

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Robert E. Brewer

Standard Aquaculture Lease Application
Suspended Culture of Shellfish/Marine Algae
Penobscot Bay, Stonington, Maine

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Robert E. Brewer, an individual, applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 2.89¹ acres in Penobscot Bay, southwest of Andrews Island, Stonington, Maine. The proposal is for the suspended culture of sea scallops (*Placopecten magellanicus*), blue mussels (*Mytilus edulis*) and sugar kelp (*Saccharina latissima*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on July 27, 2020, and a scoping session was held on December 21, 2020. DMR accepted the final application as complete on October 7, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of Stonington, 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 *Penobscot Bay Press* on September 15 and October 5, 2023. The public notice for the hearing stated that the proceeding would be conducted in-person and directed interested persons to register in order to provide testimony or ask questions during the proceeding. No applications for intervenor status were received by DMR and no individuals registered to participate in the hearing. The public hearing was held on October 25, 2023.

Sworn testimony was given at the hearing by the applicant, Robert E. Brewer.

Additional members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett.

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 all sources is summarized below.²

LIST OF EXHIBITS

¹ Applicant originally requested 3.26 acres. DMR calculations indicate the area is 2.89 acres.

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

1. Case file
2. Application
3. DMR site report, issued on August 31, 2023

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture sea scallops (*Placopecten magellanicus*), blue mussels (*Mytilus edulis*) and sugar kelp (*Saccharina latissima*) on the proposed lease site using suspended culture techniques (App 1). A maximum of 360 lantern nets (20-inch wide by six-foot long), 500 spat bags (two-foot by three-foot), 1,200 ear hanging lines (5/16-inch by 30-foot), and two 1,200 linear foot longlines are proposed for the site. Yellow lease marking buoys will be deployed at the corners (App 9).

The applicant anticipates seeding the lantern nets from the spat bags July through September. Routine tending and maintenance will occur from April to November, five days per week.

On August 10, 2017, DMR granted a 3.23-acre experimental lease (PEN AIX) to Robert E. Brewer. The decision provided authorization to cultivate sea scallops using suspended culture. Two 600-foot longlines with lantern nets, spat collecting bags, and dropper ropes were authorized to be deployed on PEN AIX. The applicant intends to replace the experimental lease with this proposal in the same area.

B. Site Characteristics

On August 2, 2023, DMR assessed the proposed lease site. DMR staff arrived on site at approximately 11:03 AM. Nearby Andrews Island is predominantly coniferous forest with a rocky shoreline. Deer Island Thorofare Lighthouse is approximately 2,100 feet southeast of the proposal at mean low water (MLW, 0.0 feet) (SR 2).

DMR staff began collecting depths at the proposed site at approximately 11:04 AM on August 2, 2023. The tide was in the late flood stage. Depths at the proposed lease site ranged from 61.9 feet at the southeast corner to 76.2 feet at the northwest corner. Correcting for tidal variation derives water depths at the next high tide to be a range from 62.4 to 76.7 feet. Water depths at MLW range from 52 to 66.3 feet (SR 2).

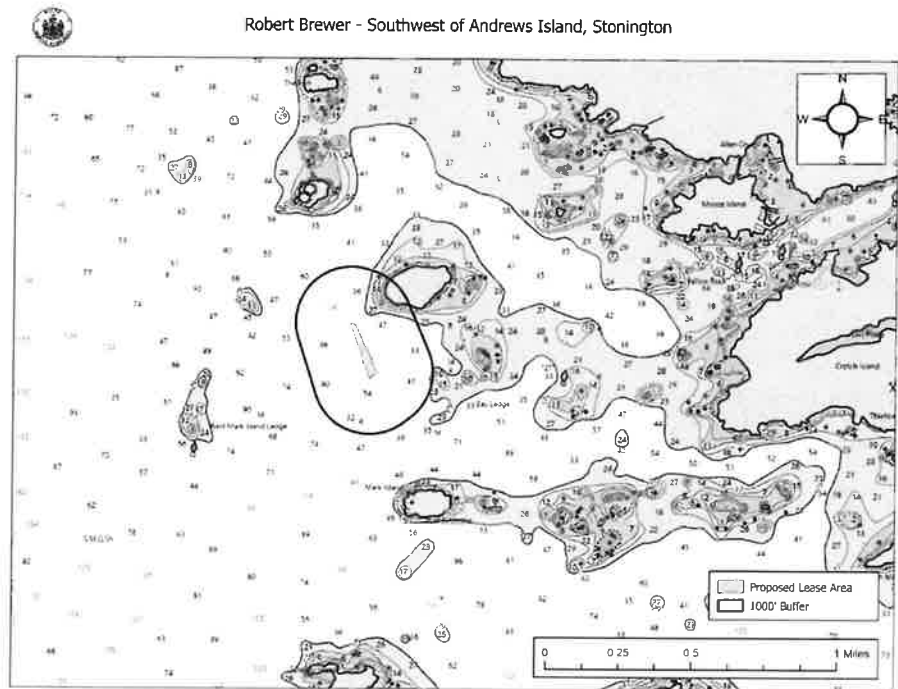


Figure 1: Proposed lease site and surrounding area. Image taken from DMR site report.

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

DMR’s Chapter 2 regulations require the Commissioner to examine whether riparian owners can safely navigate to their shore. In examining riparian owner ingress and egress, the Commissioner “shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures.” Chapter 2, § 2.37.

Andrews Island, located approximately 620 feet northeast of the proposal at MLW, is a privately owned, uninhabited island. It is denoted as a Maine Coast Heritage Trust Island Preserve and is open to the public. There were no docks observed during DMR's site assessment (SR 4).

A Harbormaster Questionnaire was sent to the harbormaster for the Town of Stonington on October 20, 2021. The harbormaster commented that the proposal would have no effect on riparian access. During the public hearing, no one offered testimony or evidence regarding riparian ingress and egress.

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

B. Navigation

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area. According to the site report, the proposal is located approximately 620 feet southwest of Andrews Island at MLW and approximately 1,800 feet west of Western Deer Island Ledge at MLW. Red navigational aid "2" marking West Mark Island Ledge is approximately 0.66 miles to the southwest of the proposal.

DMR staff observed approximately 20 recreational vessels operating in the navigational channel approximately 1,200 feet southeast of the proposal. The vessels observed ranged from smaller outboard powered recreational vessels to mid-sized cruising sailboats. (SR 4, 5).

A Harbormaster Questionnaire was sent to the harbormaster for the Town of Stonington on October 20, 2021. The harbormaster commented that the proposal would have minimal effect on navigation. During the public hearing, no one offered testimony or evidence regarding potential impacts to navigation.

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

C. Fishing & Other Uses

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area.

Fishing. During the site assessment, DMR staff observed moderate lobstering activity to the north and northwest of the proposal. The buoys nearest to the proposal were approximately 300 feet to the west. No lobster buoys were located within the proposed lease area.

No testimony was given at the public hearing concerning impacts to commercial or recreational fisheries. The harbormaster commented there is no commercial or recreational fishing within the lease area.

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

Other aquaculture uses: Except for PEN AIX, which is currently held by the applicant, there are no other aquaculture sites within 1,000 feet of the proposed lease site.

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. 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. The application states there are no other existing uses within the proposed site (App 22). No one offered testimony about other water-related uses of the area.

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

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna.

Site observations. On August 2, 2023, DMR conducted a transect via remotely operated vehicle to assess the epibenthic ecology of the proposed lease. The observed bottom was soft mud with several lobster burrows. The transect determined American lobster (*Homarus americanus*) are common in abundance (SR 5, 6).

Eelgrass. Data records of eelgrass collected by DMR in 2010 indicate no mapped eelgrass presence within 1,000 feet of the proposal.³ No eelgrass was observed within the proposal boundaries during DMR's site assessment (SR 7).

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is not located within 1,000 feet of tidal waterfowl and wading bird habitat. Data collected by the United States Fish and Wildlife Service in 2022 by aerial nest survey shows the closest bald eagle nesting site over three miles away from the proposal.

On October 22, 2021, a Wildlife Biologist with MDIFW responded by email to a "Request for Agency Review and Comment", stating the proposal is located near purple sandpiper habitat. MDIFW

³ Data obtained from The Maine Office of GIS "GISVIEW.MEDMR.Eelgrass"

stated that if total exclusion nets will be used to deter predatory sea ducks, it is recommended to use a maximum mesh size of 6 inches with a minimum of 3-millimeter twine to exclude eiders, and a maximum mesh size of 4 inches with a minimum of 3-millimeter twine to exclude scoters. A mesh size of larger than 6 inches paired with twine of less than or equal to 2 millimeters has been shown to cause sea bird entanglement.⁴ No exclusion nets are proposed for the lease site.

During DMR's site assessment, staff observed common tern (*Sterna hirundo*), osprey (*Pandion haliaetus*), bald eagles (*Haliaeetus leucocephalus*), and herring gulls (*Larus argentatus*).

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

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government.

The proposal is not within 1,000 feet of any beach, park, docking facility, or other conserved lands owned by federal, state, or municipal governments (SR 9).

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

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

According to the application, the source for all stock is wild spat. This is currently an approved source for these species.

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, one small deck light would be used on the proposed lease site. The applicant only anticipates working beyond daylight hours in extenuating circumstances.

⁴ Email correspondence between MDIFW and MDMR

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 scallop washer would be used on-site from April to November, five days a week, up to eight hours per day. The applicant only anticipates working beyond daylight hours in extenuating circumstances. According to the applicant's testimony, the washer would be powered by the boat hydraulics and the noise generated would be similar to a lobster trap hauler. The applicant stated the boat has a muffler (Brewer testimony).

Based on this information, 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

All gear will be submerged with the exception of the required marker buoys and red buoys on high flyers with radar reflectors. At the hearing, the applicant testified the high flyers are proposed to better delineate the location of the gear within the boundaries of the site for local lobstermen. DMR regulations state the color of equipment, such as buoys, shall not compromise safe navigation or conflict with US Coast Guard (USCG) Aids to Private Navigation standards. While the high flyers are not required by DMR, there is no indication that they would compromise safe navigation or conflict with USCG standards. According to the applicant, the use of high flyers is a courtesy to local fishermen in the area.

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

6. 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 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 for organisms 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.

7. DECISION

Based on the foregoing, the Commissioner grants a lease to Robert E. Brewer for 2.89 acres for twenty years for the cultivation of sea scallops (*Placopecten magellanicus*), blue mussels (*Mytilus edulis*) and sugar kelp (*Saccharina latissima*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

8. 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).⁵ 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 are imposed on this lease.

9. 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

⁵ 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."

lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: 12/1/23



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

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of Atlantic sea scallops, Penobscot Bay

Robert E. Brewer
PEN AIx
Docket #2017-04-E
August 10, 2017

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Robert E. Brewer applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 3.23¹ acres located in Penobscot Bay, southwest of Andrews Island, Stonington, Hancock County, for the purpose of cultivating Atlantic sea scallops (*Placopecten magellanicus*), using suspended culture techniques. DMR accepted the application as complete on April 19, 2017. No one intervened in this case. No requests for a public hearing were received during the comment period, and no hearing was held.

1. THE PROCEEDINGS

Notice of the application, the DMR site report, and the 30-day public comment period were provided to state and federal agencies which were requested to review the project, as well as to riparian landowners, the Town of Stonington and its Harbormaster, members of the Legislature, representatives of the press, aquaculture and environmental organizations, and others on the Department’s mailing list. Notice of the application and comment period was published in the *Penobscot Bay Press* on May 18, 2017.

The evidentiary record before the Department regarding this lease application includes the application and the Department’s site report dated July 19, 2017, as well as the case file. The evidence from each of these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed lease site is to assess the commercial feasibility of growing scallops using Japanese ear hanging techniques (App 8). The technique involves deploying two 600-foot longlines that are suspended 15 feet below the surface of the water at mean low water. Each 600 foot longline has a maximum stocking density of 100,000 scallops (App 8). The site report notes:

Lantern nets, spat collecting bags, and dropper ropes with ear-hung scallops will be deployed from the longlines. Longlines will be parallel to one another and oriented north to south. The only gear visible from the surface will be high-flyer buoys marking the ends of each longline plus 16” black hard plastic balls at the ends and in the middle of each longline (App 8).

¹ Applicant originally requested 3.8 acres. DMR calculations, based on the provided coordinates, indicate the area 3.23 is acres in size.

² These sources are cited below, with page references, as CF (case file), App (application), SR (site report).

The applicant will be working with Maine Sea Grant and the Maine Aquaculture Co-op to secure a processor who will prepare the scallops for market and distribution (App 8). Throughout the term of the lease, the applicant anticipates being on site at least every other day, during daylight hours.³ The applicant will access the proposed site from the Town of Stonington boat launch.⁴

B. Site History

The applicant currently has four Limited Purpose Aquaculture License (LPA) sites within the boundaries of the proposed lease area.⁵ The LPAs were originally granted in 2017 for the cultivation of sea scallops using longlines (SR 2). The Department has received no complaints regarding the operation of any of these licenses.

C. Site Characteristics

On June 29, 2017, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an aquaculture lease. The proposed site occupies subtidal waters outside of any well-traveled navigational channels (SR 2). The site report notes:

More than 600 feet to the northeast and east, respectively are Andrews Island and Western Deer I Ledge. Second Island is more than 2,000 feet to the north and Mark Island more than 2,000 feet to the south. To the west lie the open waters of Penobscot Bay. Except for the lighthouse on Mark Island, the surrounding islands are undeveloped and dominated by large expanses of ledge leading to interiors of primarily spruce forest (SR 2).

At mean low water, the distance from the proposed lease site to the closest shoreline, located on the northwestern side of Andrews Island, is ~615 feet (SR 7). At mean low water, water depths range between 55.6 feet at the southeast corner of the proposed lease and 68.6 feet at the northwest corner (SR 7). Depending upon tidal stages, the longlines will be submerged between 15 and 27 feet below the surface of the water (SR 7). Vertical dropper lines, measuring ~35 feet in length, will be suspended from the longlines. This configuration allows for 4-18 feet of space between the proposed gear and the benthos (SR 7). The bottom of the proposed site is characterized by soft mud (App 8). The current speeds vary between zero and two knots (App 8).

The proposed lease is in an area currently classified by the Department of Marine Resources Water Quality Classification program as “approved for the harvest of shellfish” (SR 7).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will

³ CF, A. Ellis notes from phone call with R. Brewer dated 6/14/17

⁴ CF, A. Ellis notes from phone call with R. Brewer dated 6/14/17

⁵ The LPAs are designated RBRE-2-17 through RBRE-5-17.

not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other 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, or docking facilities 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.

A. Riparian Access

The applicant indicates that the proposed operations would not interfere with ingress or egress (App 8). During the site visit, no docks or moorings were observed within the vicinity of the proposed lease site (SR 8). Maine Coast Heritage Trust, owner of Andrews Island, is the only riparian owner within 1,000 feet of the proposed site (SR 8). Andrews Island is undeveloped and is located more than 600 feet to the northeast of the proposed lease site (SR 8). The Harbormaster notes that there are no permitted moorings within the proposed lease area and that the proposed lease would not interfere with riparian ingress and egress (CF, Harbormaster Questionnaire). Activities at the lease site in subtidal waters will not hamper access to and from the uplands.

Therefore, I find that 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 not located within a major navigation channel and it “is surrounded by more than 600 feet of open, navigable water on all sides” (SR 8). The site report describes the following:

At all tidal stages, vessels in the area will have substantial room and adequate water depths (>30 feet) to navigate on all sides of the proposed lease site. Additionally, because the applicant plans to submerge all gear a minimum of 15 feet below the surface, mariners will likely be able to navigate through much of the proposed lease site (SR 8).

The Harbormaster indicates that the proposed lease will not interfere with navigation (CF, Harbormaster Questionnaire).

It appears from this evidence that navigation in the area will not be unduly affected by the presence of the proposed lease site. Aquaculture lease sites are required to be marked for navigation purposes in accordance with U. S. Coast Guard requirements.

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

C. Fishing & Other Uses

During the site visit, limited commercial fishing activity was observed within the vicinity of the proposed lease site (SR 9). A single trap buoy was observed along the middle of the proposed southern

boundary. Approximately four trap buoys were located to the south of the proposed lease boundary, ~25 trap buoys were located to the east, and ~50 trap buoys were located to the north (SR 9). Based on the application and site report, most commercial fishing activity occurs outside the proposed lease boundaries. The site report notes: “the proposed aquaculture operation, if granted, will not obstruct access to the surrounding areas” (SR 9). According to the Harbormaster, the proposed lease activities will not interfere with commercial or recreational fishing in the area (CF, Harbormaster Questionnaire). It appears from this evidence that the proposed lease site is unlikely to affect fishing in the area.

Exclusivity. Although the applicant requests exclusive use of the proposed lease area to avoid possible gear entanglement (App 8), the Department recognizes that not all uses of the waters within the lease boundaries would conflict with the gear. For example, most boats can navigate across the site, but commercial fishing such as lobstering, trawling, or dragging could damage the lease gear. Therefore, commercial and recreational fishing will be prohibited within the proposed lease area.

These restrictions are reasonable to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). Conditions reflecting these restrictions will be included in the lease.

Other aquaculture leases.

Besides the four LPAs held by the applicant, there are no other aquaculture licenses or leases within one mile of the proposed lease site (SR 9).⁶

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other uses of the area. The lease must be marked in accordance with DMR Rule 2.80⁷. Navigation will be permitted on the lease site.

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

⁶ The nearest aquaculture site, not operated by the applicant, is located south of Crotch Island and ~2 miles to the east (BREW112).

⁷ **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

D. Flora & Fauna

Site Observations. During the site visit DMR scientists noted the following:

One harbor seal pup (*Phoca vitulina*) was observed hauled out on the eastern side of Western Deer I Ledge. The proposed lease is located more than 1,900 feet to the west and is unlikely to disturb seals resting on this tidally exposed ledge. Another seal was observed swimming in the open waters around the proposed lease. Additionally, two osprey (*Pandion haliaetus*) were observed over Andrews Island while several common eiders (*Somateria mollissima*) were noted in the surrounding waters (SR 10).

Data collected by DMR, between 2001 and 2010, does not indicate the presence of eelgrass within the vicinity of the proposed lease site (SR 10).

Fisheries and Wildlife.

DMR sent a copy of this lease application to the Maine Department of Inland Fisheries and Wildlife (MDIF&W) for their review and comment. DMR received the following comment from MDIF&W regarding the proposed site:

MDIFW recently surveyed Andrews Island and the ledges southeast of Andrews Island for wintering purple sandpipers and harlequin ducks. In 2015, MDIFW also conducted red knot surveys during the fall migration period. During those surveys, there were only one purple sandpiper and minimal number of other migratory shorebirds documented; no red knots were observed. MDIFW does not anticipate significant adverse impacts to migratory shorebirds, including red knots or harlequin ducks, from this project.⁸

Based on data maintained by MDIF&W the proposed site is more than 1,000 feet to the south of the ¼ mile boundary encompassing a bald eagle (*Haliaeetus leucocephalus*) nest on Second Island (SR 10).

Based on this evidence, it appears that the culture of Atlantic sea scallops (*P. magellanicus*) as proposed for this lease site will not interfere with the ecological functioning of the area.

Therefore, I find that 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

According to the site report,

There are no public docking facilities or beaches within 1,000 feet of the proposed lease. (SR 11).

Therefore, I find that 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.

⁸ CF, MDIF&W correspondence to DMR dated 6/15/17.

F. Source of Organisms

Seed stock will be procured by the applicant, who is authorized to collect scallop spat pursuant to DMR Special License #2016-72-00.

Therefore, I find that the applicant has demonstrated that there is an available source of Atlantic sea scallops (*P. magellanicus*), to be cultured for the lease site.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
3. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area.
4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
5. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.
6. The applicant has demonstrated that there is an available source of Atlantic sea scallops (*Placopecten magellanicus*) to be cultured for the lease site.

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.23 acres to Robert E. Brewer for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee⁹; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessee for the purpose of cultivating Atlantic sea scallops (*Placopecten magellanicus*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (D) in the amount of \$5,000.00,

⁹ DMR Rule 2.64 (14) provides:

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

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 MRSA §6072-A (15)¹⁰. 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:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Commercial and recreational fishing is prohibited except by authorization of the leaseholder.
3. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

7. REVOCAION OF EXPERIMENTAL LEASE

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

Dated: 8/10/17

Patrick C. Keliher, Commissioner
Department of Marine Resources

¹⁰ 12 MRSA §6072-A (15) provides that:

“The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”