

Application for Change in Gear  
Taunton and Hog Bays, Franklin

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

Taunton Bay Oyster Co., Inc. applied to the Department of Marine Resources (DMR) to amend its existing standard lease TAUN HB4, located in Taunton and Hog Bays, Town of Franklin, Hancock County, Maine, to change its gear authorization.

#### 1. THE PROCEEDINGS

The application was submitted to DMR on March 28, 2023. The application was deemed complete by DMR on September 11, 2023. Notice of the application and the 14-day public comment period were provided to other state agencies, riparian landowners within 1,000 feet of the lease site,<sup>1</sup> the municipal officers of the Town of Franklin and its Harbormaster, and subscribers of DMR's GovDelivery aquaculture email list. No public comments were received. The evidentiary record before DMR regarding this lease amendment application includes four exhibits (see exhibit list below).

#### LIST OF EXHIBITS<sup>2</sup>

1. Application for a change of gear authorization, deemed complete September 11, 2023<sup>3</sup>
2. Original TAUN HB4 lease decision signed June 19, 2014
3. Executed lease document for TAUN HB4 with size reduction, signed July 15, 2016
4. Re-executed lease document for TAUN HB4 signed November 14, 2022
5. Case file

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<sup>1</sup> For purposes of notice, the Department defines "riparian owner" as a shorefront property owner, whose property boundaries are within 1,000 feet of the proposed site.

<sup>2</sup> Exhibits 1-4 are cited as: Amendment Application – "App", DMR original decision for lease TAUN HB4 - "Exhibit 2", Executed lease document for TAUN HB4 with size reduction, signed July 15, 2016 – "Exhibit 3", Re-executed lease dated November 14, 2022 – "Exhibit 4", and Case File – "CF".

<sup>3</sup> Page numbers are cited using the PDF page number, and not the page number written on the application.

## **2. STATUTORY CRITERIA & FINDINGS OF FACT**

Approval of standard aquaculture lease amendments is governed by 12 M.R.S.A. § 6072 and Chapter 2.44 of DMR regulations.<sup>4</sup> 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 are consistent with the findings on the underlying lease application, do not materially alter the findings of the original decision, and would not result in a change to the original lease do not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A), and would not result in a change to, or violate, the original lease conditions.

### **A. History of the TAUN HB4 Lease**

Taunton Bay Oyster Co., Inc. initially cultivated American oysters in upper Taunton Bay and Hog Bay on six tracts in Franklin totaling 22.16 acres under lease TAUN HB3, which DMR issued in 2011. Taunton Bay Oyster Co., Inc. subsequently applied for a new lease that proposed to terminate existing Tracts 3 and 5 of lease TAUN HB3 and combine the remaining four tracts (existing Tracts 1, 2, 4, and 6, totaling 10.66 acres in Franklin) with new Tracts 1 and 3 in Franklin, Tract 4 in Sullivan, and Tract 5 in Hancock (totaling 17.22 acres) in a new lease (designated TAUN HB4) of 27.88 acres. DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the Original Decision", issued on June 19, 2014, found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Taunton Bay Oyster Co., Inc. in TAUN HB4 met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 2, page 22). The original lease for TAUN HB4 was executed on August 27, 2014.

In 2016, DMR reissued the lease, removing Tracts 4 and 5 in Sullivan and Hancock and reducing the acreage from 27.88 acres to 19.54 acres. A corrected lease agreement was re-executed on November 14, 2022, to reflect the leaseholder's relinquishment of Tract 1 (the "2022 Lease"). After November 14, 2022, the two remaining tracts comprising TAUN HB4 are Tract 2 (east, north, and west of Buckskin Island) and Tract 3 (southwest of Dwelley Point in mid-channel) and are referred to as such in the agreement.

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<sup>4</sup> 13-188 C.M.R. ch. 2, § 2.44.

As tracts were relinquished, conditions on the lease were updated accordingly (if a condition pertained to a relinquished tract, it was then removed). The following conditions were part of the 2022 lease:

1. General conditions for all lease tracts. Navigation, recreational fishing, lobster and crab fishing, and moorings are permitted in the open areas of all tracts of the lease. Dragging and shellfish harvesting are prohibited on all tracts of the lease except by the leaseholder or its authorized agents. Mussel washing is prohibited on all tracts of the lease. The lease tracts must be marked in accordance with DMR Rule 2.80 and U. S. Coast Guard requirements.
2. Conditions for Tract 2. The following restrictions apply in order to protect the eagles nesting on Buckskin Island: Activities should occur within the lease site whenever possible. There should be no boats or equipment moored closer to the eagle nest than the lease site. Equipment should not be staged on Buckskin (Round) Island. The leaseholder shall not use the shore of Buckskin (Round) Island in connection with the lease activities, except if necessary to remove debris from shore.
3. Conditions for Tract 3. In the event that eelgrass (*Zostera marina*) regrows on any tract, the leaseholder must minimize the placement of any floating gear over eelgrass beds to avoid shading; overwintering gear may not be placed on eelgrass beds on the bottom before October 15; and such overwintering gear must be removed by April 15.

## **B. Proposed Changes to Gear Type and Findings**

No gear changes are proposed for Tract 2.

For Tract 3, the leaseholder is requesting to replace the current configuration of 32 strings of 150 floating mesh bags with 16 strings of 270 FlipFarm baskets (App 5). A maximum of 4,320 of the 29-inch by 13-inch by 12-inch baskets is proposed, and the baskets will be on-site from March to December.

DMR Rule Chapter 2.44 (1) states that “[t]he Commissioner shall not amend a lease in such a way that it materially alters the findings of the original decision or would result in a change to the original lease conditions.” The Rule further states,

4. Decision. The Commissioner may grant the lease amendment if it is determined that

- A. the lease amendment does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A) and is consistent with the Commissioner’s findings on the underlying lease application....;
- B. the lease amendment does not violate any of the conditions set forth in the original lease[.]

Accordingly, this amendment proposal will be considered in light of the original decision and the original lease conditions.

Because the applicant is proposing to replace existing gear with similar suspended gear, no new unreasonable impacts to riparian ingress and egress, navigation, fishing, other aquaculture uses, flora and fauna, and public use and enjoyment are anticipated. Additionally, no changes in light, noise generation, or visual impact are expected from the proposed changes. The application states that on-site activity may decrease due to the increased efficiency of the FlipFarm baskets. No public comments concerning the proposal were received by the Department.

Therefore, the proposed change of gear from mesh bags to FlipFarm baskets is consistent with the Commissioner’s findings on the underlying lease application, *i.e.*, the findings of the Original Decision, and it would not materially alter the findings of the Original Decision.

Condition #3 relates to gear placement should eelgrass regrow within any tract. The lessee will still need to adhere to that condition, so that gear is not deployed over any eelgrass. Additionally, the condition also relates to overwintering gear, which is not proposed for the FlipFarm baskets, so it is not contemplated as part of this request. Therefore, the proposed gear change for Tract 3 does not lead to a change in, or violate, the conditions currently in effect for Tract 3.

Therefore, the replacement of floating mesh bags with FlipFarm baskets will not change or violate the conditions originally imposed by the lease.

### **3. CONDITIONS**

All conditions included in the 2022 Lease, as listed in Section 2A, shall remain in effect.

### **4. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

- a. The proposed lease amendment does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A);
- b. The proposed lease amendment is consistent with the Commissioner's findings on the underlying lease application;
- c. The proposed lease amendment does not violate any of the conditions set forth in the original lease.

Accordingly, the evidence in the record supports the conclusion that the proposed lease amendment meets the requirements for the granting of a lease amendment set forth in 12 M.R.S.A. §6072 and in DMR Rule Chapter 2.44.

**5. DECISION**

Based on the foregoing, the Commissioner grants the requested lease amendment from Taunton Bay Oyster Co., Inc. for authorization to change gear by replacing existing mesh bags with FlipFarm baskets.

Dated: 1/24/24



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

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
Standard Aquaculture Lease Application  
Bottom & suspended culture of American oysters  
Taunton & Hog Bays, Franklin, Hancock, Sullivan

Taunton Bay Oyster Company, Inc.  
Lease TAUN HB4  
Docket #2013-14  
June 19, 2014

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

Taunton Bay Oyster Company, Inc., a Maine corporation, applied to the Department of Marine Resources (“DMR”) for a standard aquaculture lease on 27.88 acres located in the coastal waters of the State of Maine, in Taunton & Hog Bays in the Towns of Franklin, Hancock, and Sullivan in Hancock County, for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. DMR accepted the application as complete on June 4, 2013. No one intervened in this case. A public hearing on this application was held on February 19, 2014 in Franklin.

### **1. THE PROCEEDINGS**

Notices of the hearing and copies of the application and DMR site report were provided to numerous state and federal agencies for their review, as well as to various educational institutions, aquaculture and environmental organizations, the Towns of Franklin, Hancock, and Sullivan and their Harbormasters, members of the Legislature, representatives of the press, riparian landowners, and other private individuals. Notice of the hearing was published in the *Ellsworth American* on January 16 and February 6 and in the *Commercial Fisheries News* February, 2014 edition.

Sworn testimony was given at the hearing by: Mike Briggs, president of Taunton Bay Oyster Company, Inc., for the applicant; Marcy Nelson, DMR Aquaculture Scientist; and by riparian landowners Larry Zellner (riparian of proposed Tract 5) and Donald Rivard (riparian of existing Tract 4 and proposed Tract 1). Mr. Briggs described the proposed project. Ms Nelson described the site visit and presented a videotape of the bottom. Each witness was subject to questioning by the Department, the applicant, and members of the public. The hearing was recorded by DMR. The Hearing Officer was Diantha Robinson.

The evidentiary record before the Department regarding this lease application includes six exhibits 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.<sup>1</sup>

### **LIST OF EXHIBITS<sup>2</sup>**

1. Case file, # 2013-14
2. Application, signed and dated February 26, 2013; amended January 7, 2014

<sup>1</sup> In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

<sup>2</sup> Exhibits 1, 2, and 3 are cited below, with page references, as CF (case file), App (application), SR (site report). Other exhibits are cited by exhibit number.

3. DMR site report, dated October 30, 2013
4. Photograph, 8.5 x 11 inches, of mussel bar east of Hancock shore in lower Taunton Bay and north of proposed Tract 5, labeled “not total low tide Track 5 2/14/14”
5. Photograph, 8.5 x 11 inches, aerial view of lower Taunton Bay, proposed Tract 5 boundaries marked with distances and mussel bar indicated by two lines drawn to northwest of tract; labeled “distance to HWM property – mussel bed”
6. Photograph, 8.5 x 11 inches, aerial view of lower Taunton Bay, proposed Tract 5 boundaries marked, distances labeled from tract to 3 houses marked “deMoulpied,” “Peters”, “Goff”

## **2. DESCRIPTION OF THE PROJECT**

### **A. Site History**

Taunton Bay Oyster Company currently raises American oysters in upper Taunton Bay and Hog Bay on six tracts in Franklin totaling 22.16 acres under lease TAUN HB3, which was issued in 2011. This application originally proposed to terminate existing Tract 3 and one-half of existing Tract 5 of TAUN HB3, retain the remaining tracts, and add five new tracts totaling 20.54 acres, resulting in a total leased area of 35.24 acres.

On January 7, 2014, Mr. Briggs amended this application by withdrawing proposed Tract 2 and proposing to terminate the remainder of existing Tract 5 of lease TAUN HB3. According to the amended application, the remaining four tracts (existing Tracts 1, 2, 4, and 6, totaling 10.66 acres in Franklin) would be combined with proposed new Tracts 1 and 3 in Franklin, 4 in Sullivan, and 5 in Hancock (totaling 17.22 acres) in a new lease of 27.88 acres.

Existing Tracts 1 and 2 were initially evaluated in 2009 for lease TAUN HB2. Existing Tracts 4 and 6 were initially evaluated in 2011 for lease TAUN HB3. Each of these lease decisions determined that the aquaculture activities proposed for these tracts, which this application does not propose to change, met the criteria for granting the lease. No problems with respect to the use of these tracts have come to the Department’s attention since they have been leased to Mr. Briggs.

The following table summarizes the existing and proposed lease tracts, their intended use, and their status as proposed in the amended application. “Bottom” refers to free-planting shellfish on the sea bed with no gear used other than marking buoys. “Suspended” refers to the use of gear for growing shellfish, in this case, floating mesh bags (on existing Tracts 1, 2, and 6 and proposed Tract 3) and overwintering cages on the bottom (existing Tracts 2 and 6 and proposed Tract 3). Three maps showing the lease tracts from the Department’s site report are reproduced below.

The lease tracts are referred to in this decision as “existing” and “proposed,” reflecting the tract numbers as used in the application, site report, and current lease TAUN HB3. In the lease resulting from this decision, however, certain tracts will be combined and re-numbered, as shown in the table below under the heading “New Name.” The conditions to be applied to the new lease will reflect the new tract numbers. A summary of the resulting new lease tracts and conditions appears on page 20 of this decision.

**TAUNTON BAY OYSTER COMPANY, INC.**

**Proposed status of existing and new lease tracts**

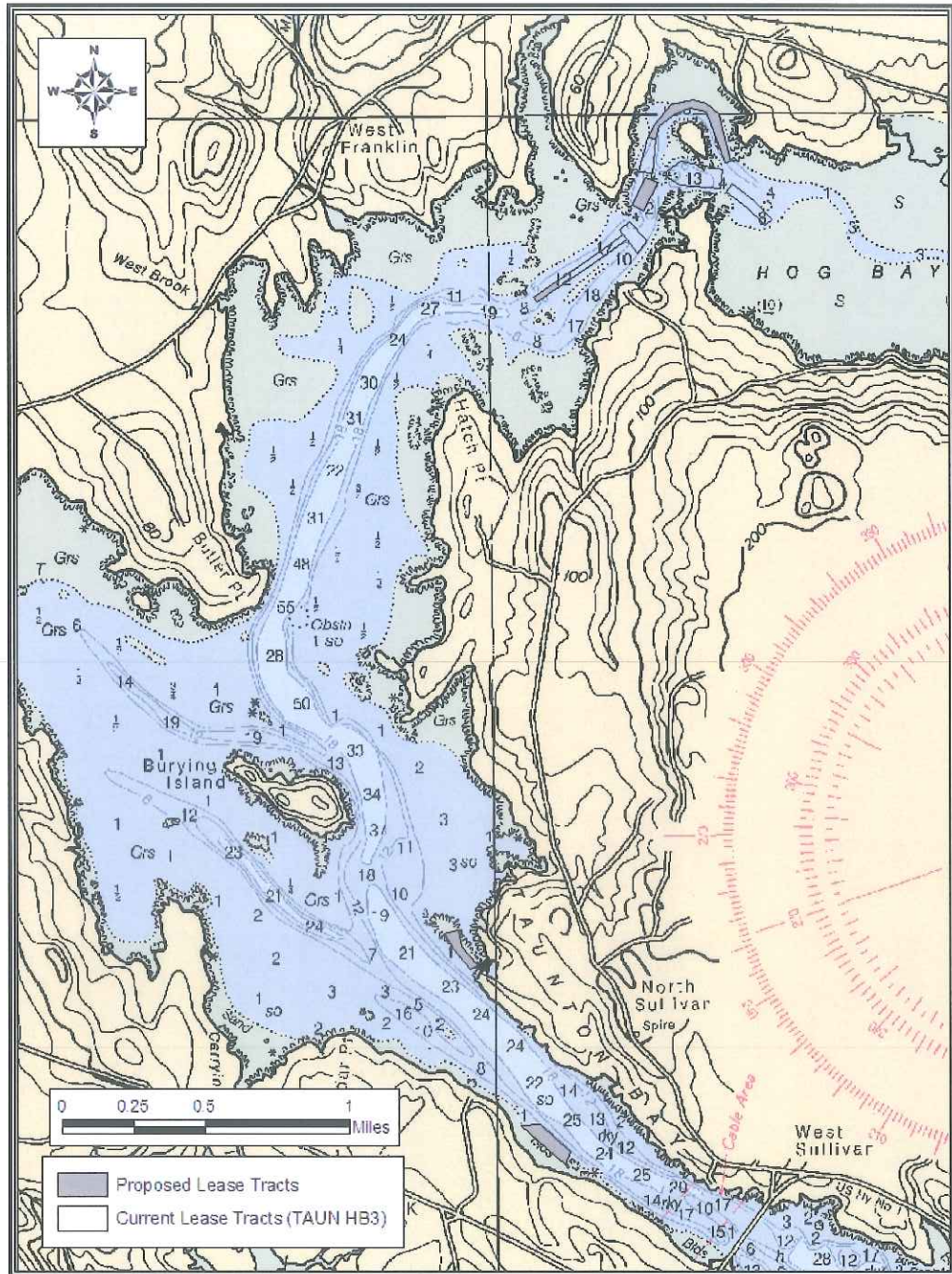
<b>TRACT NAME</b>	<b>NEW NAME</b>	<b>ACRES</b>	<b>BOTTOM/ SUSPENDED</b>	<b>LOCATION</b>	<b>DISPOSITION</b>
Existing T. 1	Tract 1	3.93	S	SE Buckskin Island, Hog Bay	Retain
Existing T. 2	Tract 3	1.27	S	SW of Dwelley Pt., mid-channel, Taunton Bay	Retain/Combine
Existing T. 3	none	3	B&S	SW of Dwelley Pt.	Terminate
Existing T. 4	Tract 2	2.91	B	SW of Buckskin I., Hog Bay	Retain/Combine
Existing T. 5	none	8.5	B	S of Buckskin I.	Terminate
Existing T. 6	Tract 3	2.51	S	SW of Dwelley Pt., mid-channel, Taunton Bay	Retain/Combine
Proposed T. 1	Tract 2	7.7	B	E, N, & W of Buckskin I., Hog Bay	Proposed/Combine
Proposed T. 2	none	3.31	B	E of Dwelley Pt.	Withdraw
Proposed T. 3	Tract 3	1.22	S	SW of Dwelley Pt., mid-channel, Taunton Bay	Proposed/Combine
Proposed T. 4	Tract 4	3.12	B	SE of Burying Island, Taunton Bay	Proposed
Proposed T. 5	Tract 5	5.18	B	NW of Hancock/Sullivan bridge, Taunton Bay	Proposed

**B. Proposed Operations**

The applicant proposes to grow American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques on various tracts of the proposed lease site, as listed in the table above. The application describes the proposed aquaculture operations in detail (App 8-10), and Mr. Briggs summarized the activities in his testimony at the hearing. The lease operations on the proposed new tracts will be the same as those ongoing at the existing tracts, according to Mr. Briggs.

Oysters raised from seed in May and June in an upweller in the Blue Hill Salt Pond (on a limited-purpose aquaculture site licensed to Evan Young) will be placed in floating mesh shellfish bags on existing Tracts 1, 2, and 6 and proposed Tract 3 later in the summer. In the fall, oysters from the previous season that have reached approximately two inches in size will be spread on the bottom on existing Tract 4 and proposed Tracts 1, 4, and 5 to grow to harvestable size. Juvenile oysters from the current season's crop will be over-wintered in bags or cages on the bottom of existing Tracts 2 and 6 and proposed Tract 3 and will be placed back in floating bags early in the following spring (App 8).





**Figure 1**



**Figure 4**

Lease tracts will be monitored daily. Floating bags will be cleaned by flipping them over to dry any algae or other fouling material, which will fall back into the water. According to the application, a power washer or other water-powered equipment may also be used to clean bags and oysters. Oysters will be graded for size periodically, using a mechanical grader on or off the lease site for “minimal” periods, approximately 4-6 hours per week (App 9). Tending the bags will entail two to three trips per day to the various tracts, four to six days per week; not every tract will be visited every day. Minimal boat traffic will be needed to plant oysters on the bottom, which will be done by spreading them on a large hinged “table” mounted on the bow of a 21-ft. Carolina skiff or similar boat and slowly shaking them off “at a rate that gives us the approximate stocking density desired” (App 8).

Oysters will be harvested on four to six days per week throughout the year, except when the tracts are iced over in winter. Proposed Tracts 4 and 5 may be harvested year-round in all but the coldest winters. Harvesting will be conducted by divers, primarily by hand-harvesting, but hand tools will be used as backup when poor visibility underwater makes hand-harvesting impractical. Use of a small two-foot drag will be an additional backup technique used only on proposed Tract 5 when visibility is poor (Briggs, testimony). The major predators of oysters planted on the bottom are starfish, which will be controlled “by divers and possibly traps,” according to the application (App 9).



**Figure 7**

The equipment used on the lease is commonly used in oyster aquaculture in Maine. Proposed Tract 3 would contain a maximum of eight lines or “strings” of floating oyster bags, with approximately 150 bags per string, for a maximum potential total on that tract of 1,200 bags. Only a minimal amount of bags will be used on that tract in the first year of operation. Stocking density will be eight to twelve oysters per square foot (App 9). Existing Tracts 1, 2, and 6 are also authorized for the use of floating oyster bags in similar arrays.

Mr. Briggs testified that he may try some additional techniques, including replacing the planting table with a conveyor belt for more even application and devising a spray system for use on his boat to clean the bags more quickly (Briggs/Robinson). In addition, he plans to create a land-based facility for processing oysters for market (App 10).

Mr. Briggs testified that no feed or other substances will be added to the water. One million oysters filter approximately one million gallons of water per hour, he said, clarifying the water and thus reducing shading of eel grass when it is present (Briggs/Goff). He noted that although water depths on proposed Tract 5 are relatively shallow, he expects that bottom-planted oysters will survive well there, despite periods of exposure to air and possibly to ice. He noted that oysters in the wild grow in such areas and that there would be more danger to them from starfish in deeper water than they will encounter from

exposure in this shallower area (Briggs/Nelson). Ms Nelson testified that American oysters can survive being out of the water for two to four hours at a time as tides ebb and flow. She noted that some winter mortality of the oysters is to be expected in the shallow-water beds, owing to the cold temperatures, but that the oysters generally can survive in those conditions (Nelson, testimony).

Mr. Briggs testified that proposed Tract 5 would also be an excellent site for floating oyster bags, but that he is proposing only bottom planting there with no gear. He said that he has no plans to use other gear there if the bottom planting of oysters does not succeed (Briggs, testimony).

Deborah deMoulied, a riparian landowner near proposed Tract 5, asked Mr. Briggs if he would operate his boat slowly when approaching and working on that tract, in order to reduce wave action that she believes is eroding the bank along the shore there. Mr. Briggs said that he, too, tries to prevent wave action because it can stir up silt that covers the oysters. He noted that erosion is caused by water running off the land, as well as by waves, which can be driven by the wind, as well as by boat wakes. He said he would be "reasonable" in his boat speed and not "race in" to the site (Briggs/deMoulied). Mr. Rivard testified that Mr. Briggs "creeps" around the bay, operating his skiff at low speed to tend existing lease tract 4 in front of Mr. Rivard's shore, as well as other tracts (Rivard, testimony).

Mr. Zellner testified to his concerns about the effect on the surrounding area of bottom planting oysters on proposed Tract 5 and his belief that aquaculture in that location is inappropriate, considering what he called the "suburban" nature of the shoreline development opposite proposed Tract 5. He said that he can see the activities on the proposed lease site and that the area will not be as "peaceful and quiet" in the future if the lease is granted, since Mr. Briggs's activity will "grossly exaggerate" the noise level in the area. He asked the "authority figures" to consider how Maine is changing (Zellner, testimony).

Mr. Briggs testified that many other people in boats use the waters off the shore where proposed Tract 5 is located, including clammers, wormers, kayakers, boaters, kelp harvesters, and lobster fishermen. He noted that the houses of the neighbors there are closer to one another than they are to the proposed lease site, so that domestic activities such as lawn mowing create noise that neighbors can hear. Mr. Briggs said that he tries to be a good neighbor on the bay, including not starting work on the water early in the day and not harvesting on Sunday, except when work has been delayed by bad weather and he has orders to fill. He noted that he rarely sees people outside when he's working on the lease tracts (Briggs/Goff).

Mr. Rivard testified that he had had concerns similar to Mr. Zellner's when Mr. Briggs first proposed to lease existing Tract 4 of Taunton Bay's present lease, TAUN HB3, which lies in front of his house. Mr. Rivard noted that his experience since the lease was granted has been positive, that Mr. Briggs "is the best neighbor you could have" and that "he's done everything he said he was going to do, and lived by his word" with respect to lease operations there (Rivard, testimony).<sup>3</sup>

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<sup>3</sup> Mr. Rivard also testified, regarding the application: "I didn't come here to be an advocate, I honestly didn't. ... All the questions that you brought up, and all the questions the newcomers brought up, I went over eight years ago. I've known Mr. Briggs for eight years, and I've been here fourteen years. I was adamantly against it - I had all the same questions. You're putting a garden in my back yard. I'm sitting on my deck which is right here, okay, and I was, there was a bunch of us - we all came down here [to a previous lease hearing]. I got up here, and I testified against it; I didn't want it." (continued on next page)

Mr. Briggs noted that the southwest corner of proposed Tract 4 is too close to an existing mooring for the corner to be marked with a “sea farm” buoy when the mooring buoy is in place. The mooring owner contacted him about this while the tract was marked prior to the hearing, and he removed the corner marker to avoid conflict with the buoy. Mr. Briggs said that he would work with the mooring owner to resolve the matter, which could involve using the mooring buoy as the corner marker when it is deployed and replacing the lease marker when the mooring buoy is not deployed (Briggs/Robinson).

### **C. Site Characteristics**

The proposed lease tracts are located in various parts of Taunton and Hog Bays, as shown on maps in the application (App 16, 17, 18) and site report (SR Figs. 1, 2, 3, 4). According to the site report:

The proposed aquaculture lease site occupies five distinct locations within Taunton and Hog Bays. Tracts 1-3 are located in upper Taunton and Hog Bays, between Buckskin Island and Hatch Point to the south. Tracts 4 and 5 are situated more than 2 miles down the bay and south of Burying Island (SR 6).

All of the lease tracts, existing and proposed, are located in water currently classified by the Department’s Water Quality Classification program as “open/approved for the harvest of shellfish” (SR 17). The site report notes:

The shallow, sheltered northern reaches of Taunton Bay and Hog Bay are expected to ice over during winter months. The applicant has indicated that he plans to remove floating gear and submerge his product in bottom cages on his existing lease and within proposed Tract 3 during winter months (SR 7).

DMR biologists Marcy Nelson and Jon Lewis conducted a site visit to Taunton Bay on July 16, 2013; they conducted SCUBA dives on proposed Tracts 1 and 3 (proposed Tracts 4 and 5 were too shallow to dive on) and took underwater video of the bottom on each of the proposed new tracts (SR 4). They dove and collected video on the existing tracts during previous site visits for leases TAUN HB2 and TAUN HB3.

The site report describes the individual proposed lease tracts as follows (SR 6):

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“And, believe, me, I retired up here just like everybody else. I love Maine. I wanted to be here. I thought this was going to be awful. I sit out on my deck - they keep to themselves. About the traffic speed? He creeps around the bay in his boat; sometimes I wonder if he’s got his boat in gear. You hardly hear it. It’s no disturbance whatsoever.”

“It wasn’t the boat traffic that originally bothered me, because it’s navigable waters, and who am I to control who goes up and down the river? You know? If he wants to go and waste gas all day, there’s nothing I’m going to do to stop it. It was the aquaculture stuff and how it was going to affect my view, and like that. I’m used to it, and it’s actually interesting when they have a diver down there, you know, maybe because I’ve lived there for fourteen years, and the view’s not a thrill any more, so I’ve got something else to look at, but that’s my testimony and I just wanted to let you know that that’s the way I feel about it (Rivard, testimony).”

Tract 1 (Bottom planting): Tract 1 occupies, at MLW, the narrow channel wrapping around the north side of Buckskin Island. Currents are primarily tidally driven and vary from north/south to east/west in direction. The bottom topography is comprised of firm mud with marble size gravel and larger boulders peppered throughout. The channel and proposed lease area are delineated by softer edges/banks leading to tidal flats along Buckskin Island and the mainland (Figure 5). During the SCUBA survey of Tract 1 water depths ranged between 9-13 feet. This is more than adequate depth to protect oysters from freezing or from ice scouring during winter months.

Tract 3 (Suspended culture): This tract occupies the eastern half of a tidally scoured channel. Fine sediments overlay a firmer substrate of sand and gravel. Divers could insert their gloved hands approximately 3-4 inches before meeting resistance. Rocks frequently provide breaks in the topography of the area. The channel and proposed lease area are bordered by gradually sloping banks of soft mud. Within Tract 3, currents are tidally driven in a northeast/southwest direction (Figure 6). Water depths range from 12 to 14 feet. This is a tidally scoured channel that transitions to soft-sided shallows quickly.

Tract 4 (Bottom planting): One of two downstream locations, Tract 4 occupies the shallows along the eastern shore of lower Taunton Bay in the town of Sullivan (Figure 7). It sits approximately 2550 feet to the southeast of Burying Island. Within the boundaries of the proposed area the benthos is comprised of firm sand with little topographical variation. A mussel bed was observed immediately north and east of the area. Currents are tidally driven in a northwest to southeast direction. Water depths within Tract 4 at 12:15 p.m. on July 16, 2013 ranged from 1-2 feet. Predicted low water for Long Cove in Sullivan was at 11:09 a.m.

Tract 5 (Bottom planting): This tract is situated in the shallows adjacent to a beach along the western shore of lower Taunton Bay and in the town of Hancock (Figure 7). With the exception of an occasional boulder, there is little topographical variation. Sediments consist of mud. Currents are tidally driven in a northwest to southeast direction. Water depths within Tract 5 at 12:35 p.m. on July 16, 2013 varied between 1 and 2 feet.

Ms Nelson testified that the oyster disease MSX has not been detected in Taunton Bay. She noted that the disease does not affect humans or other bivalve shellfish. It is common from the New Hampshire coast south along the Atlantic shore, and in 2010 it was detected in the Damariscotta River, causing heavy mortality of oysters there. Ms. Nelson noted that efforts are ongoing to breed disease-resistant oysters for use in Maine and that MSX has been primarily limited to the Damariscotta River to date (Nelson, testimony).

Mr. Briggs testified in response to questions from Ms deMoulied and Mr. Goff that proposed Tract 5 does not incorporate the mussel bar that lies off the shore in that area and that the lease operations will not affect the mussel bar in any way. Exhibit 4, presented by Ms deMoulied, shows the mussel bar as viewed from the shore; Exhibits 5 and 6, prepared by Mr. Briggs, show the site boundaries in relation to the mussel bar.

### **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 of DMR 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 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, 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 be in compliance with visual impact criteria adopted by the Commissioner relating to color, height, shape and mass.

#### **A. Riparian Access**

The site report describes the distance to shore from each of the proposed tracts and the potential effect of the aquaculture activities upon riparian access to and from the shore by water as follows (SR 10-11):

Tract 1: Buckskin Island, Franklin: On July 16, 2013 no docks or moorings were observed nearby the proposed lease area. Proposed Tract 1 is ~200 feet from the nearest mainland shorefront property (between corners "F" and "G") and ~50 feet from Buckskin Island. At MLW the proposed area follows the contours of the subtidal channel, bordering tidally exposed mudflats in all directions. The extensive mudflats exposed at MLW likely impede the placement of riparian docks. Tract 1 is proposed for the free planting, or bottom culture, of oysters. No gear, with the exception of the required boundary markers, is proposed for this location. Access to moorings and docks in this area would be limited predominantly by tidal stage versus the proposed activities. The applicant intends to harvest by SCUBA diving.

Tract 3 (SW of Dwelley Point, Franklin) is the only location where surface gear is proposed; it is an extension of the applicant's current surface gear lease (Figure 4). With this application, Taunton Bay Oyster Company is requesting permission to deploy an additional 8 arrays or strings of 150 floating nursery bags each. Based on descriptions provided in the application, a single array, with spacing between bags included, would occupy 1500 ft<sup>2</sup> of surface area. With a maximum of 8 arrays (1200 bags) proposed the total surface area occupied by gear would be 12,000 ft<sup>2</sup> (see page 6 of the application). During the winter months oysters would be submerged in over-wintering cages on this site. A description of those cages was not provided with the application.

More than 1,200 feet of intertidal flats separate the proposed area from the nearest shorefront property to the west. A tidally exposed sand bar separates proposed Tract 3 from the eastern branch of the main navigational channel and the eastern shorefront.

Access to existing or future moorings and docks in this area will be limited predominantly by tidal stage versus the proposed activities. At higher tidal stages adequate room would remain for safe navigation to and from shore (see “Distances to Shore” – p. 10).

Tract 4 (Eastern shore of Taunton Bay, Sullivan): On July 16, 2013 a single mooring was noted adjacent to the SW corner of the proposed lease tract. To avoid interference with that mooring the buoy marking the proposed SW corner was removed. Department staff also observed 5 houses overlooking proposed lease Tract 4. Two homes, one to the south and another inside the southeastern boundary, had small piers associated with them; they were approximately 140’ and 200’, respectively, from the boundaries of the proposed lease site.

With the exception of corner markers, no floating or submerged gear would be deployed at this location. The applicant has requested to harvest oysters by “hand tools and divers”. At times dive harvest may coincide with the need of riparian landowners to access the aforementioned properties. In such situations mariners traveling to and from shorefront properties may be required to slightly alter their course to safely pass around divers.

Tract 5 (Western shore of Taunton Bay, Hancock): On July 16, 2013 DMR staff observed 2 houses to the west of proposed Tract 5 and visible from the water (Figure 7). No docks or moorings were observed although staff did note steps leading from one property to the adjacent beach. A minimum of ~140 feet of shallow water and tidal flat separate the western boundary of the proposed lease from the neighboring sand beach. Again, the applicant does not wish to use gear in this location. As such the proposed activities are unlikely to obstruct riparian access, including any potential hand launching of small vessels. Like Tract 4, there may be temporary inconveniences during harvest activities.

The Department sent Harbormaster Questionnaires to the Town of Franklin, Hancock, and Sullivan. The site report states, “According to their responses the proposed application does not interfere with navigation, permitted moorings and traditional storm anchorages, or the ingress and egress of riparian landowners” (SR 10). Mr. Briggs testified that he did not need to request restrictions on moorings in order to carry out his aquaculture activities (Briggs/Robinson).

No information was provided at the hearing indicating any interference by the proposed or existing lease tracts with access by riparians to and from their shores. It appears from this evidence that the aquaculture activities on the proposed lease site, including all existing and proposed tracts, will not interfere with such access.

**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**

Proposed lease Tracts 1, 4, and 5 would contain no gear except for corner marker buoys, so no structures would be placed on those sites that could hamper navigation. When activities such as seeding and harvesting occur on those sites, other vessels may have to navigate around the aquaculture activities, but this does not constitute significant interference with boat traffic.



Proposed Tract 3 would contain floating shellfish bags during the growing season and overwintering cages on the bottom between growing seasons. The site report notes:

The applicant intends to deploy floating bags on proposed Tract 3 (Taunton Bay). These bags would obstruct the majority of the channel at MLW although 70-130 feet of navigable water would remain open to the northwest. Additionally, a second channel exists to the southeast of proposed Tract 3 that would remain open and available to vessel traffic. At low water it is unlikely that large vessels or vessels other than those familiar with the area would attempt to reach Hog Bay (SR 11).

The water depth on Proposed Tract 3 is 17 ft. at mean low water, while cage heights are 2.5 to 3 ft., according to Mr. Briggs, so ample water will remain above the sunken gear in winter (Briggs/Robinson).

No evidence was presented at the hearing to indicate that any of the proposed or existing lease tracts is likely to interfere with navigation. Mr. Briggs testified that he did not need to request restrictions on navigation in order to carry out his aquaculture activities (Briggs/Robinson).

Existing Tract 1 is subject to two conditions in lease TAUN HB3 providing that no gear may be overwintered on that tract (to protect overwintering horseshoe crabs) and that the arrays of floating trays must be separated by at least fifteen feet to allow space for navigation (particularly by clambers heading for the surrounding flats). These conditions will continue to apply to that tract in the new lease.

Based on this evidence, and with the continuation of the lease condition on existing Tract 1, it appears that the aquaculture activities on the proposed lease site, including all existing and proposed tracts, will not interfere with navigation in the vicinity of the lease tracts to any significant degree. 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. The lease site must be marked in accordance with U. S. Coast Guard requirements. Existing Tract 1 will continue to be subject to the condition listed in lease TAUN HB3 and noted above.

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

The site report indicates that various types of fishing and other activities take place in Taunton Bay. Lobster and crab fishing are described as follows:

During the site visit on July 16, 2013 limited commercial fishing was observed. During other visits to the area, Department staff observed lobster/crab fishing in the main body of Taunton Bay, to the south (downstream) of Tract 3. Although not observed within the boundaries of the proposed lease tracts, approximately 20 trap buoys were also identified in the area of Tracts 4 and 5 (SR 11-12).

According to the site report, "The town of Sullivan reports that some lobster fishing occurs in the area of proposed Tract 4 between the months of May and October. The town of Franklin also reports the presence of 'some lobster fishing' ... within the areas surrounding Tracts 1-3" (SR 10).

The site report continues, with respect to other fisheries (SR 12):

Clams and worms are harvested from the extensive mudflats in Hog Bay and throughout Taunton Bay. All proposed lease areas are subtidal and will not infringe on these flats. Only Tract 3 would have surface gear to navigate around. Clam and worm harvesters, who have a familiarity with the area and the navigational hazards, are unlikely to be impeded by the floating bags within proposed Tract 3.

Limited dragging for blue mussels (*Mytilus edulis*) also occurs in Taunton Bay. At the time of the Department's visit mussels were not observed in exploitable quantities within any of the proposed lease tracts (see "Section (5) Existing System Support"). A mussel bar was noted to the north of proposed Tract 4; that area, however, has been designated as a "No-harvest area for mussel dragging" due to the documented presence of "persistent eelgrass beds" (<http://www.maine.gov/dmr/council/tauntonbay/index.htm>).

Recreational fishing and boating is expected throughout Taunton and Hog Bays. As with commercial fishing, there may be some obstruction of recreational hook and line fishing within proposed Tract 3. Mariners can traverse to the northwest of Tract 3 or they can use the eastern leg of the navigational channel which would remain unobstructed.

With respect to recreational fishing, the site report also notes that "The town of Franklin also reports the presence of ... 'summertime striped-bass fishing from small boats...' within the areas surrounding Tracts 1-3" (SR 10).

The site report states that "Swimming is likely to occur in the shallow waters surrounding proposed Tract 5 and the adjacent beach" (SR 12). No testimony was offered regarding swimming in the area, however. Oysters on this tract would be planted on the bottom, with no gear other than marking buoys. This tract is separated from the beach by approximately 140 feet of shallow water and tidal flat. There is no evidence to indicate that the aquaculture activities will interfere with swimming in the area.

Proposed Tracts 1, 4, and 5, like existing Tract 4, would be used for bottom culture and will not interfere with fishing or other activities. Seeding or harvesting activities on those tracts, which will be conducted from time to time, will not interfere with fishing or other uses of the waters to any significant extent. Proposed Tract 3, with its surface gear, like existing Tracts 1, 2, and 6, has the potential to interfere with fishing activity, but the evidence indicates that any interference would not be significant. Mr. Briggs testified that he did not need to request restrictions on lobster and crab trapping, recreational fishing, or other uses of the area in order to carry out his aquaculture activities (Briggs/Robinson).

**Other aquaculture leases.** According to the site report, "The only aquaculture activity currently conducted within Taunton Bay is that of the applicant on his existing lease site (TAUN HB3)" (SR 12). Other aquaculture sites in the area are located three miles or more from the proposed lease site.

The site report concludes that “The proposed activities are unlikely to impact existing aquaculture operations in the area” (SR 12).

**Exclusivity.** Mr. Briggs requested that mussel washing be prohibited on the lease tracts, since it deposits small mussels on top of the bottom-planted oysters. Dragging and shellfish harvesting should also be prohibited on the lease tracts, except by the leaseholder or its authorized agents, in order to protect the bottom-planted shellfish and gear. These restrictions are reasonable in order 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 (7-B). Conditions reflecting these restrictions will be included in the lease. Mr. Briggs is not requesting to restrict navigation, lobstering, crab fishing, recreational fishing, or moorings in the open areas of the lease tracts in order to carry out the proposed aquaculture activities (Briggs/Robinson; App. 12).

Conditions similar to these were applied to all tracts of lease TAUN HB3, so the existing tracts that are included in the new lease will continue to be treated as they have been in the past.

**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. Navigation, recreational fishing, lobster and crab fishing, and moorings will be permitted in the open areas of all tracts of the lease. Dragging and shellfish harvesting will be prohibited on all tracts of the lease except by the leaseholder or its authorized agents. Mussel washing on all tracts of the lease will be prohibited. The lease tracts must be marked in accordance with DMR Rule 2.80.<sup>4</sup>

#### **D. Flora & Fauna**

**Site observations.** The site report describes the bottom characteristics of each proposed tract and the species observed there, as noted below (SR 13-15).

Tract 1: Buckskin Island: “Bottom sediments are coarse with a combination of firm mud, cobble and boulders.” Species observed included various brown, green, and red seaweeds, including *Laminaria spp.*, *Chondrus crispus*, and *Ulva lactuca*; red beard sponge, tunicates, barnacles, bryozoans, frilled

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#### <sup>4</sup>**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.

anemones, green crabs, hermit crabs, and rock crabs; sand shrimp, Asteroiid sea stars, and an unidentified sponge or tunicate. The report notes that “Eel grass (*Zostera marina*) was not observed within the boundaries of the proposed tract nor along the channel edges.”

Tract 3: Mid-channel, Taunton Bay: “Tract 3 occupies a portion of the western leg of the channel to the south of Dwelley Point in Taunton Bay. This tract is a tidally scoured channel with fine sediments overlying a firmer substrate of sand and gravel. Mud is more prevalent along the channel edges and at the southern boundary.” Species observed included sand shrimp, sea stars, blood stars, green crabs, rock crabs, hermit crabs, frilled anemones, crumb-of-bread sponges, red beard sponges, and various seaweeds, including *Laminaria* species. “No eel grass fronds or rhizomes were observed during this dive.”

Tract 4: SE of Burying Island, Taunton Bay: “Tract 4 is best characterized as a firm mud bottom covered in a scattering of small rocks and shell hash.” Species observed included blue mussels, sand dollars, periwinkles, sand shrimp, rock crabs, green crabs, kelp, sea lettuce, and knotted wrack. Contrary to eelgrass data from 2008 as shown in Figure 9 of the site report, blue mussels, instead of eelgrass, were observed north and east of proposed Tract 4. No eel grass was present.

Tract 5: NW of Hancock to Sullivan Bridge, Taunton Bay: “Tract 5 exhibits the topographical variation and limited vegetation characteristic of a shallow mud bottom habitat. Diversity increases slightly at the southern extent and adjacent ledge.” Species observed included periwinkles (two species), sand shrimp, green crabs, kelp, knotted wrack, rock crabs, and burrowing anemones. “No eel grass was noted at the time of the Department’s site visit” (SR 13-15).

Mr. Briggs testified that he often sees eagles in upper Taunton and Hog Bays fly over him and catch fish. He described watching an eagle kill a great blue heron very close to his boat (Briggs, testimony).

**Fisheries and Wildlife.** The site report notes that there are no Essential Habitats for Endangered and Threatened Species within a quarter-mile of the proposed lease site, according to maps produced by the Maine Department of Inland Fisheries and Wildlife (SR 15).

The application includes a letter from the Maine Department of Inland Fisheries & Wildlife stating that a review of their records indicates that a bald eagle nest is located on Buckskin Island in Hog Bay, near proposed Tract 1 and existing Tracts 1 and 4. The letter states, “Additionally our department has mapped Significant Tidal Waterfowl Wadingbird Habitat and Shorebird Habitat within the proposed lease area. We do not anticipate that the activity as described will result in unreasonable impacts to any of these habitat types” (App 20).

**Eagles.** The eagle’s nest has prompted restrictions in the prior leases on aquaculture activities on the nearby existing lease tracts, as described in the Department’s lease decisions for TAUN HB2 (2009) and TAUN HB3 (2011). With the reclassification of the status of eagles from “endangered” to “threatened,” the nest was no longer designated as Essential Habitat when TAUN HB3 was issued, and the conditions in that lease regarding eagles were less stringent than those in the previous lease, TAUN HB2. Those conditions will be continued in the new lease for existing Tracts 1 and 4 and for proposed Tract 1, which is also located close to Buckskin Island. These conditions, as listed in lease TAUN HB3, are:

Activities should occur within the lease site whenever possible. There should be no boats or equipment moored closer to the eagle nest than the lease site. Equipment should not be staged on Buckskin (Round) Island. The leaseholder shall not use the shore of Buckskin (Round) Island or Burying Island in connection with the lease activities, except if necessary to remove debris from shore.

**Seals.** The site report notes that a “haul-out” for harbor seals (*Phoca vitulina*) “is located approximately 400 feet to the southwest of proposed lease Tract 3 (Figure 6). Upwards of 30 seals have been seen in this area and pupping during late May through June is likely” (SR 17). At the hearing, Mr. Briggs testified that he approaches proposed Tract 3 from the north, so that he does not pass near the ledge that forms the seal haul-out. He said he has seen seals “hopping over and under strings of bags on the lease tracts” (Briggs/Robinson).

Ms Nelson testified that the National Marine Fisheries Service recommends that people and boats keep at least 150 ft. away from seals. The ledge in question is about 400 ft. from proposed lease Tract 3. Ms Nelson noted that seals become habituated to boat traffic if they can hear the boats coming, which is common with motor boats like those to be used on the lease tracts but is not the case with kayaks, which are more likely to disturb seals (Nelson, testimony).

Mr. Rivard testified that he sees seals occasionally on ledges near existing Tract 4, and “They sit there and watch him [Mr. Briggs] ride by in his boat, and he goes clear to the channel right there. They usually just come in the fall, anyway, and he doesn’t disturb them at all” (Rivard, testimony).

**Eel grass.** As described in the site report, no eel grass was observed on or near any of the proposed lease tracts during the Department’s 2013 site visit. Ms Nelson testified that there was a loss of eelgrass statewide along the coast in 2013 (Nelson, testimony). Lease TAUN HB3 contains a condition on existing Tract 2, based on the presence of eel grass there during previous site visits, which requires that “the leaseholder must minimize the placement of any floating gear over eelgrass beds on Tract 2 to avoid shading.” Although no eel grass was observed during the site visit in 2013, it is reasonable to apply a similar condition to the lease tracts that will contain floating gear in the event that eel grass returns during the term of the new lease. This condition will apply to existing Tracts 1, 2, and 6 and to proposed Tract 3. If eel grass reappears on existing Tracts 2 or 6 or on proposed Tract 3, overwintering gear may not be placed on the bottom before October 15 and must be removed by April 15.

Based on this evidence, it appears that the aquaculture activities on the proposed lease site, including all existing and proposed tracts, with the conditions described above, will not interfere to any significant degree with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

**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, provided the conditions listed above regarding the eagle’s nest are applied to existing

Tracts 1 and 4 and proposed Tract 1 and that the conditions listed above regarding eel grass are applied to existing Tracts 1, 2, and 6 and to proposed Tract 3.

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

According to the site report, there are no public beaches, parks, docking facilities, or conserved lands within 1000 feet of the proposed lease site (SR 17).

**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 or certain conserved lands owned by municipal, state, or federal governments.

#### **F. Source of Organisms**

The application indicates that the source of stock for this proposed lease site is the Muscongus Bay Aquaculture hatchery in Bremen, Maine, or “any licensed Maine hatchery” (App 1-2).

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

#### **G. Light**

The application indicates that no lights will be used at the proposed lease site, and that “with the exception of a breakdown or an emergency, work will occur only during daylight hours” (App 10). The site report notes that “It is possible, although unlikely, that the U.S. Coast Guard Office of Private Aids to Navigation may require some sort of small navigational lighting at Tract 3” (SR 17).

**Therefore, I find** that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

#### **H. Noise**

The site report summarizes the equipment to be used on the lease site as follows:

The applicant has proposed using a 21’ outboard powered skiff (or similar boat), an electric grader and generator, pressure washer, and an electric winch. The applicant states that any gasoline powered engine used to “power equipment” would be inside an insulated, louvered box. The electric winch is nearly silent. Anticipated noise levels from lease activities would be similar to other waterborne activities in the area, and would generally be similar to those produced over the last several years of operation at the existing lease site (SR 17).

Based on this evidence, it appears that any noise generated by operations on the site will not have a significant effect at the boundaries of the lease.

**Therefore, I find** that 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 site report notes that:

Within the current application, Tract 3 is the only area proposed for the placement of floating oyster bags and overwintering cages whereas Tracts 1, 2, 4 and 5 are for bottom (non-containment) culture only. All floating gear proposed for Tract 3 is black or dark blue and of low profile. The gear proposed for this tract is the standard throughout Maine's shellfish aquaculture industry. At maximum production the applicant proposes 8 arrays/strings of 150 floating nursery bags each arranged in four parallel rows (see page 6 of the application). When deployed approximately 1/2 of the 5" bag depth is exposed or above the surface of the water. No buildings or other on-site support structures are planned as part of this proposal (SR 17).

The same type of gear has been approved for use on existing Tracts 1, 2, and 6.

The Department's visual impact rule requires structures and gear on lease sites to blend with the surroundings as much as possible. The evidence shows that this will be the case on all tracts of the lease.

**Therefore, I find** that the equipment, buildings, and watercraft to be used at the proposed 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, 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. The lease site must be marked in accordance with U. S. Coast Guard requirements.

*Conditions re: gear on new Tract 1 (existing Tract 1 of lease TAUN BH3):* No gear may be overwintered on Tract 1. The arrays of floating trays on Tract 1 must be separated by at least fifteen feet to allow space for 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. Navigation, recreational fishing, lobster and crab fishing, and moorings will be permitted in the open areas of all tracts of the lease. Dragging and shellfish harvesting will be prohibited on all tracts of the lease except by the leaseholder or its authorized agents. Mussel washing on all tracts of the lease will be prohibited. The lease tracts must be marked in accordance with DMR Rule 2.80.<sup>5</sup>

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<sup>5</sup>**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

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.

*Conditions re: eagles for new Tracts 1 and 2 (existing Tracts 1 and 4 and proposed Tract 1):* The following restrictions apply in order to protect the eagles nesting on Buckskin Island: Activities should occur within the lease site whenever possible. There should be no boats or equipment moored closer to the eagle nest than the lease site. Equipment should not be staged on Buckskin (Round) Island. The leaseholder shall not use the shore of Buckskin (Round) Island or Burying Island in connection with the lease activities, except if necessary to remove debris from shore.

*Conditions re: eel grass for new Tracts 1 and 3 (existing Tracts 1, 2, and 6 and proposed Tract 3):* In the event that eelgrass (*Zostera marina*) re-grows on any tract, the leaseholder must minimize the placement of any floating gear over eelgrass beds to avoid shading; overwintering gear may not be placed on eelgrass beds on the bottom of before October 15; and such overwintering gear must be removed by April 15.

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 American oysters (*Crassostrea virginica*) to be cultured for the lease site.

7. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.

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

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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.



9. 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. TRACTS COMBINED FOR NEW LEASE, TAUN HB4**

Certain lease tracts in upper Taunton and Hog Bays are contiguous and will be combined into single tracts and renumbered. Existing Tract 4 and proposed Tract 1 will be combined into a new Tract 2 in the new lease. Existing Tracts 2 and 6 will be combined with proposed Tract 3 into a new Tract 3 in the new lease. The following is a list of the tracts to be included in the new lease, TAUN HB4.

##### **NEW TRACT 1**

- 3.93 acres in Franklin, southeast of Buckskin Island in Hog Bay, for suspended culture (up to 3300 floating oyster bags in 22 arrays of 150 bags each). This tract (*Existing Tract 1*) was previously approved by lease decisions for TAUN HB (2003), TAUN HB2 (2009), and TAUN HB3 (2011). This tract is subject to the general conditions and to the conditions re: gear, eagles, and eelgrass.

##### **NEW TRACT 2**

- 10.61 acres in Franklin, east, north, and west of Buckskin Island in Hog Bay, for bottom culture. This tract includes:
  - *Proposed Tract 1* (7.70 acres), which is approved for the first time in this lease decision for lease TAUN HB4 (2014).
  - *Existing Tract 4* (2.91 acres), which was previously approved by the lease decision for lease TAUN HB3 (2011).

This tract is subject to the general conditions and to the conditions re: eagles.

##### **NEW TRACT 3**

- 5 acres in Franklin, southwest of Dwelley Point in mid-channel in Taunton Bay, for suspended culture. This tract includes:
  - *Proposed Tract 3* (1.22 acres; up to 1200 floating oyster bags in 8 arrays of 150 bags each and overwintering gear on the bottom), which is approved for the first time in this lease decision for lease TAUN HB4 (2014).
  - *Existing Tract 2* (1.27 acres; up to 1200 floating oyster bags in 8 arrays of 150 bags each and overwintering gear on the bottom), which was previously approved by the lease decisions for leases TAUN HB (2003), TAUN HB2 (2009), and TAUN HB3 (2011).

- *Existing Tract 6* (2.51 acres; up to 2400 floating oyster bags in 16 arrays of 150 and overwintering gear on bottom), which was previously approved by the lease decision for lease TAUN HB3 (2011).

This tract is subject to the general conditions and to the conditions re: eel grass.

#### **NEW TRACT 4**

- 3.12 acres in Sullivan, off the eastern shore of lower Taunton Bay 2,550 ft. SE of Burying Island, for bottom planting. This tract (*Proposed Tract 4*) is approved for the first time in this decision for lease TAUN HB4 (2014). It is subject to the general conditions.

#### **NEW TRACT 5**

- 5.18 acres in Hancock, off the western shore of lower Taunton Bay, southeast of Cedar Point, for bottom planting. This tract (*Proposed Tract 5*) is approved for the first time in this decision for lease TAUN HB4 (2014). It is subject to the general conditions.

### **6. DECISION**

Based on the foregoing, the Commissioner grants the requested lease of 27.88 acres to Taunton Bay Oyster Company, Inc., for ten years for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The applicant 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. Execution by the leaseholder and the Department of the new lease authorized by this decision constitutes their consent to terminate lease TAUN HB3.

### **7. 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)<sup>6</sup>. Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The following conditions will be incorporated into the lease (tract numbers are the new numbers as described in Section 5 above):

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<sup>6</sup> 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."

1. **General conditions for all lease tracts.** Navigation, recreational fishing, lobster and crab fishing, and moorings are permitted in the open areas of all tracts of the lease. Dragging and shellfish harvesting are prohibited on all tracts of the lease except by the leaseholder or its authorized agents. Mussel washing is prohibited on all tracts of the lease. The lease tracts must be marked in accordance with DMR Rule 2.80 and U. S. Coast Guard requirements.

2. **Conditions re: gear for Tract 1.** No gear may be over-wintered on existing Tract 1. The arrays of floating trays on existing Tract 1 must be separated by at least fifteen feet to allow space for navigation.

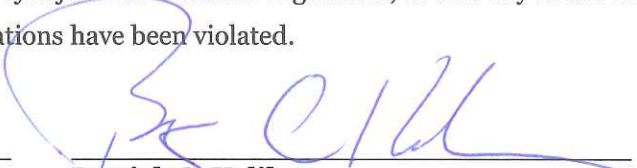
3. **Conditions re: eagles for Tracts 1 and 2.** The following restrictions apply in order to protect the eagles nesting on Buckskin Island: Activities should occur within the lease site whenever possible. There should be no boats or equipment moored closer to the eagle nest than the lease site. Equipment should not be staged on Buckskin (Round) Island. The leaseholder shall not use the shore of Buckskin (Round) Island or Burying Island in connection with the lease activities, except if necessary to remove debris from shore.

4. **Conditions re: eelgrass for Tracts 1 and 3.** In the event that eelgrass (*Zostera marina*) re-grows on any tract, the leaseholder must minimize the placement of any floating gear over eelgrass beds to avoid shading; overwintering gear may not be placed on eelgrass beds on the bottom before October 15; and such overwintering gear must be removed by April 15.

#### **8. REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §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: \_\_\_\_\_

*6/19/14* 

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