

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Timothy Johnson**

Standard Aquaculture Lease Application  
Bottom Culture of Shellfish  
Middle Bay, Brunswick and Harpswell, Maine

**MIDD BP**

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

Timothy Johnson applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 17.36<sup>1</sup> acres southeast of Barnes Landing in Middle Bay, Brunswick and Harpswell, Maine. The proposal is for the bottom culture of American/eastern oysters (*Crassostrea virginica*), and hard clams/northern quahogs (*Mercenaria mercenaria*).

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on April 16, 2020, and a scoping session was held on December 7, 2020. DMR accepted the final application as complete on February 5, 2021. One request for intervenor status from the Town of Brunswick was received by the Department on January 20, 2023. In accordance with 12 M.R.S.A. § 6072(5), intervenor status is granted to all municipalities upon written request. Therefore, the Town of Brunswick was granted full intervenor status on January 24, 2023. A public hearing on this application was held on February 7, 2023. Notice of the completed application and public hearing was provided to state and federal agencies, the Towns of Brunswick and Harpswell, riparian landowners<sup>2</sup> within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in the *Times Record* on January 6, 2023, and January 20, 2023. The public notice for the hearing indicated that the proceeding would be conducted both in-person and remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. Twelve individuals registered to participate in the hearing, including ten that indicated an intention to provide testimony.

The hearing was originally noticed to be held at the Curtis Memorial Library seminar room. However, given the number of registered participants and capacity limitations of the seminar room, DMR was unable to use the originally planned meeting room space. Therefore, the hearing was held on the same date listed in the hearing notice and DMR changed the venue from the Curtis Memorial Library to the

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<sup>1</sup> Applicant originally applied for 17 acres. DMR calculations, based on the coordinates provided by the applicant, indicate the area is 17.36 acres.

<sup>2</sup> The Department defines "riparian owner" as a shorefront property owner.

Southern Maine Community College Midcoast Campus. Notice of the change of venue was sent to the applicant, intervenor, registered participants, posted to DMR’s website, and sent to subscribers of DMR’s aquaculture email list serve. The hearing was held on February 7, 2023, and the following persons provided sworn testimony:

Name	Affiliation
Timothy Johnson	Applicant
John Eldridge, Cody Gillis, Daniel Sylvain	Town of Brunswick, Intervenor
Amanda Ellis	DMR Aquaculture Division Director, Acting Capacity
Paul Plummer	Town of Harpswell
Jon Lewis, Robert Howe, Erik Sol, Scott Bodwell, Toben Galvin, Lee Silverman, Max Burtis, Cindy Wood, Paul Wood	Interested persons

Paul Plummer attended for the Town of Harpswell as Harbormaster. Additional DMR staff, including Geoff Shook, aquaculture marine scientist, 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 Lisa White.

The evidentiary record before DMR regarding this lease application includes five exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.<sup>3,4</sup>

**LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on February 16, 2022
4. Intervenor #1
5. Bodwell #1

<sup>3</sup> Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”. Other exhibits are cited by exhibit number.

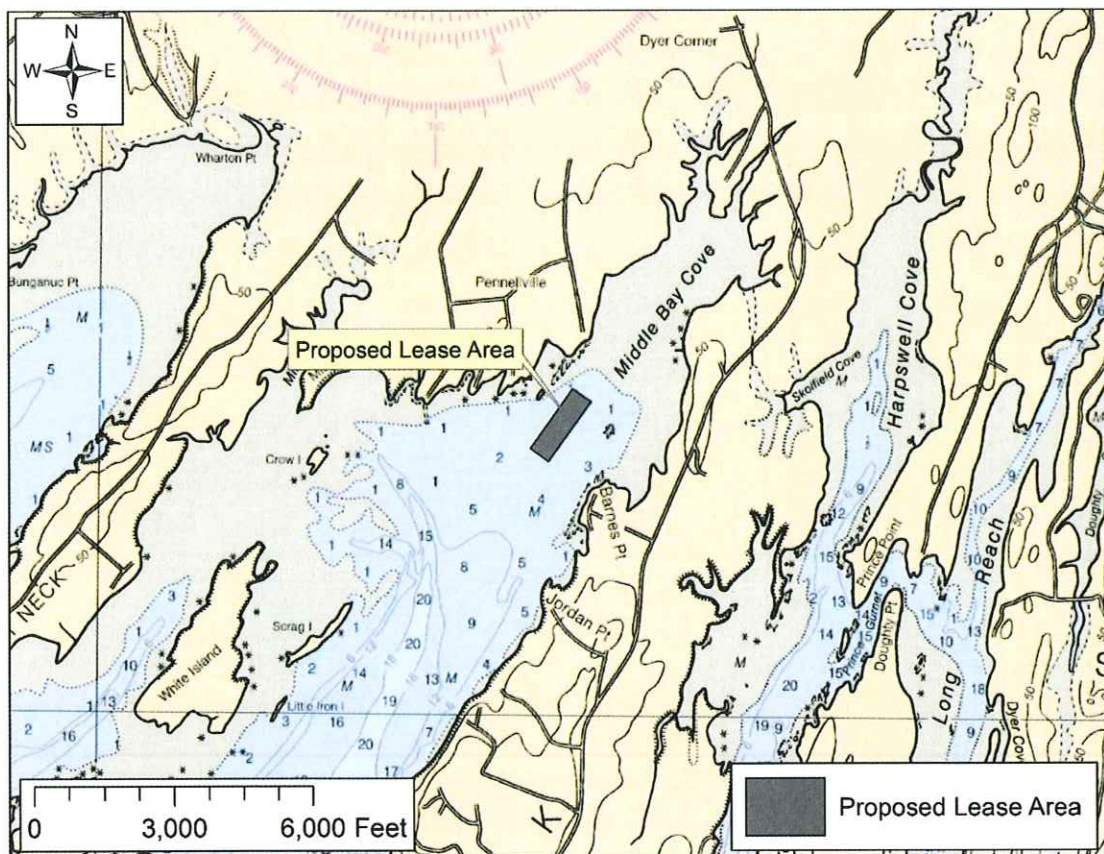
<sup>4</sup> In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

## 2. DESCRIPTION OF THE PROJECT

### A. Site Characteristics

DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease on the following dates: June 29, 2021, August 6, 2021, November 9, 2021, and December 15, 2021 (SR 2). The proposed lease site occupies subtidal waters in Middle Bay in Brunswick and Harpswell. The shoreline surrounding the proposal is mostly wooded with occasional residences throughout Upper Middle Bay. Docks and moorings are located along the surrounding shorelines.

At the time of the Department's site assessment in 2021, water depths within the proposed lease site ranged from 2.9 feet at the northwest corner to 4.8 feet at the southeast corner (SR 5). Correcting for tidal variation derives depths between 1.7 and 3.6 feet at mean low water (MLW, 0.0 feet). Depth measurements were collected using a transom-mounted depth sounder. Department staff observed the depths of the proposed lease site at approximately 11:15 am on June 29, 2021. The bottom of the proposed lease area is composed of mud, the southern section of the proposal contains small amounts of shell hash as well (SR 6).



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

## **B. Proposed Operations**

The applicant proposes to culture American/eastern oysters (*Crassostrea virginica*) and hard clams/northern quahogs (*Mercenaria mercenaria*) using bottom culture only (App 2). Corner markers, and additional boundary markers as needed, are the only gear proposed to be deployed (App 9).<sup>5</sup>

The applicant anticipates seeding the site with American oysters from September to November and with quahogs in July. Oyster seeding would require about 15 days and quahog seeding one to two days of seeding activity. No tending activities would take place as the proposed site is for bottom culture only. Oyster harvesting would take place year-round unless ice is present. Oysters would be harvested using a light drag, measuring 36 inches or less. The drag is designed to pick up oysters and to minimize sediment disturbance. The drag would be towed by a skiff, powered by a 15 hp four-stroke outboard motor<sup>6</sup> on medium throttle for about one hour per harvest day with one to two harvest days per week (App 11). Quahogs would be harvested from May through December using a hand rake or bull rake. The time on site would be four to six hours per harvest day.

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

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner upon determining that the project will not unreasonably interfere with: the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

### **A. Riparian Access**

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

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<sup>5</sup> During the hearing, the applicant stated he will comply with DMR's new marking requirements that took effect in 2023 (Johnson/Shook).

<sup>6</sup> During the hearing, the applicant stated that he will be upgrading to a 22-foot vessel with a 70 hp four-stroke outboard motor (Johnson/White).

The proposed lease occupies subtidal waters in Upper Middle Bay. The surrounding uplands are wooded, with occasional residences. Docks and moorings are located along the surrounding shorelines. The closest docks to the northwest observed by DMR staff during the site visit are approximately 970 and 1,055 feet from the NW corner of the proposal (SR 8). A series of ledges that extend from the Brunswick shoreline are located between these docks and the proposal. It is likely that access to and from these docks occurs from the south, instead of the east where the proposal is located, as a result of these ledges. A mooring was observed to the east of these ledges, approximately 125 feet to the west of the proposal's NW-SW Boundary. The closest docks to the east/southeast are approximately 895 and 940 feet from the proposal's NE-SE Boundary. The closest mooring observed was approximately 610 feet from the proposal (SR 9). Based on these distances, DMR staff conducting the site review reported that if the lease were granted, adequate space would likely remain for access to these structures and for riparian ingress and egress as no gear other than boundary markers will be deployed and the vessel used for seeding and harvesting is a 22-foot outboard, occasionally towing a small drag (SR 9). There was no testimony provided at the hearing to indicate there was concern regarding riparian ingress and egress. The Department finds that the record evidence demonstrates that the proposed project will not interfere with the ingress and egress of any riparian owner.

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

## **B. Navigation**

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area.

During DMR's site assessment on August 6, 2021, hand powered vessels were observed operating to the west of the proposal and a motorized vessel was observed navigating through the proposed lease area. During the site visit on June 29, 2021, a single lobster boat was observed operating to the south. Boats were observed moored, attached to docks, or hauled onshore in Upper Middle Bay on both dates (SR 9).

DMR's site assessment indicates that the proposal does not prevent vessel access to Upper Middle Bay as no gear would be deployed on the site other than corner markers (SR 9). The site assessment states that this section of Middle Bay is over 2,000 feet wide, which is ample room for the number and type of vessels that may access the area to navigate around the seeding and harvesting operations, which are proposed to be conducted using a 22-foot outboard. There was no testimony provided at the hearing to indicate there was concern regarding navigation. The Department finds that based on information provided, the proposed project will allow for adequate distances for navigation.

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

### **C. Fishing and Other Water-Related Uses**

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

**Fishing.** At the time of the Department's four site assessments, no lobster (*Homarus americanus*) trap buoys were observed within the proposal. During the June 29, 2021 site visit, one lobster boat was observed operating to the south of the proposal (SR 10). According to the applicant, infrequent seining for menhaden occurs June to October near or in the proposed area (App 16).

The applicant states that occasional recreational fishing for striped bass, bluefish, and mackerel takes place June to October near or in the proposed area (App 16). Recreational hook and line fishing was observed in the vicinity of the lease during the August 6, 2021 site visit. The proposed lease is not expected to negatively impact recreational fishing, apart from potential minor interferences during times when the applicant is actively tending the site (SR 11).

There is clamming in the intertidal in the general vicinity and subtidal bull rakers harvest in the area (SR 10). Accounting for tidal variation, DMR staff calculated depths between 1.7 and 3.6 feet at the corners of the proposal at mean low water (MLW, 0.0 feet). Therefore, northern portions of the lease area might be available for intertidal harvest at extreme low tides, but the proposal is likely covered by water the majority of the time and, therefore, if wild shellfish harvesting were to occur within the site, it would more likely occur via bull rake (SR 10). DMR staff observed American oysters (*Crassostrea virginica*) and hard clams (*Mercenaria mercenaria*) within the bounds of the proposed lease with hard clams observed in greater abundance in the northern quarter of the proposal (SR 10).

To assess hard clam abundance within the proposal in a more quantitative manner, DMR staff, in partnership with the Town of Brunswick, conducted a bull rake survey. Only one hard clam, which was below legal size, was collected during this survey (SR 10). However, the sample grid used in the bull rake survey resulted in only three samples being collected in the northern quarter of the proposal, where divers most frequently observed hard clams. Due to the small sample number in the northern quarter of the site, it's possible that the hard clams observed by divers were missed by the bull rake survey (SR 11).

During the public hearing, the applicant stated that the proposed site is subtidal and does not drain at low tide and that hard clam and steamer harvest takes place outside the proposed lease area about one quarter mile north (Johnson/Howe). The intervenor, Town of Brunswick, testified that wild hard clam resources were observed within proposed lease boundaries. Daniel Sylvain, Town of Brunswick, stated that

up to 15 harvesters per tide have been observed using the flats north of the proposed lease (Sylvain/White). The Town of Brunswick requested more separation between the proposed site and the intertidal wild harvest areas north of the proposed site. The Town of Harpswell Harbormaster, Paul Plummer, testified that the proposed lease drag harvest methods could potentially disturb the wild subtidal hard clam resource, which helps propagate the intertidal hard clams and that harvest methods could impact water quality in the intertidal by stirring up sediment. As pointed out by both Towns, DMR prohibits dredging for quahogs in parts of Middle Bay (DMR Regulations Chapter 10.01(B)).

**Discussion on commercial shellfish.** The evidence indicates that an occasional abundance of wild hard clams, particularly in the northern quarter of the proposed site, exists. The evidence also indicates that wild hard clam harvest takes place in the intertidal area to the north and outside of the proposed site. For the reasons contemplated in section 3D, the northern boundary has been reduced by 300 feet. Incidentally, this means that the northern quarter of the proposed lease site where the hard clam resource was most abundant is now excluded from the proposed lease and that there is greater distance between the intertidal harvest area and the revised proposed lease site northern boundary. In addition, the referenced area excluded from the proposed site will be open to wild harvest at extreme low tides. The evidence indicates that the light drag to be used only for American oyster harvest is of a design, which does not pull up much sediment, and scale that will not unreasonably disturb wild resources in the area. Drag harvest would also only occur one to two days per week.

**Exclusivity.** The applicant requests that dragging, hand raking, or bull raking be excluded within the proposed lease site. The applicant also requests that handpicking of oysters or quahogs be excluded within the proposed lease site (App 17). No restrictions to boating, fishing, seining, lobstering, swimming, paddleboarding, anchoring, or any other recreational use are being requested.

The Department finds that as the proposed lease is in the subtidal and does not limit or block access to traditional shellfish harvest areas, and, in consideration of the site reduction, it is unlikely that commercial or recreational fishing will be unreasonably impacted by the proposed activity.

**Therefore,** in consideration of the site reduction, the aquaculture activities proposed for this site will not unreasonably interfere with fishing.

**Other aquaculture uses.** Ten Limited Purpose Aquaculture (LPA) licenses and one lease are located within one mile of the proposed lease (SR 11). The closest aquaculture activities to the proposal are a total of four LPA licenses held by Jesse and Derek Devereaux, which are permitted for the suspended culture of shellfish. The closest of these licenses is located less than 500 feet to the west of the proposal. Access to, and navigation around, the nearby aquaculture sites is unlikely to be impacted by the proposal, if the lease were to be granted.



No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Based on this evidence, the Department finds that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

**Other water-related uses.** The applicant states that the area around the proposed lease is used by recreational boats and kayaks during the summer. Most boats and swimmers start from Simpson Point to the west of the proposed site (App 16). There was no testimony provided at the hearing to indicate there was concern regarding other water-related uses.

The Department finds that evidence of moderate to heavy recreational use of the waters near the project site exists in the record. However, the Department also finds that ample area for recreational use of the waters will remain if the project is approved, as no gear other than boundary markers will be deployed and the vessel used for seeding and harvesting is a 22-foot outboard, occasionally towing a small drag.

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

**D. Flora & Fauna**

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

**Site observations.** On June 29, 2021 and November 9, 2021, DMR staff conducted video SCUBA transects to assess the epibenthic ecology of the area. The observed bottom was semi-soft mud, with some shell hash present on certain portions of the lease (SR 12). Other organisms were noted occasionally and are listed below:

Species Observed	Abundance
Benthic Diatoms	Abundant in sections of proposal with mud bottom
Hermit Crab ( <i>Pagurus sp.</i> )	Abundant
Mud snail ( <i>Nassarius sp.</i> )	Abundant - patchy
American Oyster ( <i>Crassostrea virginica</i> )	Observed in dense, patchy beds
Green crab ( <i>Carcinus maenus</i> )	Occasional
Hard clam/Northern Quahog ( <i>Mercenaria mercenaria</i> )	Observed occasionally throughout lease site and more frequently in northern ~1/4
Horseshoe Crab ( <i>Limulus polyphemus</i> )	Occasional
Eelgrass ( <i>Zostera marina</i> )	Rare



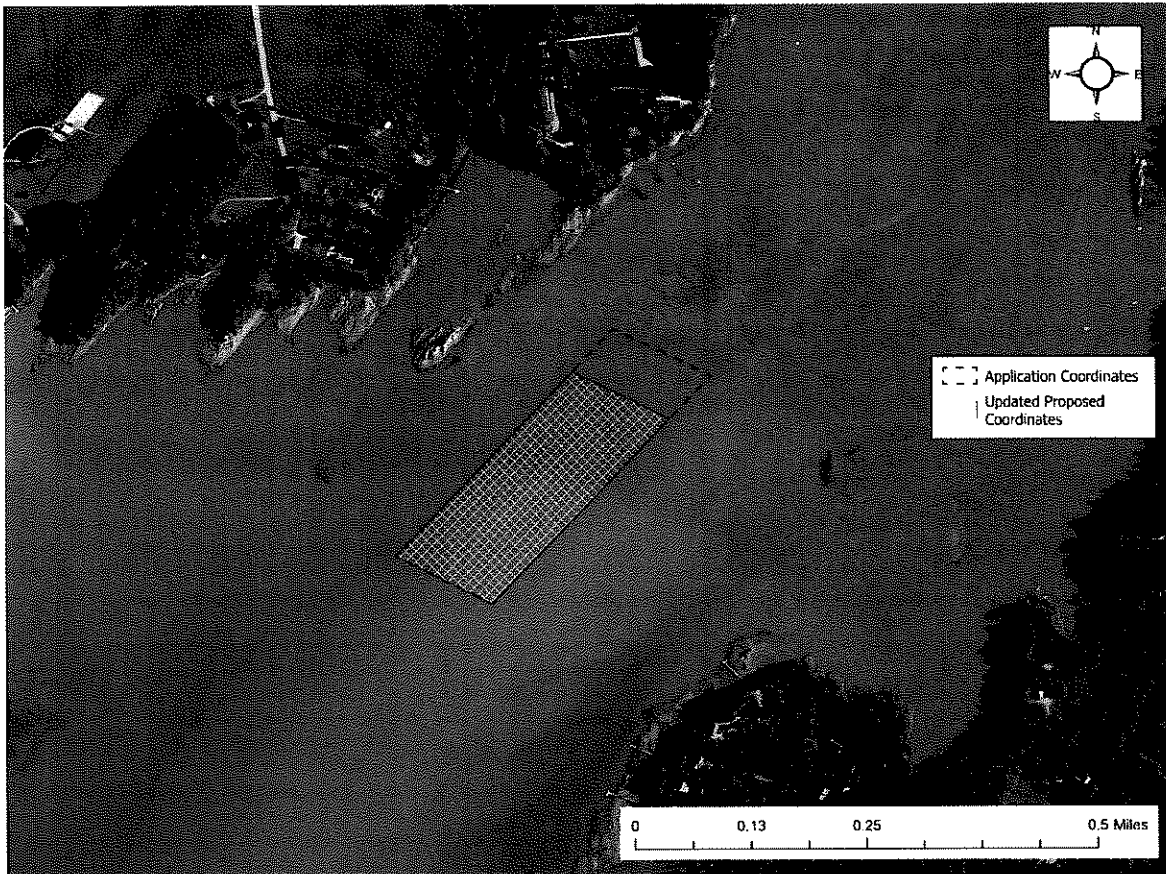
<i>Ulva</i> or <i>Ulvaria</i> sp.	Rare
Knotted Wrack ( <i>Ascophyllum nodosum</i> )	Rare
Filamentous algae	Rare

**Wildlife.** According to GIS data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the intertidal areas to the north and east of the proposal, is designated Tidal Wading Bird and Waterfowl Habitat (TWWH) that is considered Significant Wildlife Habitat under Maine’s Natural Resource Protection Act. At the nearest point, the proposed lease area is approximately 165 feet from designated TWWH. The proposed lease is approximately 100 feet from Maine Shorebird Areas, which is also considered Significant Wildlife Habitat. On April 23, 2021, a MDIFW wildlife biologist responded by email to a “Request for Agency Review and Comment” stating that “minimal impacts to wildlife are anticipated” (SR 15).

**Eelgrass.** According to historical data collected by DMR in 2018, eelgrass (*Zostera marina*) beds were not present within 1,000 feet of the proposal. DMR did, however, observe a few patches of eelgrass in the northern portion of the proposed lease, each patch less than 2 square feet in size, during the June 29, 2021 dive transect (SR 14). The exact location of these patches was not recorded.

Although small in size, the proposed drag harvesting operations may damage these patches of eelgrass. If granted, the applicant should avoid drag harvest in areas where eelgrass is observed (SR 14). The applicant testified that he observed eelgrass within the proposed site approximately 50 feet from the northern boundary. During the hearing, members of the public raised concerns about the impacts the proposed operations may have on eelgrass within the area. In response to these concerns, the applicant testified that he would be amenable to reducing the northern boundary to exclude observed eelgrass from the proposed site (Johnson/Howe).

**Discussion on eelgrass.** The evidence indicates that eelgrass patches were observed in the north end of the proposed site. The site report notes that dragging should be avoided in areas where eelgrass was observed. The Department will require the northern boundary of the proposed lease be moved 300 feet to the southwest. Moving the NW and NE corners this distance means that the site does not overlap with any historically mapped eelgrass beds, excludes the observed eelgrass documented during the June 29, 2021 site visit, and by the applicant within 50 feet of the proposed NW-NE boundary (SR 14 and Johnson/White). This will result in a reduction of acreage from the proposed 17.36 acres to 14.08 acres.



**Figure 2:** Revised boundary of the proposed lease site after moving the NW and NE corners 300 feet to the southwest. Figure 2 was made by DMR staff after the public hearing.

**Updated Proposal Coordinates (WGS84) – 14.08 Acres (Figure 2)**

<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>
NW	43.85183° N	-69.96187° W then 481.24 feet at 124° True to
NE	43.85110° N	-69.96035° W then 1279.17 feet at 215° True to
SE	43.84823° N	-69.96314° W then 480.98 feet at 305° True to
SE	43.84898° N	-69.96464° W then 1270.17 feet at 35° True to NW.

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

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

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

The Pennellville Road Right-of-Way, which leads to Barnes Landing, and a coastal island owned by the Maine Bureau of Parks and Lands are located within 1,000 feet of the proposed lease (SR 16). Located approximately 730 feet to the north of the proposal, Barnes Landing hosts a small parking lot and a boat launch for hand-carry watercraft. At the time of the site visit on August 6, 2021, an outhaul holding a canoe was observed at this right of way. Simpson's Point, a public access point owned by the Town of Brunswick and used, among other things, as a location to swim and launch hand-carried vessels, is located approximately 2,500 feet to the west of the proposal (SR 17).

There was testimony provided at the hearing that demonstrated moderate public use or enjoyment of the Simpson's Point boat launch, which has been closed to all motorized boats since 2006 to mitigate eelgrass disturbance (Bodwell #1). However, the proposal is not expected to interfere with the use of these facilities because no gear other than corner markers is proposed. The Department finds that the proposal will not unreasonably interfere with the hand-carry watercraft or swimming activities at Simpson's Point or Barnes Landing, as no gear other than boundary markers will be deployed.

**Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.

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

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

The applicant will obtain American oyster and northern quahog seed from nursery site MIDD CI, approximately 3,455 feet to the southwest, and Muscongus Bay Aquaculture. This hatchery is approved by DMR.

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

#### **G. Light**

According to the application, no lights would be used on the proposed lease site and no work would occur beyond daylight hours, except when necessary and weather conditions favor working before daylight,

if weather is forecasted to deteriorate during the day. The application states in these cases the only lights used would be a head lamp and navigation light (App 13). There was no testimony provided at the hearing to indicate there was concern regarding light associated with the proposed activities.

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

#### **H. Noise**

According to the application, no power equipment will be used on site. A 15 hp four stroke outboard motor will be used to tow the drag to harvest oysters for about an hour per harvest day. The drag will be lifted with a 12-volt electric hauler powered by photovoltaic panels. Generally, there will be one or two harvest days per week and a maximum of six hours on site per harvest day. Harvest would occur year-round for a total of up to 100 harvest days. Quahog harvest will be done at low tide using a hand rake or bull rake. Based on this evidence, the Department finds that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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

#### **I. Visual Impact**

The applicant plans to employ bottom culture techniques and no gear will be deploy as described in Section 2B, above. Boundary marker buoys will be yellow. The gear proposed by the applicant complies with DMR's height and visual impact limitations.

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

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

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. In consideration of the site reduction, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.

- d. In consideration of the site reduction, the aquaculture activities proposed will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of seed to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

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

## **5. DECISION**

Based on the foregoing, the Commissioner grants the requested lease to Timothy Johnson for 14.08 acres for 20 years for the cultivation of American/eastern oysters (*Crassostrea virginica*) and hard clams/northern quahogs (*Mercenaria mercenaria*) using bottom culture techniques. Final approved coordinates for this lease are provided in Section 3D above. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

## **6. CONDITIONS TO BE IMPOSED ON LEASE**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072 (7-B).<sup>7</sup> Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of

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<sup>7</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."

the lessee to the extent necessary to carry out the purposes of the lease. The conditions imposed on this lease include:

1. Dragging for American oysters and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site.

**7. REVOCAION OF LEASE**

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A §6072 (11), that no substantial aquaculture has been conducted within the preceding year, that the 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: May 30<sup>th</sup> 2023

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