

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Maine Island Aquaculture, LLC

Standard Aquaculture Lease Application
Suspended culture of shellfish
Marsh Cove, North Haven, Maine

HOG MC

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Maine Island Aquaculture, LLC, applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 15.07¹ acres located southwest of Hog Island, Marsh Cove, in North Haven. The proposal is for the suspended culture of sea scallops (*Placopecten magellanicus*), sugar kelp (*Saccharina latissima*), dulse (*Palmaria palmata*), winged kelp (*Alaria esculenta*), and skinny kelp (*Saccharina angustissima*) using suspended culture techniques.

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on May 28, 2019, and a scoping session was held on August 2, 2020.² Due to COVID-19, DMR allowed for a 2-week comment period following the scoping session to allow those who were unable to attend the opportunity to provide comments on the proposal. During this time, DMR received approximately 52 comments from 42 individuals. DMR accepted the application as complete on January 22, 2021. The hearing was originally scheduled for January 24, 2023, and members of the public who wished to participate in the proceeding were required to register by January 9, 2023.

Notice of the completed application and original public hearing was provided to state agencies, the Town of North Haven, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the original hearing was published on December 1, 2022, and January 5, 2023, in the *Courier-Gazette*, *Camden Herald*, and *Republican Journal*. A pre-hearing conference was held remotely on December 13, 2022. The

¹ Applicant originally requested 15 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 15.07 acres.

² The scoping session was originally scheduled for January 22, 2020 but was cancelled due to the incidental omission of at least five riparian landowners from the draft application. The rescheduled scoping session on March 21, 2020, was rescheduled due to COVID-19.

purpose of the pre-hearing conference was to discuss the general administration of the proceeding, including hearing guidelines, procedures for applying for intervenor status, and requirements for pre-filed testimony. On December 14, 2022, DMR issued a procedural order detailing the conduct of the hearing and specifying the submission of pre-filed testimony, exhibits, and objections among other considerations.

The deadline to apply for intervenor status was January 9, 2023, and DMR received three applications for intervenor status from Scott Brown, Sherry Anders, and Katherine Merolla. On January 10, 2023, Mr. Brown, and Mss. Anders and Merolla were granted intervenor status and were consolidated into the DMR designated group, Concerned Citizens of Marsh Cove (CCMC).

On January 23, 2023, Mr. Brown, on behalf of CCMC, alleged that the applicant had not marked the proposed lease boundaries 30 days prior to the hearing as required by Chapter 2.15(4) of DMR's regulations. The applicant subsequently confirmed that the site had not been marked. In consideration of the lack of marking, the hearing was postponed. DMR sent electronic notices of the postponement to the municipality, applicant, CCMC, persons who registered for the January 24th hearing, subscribers of DMR's aquaculture listserv, and posted notice to DMR's website.

After notice of the postponement was processed, CCMC requested that the hearing be rescheduled during the summer months for logistical reasons³ and that registration for the rescheduled hearing be re-opened to give adequate opportunity for other individuals to register or apply for intervenor status. CCMC alleged that extending these deadlines were necessary because the site was not marked 30 days before the hearing, so individuals would not have been aware of the location of the proposal.⁴ DMR denied the request as the location of the proposed site was available to the public beginning with the complete draft application, which was the subject of the scoping session on August 2, 2020. The draft application included coordinates for the proposed site and maps displaying the location of the proposal. After the scoping session, many riparian landowners as listed in the draft application and other stakeholders submitted comments to DMR.

³ CF: Filing titled 'CCMC Position Regarding Scheduling of Hearing' dated January 26, 2023. CCMC noted that summer cottages on Marsh Cove are not insulated, there is no short-term rental housing on the island for persons wishing to attend the proceeding, etc. Recognizing that some persons may not live on the island year-round, DMR offered a remote option to accommodate those situations, which DMR clarified in a response to CMCC's January 26, 2023, letter.

⁴ CCMC also noted that the marking of other aquaculture sites in the area (i.e. Limited Purpose Aquaculture (LPA) licenses) would have misled people as to the actual location/size of the proposed lease. However, LPA licenses must be marked in accordance with regulation (Chapter 2.90(6)). Furthermore, at the time this application was processed, proposed lease sites had to be marked at least 30 days prior to the hearing. The proposed site was not marked, which is why the hearing was initially postponed.

Many of the comments detailed the impacts that the size and location of the proposed lease would have on the area. The applicants submitted a final application, and the location of the proposed site did not change. Therefore, interested persons were aware of the size and location of the proposed site as early as August 2, 2020-nearly three years prior to the public hearing.

In addition, the DMR site report, which was made publicly available on March 4, 2022, contained detailed information regarding the location of the proposed lease site – including coordinates, approximate distances from the proposed lease site to surrounding features (e.g., shore, mooring fields, etc.), proposed site diagrams, and photographs of the proposed lease area. The application had been publicly available on DMR’s website for more than a year in advance of the original hearing (including the deadline to register and apply for intervenor status) and the site report was made available nearly a year before the deadline to register or apply for intervenor status.⁵

Furthermore, notice of the hearing was first published on December 1, 2022, which was more than 30 days in advance of the hearing. That notice included a description of the site location, how to access the application and it included directives on how to apply for intervenor status and register to participate in the proceeding. The public had sufficient notice and opportunity to submit timely registrations/intervenor applications despite the absence of the applicant’s site markings. Additionally, DMR denied the intervenor’s request to postpone the rescheduled hearing until the summer months as the hearing included a remote component.

The hearing was rescheduled for April 4, 2023. Notice of the rescheduled public hearing was provided to state agencies, the Town of North Haven, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR’s aquaculture email listserv. Notice of the rescheduled hearing was also published in the *Courier-Gazette*, *Camden Herald*, and *Republican Journal* on March 2, 2023, and March 23, 2023. Notice was sent to persons who had previously registered for the January 24, 2023, hearing, including the applicant and CCMC. Persons who registered to participate in the hearing, including the applicant and CCMC were also sent information about participation in the proceeding, hearing agenda and testimony time limits.

Sworn testimony was given at the April 4, 2023, hearing by the following witnesses:

Name	Affiliation
Hannah Twombly & Connor O’Neil	Maine Island Aquaculture, LLC, applicant

⁵ The site report was published on March 4, 2022. The deadline to register to participate in the hearing or request intervenor status was January 9, 2023. The site report was published 10 months and 5 days or 311 days prior to this deadline.

Phoebe Jekielek, Marine Scientist	Expert Witness for the applicant
Scott Brown, Sherry Anders and Katherine Merolla	Concerned Citizens of Marsh Cove, intervenors
Rick Lattimer	North Haven Town Administrator
Alex de Koning, Blake Whitman, Gardner Patton, Foy W. Brown, Adam Campbell, Benjamin R. Lovell, Foy E. Brown, Amilia Campbell, Adam Alexander, Abel Labelle, Zebadiah Campbell, Karen Cooper, Jon Emerson, Karin Lockwood	Members of the Public

Additional DMR staff and members of the public attended the hearing either in person or remotely but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Hannah Brazier.

The evidentiary record before the Department regarding this lease application includes 14 exhibits, one of which was introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from all of these sources is summarized below.⁶

LIST OF EXHIBITS⁷

1. Case file
2. Application
3. DMR site report
4. Hannah Twombly, 1 – PowerPoint Presentation
5. Hannah Twombly, 2 – Video of sailboat
6. CCMC, 1 – Images of buoy colors
7. CCMC, 2 - Excerpt from the Aquaculture Siting Study from the State of Washington
Department of Ecology
8. CCMC, 3 – Map of site by Atlantic Environmental, LLC
9. CCMC, 4 – Page 16 of DMR Site Report
10. CCMC, 5 – Applicant’s proposed lease site showing distance and cone of view calculations

⁶ In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

⁷ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”; Application – “App”, site report – “SR”. Other exhibits are cited by number.

11. CCMC, 6 - Excerpts from Maine Scallop Aquaculture Report by Des Fitzgerald
12. CCMC, 7 – Photo of applicant’s scow
13. CCMC, 8 - Proposed Conditions
14. CCMC, 9 – Photo of applicant’s corner marker buoy and LPA marker buoy

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On June 17, 2021, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR, 2). The proposed lease area is located in subtidal waters in Marsh Cove, off the eastern shore of North Haven. The shoreline surrounding the proposal is comprised of ledge and sandy beaches, while the surrounding uplands are comprised of mixed forest and residential properties. Docks and moorings are located within Marsh Cove, with the highest density of these structures located north of the proposed lease (SR, 2). Hog Island is located to the northeast of the proposal and no structures were observed on that island (SR, 2).

At the time of the DMR’s site assessment in 2021, water depths at the corners of the proposed lease ranged from 26.2 to 34.7 feet (SR, 7). Correcting for tidal range would derive water depths approximately 0.31 feet lower at mean low water (MLW) (SR, 7). Depth measurements were collected using a transom-mounted depth sounder. The bottom of the proposed lease area is composed of a range of sediment types, including cobble and soft mud (SR, 8).

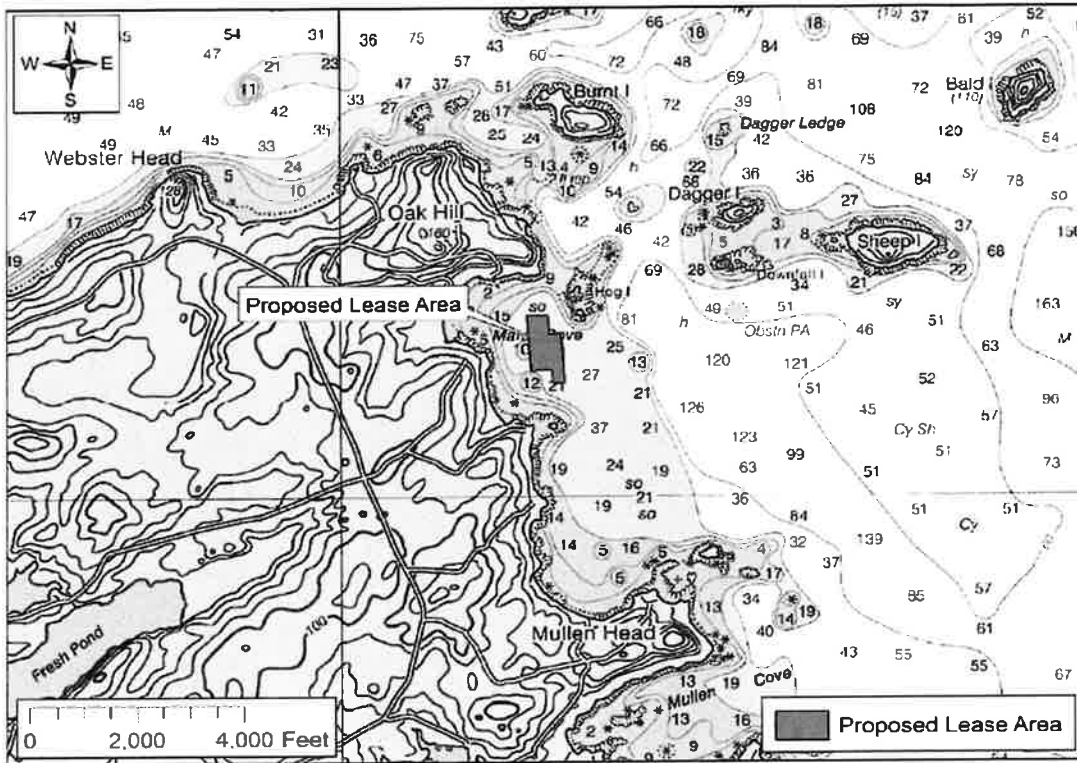


Figure 1: Proposed lease site and surrounding area. Image taken from DMR's site report.

B. Proposed Operations

The applicant is requesting to culture sea scallops on the northwestern section of the site using up to 800 hard mesh oyster bags (17.25" x 36.5" x 4") inside up to 100 Oyster Condos (45" x 40.5" x 22.5"), 1,000 lantern nets (6' x 18"), and 200 spat bags (32" x 15") (SR, 2). All scallop gear would be 20 feet below the surface of the water and deployed year-round, except for spat bags which would be deployed December to June (SR, 2/App, 15).

Marine algae would be cultured on the southeastern section of the site with up to 20 longlines measuring 800 feet in length that would be deployed 7 feet below the surface of the water from November to June (SR, 2/App, 15). According to the application, all marine algae gear will be removed from the site from July through October (App, 27). However, during the hearing, the applicant requested that the moorings and mooring lines be sunk instead of removed from July through October (Twombly, testimony).

All gear used to culture marine organisms will be submerged below the surface approximately 7 to 20 feet. The applicant is proposing up to 28 depth-control buoys and 8 mooring buoys that would be associated with scallop gear, while buoys associated with marine

algae cultivation would include 180 depth-control buoys, for a total of 208 depth control buoys and 8 mooring buoys (App, 16). During the hearing, Connor O’Neil stated that since the submission of the application, DMR marking regulations had changed, resulting in the reduction of marker buoys along the perimeter of the site (O’Neil, testimony). He also stated that in the initial submission, they were proposing 19 boundary markers, one every 300 feet, but the site will now only require 10 marker buoys, one every 600 feet (200 yards) (O’Neil, testimony).⁸

Additionally, Mr. O’Neil testified that the site would have a total of 226 buoys spread throughout 15 acres, with an average of 15 buoys per acre during the winter and approximately 3 buoys per acre during the summer months (O’Neil, testimony). The applicant is also proposing to use a 30-foot-long x 14-foot-wide work barge that will be moored in Marsh Cove, outside of the lease site, and transported to the site only as needed (SR, O’Neil, testimony). When not in use, the barge will be moored outside of the proposed lease site year-round.

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 Ingress and Egress

⁸ Chapter 2.80 of DMR’s regulations governs marking requirements for lease sites. The regulation specifies, in part, that yellow 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 200 yards, additional devices must be displayed to clearly show the boundary line of the lease. The marking requirements were updated via agency rulemaking on March 13, 2022, which was after the final application was deemed complete on January 22, 2021. If the lease is granted, the site would need to comply with the existing marking requirements.

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.

At the time of DMR's site assessment, staff observed approximately 10 moorings in the mooring field north of the proposal, two moorings within the proposed lease boundaries and three moorings to the southwest of the proposal. During DMR's site assessment, staff observed two motorboats on moorings, a rowboat on a dock, and an inflatable boat on an outhaul. Two docks were observed on the north end of the cove, near the mooring field, as well as several sets of stairs along the shoreline within the cove (SR, 11). The nearest observed mooring within the mooring field was approximately 290 feet to the north of the proposal. The site report indicates that the use of this mooring, as well as the two moorings located within the boundaries of the proposal, may be impacted to some degree, depending on factors such as weather conditions and size and type of the vessel (SR, 11).

During his testimony, Mr. Brown stated that DMR's site report highlighted that transiting to and from the moorings, docks, and stairs has likely traditionally required navigating through the proposed lease area. Amanda Ellis, Aquaculture Division Director, asked each member of CCMC to describe their personal use of vessels in the area including what types of vessels, the size of the vessels, if the vessels are motorized, and how frequently they use the vessels within the area of the proposed lease site. In response to Amanda Ellis' question,⁹ Scott Brown stated that he currently has a motorized dinghy and a 14-foot rowboat that are used "at least 3 to 3 and a half days a week" (Brown, testimony). Scott Brown also stated that he has previously navigated the area in a 25-foot and 18-foot motorized boat (Brown, testimony). Sherry Anders stated that she shares vessels with Mr. Brown and their boating activities are similar (Anders, testimony). Katherine Merolla stated that she personally has two motorized skiffs that are used for fishing

⁹ In their initial reply, Scott Brown & Sherry Anders stated that they were representing 200 other residents and they also referenced the written comments that were received during the scoping session comment period expressing concern about the proposed lease site within Marsh Cove. However, none of the intervenor applications indicated that they were representing others or listed any other person by name in their respective applications. Intervenor status was granted to Scott Brown, Sherry Anders, and Kathy Merolla only. Weight will be given to their personal use and experience with the area, not the claim that they are representing the interests of 200 people. The written comments submitted as part of the scoping session are part of DMR's administrative record, but consistent with 5 M.R.S.A. § 9057 any witness needs to be sworn and available for cross-examination. The written comments are unsworn and the submitters did not offer testimony during the hearing and were unavailable for questioning.

within the cove, as well as a 42-foot motorized sailboat, that are used “at least a couple of times a week” (Merolla, testimony).

Hannah Twombly asked the members of CCMC how many moorings they own within the cove. Mr. Brown stated that his family has two moorings, one being approximately 200 feet offshore for a 25-foot motorboat and another for the 14-foot rowboat (Brown/Twombly, testimony). Karin Lockwood stated during her testimony that the buoys, lines and proposed activities will unreasonably impact the ingress and egress of riparian landowners, particularly while using kayaks, rowboats, and sailboats (Lockwood, testimony). However, Ms. Lockwood did not specify how the proposed lease would impact her ingress and egress, nor how far the proposed lease site is from her respective property.

Alex de Koning testified that he currently operates a 47-foot sailboat and a 74-foot landing craft. Based on his boating and sailing experiences, Mr. de Koning testified that there would be adequate area remaining for landowners to navigate to and from their properties (de Koning, testimony). Blake Watson-Whitman testified that his family has a large mooring field within Marsh Cove that has at least 10 moorings with boats at any given time and that he personally has a 24-foot motorboat that he anchors in the mooring field (Whitman, testimony). Mr. Whitman testified that he has no concerns about the proposed lease site interfering with his ability to navigate to and from his mooring within the mooring field (Whitman, testimony). Additionally, Mr. Whitman specified that his family owns Hog Island, which is private property and that members of CCMC did not have permission to access the island (Whitman, testimony). John Emerson testified that based on his experience of fishing around North Haven, including Hog Island, the proposed lease site is situated in the deeper waters of Marsh Cove and far enough away from the riparian landowners to allow for safe navigation to and from their moorings, as well as to the docks (Emerson, testimony).

Discussion:

In accordance with 12 M.R.S.A. 6072-A(13)(A), DMR must determine whether the proposed lease would unreasonably interfere with the ingress and egress of riparian owners. The types of watercrafts utilized in the area by riparian landowners include kayaks, paddleboards, motorboats, sailboats, and lobster boats.

The proposed lease site is not within any designated navigational channels and occupies varying water depths of 26.2 to 34.7 feet within the middle of Marsh Cove. According to the site report, the proposed lease boundaries are 675 feet from the North Haven shoreline and 350 feet from the Hog Island shoreline at the nearest points and access to shorefront properties is unlikely

to be prevented if the proposal were granted (SR, 11). Access to Hog Island would not be precluded if the proposal is granted provided persons have requisite permission to access the land.

The site report notes that “transiting to and from the moorings, docks, and stairs within Marsh Cove has likely traditionally required navigating through the proposed lease area.” It is possible that the site, if granted, will cause vessels to alter their course or preferred routes. However, the evidence indicates that all vessels will be able to navigate to and from moorings, docks, and stairs within the vicinity of the lease site if the proposed lease is granted.

Based on the record, the marine algae section of the proposed lease site will not have any longlines or buoys in the water during the summer months when vessel traffic is expected to be the heaviest. Additionally, the scallop section will have gear submerged 20 feet below the surface and held in place by 28 depth control buoys and 8 mooring buoys, resulting in approximately 3 buoys per acre.

DMR finds that while customary routes of ingress and egress may be affected, and some course adjustments may be necessary to avoid the project, sufficient area remains for reasonable ingress and egress by riparian owners. **Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian landowner.

B. Navigation

During the site visit on June 17, 2021, DMR staff observed two sailboats transiting through the entrance northwest of Hog Island, and a sailboat being towed by a motorboat through the entrance south of Hog Island (SR, 11). Vessel flow entering and exiting Marsh Cove can occur in two general routes: through the approximate 450-foot entrance northwest of Hog Island, or through the approximate 1,950-foot entrance south of Hog Island (SR, 11). Available NOAA Charts indicate that the low water depths in the entrance northwest of Hog Island are 9 feet, while the depths in the entrance south of Hog Island range from 21 to 27 feet (Figure 2/SR, 11). As noted in the site report, the shallower depth of the entrance northwest of Hog Island, in combination with the narrower space available for maneuvering, may discourage some mariners from taking this route, resulting in the potential for majority of traffic to transit through the area south of Hog Island (SR, 11). A Harbormaster Questionnaire was sent to the Town of North Haven, but no response was received.

The proposed lease site is in the center of the deep water south of Hog Island and according to the site report, if the lease were to be granted, approximately 350 feet would remain

unimpeded between the proposal and Hog Island to the northeast and approximately 700 feet would remain unimpeded between the proposal and North Haven to the southwest (SR, 12).

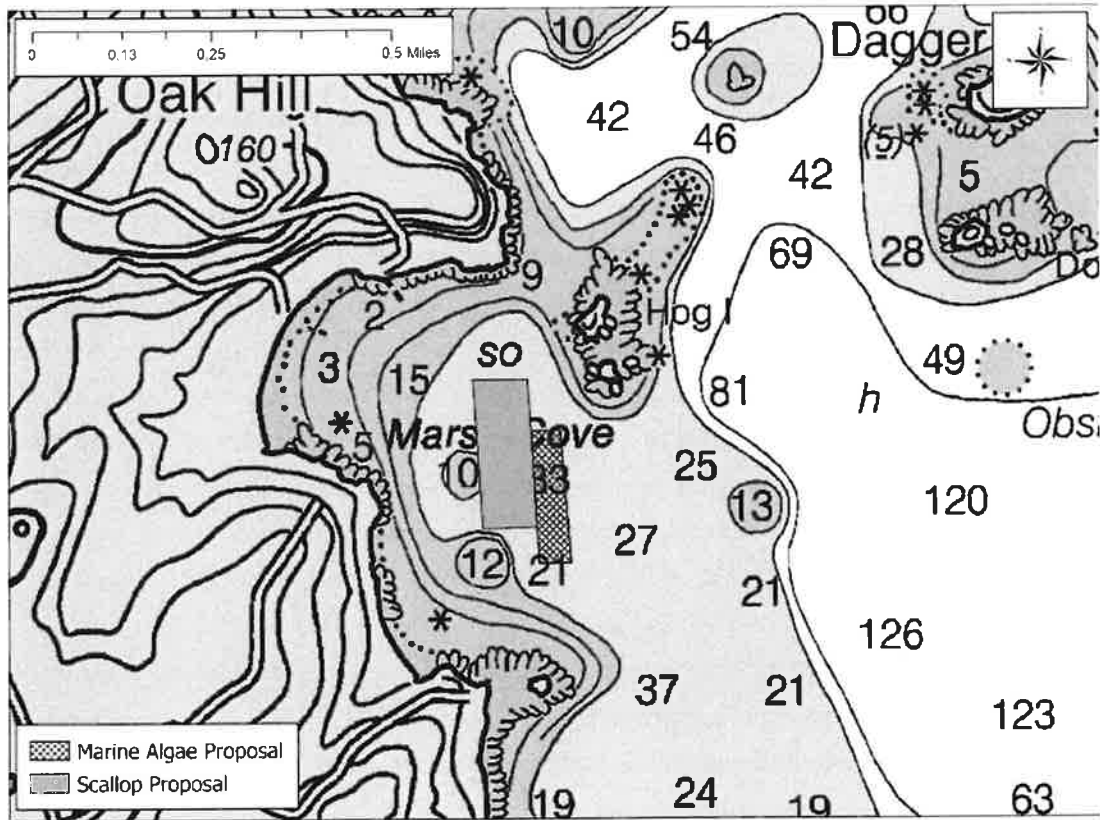


Figure 2. Proposed species and gear layout. Image taken from DMR site report.

According to the site report, there is approximately 1,950 feet between the southern shore of Hog Island and North Haven (SR, 12). For vessels navigating outside of the 9-foot depth contours, there would be approximately 365 feet to the southwest of the proposal and approximately 300 feet to the northeast of the proposal for access to the cove through the entrance south of Hog Island (SR, 12). There is approximately 1,630 feet between the 9-foot contour line around Hog Island and the 9-foot contour line to the south, near North Haven's shoreline, at the narrowest point (SR, 12). According to the site report and clarified during testimony, marine algae longlines would be removed from July through October (SR, 12/ Twombly, testimony). The application originally proposed removing the marine algae moorings from the site, but during the hearing the applicant requested that the mooring lines be sunk rather than removed (Twombly, testimony). If the proposal were to be granted, during these months, the navigable area between

the 9-foot depth contour lines would be approximately 500 feet to the southwest of the lease and 325 feet to the northeast of the lease (SR, 12). These distances would remain unchanged with the presence of the sunken moorings.

The applicant is proposing to suspend scallop longlines 20 feet below the surface of the water, and space scallop depth control buoys 100 feet apart, which would allow for mariners to transit through the proposed lease site and over the proposed longlines. From November through June, marine algae longlines will be suspended 7 feet below the surface of the water, with 10 feet of space between longlines, and 100 feet of space between depth control buoys. Ms. Twombly testified that all lines are submerged, and motorboats and sailboats can cross over the proposed lease site (Twombly, testimony). Exhibit 2, a video provided by the applicant, showed a sailboat traversing over a submerged scallop longline from one of their existing Limited Purpose Aquaculture (LPA) licenses (Twombly, exhibit 2). The LPAs are authorized for the same scallop gear as the proposed lease site.

During the hearing, Mr. Brown noted that some vessels, including sailboats are large and are hard to maneuver. Mr. Brown clarified that he does not own a sailboat and does not have a large boat. Mr. Brown stated that the presence of 226 buoys over 15 acres within the proposed lease site would present unreasonable risk to most boats, quoting DMR's site report, "the presence of required site markers and a relative concentration of buoys may encourage mariners, especially those without local familiarity, to avoid the proposed lease area altogether." Karin Lockwood testified to having kayaks, rowboats, and sailboats and that the proposed lease site will negatively affect her children's ability to sail through the area with the increased presence of buoys (Lockwood, testimony). However, during his testimony, Mr. Lattimer, a Town Administrator for North Haven, stated that North Haven has a lot of buoys around the island – predominately lobster, but also many mooring buoys, and that vessels of all sizes have an obligation to avoid buoys and other navigational structures, including vessels within Marsh Cove (Lattimer, testimony).

During the hearing, testimony provided by multiple individuals and island residents indicate that the proposed site will not interfere with navigation in the cove. John Emerson testified that one could circumnavigate around Hog Island and avoid the lease site entirely. Foy W. Brown, Harbormaster on North Haven,¹⁰ stated that he has over 70 years of monitoring boating activities within Marsh Cove and does not see any issue with the placement of the lease

¹⁰ When asked by Mark Randlett, Assistant Attorney General, if he was the Harbormaster for Marsh Cove, Foy W. Brown stated that he is the Harbormaster for the Thoroughfare on North Haven and that Marsh Cove does not have a Harbormaster (Randlett/F.W.Brown, testimony).

site. Foy E. Brown testified that he does not believe that this lease will impact navigational channels as the nearest navigational aid is over 2.5 nautical miles away, and that this proposed site will not cause any disruption to general boating or recreational activities. Abel Labelle testified that the proposed lease site will not prevent him from navigating within the area while tending his lobster traps (Labelle, testimony).

Based on the hearing record, there is no evidence to suggest that vessels would be precluded from navigating within the 365 feet of navigable area between the southern boundary of the proposed lease site and nearest shoreline of the North Haven shoreline, in addition to being able to traverse through the lease site. However, the seasonality of vessel traffic may influence how vessels traverse to and from Marsh Cove. According to the site report, the higher concentration of depth control buoys used for marine algae longlines from November-June, would be more likely to result in vessel avoidance of the area (SR, 12). Although less vessel traffic in the area is generally expected during winter months, there may be some overlap between increased vessel activity and marine algae longlines at the beginning and end of the marine algae growing season (SR, 12).

Although the site report indicates the potential for congestion in the area during the summer months when vessel traffic is expected to be heaviest in the area and that alteration to traditional navigation routes may be required throughout the year, testimony provided by multiple individuals and island residents during the hearing indicated that the proposed site will not interfere with navigation in the cove. Also, as noted in the application, boating activity is welcome within the boundaries of the proposed lease (App, p 33). Per the site report, if the lease were granted, approximately 450 feet of navigable area would remain between North Haven and the northwest of Hog Island; approximately 350 feet between the proposal and Hog Island to the northeast; and approximately 700 feet between the proposal and North Haven to the southwest. **Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

C. Fishing & Other Uses

Commercial & Recreational Fishing. During DMR's site visit on June 17, 2021, three lobster buoys were observed within Marsh Cove, one of which was within the proposed lease site (Figure 3/SR, 13). One lobster vessel was observed hauling traps outside of the cove (SR, 13). During the

SCUBA transect, DMR divers observed approximately five lobsters (*Homarus americanus*) within the boundaries of the proposed site.

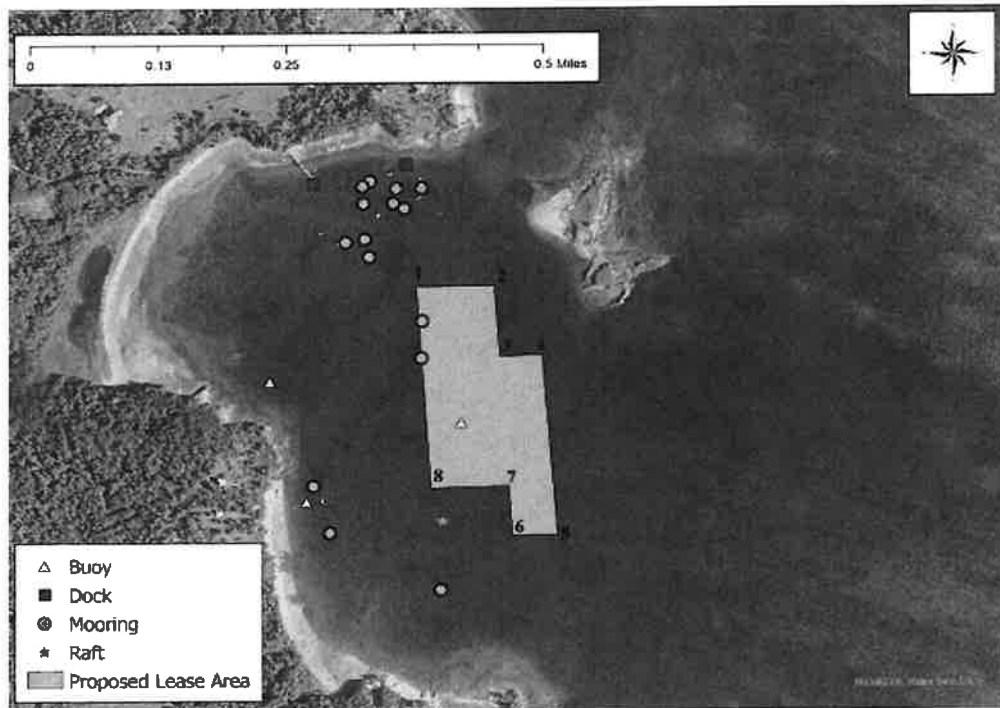


Figure 3. Nearby moorings, buoys, and docks observed on June 17, 2021. Image taken from DMR site report.

Additional commercially important species observed during the SCUBA transect include approximately 13 sea scallops (*Placopecten magellanicus*) and one green sea urchin (*Strogylocentrotus droebachiensis*) (SR, 13). The site report indicates that if either of these species were present in greater abundance in areas of Marsh Cove outside of the proposed lease footprint, it is possible that dive or drag harvesting could continue unimpeded if the leases were granted (SR, 13). According to information obtained from DMR’s scallop program, there may be some fishing effort from drag vessels, but it likely occurs in other areas near the site (SR, 13).

During the hearing, Hannah Twombly stated that the proposed location was chosen as it is not an area that is heavily commercially or recreationally fished. Connor O’Neil testified that prior to choosing the proposed lease site, he spoke to commercial fisherman that use the cove and received no objections to the site selected (O’Neil, testimony). Foy E. Brown, testifying to lobstering, stated that the proposed lease is not currently or historically a heavily fished bottom. Zebadiah Campbell, who fishes for lobster and scallop in the area and is aquaculturist, testified that the proposed lease site would have negligible impacts on the lobster, scallop, and urchin

fisheries on North Haven. Mr. Campbell also testified that he and his father (Adam Campbell) have towed for scallops in Marsh Cove and would have no problems towing around the proposed lease site.

Abel Labelle testified that, as a local lobsterman and registered Maine guide who commercially and recreationally fishes around Hog Island and the proposed lease site, he does not believe that this proposal will unreasonably interfere with his ability to lobster or fish in the area. John Emerson stated that he has fished all around North Haven, including Hog Island, and testified that the proposed location of the lease site is located within deep waters and believes that the proposed location will not negatively impact commercial or recreational fishing in the area.

During the hearing, Ms. Anders indicated that she and Mr. Brown have previously fished within the cove but did not specify the types of species targeted. Ruth Lockwood testified that her family recreationally troll for mackerel within the proposed scallop section of the lease site and that its placement will unreasonably interfere with their ability to do so in the future.

Other Water-Uses. According to the application, kayaking and water skiing have been observed in the cove during the summer months (App, 33). The application further indicates that swimming, canoeing and snorkeling also occur in the cove (App, 33). The application specifies that all of the identified activities can occur within the boundaries of the lease but recommends that water skiing take place outside of the boundaries of the lease due to the presence of surface buoys (App, 33). During the hearing, several individuals testified to the cove being used for kayaking, swimming, water-skiing, and tubing. Connor O'Neil testified that kayaking and swimming can occur within the boundaries of the proposed lease site, and water skiing can occur outside of the boundaries (O'Neil, testimony). Blake Watson-Whitman testified that the presence of the lease will not interfere with his or his family's ability to recreate, which includes kayaking, paddleboarding, water skiing, and tubing (Watson-Whitman, testimony).

Other aquaculture leases. According to the site report, there are four active Limited Purpose Aquaculture (LPA) license sites within 1 mile of the proposal (Figure 4). These four LPA licenses are held by one of the owners of Maine Island Aquaculture, LLC and would be relinquished if the lease were to be granted (App, 27). Per the site report, there are no leases within a mile of the proposed site.

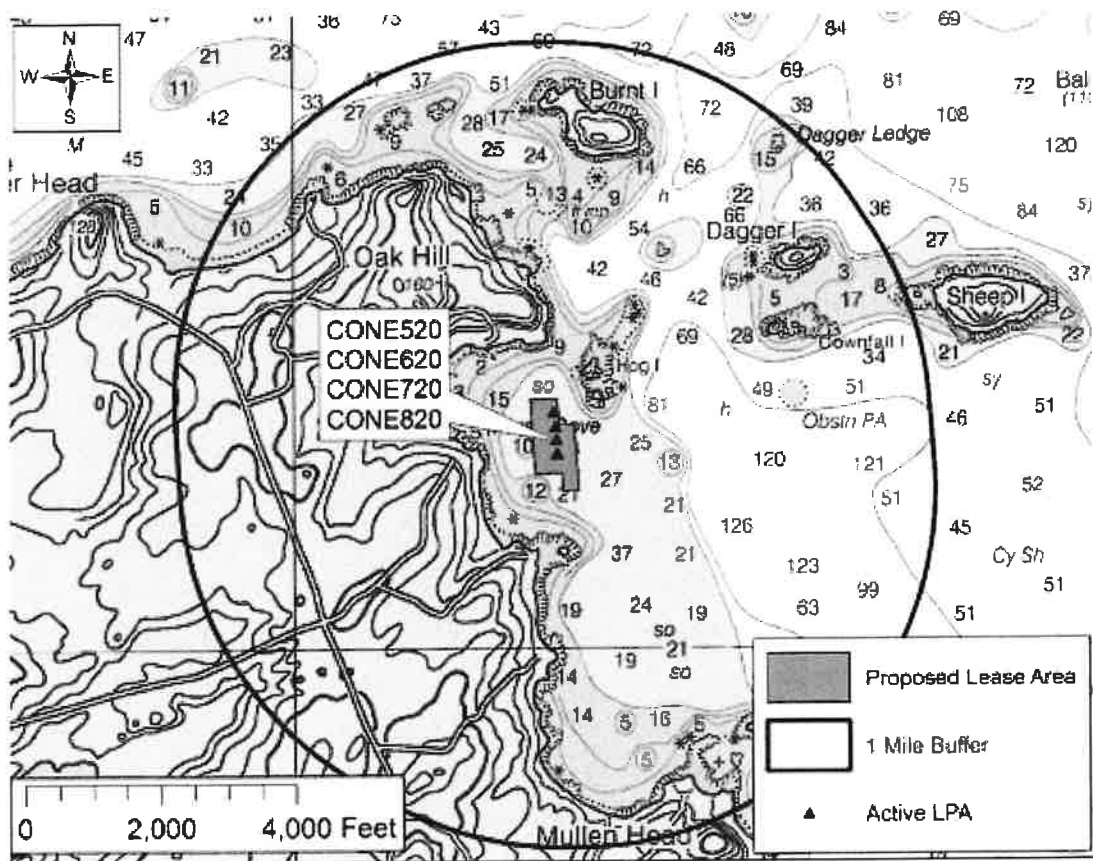


Figure 4. Active aquaculture leases and licenses nearby the proposed lease. Image taken from DMR site report.

Discussion

In accordance with 12 M.R.S.A. §6072-A(C), DMR must determine whether the proposed lease will unreasonably interfere with fishing and other water related uses of the area. Chapter 2.37(1)(A)(3) of DMR's regulations specifies that DMR must consider the following in evaluating this criterion:

The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of days, and the amount of fisheries resources harvested from the area.

DMR interprets this language as requiring it to look broadly at the potential effect the proposed site may have on fishing and other water-related uses of the area, both within the proposed lease site and the surrounding waters.

Commercial Fishing

The evidence indicates that limited commercial fishing activities including lobstering and scalloping occur within Marsh Cove and not exclusively within the boundaries of the proposed lease site. Individuals who are engaged in lobster and scallop fishing testified that the proposed lease would not impact their commercial fishing activities. In addition, the applicants noted that commercial lobstering could still occur within the boundaries of marine algae section of the proposed lease site.

Based on the evidence, the aquaculture activities proposed for this site will not unreasonably interfere with commercial fishing activities.

Recreational Fishing

Some intervenors indicated that they personally fish for mackerel near or within the boundaries of the proposed lease site. If granted, recreational fishing would be excluded from the scallop section of the lease site to avoid entanglement as the scallop gear will remain on site year-round. However, recreational fishing would be permitted within the boundaries of the proposed marine algae site from July – October, when gear has been removed from the site. Whether they choose to fish within the boundaries of the proposed marine algae site is a matter of preference, but it remains an option. Furthermore, recreational fishing remains available throughout the remainder of Marsh Cove. **Therefore**, the proposed lease site will not unreasonably interfere with recreational fishing.

Other water related uses

Some intervenors felt that other recreational uses of the cove such as swimming, kayaking, tubing, and water skiing would be impacted by the proposed lease site. DMR finds that ample area for recreational use of the waters will remain if the project is approved. While the proposed lease site may cause some individuals to alter their traditional recreational routes or preferences, these changes are not deemed unreasonable.

Other aquaculture leases

Four LPAs are located within the proposed lease boundaries and are held by Connor O’Neil, an owner of Maine Island Aquaculture, LLC. The LPAs are approved for the suspended culture of sea scallops (*Placopecten magellanicus*) and will be terminated if the proposed lease is granted (App 29).

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

D. Flora & Fauna

DMR observations. While conducting dive transects of the proposed site, staff observed several marine species and recorded their respective abundance:

Species	Abundance
Filamentous algae Northern sea star (<i>Asterias rubens</i>)	Abundant
Sugar kelp (<i>Saccharina latissima</i>) – unattached, Colonial tunicate, Sea scallop (<i>Placopecten magellanicus</i>)	Common
Rockweed (<i>Ascophyllum nodosum</i>) – unattached, Sea lettuce (<i>Ulva lactuca</i>) Sea cucumber (<i>Cucumeria frondosa</i>) Tube-dwelling anemone (<i>Cerianthus borealis</i>), Lobster (<i>Homarus americanus</i>), Hermit crab (<i>Pagurus sp.</i>) Green sea urchin (<i>Strongylocentrotus droebachiensis</i>), solitary tunicate (<i>Ciona intestinalis</i>), Crab (<i>Cancer sp.</i>) Sugar kelp (<i>Saccharina latissima</i>) – attached	Rare

Staff also observed two bald eagles (*Haliaeetus leucocephalus*), guillemots (*Cepphus grylle*), and various gulls (*Larus sp.*) (SR, 16).

Eelgrass (*Zostera marina*). The closest record of eelgrass to the proposed lease site is located approximately 600 feet to the northwest, with a percent coverage of 10%-40% (Figure 5/ SR,16). No eelgrass was observed during DMR’s underwater site assessment on June 17, 2021. Additionally, the site is expected to be too deep to allow adequate light penetration to support eelgrass growth (SR, 16).

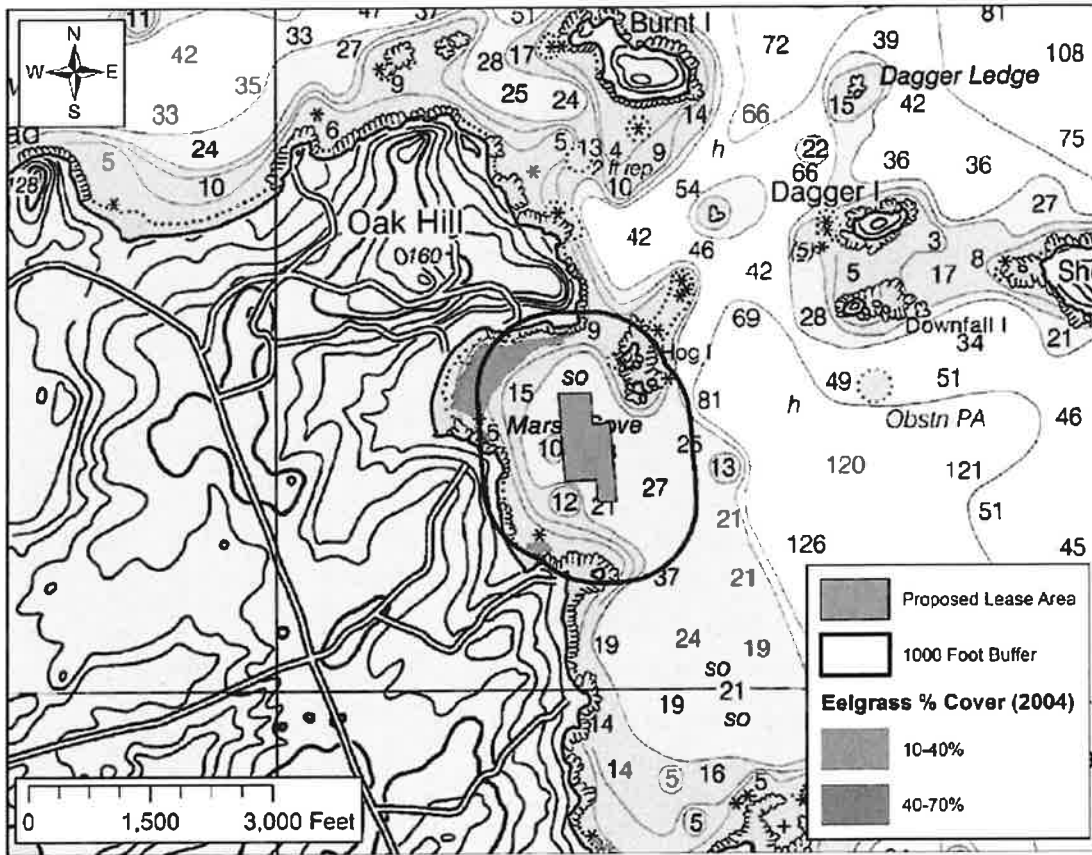


Figure 5. Historical records of eelgrass (*Z. marina*) near the proposed lease site. Image taken from DMR site report.

Fisheries & wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicates that the proposed lease is located approximately 220 feet to the south of Tidal Wading Bird and Waterfowl Habitat (SR 16). This habitat is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat (SR 16). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW noted that: “minimal impacts are anticipated from this lease.”¹¹

CCMC raised a variety of concerns related to how the proposed site may affect wildlife, and their respective habitat types, in the area. For example, Sherry Anders noted that Marsh Cove is a feeding ground for an osprey pair and bald eagle pair (Anders, testimony). Ms. Anders testified

¹¹ CF: Email from R. Settele dated February 24, 2021.

that daily noise and activity at the proposed lease site will disturb nesting, feeding, and sheltering activities for many birds, most notably the eagles and ospreys...” (Anders, testimony).

Bald eagles are no longer considered a species of special concern in Maine, they are protected under federal law by The Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) of 1940. According to Geographic Information System (GIS) data maintained by the U.S. Fish and Wildlife Service (USFWS) and available through the Maine Office of GIS, the 660-foot protective buffer associated with the nearest bald eagle (*Haliaeetus leucocephalus*) nest is located more than 6,000 feet northeast of the proposed lease site.

USFWS and MDIFW did not indicate that the proposal would unreasonably interfere with the birds or other species under their jurisdiction. Additionally, the proposal is located outside of any habitat or species designations defined under Maine’s Natural Resources Protection Act (NRPA) (SR, 16). Based on this evidence, the proposed lease site will not interfere with the ecological functioning of the area.

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

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, State, or municipal governments.

There are no beaches, parks, docking facilities, or conserved lands owned by federal, state, or municipal government within 1,000 feet of the proposed lease site.

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 intends to obtain stock from the approved sources listed below. In the event the identified sources are unable to provide stock, it must be obtained from another approved source.

Source	Location	Species
Connor O'Neil – spat collector	North Haven, Maine	Atlantic sea scallop (<i>Placopecten magelanicus</i>)
Marsden Brewer –spat collector	Stonington, Maine	Atlantic sea scallop (<i>Placopecten magelanicus</i>)
Bobby Beckman – spat collector	Vinalhaven, Maine	Atlantic sea scallop (<i>Placopecten magelanicus</i>)
Atlantic Sea Farms	Saco, Maine	Sugar Kelp (<i>Saccharina latissima</i>)
Springtide Seaweed	Gouldsboro, Maine	Sugar Kelp (<i>Saccharina latissima</i>), Dulse (<i>Palmaria palmata</i>), Alaria (<i>Alaria esculenta</i>), Skinny Kelp (<i>Saccharina angustissima</i>)

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

G. Light

The applicant does not propose the use of lighting at the lease site or working beyond daylight hours except during a potential emergency (App, p. 26). During the hearing, Hannah Twombly clarified that head lamps would be used as the light source in the event of an emergency (Brazier/Twombly, testimony).

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

H. Noise

Equipment to be used on site would include a propane-fueled hot tank, a gas-powered generator, and a barge (30' x 14') with a shed (96" x 48" x 48"). The applicant installed solar panels on the shed and plans to use these, in combination with the generator, to power an electric sorting machine, electric hauler, a wash down/pressure pump, a mast and boom, and a net washer. The sorting machine and wash down/pressure pump would be used up to 12 weeks/year, and the hauler and mast and boom would be used up to 5 days/week (SR,18). CCMC provided testimony regarding the potential adverse effects noise generating equipment could have in Marsh Cove. Individuals were concerned that noise created by the generator and tumbler would disturb marine

mammals and other wildlife. In addition, some individuals felt that the noise associated with the proposed aquaculture operation would ruin the quality of life for people who live within the vicinity of the proposed lease site.

DMR evaluates noise in accordance with 12 M.R.S.A §6072-A(G) and the regulatory standards specified in Chapter 2.37(1)(A)(9). The statutory criterion specifies that a lease must not result in an unreasonable impact from noise at the boundaries of the proposed site. The applicable regulation requires that all motorized equipment be designed or mitigated to reduce the source sound levels to the maximum practical extent and that the applicant has taken reasonable measures to mitigate noise impacts associated with the lease activities.

The equipment proposed by the applicant is powered by solar panels (App, 27). The generator proposed for the site (Honda EU3000iS) is intended to be used as a back up to the solar panels (App, 27). According to the application, the generator is rated at 50-57db and is located within the shed on the barge (App, 28). The applicant also intends to utilize electric equipment whenever possible including an electric sorting machine and hauler. According to testimony by Connor O'Neil, the generator was chosen as it is the quietest unit available that meets operational needs (O'Neil, testimony). During the hearing, Jon Emerson stated that he had requested that Mr. O'Neil run the generator inside of the shed and that they were able to carry on a normal conversation while the generator was running within the shed (Emerson, testimony). During the hearing, Connor O'Neil stated that any diesel engine and future hydraulic systems would be insulated to further mitigate noise (O'Neil, testimony).

The applicant will utilize powered equipment on the proposed work barge. As mentioned in Section 2-A, the barge will be moored outside of the proposed lease site as shown in Figure 3 and will be brought to the site whenever the applicants are on site. In an effort to further reduce noise levels, the application states that the wash down pump is also located within the shed (App, 28). The eastern most boundary is approximately 700 feet from the nearest point on of the North Haven shoreline (SR, Figure 3). According to the application, the sorting machine (electric) and wash down pump will be utilized approximately 1-4 weeks at a time during the spring, summer, and fall (App, 27). Additionally, the application states that while the applicants intend to use the hauler (electric) and mast and boom each time they visit the site for maintenance and harvesting (maximum 5 days a week during the spring/summer), the harvesting process will require minimal usage of power – gas or solar (App, 27).

The applicant has selected equipment designed to reduce or mitigate source sound levels. The placement of noise generating equipment away from the North Haven shoreline, the use of

solar panels, operating equipment within enclosures, proposed insulation of any hydraulic systems, and using electric powered equipment when possible are reasonable measures to further mitigate noise impacts. Based on this evidence, it appears that any noise generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease and the applicant has satisfied the standards specified in Chapter 2.37(1)(A)(9).

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

As noted in section 2.B of this decision, the applicant intends to deploy a variety of soft mesh, wire cages, and longlines, that will all be submerged, and a work barge with a shed. The work shed, will be used for the operation and storage of some power equipment. Some individuals, including CCMC, maintain that the proposed gear and structures proposed for the lease site would detract from the scenery of Marsh Cove. Mr. Brown suggested that the applicant failed to provide a color, size, and hue of the interior buoys that would be compliant with DMR standards and provided CCMC, Exhibit 1 as evidence. According to Mr. Brown, CCMC, Exhibit 1 (Figure 6) is an example of a buoy that is sufficiently blended into the surrounding environment and contains sufficient markings to aid in navigation and meets DMR's visual criteria (Brown, testimony).

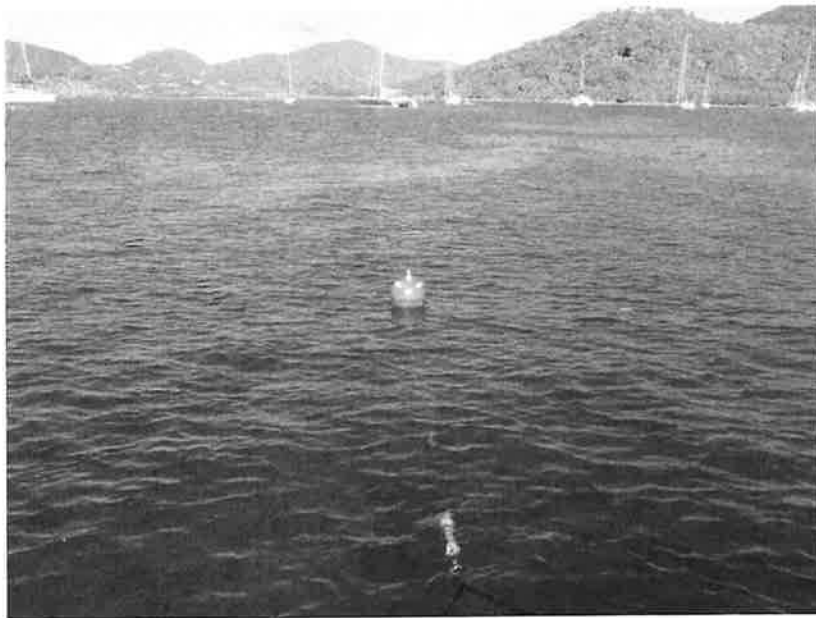


Figure 6. Example of buoy. Image taken from CCMC, Exhibit 1.

DMR assesses visual impacts in accordance with Chapter 2.37(1)(A)(10), which requires gear and structures on the proposed lease site to comply with certain requirements governing color, height, and building profiles. The regulation requires gear and structure to be a color that does not contrast with the surrounding area. Acceptable hues listed in regulation include black, brown, gray, green, and blue. According to the application, the only gear that will be visible from the surface will be mooring balls, pot buoys, and the required boundary markers (App, 21). In accordance with DMR Rule 2.80(2)(A)(1), the applicants are required to have yellow boundary markers which must be readily distinguishable from the interior buoys. In the application, the applicants proposed to use white interior buoys (App, 21).

During the hearing, Connor O'Neil stated that they are open to other colors, such as blue and green to address concerns raised by CCMC (O'Neil, testimony). If the proposed lease is granted, the markers buoys must be yellow in accordance with regulation. However, the interior buoys may either be blue or green as Connor O'Neil suggested.

In accordance with applicable regulations, structures cannot exceed 20 feet in height as measured from the waterline. The work barge houses a work shed that does not exceed 20 feet, as outlined in DMR regulation. The roof materials for the work shed are covered by solar panels and the siding is wooden boards that have weathered to grey that appear to blend with the surroundings (Twombly, exhibit 1). The roof and siding materials proposed for the shed satisfy DMR standards. Per the site report, all gear and structure comply with DMR's height limitations (SR, 19).

Therefore, equipment and structures proposed for the lease site will comply with the visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

4. CONCLUSIONS OF LAW

Based on the above findings:

- 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 uses of the area, taking into consideration the number and density of aquaculture leases 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, or docking facilities owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of sea scallops (*Placopecten magellanicus*), sugar kelp (*Saccharina latissima*), dulse (*Palmaria palmata*) winged kelp (*Alaria esculenta*), and skinny kelp (*Saccharina angustissima*) 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 of 15.07 acres to Maine Island Aquaculture, LLC for 20 years for the purpose of cultivating sea scallops (*Placopecten magellanicus*), sugar kelp (*Saccharina latissima*), dulse (*Palmaria palmata*) winged kelp (*Alaria esculenta*), and skinny kelp (*Saccharina angustissima*) 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 MRSA §6072 (7-B).¹² 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. In compliance with applicable laws, recreational and commercial fishing is permitted within the boundaries of the marine algae section of the lease site when longlines are not present July through October. Boating and all other recreational activities are permitted within all areas of the lease site.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §6072 (11) and DMR Rule Chapter 2.42 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:

JAN 9th 2024



Patrick C. Keliher, Commissioner
Department of Marine Resources

¹² 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.”