FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Nice Oyster Co, LLC applied to the Department of Marine Resources (DMR) to change the species and gear authorization for their existing experimental lease NMR WPx, located east of Woodward Point and south of Getchell’s Ledge in the New Meadows River in the town of Brunswick, Cumberland County, Maine. The leaseholder is seeking authorization to cultivate surf clams (Spisula solidissima), to alter the configuration of authorized floating gear, and to install additional suspended gear on the existing experimental lease site.

1. THE PROCEEDINGS

Notice of the application and the 14-day public comment period were provided to federal agencies, riparian landowners, and the Town of Brunswick. The evidentiary record before DMR regarding this lease amendment application includes two exhibits (see exhibit list below).

LIST OF EXHIBITS:
1. Application for a change of species and gear authorization
2. Original lease decision signed August 22, 2017

2. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture lease amendments is governed by 12 M.R.S.A. § 6072-A (8) and Chapter 2.44 of DMR regulations. The statute and regulations provide that the Commissioner may grant amendments for the use of specific gear, species, and/or operational modifications on an existing lease site provided the proposed changes do not materially alter the findings of the original decision or would result in a change to the original lease conditions.

A. Original Lease Decision

On August 22, 2017, DMR granted lease NMR WPx to Nice Oyster Company, LLC (Exhibit 2, page 8). DMR’s Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as “the decision”, found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Nice Oyster Company, LLC met the requirements for granting an experimental aquaculture lease as set forth in 12 M.R.S.A. § 6072-A (Exhibit 2, page 7).

1 Exhibits 1 and 2 are cited below as: Application – “App”, DMR Decision on Lease NMR WPx - “Exhibit 2”. 
The decision provided authorization to cultivate shellfish using both bottom culture and suspended culture (Exhibit 2, page 7). Surface bags and bottom cages and/or trays comprise the gear authorized for the suspended culture of shellfish on NMR WPx (Exhibit 2, 2). The decision authorized surface bags to be deployed along two horizontal longlines, each approximately 200 feet in length (Exhibit 2, page 1). The decision also provided authorization for bottom cages and/or trays to be deployed along up to five submerged longlines, each approximately 350 feet in length (Exhibit 2, page 2).

Conditions imposed on lease NMR WPx, pursuant to 12 M.R.S.A § 6072-A (15) and located on page 7 of the decision, are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Dragging, lobster fishing, shellfish harvesting, and diving, are prohibited within the lease boundaries, except by authorization of the lessee/holder.
3. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

B. Proposed Species Changes and Findings

Nice Oyster Company, LLC is requesting the authorization to cultivate surf clams (S. solidissima) on their existing experimental lease site NMR WPx (App 3). The lessee/holder has demonstrated that there is an available source of surf clams (S. solidissima) for cultivation, as they propose to obtain surf clam seed from Downeast Institute, located in Beals, Maine or from Basket Island Shellfish, located in Portland, Maine (App 3). Per the application, surf clams (S. solidissima) could be grown using the existing gear authorized on NMR WPx and therefore no gear changes would be required (App 1).

NMR WPx is currently authorized to cultivate American oysters (Crassostrea virginica), European oysters (Ostrea edulis), bay scallops (Aequipecten irradians), and sea scallops (Placopecten magellanicus). As the addition of surf clams (S. solidissima) would not require gear changes to the existing lease site, the addition of this shellfish species would not cause a material deviation from the currently permitted operations. Therefore, the proposed species change is consistent with the findings of the original decision. Furthermore, the proposed species change would not result in a change to the original lease conditions.

C. Proposed Gear Changes, Operational Modifications, and Findings

Nice Oyster Company, LLC is authorized to deploy a total of five submerged longlines and two surface longlines on experimental lease NMR WPx (Exhibit 2, 1-2). The submerged lines, which measure approximately 350 feet in length are used to anchor bottom cages and/or trays, while the surface longlines, which measure approximately 200 feet in length, are deployed to hold paired surface bags (Exhibit 2, 1-2).

Nice Oyster Company, LLC is requesting the authorization to install a ~350-foot surface longline holding up to 30 shellfish bags, measuring 30" x 20" x 36", that would be suspended vertically in the water
column in a configuration similar to lantern nets\textsuperscript{a} (App 1 & 12). This surface longline is proposed to replace one of the permitted submerged longlines and the associated bottom cages and/or trays (App 12).

The leaseholder is also requesting to modify the configuration of the existing surface bags on NMR WPx from two longlines holding paired surface bags to four longlines holding single surface bags. The two additional surface longlines, which are proposed to measure approximately 150 feet, would replace one of the currently permitted submerged longlines and associated bottom cages and/or trays (App 12).

The proposed changes would replace two submerged longlines on NMR WPx with surface longlines holding surface or midwater gear. Despite the fact that there are no proposed changes to the number of surface bags to be deployed on the existing lease site, the proposed operational modifications would increase the number of surface longlines from two, 200 -foot surface longlines to four, 200-foot surface longlines and one ~350-foot longline and would introduce a gear type that was not considered during the original application process. Therefore, the proposed changes to the gear type and configuration would materially alter the findings of the original decision for experimental lease NMR WPx.

3. DECISION

Based on the foregoing, the Commissioner grants the request from Nice Oyster Company, LLC for the authorization to cultivate surf clams (\textit{S. solidissima}) on experimental lease NMR WPx but denies the leaseholder’s gear amendment requests, including both the gear type and configuration amendments.

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Dated: July 29, 2019
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\textbf{Patrick C. Keliher, Commissioner}
\textbf{Department of Marine Resources}

\textsuperscript{a} These shellfish bags are referred to in the application as “lantern nets” due to their similarity to this equipment type (App 1).