

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Love Point Oysters, LLC

Standard Aquaculture Lease Application
Suspended culture of American/eastern oysters
Casco Bay, Freeport, Maine

CAS CB

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters LLC, applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 4.15 acres south of Crab Island in Casco Bay, Freeport, Cumberland County, Maine. The proposal is for the suspended culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on September 24, 2019 and a scoping session was held on December 9, 2019. DMR accepted the final application as complete on February 6, 2020. A public hearing on this application was scheduled for October 26, 2021. Notice of the completed application and public hearing was provided to riparian landowners within 1,000 feet of the proposed site, state and federal agencies, the Town of Freeport, and subscribers to DMR’s aquaculture email listserv. Notice of the hearing was published in *The Forecaster* on September 23, and October 7, 2021. The public notice for the hearing directed interested persons to contact DMR to sign up to participate in the proceeding. Three members of the public registered to attend, and one indicated they would provide testimony at the hearing. No one intervened in this case. Additional members of the public who had not registered by the deadline also attended the hearing. No members of the public ultimately offered testimony during the proceeding.

Sworn testimony was given at the October 26, 2021 hearing by the following witnesses:

Name	Affiliation
Cameron Barner and Ben Hamilton	Love Point Oysters LLC, Applicant
Flora Drury	Aquaculture Scientist, DMR Aquaculture Division

The evidentiary record before DMR regarding this lease application includes the exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.¹

LIST OF EXHIBITS

1. Case file
2. Application

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

3. DMR site report
4. PowerPoint presentation used by applicant during the hearing

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

DMR staff visited the proposed lease site a total of three times. An initial assessment was conducted on June 9, 2020, and staff returned on August 21, 2020 to conduct additional videos of the bottom of the proposed lease. A third visit was conducted on October 15, 2020 to collect depth measurements at the corners of the proposal (SR 2). During her testimony, Ms. Drury also commented that in addition to the three specific visits to the proposed site, DMR Aquaculture staff are in Casco Bay and the general area frequently (Drury, testimony).

The proposed lease occupies subtidal waters between Crab and Moshier Islands in Casco Bay, and while the proposal is located entirely within Freeport, Maine waters, it is located just north of the Yarmouth town line (SR 2). Crab Island is located north of the proposal and hosts a rocky shoreline and lightly wooded uplands (SR 2). During their visits to the site, DMR staff observed a residential building on Crab Island, and a dock was noted on the island's western shoreline (SR 2). Moshier Island is to the south of the proposed lease and hosts a steep rocky shoreline with mature forest and residential buildings on the uplands (SR 2). From the proposed lease site, DMR staff observed five docks and associated moorings along the Moshier Island shore (SR 2).

During DMR's visit to the site on October 15, 2020, depths at the corners of the proposed site ranged from 17 to 27 feet. Correcting for tidal variations results in depths between 9.3 and 17.3 feet at mean low water (SR 4). The bottom of the proposed lease is composed of mud, with occasional burrows throughout (SR 5). Figure 1 shows the proposed lease area and approximate location of DMR's underwater video transects through the site.

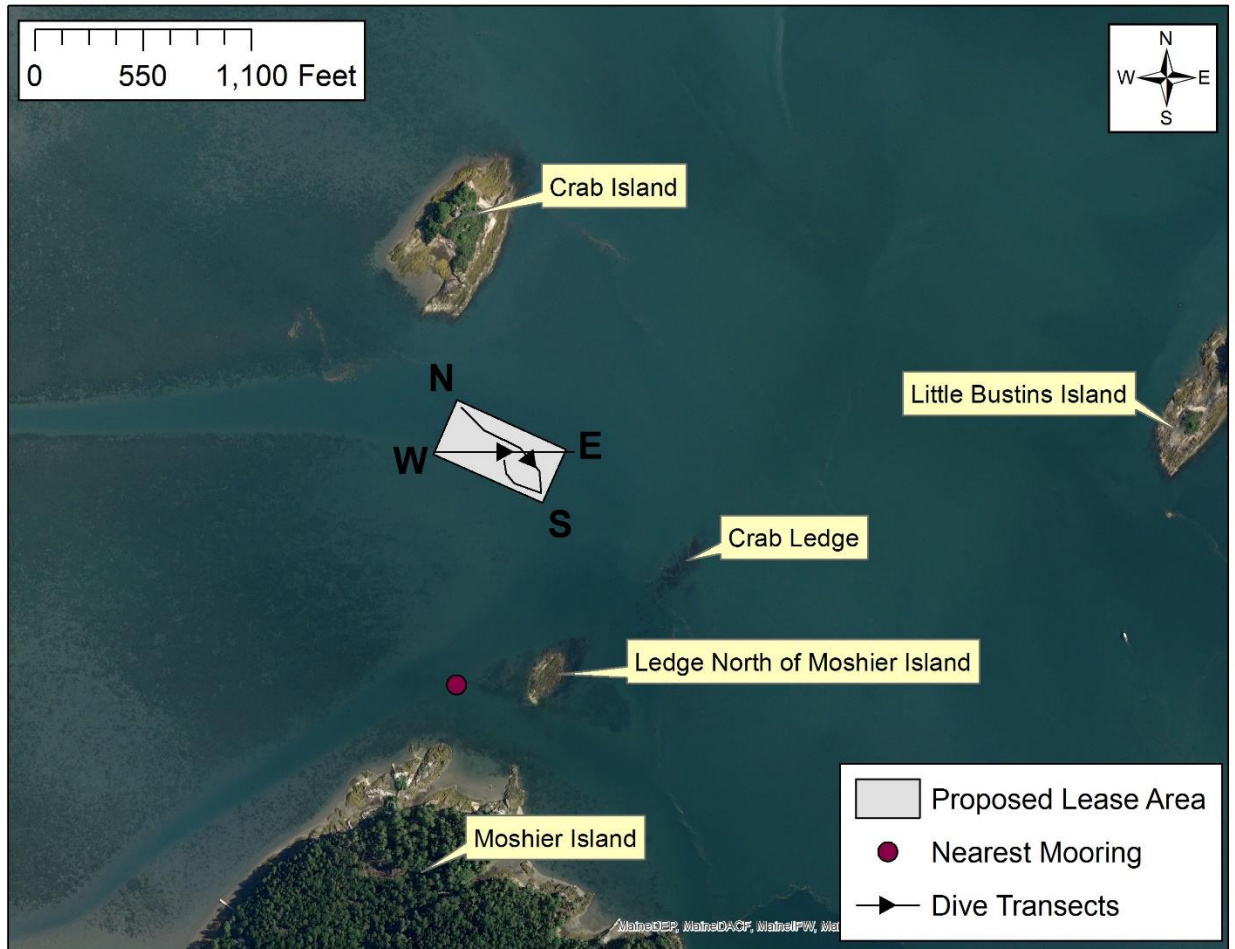


Figure 1: Proposed lease area and video transected conducted within the proposed lease site. Image taken from DMR’s site report

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*), on the proposed lease site using suspended culture techniques (App 1). The applicant proposes to use this site to overwinter oysters and testified that gear would only be present on the site from November 15th – April 30th annually (Barner, Hamilton testimony). According to the application, and their testimony, OysterGro and bottom cages, which would contain mesh bags, would be used on the site. Up to 15, 450-foot longline strings would be deployed on the bottom of the site, with each string holding up to 45 cages. At maximum capacity, there would be 675 cages and 4,050 mesh bags on site. All cages and gear would be sunk to the bottom of the proposed lease (APP 7-10).

Each November, the applicant expects to deploy gear beginning on or around November 15th and expects it will take up to 4 weeks to deploy and sink the cages on site (App 18). During this 4 week period, the applicants testified that they expect to be on the site 3-5 days each week, for the entire day (Barner, Hamilton, testimony). For approximately 4 weeks in the spring, the applicants expect to be back on site for

3-5 days per week to raise and remove the cages and oysters from the site (App 18). Outside of the times when the applicant proposes to deploy (November) and remove gear (April) they do not expect to be on site. Between May 1 and November 14 all gear, including corner markers, would be removed from the site and moved to private land, or another proposed or existing lease site held by Love Point Oysters.² If the lease is approved, it will be conditioned such that gear may only be on site from November 15 through April 30 each year.

The applicant plans to service the site using a 19' Carolina Skiff (powered by a 50hp Honda outboard motor) and a 23' Seaway (powered by a 115hp Mercury outboard motor). A hydraulic hauler, powered by a 5hp Honda engine, will be used to help raise and lower gear on the site (APP 19).

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

The proposed lease site is in Casco Bay, between Crab and Moshier Islands. Crab Island is approximately 420 feet to the north of the proposed site at the closest point and hosts a residential building and a dock on the northwest shore of the island (SR 7). DMR's site report, and Ms. Drury's testimony indicate that because the observed dock on the northwest shore of Crab Island is on the opposite side of the island from the proposed lease site, it appears access to this infrastructure would not be impacted by the proposed activities(SR 7). While DMR was conducting the site visit on August 21, 2020, they observed a large vessel landing on the beach along the southern shore of Crab Island. DMR's site report indicates that riparian owners wishing to access the southern shore of the island would likely have to alter course to avoid the proposed lease area when approaching the beach from the navigation channel to the southeast (SR 7). However, because there is approximately 420 feet between the proposal and the southern shore of Crab Island, it does not appear that access would be prevented. In addition, the applicant is proposing to deploy gear that would be submerged on the seafloor, and as stated above, depths at the proposed site range from 9.3 to 17.3 feet at mean low water. Because the proposed gear has a maximum height of 2 feet (APP 6),

² Love Point Oysters LLC currently holds 1 experimental lease, MID GIX, and has another application for a standard lease pending with DMR. A hearing on the additional proposed standard lease was also held on October 26, 2021 and a decision is pending.

vessels with appropriate draft would still be able to transit though the site when gear is deployed. Additionally, no gear will be on site between May 1 and November 15 each year, so access would not be impacted during the summer months (SR 7). The riparian owner of Crab Island did not provide testimony at the public hearing.

Moshier Island is located approximately 1,310 feet to the south of the proposed lease site, and docks and moorings are located along the northern shoreline of the island, which faces the proposed lease (SR 7). The presence of ledges to the north of Moshier Island create natural obstacles for individuals accessing these docks and moorings (SR 7). The proposal is also located to the northwest of Crab Ledges and is in the shadow of this existing obstacle. As such, the proposed lease is unlikely to create additional difficulty for riparians on Moshier Island accessing their docks and moorings from the east (SR 7). In addition, the distance between the proposed lease and Moshier Island is such that access to the observed docks and moorings is unlikely to be prevented by the proposal. And, because all gear is proposed to be removed from the site during the summer months when use of these docks and moorings is likely the heaviest, there would be no impact to these points during that time, and those vessels with an appropriate draft would be able to navigate through the site during times when gear is submerged (SR 7).

No testimony was provided at the hearing to indicate there is concern about the proposed lease and riparian ingress and egress. Given the distance between the proposal and the nearest points of land, because no gear will be present in the summer, and because vessels of appropriate draft would be able to transit the site when gear is deployed, it appears that riparian access will not be prevented 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 site is located within Casco Bay, between Crab and Moshier Islands. During DMR's site visit on August 21, 2020, four vessels were observed navigating between the two islands, and kayakers were also observed to the west of the proposal (SR 8). DMR's site report notes that because the proposal is located in the deepest water between Crab and Moshier Islands, it is likely that vessels often navigate through the proposed lease area (SR 8). Between the proposal and Crab Island there are approximately 420 feet of open water, the majority of which is between 20 and 11 feet deep at mean low water, and approximately 750 of water, approximately 7 feet deep at mean low water, would remain available between the proposal and the ledge located between Crab Ledges and Moshier Islands if the lease were granted (SR 8). Because the applicant is proposing to submerge gear on the site between November 15 and April 30, vessels of appropriate draft would also still be able to navigate through the proposed lease site once gear is deployed. In addition, as no gear is proposed to be on site between May 1 and November 14th of each year, there would be no impact to navigation during the summer months, when vessel traffic is likely the heaviest (SR 8).

The proposal is located southwest of the marked navigation channel that leads into the Harraseeket River. DMR's site report notes that this channel experiences heavy recreational and commercial traffic, especially during the summer months. As the proposal is over 1,000 feet to the west of the green can marking this channel's western boundary, it is unlikely that boats operating in this channel would be impacted by the proposal.

During the hearing no testimony was offered to indicate there is concern regarding the proposed lease and navigation in the area.

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

C. Fishing & Other Uses

Fishing. During the June 9, 2020 visit to the site, DMR observed approximately five lobster buoys within 1,000 feet of the proposed site, and one buoy was observed within the boundaries of the proposal. During the August 21, 2020 visit to the site, some light lobstering activity was observed between Crab and Moshier Islands (SR 9). The completed application stated that commercial lobstering occurs in the proposed lease area, but that it is limited to the inshore lobstering season, and as such the proposed lease should not interfere with this activity given the seasonality of when gear would be deployed on the site (APP 24). DMR's site report details that because the lobster fishing in Maine follows the annual migration and molt cycle of lobsters, it is likely that lobster fishing in this area is most prevalent during the summer months, and as the applicant proposed to only have gear deployed on the site between mid-November and May, the proposed activities are unlikely to pose an unreasonable impact on lobster fishing in the area during the summer. However, there could be some overlap with fall lobster fishing that may occur in the area (SR 9). No testimony was provided from lobstermen to indicate there is concern regarding the proposed lease activities and interference with lobstering.

During their August 21, 2020 visit to the site, DMR observed schools of menhaden in the vicinity of the proposed lease, one of which travelled through the proposed lease area. Bait fishing is common in Casco Bay during the summer months, and it is likely this activity occurs in the vicinity of the proposed lease. (SR 9) Ms. Drury's testimony indicated that because of the timing of the proposed gear deployment, it is unlikely the proposed activities would overlap with the menhaden fishing season (Drury, testimony).

DMR staff observed recreational fishing (presumed to be targeting striped bass) near the mouth of the Harraseeket river, and northwest of Crab Island, and it is possible this activity occurs within the boundaries of the proposed lease. However, given the seasonal nature of the proposed activity, and because recreational fishing is most prevalent during the summer months, interference with this activity is unlikely (SR 9). The completed application also indicated that recreational fishing occurs in the area but that it is limited to the warmer season (APP 24).

No testimony was offered from members of the public or commercial or recreational fishermen regarding fishing in the area.

Other aquaculture uses: At the time DMR published the site report, in November 2020, there were 13 Limited Purpose Aquaculture (LPA) licenses, and 1 active lease within one mile of the proposed lease (SR 11). At the hearing, Ms. Drury testified that there are now 26 active LPA licenses, 1 active lease, and 1 approved but not executed lease within 1 mile of the proposed site (Drury, testimony). No testimony was offered by other aquaculture lease or license holders in the area to indicate they have concern regarding the proposed activities. The closest aquaculture activity to the proposed site are two LPAs held by Kenneth Sparta, which are located over 1,300 feet to the west³. 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: DMR’s site report does not detail other water-related uses of the proposed lease area. The application indicates that kayaking is common in the area during the summer months (APP 13). DMR did not receive any testimony or evidence to suggest that the proposed site would interfere with 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

Site observations. DMR scientists conducted drop camera transects through the proposed lease site on June 9 and August 21, 2020 (SR 10). The bottom of the proposed site is composed of soft mud, and burrows were observed occasionally throughout the site (SR 10).

Eelgrass. Data collected in 2018 by the Maine Department of Environmental Protection, in cooperation with the Casco Bay Estuary Partnership, indicate that eelgrass beds were located to the north, south, and west of the proposal. The closest documented bed was approximately 120 feet to the southwest of the proposal (SR 12). However, the drop camera transects taken on June 9, 2020 showed a patch of eelgrass near the west corner of the proposed lease. To avoid this patch of eelgrass, DMR recommends shifting the west corner 50 feet to the east, along the southern boundary of the proposal (SR 12). DMR did also observe some lone blades of rooted eelgrass elsewhere throughout the site, but those amounts are minimal and do not warrant a reduction in acreage (SR 12).

In consideration of DMR’s recommendation to shift the western boundary 50 feet to the east, revised coordinates are provided in table 1. With this shift, the acreage of the site is also reduced to 3.89 acres.

Table 1: Revised lease coordinates; 3.89 acres

Corner	Latitude	Longitude	
E	43° 47' 32.84" N	70° 5' 34.66" W	then 608.67 feet at 293.84° True to
N	43° 47' 35.27" N	70° 5' 42.25" W	then 306.40 feet at 192.86° True to

³ Given the distance between the proposed lease and the LPA, it is unlikely that additional impacts to riparian ingress and egress, navigation, other aquaculture users of the area would result from this lease. No comments or testimony were provided at the hearing to indicate there is concern about the addition of aquaculture activity to this area creating an unreasonable level of interference.

W	43° 47'32.32" N	70° 5'43.18" W	then 554.72 feet at 113.22° True to
S	43° 47'30.16" N	70° 5'36.23" W	then 294.80 feet at 22.99° True to E.

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located approximately 3,060 feet to the east an area listed as tidal waterfowl and wading bird habitat (SR 14). DMR sent a copy of the lease application to MDIFW for their review and comment, and they indicated that “minimal impacts to wildlife are anticipated for this project.”⁴ No testimony was provided at the hearing to indicate there is concern regarding the proposed activities and the flora and fauna in the area.

Based on this evidence, and in consideration of the revised lease coordinates to avoid eelgrass at the site, 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, as modified by the revised lease coordinates, will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

The proposed site is located over 3,000 feet from intertidal lands associated with Winslow Park and Campground; a municipally-owned facility located to the northwest of the proposal (SR 15). The park hosts camping facilities, as well as a public boat ramp and dock that is accessible from mid to high tidal stages (SR 15). A deeper channel located more than 4,500 feet from the proposed aquaculture activities leads into this infrastructure. Given the distance between the proposal and the campground and dock, interference with these facilities is unlikely. In addition, because gear will only be on the site during the winter months, an impact to this area is not expected. No testimony was provided to indicate there was a concern regarding the proposed lease activities and interference with the use of these facilities.

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 Muscongus Bay Aquaculture and Mook Sea Farm as sources of stock for American oyster seed (APP 2). These hatcheries are approved by DMR.

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

G. Light

⁴ CF: Email from R. Settele to C. Burke on February 24, 2020.

According to the application, no lighting is proposed for the site and the applicant intends to only work during daylight hours (APP 20). 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, the only power equipment used on the site would be the boats used to service the site and one hydraulic hauler (APP 19). The applicant plans to service the site using a 19' Carolina Skiff (powered by a 50hp Honda outboard motor) and a 23' Seaway (powered by a 115hp Mercury). A hydraulic hauler, powered by a 5hp Honda engine, will be used to help raise and lower gear on the site (APP 19). The applicants testified that they do not intend to be on site outside of 4 weeks beginning November 15th, and for 4 weeks in April, to set and remove gear (Barner, Hamilton, testimony), and that the boats and hauler would only be used when they're on the site during those times. No testimony was provided to indicate there is concern about the proposed activities and noise.

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 plans to deploy bottom cages and OysterGro cages that contain mesh bags and will be sunk to the bottom of the proposed lease site. The gear proposed by the applicant 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. Provided the lease site is modified in accordance with the revised coordinates above, 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 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 lease to Love Point Oysters LLC, reduced to 3.89 acres in accordance with the revised coordinates above, for twenty years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. 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).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. The following conditions have been imposed on this lease.

1. Gear may only be deployed on the site from November 15th through April 30th.

7. REVOCATION OF LEASE

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.”

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: 12-20-21



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