

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Community Shellfish Co. LLC
MEDO HI**

Standard Aquaculture Lease Application
Suspended and Bottom Culture of Shellfish
Medomak River, Bremen

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Community Shellfish Co. LLC, applied to the Department of Marine Resources (DMR) for a 20-year standard aquaculture lease on 4.15 acres.¹ The proposed site is located west of Oar Island in the Medomak River, Bremen, Lincoln County, Maine, for the cultivation of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and northern quahogs (*Mercenaria mercenaria*) using suspended and bottom culture techniques.

1. THE PROCEEDINGS

The pre-application meeting for this proposal was held on January 15, 2019 and the scoping session was held on March 18, 2019. Community Shellfish Co, LLC submitted the final application to DMR on June 3, 2019, which was deemed complete on August 22, 2019. Notice of the completed application was provided to riparian landowners within 1,000 feet of the proposed site, the Town of Bremen, including the Harbormaster, and other state and federal agencies. DMR's site report was issued on February 19, 2020.

A public hearing on this application was scheduled for March 30, 2020. Public notice of the hearing was published in the *Lincoln County News* on February 27, 2020, and March 5, 2020. Public notice of the hearing was also provided to subscribers of DMR's aquaculture email list-serve. However, due to the COVID-19 pandemic, the March 30th hearing was cancelled. A hearing was not immediately rescheduled because DMR was unsure when it would be safe to conduct the proceeding. Due to the uncertainty and evolving situation regarding COVID-19, and to limit any potential public health risks associated with gathering in groups, DMR elected to conduct this proceeding remotely, using a virtual meeting platform². The remote hearing was scheduled for September 15, 2020 at 3:00pm, and public notice was published in the August 6 and September 3, 2020 editions of the *Lincoln County News*, and the September 2020 edition of *The Working Waterfront*. Public notice of the hearing was also provided to the Town of Bremen and its Harbormaster, riparian landowners within 1,000 feet of the proposal, other

¹ Applicant originally requested 4.19 acres. Based on the provided coordinates, DMR calculated the area at 4.15 acres.

² The State of Maine uses Microsoft Teams for all virtual conferencing, so this was the platform used for the Community Shellfish Co, LLC remote hearing.

state and federal agencies, and subscribers of DMR’s aquaculture email list-serve. The public notice for the September 15 hearing indicated that the proceeding would be conducted remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. Each person who contacted DMR to participate was provided with instructions on how to join the hearing.

The remote hearing on the application submitted by Community Shellfish Co. LLC was held on September 15, 2020, and sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
John Marsh	Applicant, Community Shellfish Co., LLC
Marcy Nelson	Acting Director, DMR Aquaculture Division

Mr. Marsh described aspects of the lease application and answered questions about the proposal. Ms. Nelson testified about DMR’s site visit and answered questions about what was observed. Members of the public participated via Microsoft Teams, but no other testimony was offered. The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson.

Exhibits

The evidentiary record before DMR regarding this lease application includes the following:

1. Case file (CF)
2. Application (App)
3. Site Report (SR)

2. DESCRIPTION OF THE PROJECT

A. Site History

The proposed site is in a shallow subtidal and intertidal area north of Hog Island and west of Oar Island in Bremen, Maine (SR 2). A portion of the proposed site is contained within the enclosed boundaries of a former lobster pound, which is owned by the applicant. John Marsh, the sole owner of Community Shellfish Co., LLC, currently operates a 2.58-acre experimental lease, MEDO HIX, within the boundaries of the lobster pound (SR 2). The experimental lease was issued for a three-year term beginning on January 8, 2018. Because the experimental lease is held for commercial purposes, it is not renewable, and therefore is set to expire in January of 2021. If the standard lease proposal is granted, it will replace the existing

experimental lease and encompass the area within the lobster pound, and an expanded area outside the boundaries of the pound, for a total of 4.15 acres (SR 2).

Portions of the proposed lease are located within the intertidal zone (SR 7). Leases in intertidal sites require, in part, the written permission of every riparian landowner who's land in the intertidal zone will be used, and the consent of municipal officers if the municipality has a shellfish conservation program. The Town of Bremen has a shellfish conservation program. The applicant, Community Shellfish Co., LLC, is the owner of the intertidal land occupied by the proposed lease, and a letter from the Deputy Town Clerk of Bremen, indicating that Selectmen from the Town approved of the proposal, was included with the application (App 43).

B. Proposed Operations:

During the public hearing, the applicant testified that the goal for the proposed lease is to develop operations on a slightly larger footprint than the experimental lease currently held by John Marsh (Marsh, testimony). The applicant proposes to culture American oysters and northern quahogs using a combination of floating bags, Oyster-Gro cages, and bottom planting (Marsh, testimony). At full capacity, there would be up to 1800 floating bags, and 54 Oyster-Gro cages, with either four or six bags³ (App 5). Bottom planting and floating bags would be used both inside the boundaries of the lobster pound and outside, while Oyster-Gro cages would only be used in the area of the proposed lease that falls within the boundaries of the former lobster pound (App 29).

The former lobster pound has bermed walls and fences, and two perpendicular piers that separate the pound into two separate pools (Marsh, testimony). Within the northern section of the pound and connected to the pier is a 12x12 foot wooden float (App 6). According to the application, all activities associated with the lease will occur on the float, piers, or on Community Shellfish Co., LLC's adjacent property (App 8). Because the proposed lease is near the company's existing infrastructure, and because the proposed site is accessible by shore from the company's property, tending and maintenance is a daily occurrence (App 8). Figure 1 shows the proposed lease, perpendicular piers and former lobster pound enclosure, and the approximate dive transect from DMR's site visit on October 30, 2019.

³ The gear table included on page 5 of the application references 1500 floating bags, 25-50 four bag OysterGro cages, and 25-50 six bag OysterGro cages. However, the gear drawings included on page 29 of the application references 1800 floating bags, and 54 OysterGro cages.



Figure 1: Proposed lease location, and approximate SCUBA transect from DMR’s site visit. Image taken from site report.

During the growing season, the schedule is routine five days a week, and oysters are continually cleaned, sorted and culled throughout the season (App 5). During the non-growing season, the schedule may reduce to 2-3 days per week, but the application states they are able to run a winter harvest operation given the proposed lease’s proximity to the company’s on shore infrastructure (App 8). The applicant proposes the occasional use of a gas-powered water pump (App 10), and in his testimony, Mr. Marsh indicated that they would also use an electric tumbler and that they try to use electric equipment as much as possible. An electric pump that is attached to one of the piers on site is also used to clean gear (Marsh, testimony). Mr. Marsh anticipated that the tumbler would be used once a month, or every couple of months for a couple of hours at a time. Mr. Marsh also reiterated that all activities would take place on the site or at the company’s adjacent facilities, and during daylight hours (Marsh, testimony).

B. Site Characteristics

On October 30, 2019, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting a standard aquaculture lease. The proposal is partially located within a former pound structure owned by the applicant (SR 2).

DMR staff observed one residential building located upland of the northern portion of the proposed lease. The shoreline opposite the proposal is undeveloped and dominated by deciduous trees. A mooring field, ramps and floats, and the hull of the “Cora F. Cressey” are located south of the proposed lease (SR 2).

During DMR’s site visit, depths at the outer corners (described in the site report as corners D and E) of the proposed site were uniform at 11 feet. Correcting for tidal variation, depths at these corners range from 11.8 feet at high water to 0.6 feet at mean low water (SR 7). According to the NOAA nautical charts and aerial imagery, much of the site appears to be intertidal. However, as described earlier in this decision, the applicant is the owner of the intertidal land occupied by the proposed lease and has also provided a letter of consent from the Town of Bremen, Board of Selectmen (App 40, 43).

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 water-related 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 comply with visual impact criteria adopted by the Commissioner.

A. Navigation

The proposed lease is partially located within the boundaries of a former lobster pound, and as such the area is already excluded to vessel traffic (SR 10). The area proposed outside of the pound enclosure is primarily intertidal, and unnavigable at low tidal stages (SR 10). According to the application, there is a very shallow subtidal channel to the east of the proposed site, approximately 50 feet away, and this channel was avoided in the planning for the proposal (App 14). During DMR’s visit to the site, a mooring field with approximately 20 moorings, and several ramps and floats was observed to the south of the proposal (SR 10). Various vessels

were using these moorings, including motorboats, sailboats, dinghies and lobster boats (SR 10). According to the application, Community Shellfish Co., LLC owns 19 moorings starting 100 feet from the south and southeast of the current experimental lease held by Mr. Marsh (App 14). To the north of the proposal is Broad Cove Marine Services. Vessels transiting in a north/south direction are expected to stay within the channel between the eastern boundary of the proposed lease and the western shore of Oar Island (SR 10). According to the site report, more than 250 feet separate the proposed lease and Oar Island to the east, and at least 175 feet separate the northern boundary of the proposed lease and Oar Island to the northeast (SR 10).

DMR did not receive any comments or testimony to suggest that the proposed site would interfere with navigation. Given that much of the proposed lease area is enclosed by the former lobster pound, or located within the intertidal, impacts to navigation are likely minimal.

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

B. Riparian Access

During their visit to the site, DMR staff observed a single float and several piles of lobster traps on the western shoreline of Oar Island (SR 9). Boaters are expected to travel primarily within the subtidal waters between the proposed lease and Oar Island, so the proposed lease is unlikely to impede access to this shoreline. The closest infrastructure to the proposed lease is the lobster pound owned by the applicant (SR 9). As noted in the navigation section of this document, a mooring field and several ramps and floats were observed to the south of the proposal. However, the site report notes that the proposed activities are unlikely to obstruct access to these points (SR 9).

A set of stairs leading to the shoreline was observed approximately 72 feet to the north of the proposed lease (SR 9). The location of these stairs is noted on figure 1. Because the nearshore portion of the northern boundary of the proposed lease shares a boundary with the lobster pound infrastructure owned by the applicant, riparian ingress and egress to these stairs should not be impacted (SR 9). In addition, the site report notes that old pilings in the area already limit navigation between the northern boundary of the proposed lease and the stairs observed to the north (SR 9).

No comments or testimony were received to indicate the proposed lease would interfere with riparian ingress and egress.

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

C. Fishing & Other Water Related Uses

During the site visit conducted on October 30, 2020, DMR staff observed approximately 20 lobster trap buoys in the general area of the proposed lease. Three of these buoys were adjacent to or within the proposed boundaries of the lease (SR 10). No other commercial or recreational fishing was observed, but DMR's site report notes that due to the timing of the site visit, it is likely other activities occur in the vicinity of the proposed lease that were not witnessed in late October (SR 10).

The application stated that lobster fishing occurs in close proximity to the proposed lease, but not within the lease area (App 14). The application also mentioned that periwinkle harvesting occurs within the proposed lease boundaries, but that this activity does not conflict with the proposed operations and will be permitted (App 14). Mr. Marsh testified that most of the proposed lease area that is outside the boundaries of the former lobster pound enclosure is intertidal, and that area was selected in part so as not to interfere with any known commercial, recreational, or navigational uses (Marsh, testimony).

No comments or testimony was provided to indicate that the proposed lease would interfere with commercial or recreational fishing in the area. DMR sent a Harbormaster Questionnaire to the Town of Bremen on September 10, 2019, but no response was received.

Based on the absence of comments from fishermen and the harbormaster for the town of Bremen, it is reasonable to conclude that it is unlikely that the proposal will unreasonably interfere with commercial or recreational fishing in the area.

Other aquaculture uses. If this proposal is granted it will replace Mr. Marsh's experimental lease, MEDO Hix, and expand the overall footprint from 2.58 acres to 4.15 acres (SR 10). There are no other aquaculture leases or licenses within 1 mile of the proposed lease.

Exclusivity. The application requests that lobster fishing be prohibited within the boundaries of the proposed lease only when it would interfere with the proposed aquaculture gear. The applicant also requests that shellfish harvesting be prohibited if it would interfere with bottom culture of oysters (App 15). The application indicated that periwinkle harvest would not interfere with the proposed aquaculture operations and that this activity would be allowed (App 14).

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

D. Flora & Fauna

Fisheries and Wildlife. The bottom of the proposed lease is composed of sand, shell hash, cobble and scattered boulders (SR 10). During their dive of the proposed lease site on October 30, 2019, DMR staff observed many species, including but not limited to, barnacles, periwinkles, sea squirts, multiple species of crab, lobster, and multiple species of marine algae (SR 12). DMR also observed a nest, likely belonging to an osprey, to the immediate north of the proposed lease (SR 15). Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed lease area overlaps with Tidal Wading Bird and Waterfowl Habitat (SR 15). DMR sent a copy of the lease application to MDIFW for their review and comment, and MDIFW commented that “minimal impacts to wildlife are anticipated for this project.”⁴

Eelgrass. According to data collected in 2005, eelgrass (*Zostera marina*) was observed within the boundaries of the proposed lease area (SR 13). However, an eelgrass survey of this area has not been conducted since 2005, and on DMR’s visit to the area on October 12, 2017 to evaluate the previous experimental lease proposed from Mr. Marsh (currently lease MEDO HIx), no eelgrass was observed within the former pound structure (SR 13). On DMR’s visit to the site on October 30, 2019 to evaluate this standard lease proposal, established eelgrass was observed approximately 10 feet from the southeastern boundary, and approximately 85 feet north of the proposed lease. Figure 2 shows the location of the proposed lease, locations of eelgrass observed in the 2005 survey, and locations of eelgrass observed by DMR in 2019.

⁴ CF: Email from R. Settele dated September 16, 2019

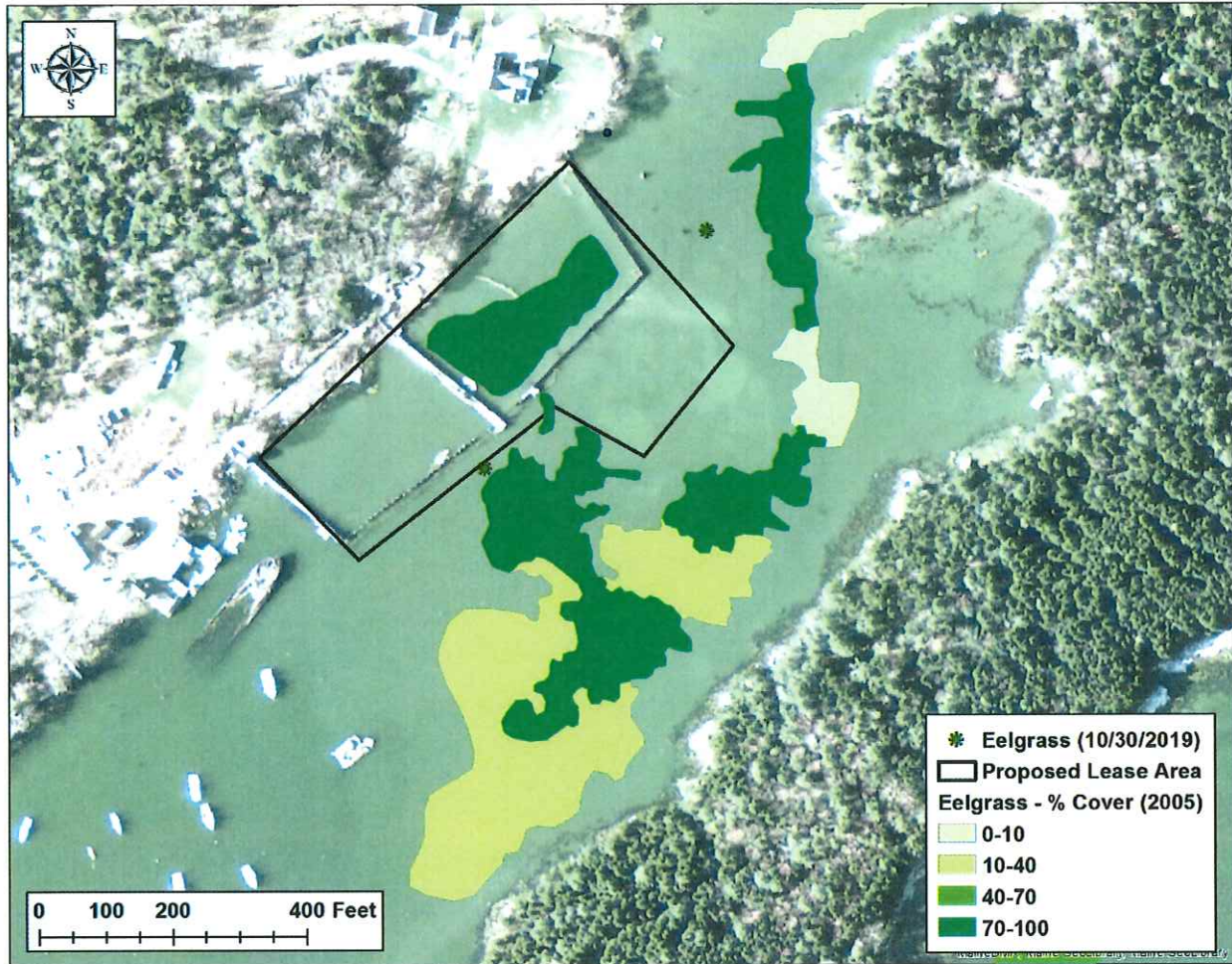


Figure 2: Location of eelgrass near the proposed site in 2005. * indicates where DMR staff observed eelgrass in 2019. Image taken from site report.

The United States Army Core of Engineers (ACOE) recommends a 25-foot separation between aquaculture sites and established eelgrass beds. However, the applicant contacted DMR and ACOE early in the application process, before the application was deemed complete, and modified the proposal to ensure it would not encroach upon existing eelgrass beds⁵. ACOE did not submit any comments or attend the hearing on the proposed application. Upon questioning at the hearing, Marcy Nelson indicated that there was not concern about the proposed operations interfering with eelgrass beds, and that the density of the eelgrass increased further away from the lease (Nelson, testimony).

Based on the evidence and because DMR's site report and ACOE did not express concerns about the location of the proposed site in relation to eelgrass in the area, it appears

⁵ CF: Email communications between J. Marsh, DMR and ACOE June 11-12, 2019.

that the aquaculture activities proposed for this lease site will not interfere with the ecological functioning of the area.

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

E. Public Use & Enjoyment

There are no beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal government within 1,000 feet of the proposed lease site (SR 16). However, the site report does note that the hull of the “Cora F. Cressy”, a five-masted schooner, is located approximately 70 feet to the southwest of the proposal. This shipwreck is on the national register of historical places, but the proposed lease should not interfere with public enjoyment of this historic place (SR 16).

A portion of Oar Island, located 300 feet to the east of the proposal, is in a conservation easement held by MDIFW (SR 16). Also, Community Shellfish Co., LLC owns what was formerly known as the Bremen Lobster Pound Co-Op, which is held in a conversation easement by the Department of Marine Resources through its Working Waterfront Initiative. The land is conserved to allow fishermen and others who work on the water an access point (SR 16). The proposed lease, if approved, should not prohibit access to the area or interfere with these easements.

No comments or testimony was provided to indicate concern regarding public use or access to any of the above-mentioned areas.

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

F. Source of Organisms

The applicant intends to obtain stock for American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and northern quahogs (*Mercenaria mercenaria*) from either Mook Sea Farms in Walpole, Maine, or Muscongus Bay Aquaculture in Bremen, Maine.

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, there is one portable, 60-watt light in their sorting shed, which is located at the end of one of the piers on site. This light is located within the building and shielded from the exterior (App 10). In addition, except for in an emergency, all operations would be performed during daylight hours (App 10).

Therefore, 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 applicant plans to use a 19-foot Carolina Skiff with a 25 hp outboard motor to service the lease. This boat is tied to a float within the existing pound structure and is used to travel around the lease site, to move gear, and to harvest oysters (App 9). The application states that all power equipment, except for the outboard motor and a gas-powered water pump, is electric (App 10). In his testimony, Mr. Marsh indicated they will be using an electric tumbler and an electric pump that is attached to one of the piers on site. It is anticipated that the tumbler would be used once a month, or every couple of months for a couple of hours at time, and that all activities would take place on the site or at the company's adjacent facilities, and during daylight hours (App 10, Marsh, testimony).

No comments or testimony was received to indicate there is concern with noise associated from the proposed operations.

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 application states that the gear is black, and the walkways and float are natural wood, while the shed is painted red (App 7). Per DMR's site report, the proposed aquaculture operations comply with DMR's height and visual impact criteria.

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and northern quahogs (*Mercenaria mercenaria*) to be cultured on 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 proposed lease in the amount of 4.15 acres to Community Shellfish Co., LLC for 20 years for the cultivation of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), and northern quahogs (*Mercenaria mercenaria*) using suspended and bottom culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

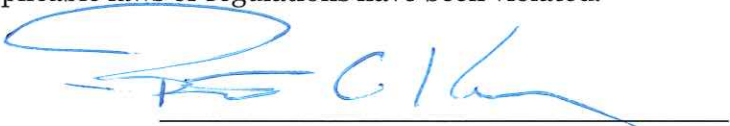
6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072(7-B).⁶ No conditions have been imposed on this lease.

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: 10/19/2020



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

⁶ 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.”