to work with them.

During the public hearing, no one indicated that they fish within the area. Except for testimony provided by Mr. Platner and DMR, no one else provided feedback about commercial or recreational



fishing within the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with commercial or recreational fishing activities in the area.

**Other aquaculture uses:** At the time the site report was published, 3 LPA license sites were within and adjacent to the proposed lease site (SR 14). Two of the LPAs are held by Mr. Platner and one is held by Mr. Crothers, who is also affiliated with Frenchman Bay Oyster Company, LLC (SR 14). The application indicates that the LPAs held by Mr. Platner (GPLA118 and GPLA218) would be relinquished if the site is granted, but Mr. Crothers would retain his LPA (JCRO312) and operate it independently of Frenchman Bay Oyster Company, LLC (App 18, SR 14).

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.** A red buoy labelled “UMaine” was seen within the boundaries of the proposed Northern Tract during DMR’s site visit (SR 14). The buoy was being used to mark oceanographic sensors deployed by the University of Maine in collaboration with Mr. Platner (SR 14). Except for the buoy, DMR staff did not observe any other water-related uses of the area not already contemplated in this decision.

**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 a dive transect of the proposed site on July 7, 2020 (SR 15). Species observed within the proposed lease site included rockweed (*Ascophyllum nodosum*), common periwinkles (*Littorina littorea*), and northern sea stars (*Asterias rubens*) among others.<sup>7</sup> Small to medium sized beds of sugar kelp (*Saccharina latissima*) were distributed sporadically within each of the proposed tracts (SR 15). In general, sugar kelp is recognized as an ecologically significant species in cold-water, rocky marine environments (SR 15). Kelp forests provide habitat, enhance biodiversity, are primary producers, and may have a significant role in the global ocean carbon cycle (SR 15). Over the last several decades, evidence suggests that kelp populations have experienced moderate declines within the Gulf of Maine (SR 15). The applicant is proposing to deploy floating gear, which could limit the amount of light able to reach sugar kelp beds (SR 15). The applicant also plans to sink gear in the wintertime, which could cause damage if placed directly on top of the sugar kelp beds (SR 15). The site

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<sup>7</sup> For a list of species observed by each tract see Table 5 in the site report.

report indicates that the proposed aquaculture activities may result in some interference with the ability of the site to support observed sugar kelp beds.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) also reviewed the lease proposal and as part of their review, which is further detailed in this subsection, noted that habitat features near the proposed lease site are conducive for various waterfowl species. MDIFW data also indicates that the area is a habitat type that supports wading birds and other fauna. While MDIFW did not identify sugar kelp as a specific habitat feature, it may be providing a variety of benefits to marine organisms within the area.

**Discussion:**

In this case, small to medium sized sugar kelp beds were observed sporadically through each of the proposed tracts. Sugar kelp is an important marine habitat that has experienced moderate levels of decline over the last several decades. The site report indicates that the proposed lease operations may interfere with the ability of the site to continue to support observed beds, because the deployment of floating gear could shade the kelp beds and sinking cages directly on the kelp beds could cause damage. Therefore, if the lease is granted, the holder should make observations for sugar kelp beds before placing gear to avoid deploying floating gear over any observed sugar kelp beds and not sink cages directly on top of observed beds.

The proposed gear layout coupled with the observed distribution of the sugar kelp provides the applicant with the flexibility to avoid shading or damaging sugar kelp beds while still being able to conduct the proposed aquaculture activities. For example, the longlines that support the cages would be deployed 25 to 30 feet apart and hold between 10 and 20 cages each. Therefore, the applicant could avoid deploying floating cages directly over any observed beds, which were distributed sporadically throughout the site. Although the cages may be sunk to the bottom of each tract during the winter months, the applicant anticipated consolidating product to the Central Tract or moving cages to the Southern Tract. These options would enable the lease holder to also avoid placing cages directly on top of sugar kelp beds given their observed distribution throughout the proposed site. These mitigation measures also only apply to observed "beds" or patches of sugar kelp.

The Commissioner may place conditions on a lease site, which govern the use of the area or otherwise limit the aquaculture activities. In some cases, conditions may be implemented on a lease site to address concerns specific to ecologically significant flora and fauna. However, for the reasons described above, if the lease is granted, the recommended mitigation measures will not be imposed as a condition of the lease.



**Eelgrass (*Zostera marina*).** The application indicates that no eelgrass has been observed within the proposed bounds of the site and that the last observation was made in August 2019 (App 20). Data collected by DMR indicated that, in 2008, the closest eelgrass bed was ~17 feet to the northeast of the northeastern boundary of the North Tract with a 0% to 10% coverage (SR 18). Although an underwater assessment was conducted on July 7, 2020, the northeastern boundary of the Northern Tract was not inspected for eelgrass beds (SR 18). Data collected in 1996, by DMR, indicated that eelgrass was present within the proposed lease area at 10% to 100% coverage (SR 18). However, no eelgrass was observed at these locations during the site assessment (SR 18).

Eelgrass distribution data collected in 1996 and again in 2008 suggest that between those years, coverage and density declined within the boundaries of the proposed lease site. In 1996 eelgrass was documented within the boundaries of the proposed site. However, in 2008, the nearest observed bed was ~17 feet from the northeastern boundary of the Northern Tract. In 2019, the applicant did not observe eelgrass within the boundaries of the proposed lease site. In 2020, DMR did not observe eelgrass in the areas of the proposed lease that were assessed. Based on this evidence, it is unlikely that the proposed lease site would unreasonably interfere with eelgrass.

**Wildlife.** During the site assessment, DMR staff observed various gulls (*Larus sp.*) and a double-crested cormorant (*Phalacrocorax auritus*) in the general vicinity of the proposal (SR 20). Several terns (*Sterna or Sternula sp.*) were observed on Welch Island, which is south of Ingalls Island (SR 20). According to the applicant, terns nest on Welch Island (SR 20). Data maintained by MDIFW indicate that the proposal is entirely within tidal waterfowl and wading bird habitat, which is defined under Maine's Natural Resource Protection Act (NRPA) as Significant Wildlife Habitat (SR 20). The lease area is further identified, by MDIFW, as a reef-mudflat complex of high significance (SR 20). The site is ~900 feet to the northwest of purple sandpiper (*Calidris maritima*) habitat that is on and around Welch Island (SR 20). Purple sandpipers are designated as a Species of Greatest Conservation Need in Maine's Wildlife Action Plan (SR 20).

During the early stages of the application process, Mr. Platner contacted MDIFW about the proposed lease site and they reviewed the proposal (App 21-22). DMR also sent a copy of the completed lease application to MDIFW for their review and comment. On November 7, 2019, MDIFW responded with the following:

...MDIFW has collected mid-winter waterfowl survey data (2011- 2015) and found that the total number of ducks in the Sullivan Harbor/Taunton Bay survey unit ranged between 600 and 1,500 ducks (variation in mid-winter counts is based on timing and freeze-up in the upper part of this unit). MDIFW recorded a high count of 690 black ducks in 2011;

various other species are included in the total counts, with goldeneye and bufflehead being the next largest species groups. These numbers are good for winter waterfowl counts and contribute to the importance of the entire Frenchman's Bay complex. That said, various waterfowl species likely use this lease area given the habitat features near the proposed site...Additionally, his proposal to sink the operation during the winter months (generally late December through the beginning of April) to protect the oysters and equipment from icing, and to not conduct any operations at the site during this time period, will minimize also impacts to waterfowl at this location.<sup>8</sup>

Based on MDIFW feedback, the proposed lease area is near habitat features that various species of waterfowl would be expected to utilize during winter months. Therefore, much of MDIFW's feedback focused on winter operations at the proposed site in consideration of the survey work they have conducted. Specifically, waterfowl surveys conducted in mid-winter demonstrate that the area has historically supported high counts of certain species including black ducks, goldeneye, and bufflehead. MDIFW felt that the surveys highlight the importance of the Frenchman's Bay complex to both the documented species and waterfowl more generally.

During the winter months, except for ten cages, the applicant would sink all cages to the bottom of the proposed lease site. MDIFW noted that winter months generally refers to the timeframe from late December through the beginning of April. The ten cages that remain floating at the surface would enable the applicant to access market size oysters during the holiday season (App 16). After those oysters are harvested, the ten cages would be removed from the lease site and brought to a storage facility owned by the applicant (App 16). No other operational activities are proposed for the site during the winter months when waterfowl are expected to be in the area. MDIFW did not raise any concerns about other species under their jurisdiction or discuss other elements of the proposed operation.

Based on this evidence, it appears that the proposed lease site will not interfere will the ecological functioning of the area.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

#### **E. Public Use & Enjoyment**

There are no beaches, parks, docking facilities, or conserved lands owned by the federal, state, or municipal governments within 1,000 feet of the proposed site (SR 20).

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<sup>8</sup> Ibid



**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 application lists Muscongus Bay Aquaculture located in Bremen Maine as the source of stock for American oysters (App 2). This hatchery is a DMR approved source of stock.

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

**G. Light**

No lights would be used on the proposed site and there are no circumstances in which the applicant anticipates needing to work at the proposed site beyond daylight hours (App 17). 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**

The applicant intends to utilize a power washer from July through September [the window of time referenced in the application as the operating season]. The applicant estimated that the power washer would be used for a total of three days during this time for up to 8 hours a day. Wooden housing would be constructed around the generator to help reduce noise (App 17). The power washer would be operated from one of the boats used to access and service the proposed site. Mr. Platner indicated that he has communicated the possible use of the power washer with the owners of Ingalls Island. If the lease is granted, Mr. Platner would operate the power washer in consideration of owner feedback or when they are not present on the island (Platner/Crothers).

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. Mr. Platner is proposing to mitigate noise from the power washer by keeping it enclosed, using it on a limited basis, and operating it when the island is not occupied by riparian landowners. 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. If the lease

is granted, the holder may apply to DMR to add a tumbler/grader or other noise generating equipment to the lease. This request would be evaluated in accordance with applicable rules and laws.

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

#### I. Visual Impact

The applicant plans to utilize OysterGro cages (36" x 60" x 23") with mesh bags deployed inside the cages (App 6). The gear would be green, black, and grey in color (App 13). No support structures are contemplated as part of this decision. If the lease is granted and the holder decides to pursue a lease amendment for additional equipment or structure it will be evaluated in accordance with applicable laws and rules. The gear contemplated for this site complies with DMR's height and visual impact limitations.

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

#### 4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of American oyster (*Crassostrea virginica*) 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 Frenchman Bay Oyster Company, LLC. for 5.82 acres, for 20 years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended and 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 \$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).<sup>9</sup> Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. No conditions have been imposed on this lease.

**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

  
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Patrick C. Keliher, Commissioner  
Department of Marine Resources

<sup>9</sup> 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."