

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions

Decision: 2026 ME 90
Docket: BCD-25-337
Argued: March 3, 2026
Decided: August 18, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, DOUGLAS, and LIPEZ, JJ., and HJELM, A.R.J.

FRIENDS OF EASTERN BAY

v.

DEPARTMENT OF MARINE RESOURCES et al.

DOUGLAS, J.

[¶1] In October 2024, the Commissioner of the Maine Department of Marine Resources granted Acadia Aqua Farms’ application for a twenty-year aquaculture lease of 19.71 acres in the coastal waters of Eastern Bay off Mount Desert Island for the cultivation of blue mussels and other shellfish. Friends of Eastern Bay, one of the intervenors in the proceeding before the Department, appeals from a judgment entered in the Business and Consumer Docket (*McKeon, J.*) affirming the Commissioner’s decision granting Acadia’s application for the lease. We affirm the judgment.

I. BACKGROUND

[¶2] In November 2019, Acadia applied for a twenty-year standard aquaculture lease¹ of 48.11 acres of coastal water in Eastern Bay, located in an area approximately 1,000 feet from shore southwest of Googins Ledge in the town of Bar Harbor. Acadia proposed to culture blue mussels using a floating pipe system at the water's surface with nets hanging down in the water column to collect blue mussel seed. The mussel seed would be harvested using specially designed machinery that is lowered over the collection netting to remove the seed with a brushing mechanism. The harvesting machine uses a hydraulic system to then pump the seed into a seventy-four-foot transport vessel.

[¶3] Acadia intends to use the harvesting machine seasonally, from May to October, for up to a total of three weeks during those months. When not in use, the machine would be stored on a twenty-foot-by-twenty-foot floating raft permanently moored within the lease site. During the off-season, the harvesting machine may be removed from the lease site. Acadia personnel

¹ The Department is authorized to issue a standard aquaculture lease for a renewable term of up to twenty years for an area of up to 100 acres. 12 M.R.S. § 6072(2), (12) (2026). Other types of aquaculture leases authorized by Title 12 include leases for commercial or scientific research, 12 M.R.S. § 6072-A (2026), emergency aquaculture leases for shellfish, 12 M.R.S. § 6072-B (2026), and other limited-purpose aquaculture leases, 12 M.R.S. § 6072-C (2026).

would be on the site daily or weekly to perform routine maintenance, which would involve use of the transport vessel's hydraulic system along with power washers and graders.

[¶4] The Department deemed Acadia's application complete on February 13, 2020, and a hearing was ultimately scheduled for March 2022. *See* 13-188 C.M.R. ch. 2, §§ 2.08(5)-(6), 2.15(1)-(3) (effective April 1, 2019). Friends applied for and was granted intervenor status in the proceeding, as were Alynn and Frances Seymour on behalf of riparian landowners. *See* 13-188 C.M.R. ch. 2, § 2.20.

[¶5] The Department held a public hearing on Acadia's lease application on March 28 and 29, 2022. *See* 13-188 C.M.R. ch. 2, § 2.30. At the hearing, representatives from Acadia, the Department of Marine Resources, the intervenors, and members of the public presented testimony and evidence. *See* 13-188 C.M.R. ch. 2, § 2.31(4)-(5). Representatives from Acadia testified about the use and storage of the harvesting machine and about measures to be taken to mitigate noise generated from its aquaculture operations. The intervenors submitted over eighty exhibits and called employees of the Mount Desert Island Biological Lab as witnesses to testify about the potential impact of noise generated by Acadia's operations on the integrity of the Lab's research, some of

which involves sound-sensitive animals and instruments. Parties and members of the public were permitted to cross-examine witnesses. Acadia and the intervenors submitted written closing arguments and rebuttals. *See* 13-188 C.M.R. ch. 2, § 2.31(6)(A).

[¶6] On October 2, 2024, the Commissioner issued a comprehensive, seventy-three page written decision approving Acadia’s application and leasing waters for a twenty-year term, but only for 19.71 acres (reduced from the original request for 48.11 acres) and subject to a number of conditions.² *See* 13-188 C.M.R. ch. 2, § 2.37.

² The lease conditions included the following:

(1) The lease holder is required to submit a sworn statement and photographs demonstrating that the hydraulic drive system on the *Stewardship* [the transport vessel] has been upgraded. Such documentation needs to also indicate whether the installation was accommodated safely and if not, demonstrate that the John Deer[e] hydraulic drive system has been muffled with a hospital grade cowl muffler. Written authorization must be granted by DMR prior to the vessel being used within the boundaries of the proposed site to verify the upgrades have been made.

(2) All power washing equipment must be located within the hull of the *Stewardship*.

(3) Any structure moored within the boundaries of the proposed site must be flat in color and must be gray, black, brown, blue, or green in hue.

(4) Conditions 2 and 3 may be re-evaluated via the lease amendment process.

(5) Lobster fishing is permitted within the boundaries of the lease site.

See 13-188 C.M.R. ch. 2, § 2.37(B); 12 M.R.S. § 6072(7-B). Conditions 1 and 2 were imposed to mitigate potential noise impacts from Acadia’s operations.

[¶7] Friends filed a Rule 80C petition in the Superior Court (Kennebec County) on October 31, 2024. M.R. Civ. P. 80C(a). The case was transferred to the Business and Consumer Docket on January 7, 2025. The court heard oral arguments on May 28, 2025, and entered a judgment affirming the Commissioner’s decision on June 30, 2025. Friends timely appealed the judgment. *See* M.R. App. P. 2B(c)(1); M.R. Civ. P. 80C(m); 5 M.R.S. § 11008(1) (2026).

II. DISCUSSION

[¶8] Friends advances three principal arguments in this appeal: first, that the Commissioner of the Department of Marine Resources lacked statutory authority to grant Acadia’s application for the aquaculture lease; second, that the Commissioner erred in determining that Acadia’s operations will not result in unreasonable impacts or unreasonable noise at the boundaries of the lease site; and third, that the Department erred by not treating Acadia’s lease application as a “discharge application” subject to review and permitting by another state agency, the Department of Environmental Protection (DEP). We address each argument in turn.

A. Authority of the Commissioner of the Department of Marine Resources to Grant Acadia's Application for an Aquaculture Lease

[¶9] In challenging the Commissioner's statutory authority to grant Acadia's application, Friends makes two interrelated arguments. First, Friends argues that the Commissioner exceeded his leasing authority in Title 12 by approving an aquaculture operation that uses a permanently moored storage raft "for the sole purpose of warehousing unused equipment," because, Friends maintains, the use of the raft "is not 'aquaculture.'" Second, Friends contends that the "jurisdiction" to approve the storage raft does not lie with the Department of Marine Resources but rather is shared between DEP pursuant to its permitting authority under the Natural Resources Protection Act (NRPA), 38 M.R.S. §§ 480-A to -480-JJ (2026), and the Bureau of Parks and Lands (BPL) pursuant to its leasing authority under 12 M.R.S. § 1862(2) (2026) with respect to submerged lands.

[¶10] We review de novo a challenge to an agency's interpretation of the statute it administers to determine first whether the statute's language is unambiguous. *E. Me. Conservation Initiative v. Bd. of Env't Prot.*, 2025 ME 35, ¶ 22, 334 A.3d 706. If the language is unambiguous, its plain meaning controls. *Id.* Otherwise, we "defer to the interpretation of a statutory scheme by the agency charged with its implementation as long as the agency's construction is

reasonable.” *Id.* (quotation marks omitted). Our deference recognizes that state agencies generally possess programmatic expertise to inform their implementation of the statute in areas that the Legislature has charged them with administering. *See Off. of the Pub. Advoc. v. Pub. Util. Comm’n*, 2023 ME 77, ¶ 9, 306 A.3d 633; *Watts v. Bd. of Env’t Prot.*, 2014 ME 91, ¶ 5, 97 A.3d 115.

[¶11] The Legislature has vested the Commissioner of the Department of Marine Resources with the exclusive authority to “lease areas in, on and under the coastal waters, including the public lands beneath those waters . . . for aquaculture of marine organisms.” 12 M.R.S. § 6072(1) (2026). A lease permits the lessee to engage in aquaculture operations, which entail “the culture or husbandry of marine organisms,” 12 M.R.S. § 6001(1) (2026), including operations “for the suspended culture” of marine organisms, which inherently involves the use of floating gear and equipment, *see* 12 M.R.S. § 6072(1-A) (providing that “it is unlawful for a person who does *not have a lease issued by the commissioner* under this section to construct or operate in the coastal waters of the State a facility . . . for the suspended culture of any other marine organism” (emphasis added)).

[¶12] The regulatory framework established by the Legislature confirms the Commissioner’s authority to approve Acadia’s application for a lease with

its floating-raft component. Section 6072(7-A) prescribes eight general conditions that the Commissioner must ensure are met in evaluating lease applications³ and requires the Department to adopt rules delineating specific criteria for determining whether these conditions are met. *See id.* § 6072(7-A) (“In evaluating the proposed lease, the commissioner . . . may grant the lease if the proposed lease meets the following conditions [contained in section 6072(7-A)(A)-(H)] *as defined by rule.*” (emphasis added)). As relevant here,

³ The conditions set out in section 6072(7-A) that the Commissioner must ensure compliance with are as follows:

- A.** The lease will not unreasonably interfere with the ingress and egress of riparian owners.
- B.** The lease will not unreasonably interfere with navigation.
- C.** The lease *will not unreasonably interfere with fishing or other uses of the area*
- D.** The lease will not unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna.
- E.** The applicant has demonstrated that there is an available source of organisms to be cultured for the lease site.
- F.** The lease does not unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park or docking facility owned by the Federal Government, the State Government or a municipal governmental agency or certain conserved lands
- G.** *The lease will not result in unreasonable impact from noise or light at the boundaries of the lease site.*
- H.** Upon the implementation of rules, the lease must be in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.

section 6072(7-A) specifically mandates that “[t]he commissioner . . . adopt rules to establish noise, light and visual impact criteria under paragraphs G and H, *which are major substantive rules* as defined in Title 5, Chapter 375, subchapter 2-A.” *Id.* (emphasis added). Major substantive rules are not only “subject to an increased level of rulemaking requirements,” 5 M.R.S. § 8072 (2026), but also must be “submit[ted] . . . to the Legislature for review and authorization”; they are effective “only after review by the Legislature followed by final adoption by the agency,” *id.* § 8072(1).

[¶13] As required by section 6072(7-A), the Department adopted, with legislative endorsement, rules establishing noise, light, and visual impact criteria applicable to floating structures used in aquaculture operations. *See* 13-188 C.M.R. ch. 2, § 2.37(1)(A)(8)-(10). For example, the rules establishing lighting criteria “apply to all exterior lighting used on buildings, *equipment, and vessels permanently moored or routinely used at all aquaculture facilities.*” 13-188 C.M.R. ch. 2, § 2.37(1)(A)(8) (emphasis added). Rules establishing visual impact criteria “appl[y] to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored [there]” and impose a twenty-foot height limit on “[a]ll buildings, vessels,

barges, and structures” at aquaculture lease sites.⁴ 13-188 C.M.R. ch. 2, § 2.37(1)(A)(10).

[¶14] Thus, the Commissioner’s approval of Acadia’s lease is consistent with his authority under section 6072 and the legislatively endorsed regulatory framework reflected in the Department’s rules. As the record establishes, the raft plays an integral part in Acadia’s planned aquaculture operations.⁵ Moreover, the raft structure itself meets all applicable criteria under the governing statute and the Department’s rules.⁶ 12 M.R.S. § 6072(7-A); 13-188

⁴ We note that the application for a standard aquaculture lease has a section entitled, “On-Site Support Structures.” There, the applicant is required to “[d]escribe structures such as barges, sheds, etc., to be located on-site” and to “[p]rovide a schematic and indicate the dimensions [of the structures], including height above sea level.”

⁵ The harvesting machine itself is equipment that Acadia plans to use in the “husbandry of marine organisms” and that must be stored when not in operation. A representative from Acadia testified that it was “also looking at whether [it] can make the harvest machine easier to launch and retrieve so that it’s only on the water for the few weeks that [Acadia] need[s] to harvest, but that’s relatively tricky because it’s a large machine and [Acadia’s] boom truck crane can’t take it.” The size of the harvest machine necessitates storage on the lease site when not in use during the six-month season from May to October. The contention that the raft is not part of Acadia’s aquacultural operation because it merely “warehouse[s] unused equipment” is contrary not only to the record but also to common sense. It is tantamount to suggesting that a barn housing farm equipment that is not in use is not part of a farming operation.

⁶ The Commissioner found, and the record supports, that the raft was “in compliance with visual impact criteria adopted by the commissioner relating to color, height, shape and mass.” 12 M.R.S. § 6072(7-A)(H). The height of the raft would be 1.5 feet above the waterline; the height of the harvest machine, when submerged and in use, would be approximately five feet above the waterline; and together, when the machine was not in use but stored on the raft, they would have a total height of approximately 13.5 feet above the waterline. This complied with the height requirements in the Department’s rules. *See* 13-188 C.M.R. ch. 2, § 2.37(1)(A)(10). And the Commissioner further found that “[w]hether or not the applicant decides to move the harvesting machine during [the] time when it is not in active use would not impact [the Commissioner’s] analysis, as under either operation, the machine complies with the visual impact rules.” *See id.*

C.M.R. ch. 2, § 2.37(1)(A). Accordingly, we reject Friends’ argument that the Commissioner lacked authority under Title 12 to grant Acadia’s aquaculture lease application.

[¶15] We also reject the argument that DEP’s permitting authority under NRPA or BPL’s authority to lease submerged lands preempts the Commissioner’s authority to grant Acadia’s application. NRPA simply does not apply here:

A [NRPA] permit is *not* required . . . if the activity takes place solely in the area specified below:

. . .

(10) Aquaculture. Aquaculture activities regulated by the Department of Marine Resources under Title 12, section 6072, 6072-A, 6072-B, or 6072-C. Ancillary activities, including but not limited to, building or altering docks or filling of wetlands, are not exempt from the provisions of this article”

38 M.R.S. § 480-Q(10) (2026) (emphasis added). Friends asserts that Acadia’s proposed use of a floating storage raft falls within the scope of “ancillary activities” and not “aquaculture activities” because the raft “is not necessary for or even directly used as a part of the culture or husbandry of marine organisms.” As just discussed, the record plainly contradicts this assertion; the

raft is directly related to, and an important component of, Acadia's aquaculture operations.⁷ *See supra* n.5.

[¶16] Likewise, BPL's leasing authority over submerged lands pursuant to 12 M.R.S. § 1862(2) does not apply. Section 1862(10) provides: "A lease for the use of lands under this section is *not required* for the development and

⁷ Friends also relies upon section 480-Q(10)'s reference to "altering docks" to argue that Acadia's storage raft, which Friends characterizes as a "floating dock," is an "ancillary activit[y]" under that section and therefore excluded from the NRPA aquaculture exemption. This argument, too, is unpersuasive. Section 480-Q(10) refers to a "dock," not a "floating dock"; the Legislature knew how to distinguish between these two terms, even within NRPA itself. *Compare* 38 M.R.S. § 480-Q(2-B) (exempting replacement of "floating docks" from the requirement of a NRPA permit if not exceeding the dimensions of the original) *with id.* § 480-Q(10) (excluding the "building or altering of docks" from the aquaculture exemption from the NRPA permitting requirement). Although neither term is defined in NRPA, a "dock" is included among the structures in the statute's definition of "[p]ermanent structure," and as such is clearly distinguished from the floating raft that Acadia contemplates here. *See* 38 M.R.S. § 480-B(7) (2026) (defining "[p]ermanent structure" as "any structure that is designed to remain at or that is constructed or erected with a fixed location or that is attached to a structure with a fixed location for a period exceeding 7 months within any 12-month period, including, but not limited to, causeways, piers, docks, concrete slabs, piles, marinas, retaining walls and buildings"). And although the word "dock" itself is undefined in NRPA, it is commonly understood to mean "a structure extending alongshore or out from the shore into a body of water, to which boats may be moored," *Dock*, New Oxford American Dictionary (3d ed. 2010); in other words, a structure that is affixed to land. Friends further attempts to enlist our decision in *Uliano v. Bd. of Env't Prot.*, 2009 ME 89, 977 A.2d 400, in support of the argument that a NRPA permit is required, noting that the case "expressly applied to a dock proposed in Eastern Bay—the very same water body that is the subject of [the Commissioner's] [d]ecision." *Uliano* is inapt; it involved construction of a land-connected, private pier, not a raft floating hundreds of feet offshore. *Uliano*, 2009 ME 89, ¶ 4, 977 A.2d 400. Finally, Friends asserts that the Commissioner of Marine Resources is owed no deference in determining what activities are "ancillary" within the meaning of 38 M.R.S. § 480-Q(10) or 12 M.R.S. § 1862(10) because the Department of Marine Resources does not administer these statutes. This argument falls short as well. It is true that the Department of Marine Resources does not administer DEP's or BPL's programs. As noted above, however, both statutes expressly exempt "[a]quaculture activities regulated by the Department of Marine Resources under Title 12, section 6072" and "any aquaculture . . . [performed under] lease from the Commissioner of Marine Resources under section 6072." *See* 38 M.R.S. § 480-Q(10); 12 M.R.S. § 1862(10). The Department of Marine Resources does administer Title 12's aquaculture leasing statute and is intimately familiar with the aquaculture industry. The Commissioner, therefore, is accorded deference in administering the requirements of the aquaculture leasing statute, and here his consideration of the storage raft as part of Acadia's aquaculture activities and operation is amply supported by the record.

operation of any aquaculture facility *if the owner or operator has obtained a lease from the Commissioner of Marine Resources under section 6072.*” *Id.* § 1862(10) (emphasis added). Section 1862(10)’s aquaculture exemption is limited—it provides that “[a]ncillary equipment and facilities permanently occupying submerged lands on the lease site and not explicitly included in the lease granted by the Commissioner of Marine Resources are not exempt.” Still, Acadia’s proposed storage raft is not “ancillary equipment or [an ancillary] facilit[y],” *id.*, but even if it were, it is explicitly permitted as part of the Commissioner’s aquaculture lease to Acadia.

B. Lease Impacts on “Other Uses in the Area” and “Noise at the Boundaries of the Lease Site”

[¶17] Friends next contends that Acadia failed to demonstrate that its proposed aquaculture operations will not unreasonably interfere with other uses of the area, as required by 12 M.R.S. § 6072(7-A)(C), and will not result in unreasonable impacts from noise at the boundaries of the lease site, as required by 12 M.R.S. § 6072(7-A)(G); that the Commissioner incorrectly interpreted and applied the statutory standards; and that the Commissioner’s findings otherwise were unsupported by substantial evidence and are an abuse of discretion.

[¶18] In an appeal from a judgment on a Rule 80C petition, “we review the underlying administrative agency decision directly for abuse of discretion, errors of law, or findings unsupported by substantial evidence in the record.” *Maquoit Bay, LLC v. Dep’t of Marine Res.*, 2022 ME 19, ¶ 5, 271 A.3d 1183. We do not “substitute our judgment for that of the agency and will affirm findings of fact if they are supported by substantial evidence in the record.” *Ouellette v. Saco River Corridor Comm’n*, 2022 ME 42, ¶ 20, 278 A.3d 1183 (quotation marks omitted). We do not independently weigh the merits of the evidence and “will affirm the agency’s findings even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency.” *Id.* (quotation marks omitted); see *Friends of Lincoln Lakes v. Bd. of Env’t Prot.*, 2010 ME 18, ¶ 13, 989 A.2d 1128.

[¶19] We first address the challenge to the Commissioner’s construction of section 6072(7-A)(C). The Commissioner initially determined that the research programs conducted by the Lab were “beyond the scope of ‘other uses of the area’ as that phrase [is] used in 12 M.R.S.[] § 6072(7-A)(C) when read in the context of the rest of the statute.” Friends argues that the Commissioner erred by limiting the scope of “other uses in the area” to other water-related uses, and not including land-based uses.

[¶20] Here, however, we need not reach that issue because, despite his conclusion to the contrary, the Commissioner considered and evaluated the evidence concerning potential noise impacts on the Lab and determined that Acadia’s proposed lease operations would not unreasonably interfere with the Lab’s activities. Thus, we assume for purposes of this opinion that the Lab’s operations, including its research programs, constitute an “other use in the area” in 12 M.R.S. § 6072(7-A)(C) and review the Commissioner’s findings to determine whether they are supported by substantial record evidence. *See infra* ¶¶ 25-27, 29-30.

[¶21] Before doing so, we turn to the other challenge to the Commissioner’s interpretation of section 6072 that Friends brings, namely that the Commissioner erred in construing the unreasonable-noise-impact condition in section 6072(7-A)(G) to mean that Acadia was required to demonstrate only satisfactory noise mitigation measures and did not need to present evidence of what particular decibel levels of noise would be generated by its operations. Again, we look first at the language of the statute to determine whether or not it is unambiguous and if not, give deference to the agency’s interpretation if its interpretation is reasonable. *See Snakeroot Solar,*

LLC v. Pub. Utilities Comm’n, 2025 ME 64, ¶ 26, 340 A.3d 99; *E. Me. Conservation Initiative*, 2025 ME 35, ¶ 22, 334 A.3d 706.

[¶22] Section 6072(7-A)(G) requires, as a condition for granting an aquaculture lease, that the Commissioner determine that “[t]he lease will not result in unreasonable impact from noise or light at the boundaries of the lease site.” The language of section 6072(7-A)(G) itself does not definitively establish specific criteria for the condition, but the legislatively endorsed rules adopted by the Department do.

[¶23] As mandated by 12 M.R.S. § 6072(7-A), the Department adopted, with legislative endorsement, major substantive rules establishing specific noise criteria. *See* Resolves 2005, ch. 58; 13-188 C.M.R. ch. 2, § 2.37(1)(A)(9). Section 2.37(1)(A)(9) provides as follows:

All motorized equipment used during routine operation at an aquaculture facility must be designed or mitigated to reduce the sound level produced to the maximum extent practical.

Centralized feeding barges, or feeding distribution systems, shall be designed or mitigated to reduce noise by installing the most effective commercially available baffles at air intakes and outlets, mounting of all relevant equipment to minimize vibration between it and the hull, and using the most effective commercially available soundproofing insulation.

All fixed noise sources shall be directed away from any residences or areas of routine use on adjacent land.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.

(Emphasis added).

[¶24] Contrary to Friends' contentions, neither the governing statute nor the Department's rules require that mechanized or motorized equipment be operated at or below specific decibel or vibrational levels. Moreover, the Department's rules implementing section 6072(7-A)'s noise-impact standard do not require lease applicants to submit information on specific decibel levels. *See* 13-188 C.M.R. ch. 2, § 2.10. Rather, the rules direct the Commissioner to ensure reasonable mitigation—the applicant must demonstrate that “all reasonable measures will be taken” to mitigate noise impact and reduce sound levels “to the maximum extent practicable” “at the boundaries of the lease site.” 13-188 C.M.R. ch. 2, § 2.37(1)(A)(9). The Commissioner determined here that “[t]his is most often achieved by describing the design of the equipment, or explaining how the equipment will be utilized or retrofitted to reduce sound levels.”

[¶25] The Commissioner found, with substantial record support, that Acadia demonstrated that it would use sufficient mitigation measures to satisfy section 6072(7-A)(G) as further delineated by rule. Acadia proposed a number of measures to reduce noise impacts, “[a]ll the mitigation measures are

consistent with approaches incorporated on other standard lease sites,” and “[m]any of these measures exceed mitigation approaches on other standard lease sites.”

[¶26] Specific to the harvesting machine and transport vessel, which were less commonly found in other aquaculture operations and which Friends contends would be the principal source of noise affecting the Lab’s operations, the Commissioner found that Acadia proposed noise-reducing measures sufficient to meet this standard, including an upgraded hydraulic system on the transport vessel to utilize a below-deck engine with water-cooled hydraulic oil; upward-facing mufflers and “cowl mufflers”⁸ for the main drive engines to minimize and dissipate noise; generators, fit with rubber footings, that are mounted below deck on the transport vessel to reduce noise and vibrations; and the rubber-foot mounting of the engine to further reduce vibrations.⁹

[¶27] In addition, the Commissioner incorporated as conditions of the lease additional representations made by Acadia in its application and closing arguments to reduce noise, including completely turning off the transport

⁸ A cowl muffler is a type of muffler developed by the military to reduce noise from field hospital generators. Most Department-approved leases do not use hospital-grade cowl mufflers.

⁹ Acadia also represented that “[a]ccording to the manufacturer the noise of the running harvest machine is very mild, less than a 4 stroke outboard engine.”

vessel “whenever possible,” even during harvesting; outfitting all portable engines used on site regularly, except for outboard engines, with “higher than standard muffling when possible”; and, if power washers are used more than several times per year, mounting them below deck for noise mitigation.

[¶28] Friends asserts, however, that despite the evidence establishing noise mitigation measures, Acadia failed to demonstrate that the noise from its activities, and in particular from the use of the harvesting machine, will not unreasonably interfere with the Lab’s use of the area. Friends argues that the unrebutted expert testimony about the uncertainty that will be injected into the Lab’s ongoing research activities alone “should have resulted in outright denial of this type of lease.”

[¶29] The Commissioner considered the testimony and evidence about potential noise impacts presented by Friends and the Lab’s witnesses; he simply found it unconvincing. The Commissioner noted, for example, that the Lab “is more than 1,590’ from the southwest boundary of the modified proposed lease site” and “approximately 30’ from the high tide line in an area that is regularly trafficked by tour vessels, mussel harvest vessels, power boats, and lobster fishing vessels”; that the Lab “has its own dock, which is utilized by employees with motorized watercraft”; that the Lab “maintains [its] grounds

with motorized equipment”; and that, although the Lab’s facility was under renovation, “no provisions were made to soundproof the space to a certain sound level, nor had the facility conducted its own sound readings to determine at what levels the animals in their care would react adversely to noise or vibrations or at what duration.”

[¶30] In sum, the Commissioner found the testimony about noise impacts to be “largely speculative,” “based on assertions that the applicant was required to supply precise studies and estimates of noise decibels not required by the applicable law,” and “not consistent with evidence regarding [the Lab’s] operations and approach to noise control and impacts from current noise level[s] already present in the area.” The fact that the record contains other evidence—even uncontested evidence—from which a different conclusion might be drawn is not cause to overturn an agency’s decision if there is competent evidence to support that decision. *See Ouellette*, 2022 ME 42, ¶ 20, 278 A.3d 1183. Here, the Commissioner applied the correct legal standard and there is competent evidence to support the Commissioner’s findings and conclusion.¹⁰

¹⁰ Contrary to an additional argument made by Friends, the Commissioner did not improperly shift the burden to the intervenors to demonstrate noncompliance with the applicable statutory criteria pertaining to noise impacts and, in particular, the impacts on the Lab. The Commissioner correctly identified the burden as resting with the applicant, Acadia, by referencing the standard in

C. Treatment of the Lease Application as a Non-Discharge Application

[¶31] Standard applications for aquaculture leases are designated as either “non-discharge” or “discharge” applications, and the application requirements differ between the two designations. 13-188 C.M.R. ch. 2, § 2.10(B). Department rules define “discharge” as “any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant including, but not limited to, the addition of feed, therapeutants or pesticides to waters of the State.” 13-188 C.M.R. ch. 2, § 2.05(G). An applicant submitting a “discharge application” must procure a Maine Pollutant Discharge Elimination System (MEPDES) permit from DEP. 38 M.R.S. § 413(1) (2026).

[¶32] Friends maintains that the Department erred by not designating Acadia’s lease application as a discharge application and that the Commissioner abused his discretion by declining to make additional findings or reopen the record in light of recent federal regulatory changes regarding PFAS chemicals.¹¹

section 2.37(1)(A)(9): “An applicant shall demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.” 13-188 C.M.R. ch. 2, § 2.37(1)(A)(9). The Commissioner relied on several sources of information in reaching his decision, and that is “consistent with [the Department’s] standard practice for developing the record that it uses to evaluate lease applications.” *Maquoit Bay*, 2022 ME 19, ¶ 19, 271 A.3d 1183.

¹¹ “Per- and polyfluoroalkyl substances (PFAS) is a general term used to describe a group of over 5,000 different synthetic chemicals that are used in industrial and commercial applications throughout the world, most commonly to repel water and oil, to combat high temperatures, and to reduce the effects of friction. Historically, the most prevalent use of PFAS has included two synthetic chemicals: perfluorooctanoate (PFOA), and perfluorooctane sulfonate (PFOS).” 4 Cetrulo et al., *Toxic*

These arguments are premised on the supposition that the equipment and gear Acadia plans to use, including plastic high-density polyethylene plastic piping, “is likely to contain PFAS” and that power washing this gear is likely to discharge PFAS and PFOA into Eastern Bay. We reject the arguments for several reasons.

[¶33] First, although the Department initially treated Acadia’s application as a non-discharge application when deeming it complete in February 2020, its staff nevertheless submitted the application to DEP for review. The application specifically proposed the use of plastic pipes and power washers. The statute then in effect required that DEP “be notified of all lease applications.” 12 M.R.S. § 6072(6)(C) (2020).¹² Despite being provided with the application, DEP did not request further information about or comment on the application. Moreover, the Commissioner found in his decision that Department staff “took official notice of a 2018 letter issued by the DEP

Torts Litigation Guide § 48:1, Westlaw (database updated May 2026). In May 2024, the Environmental Protection Agency (EPA) published its final rule designating PFOA and PFOS as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C.A. §§ 9601-75 (Westlaw through Pub. L. No. 119-100). See *Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances*, 89 Fed. Reg. 39124 (May 8, 2024) (codified at 40 C.F.R. pt. 302).

¹² Title 12 M.R.S. § 6072(6)(C) has since been amended to require the Department to notify DEP only of applications deemed to be discharge applications. See P.L. 2021, ch. 52, § 3 (effective Oct. 18, 2021) (codified at 12 M.R.S. § 6072(6)(C)).

determining that a discharge permit was not required for a similar aquaculture lease application that also included the culture of shellfish and power washing.”¹³ There is competent record evidence to support the Department’s initial designation of Acadia’s application as a non-discharge application and the Commissioner’s consistent treatment of it after that, given the information available at the time the application was made and deemed complete. *Cf. Maquoit Bay*, 2022 ME 19, ¶ 21, 271 A.3d 1183 (“The record reflects that DMR notified DEP about [the] completed application . . . , which defeats . . . [the intervenors’] notice argument and their related contention that the allegedly improper notice undermined DEP’s ability to consider the application of the Natural Resources Protection Act.”).

[¶34] Second, there is no evidence in the record that the equipment Acadia proposes to use contains any PFAS toxins. Friends merely asserts that Acadia’s equipment “is likely to contain PFAS,” that power washing “will likely result in a discharge of those pollutants,” and that there is a “potential for [Acadia’s] proposed activities to result in the discharge of PFAS into the marine

¹³ The letter acknowledged receipt of the lease application and stated that DEP reviewed the application and determined that, with support from a decision of the United States Court of Appeals for the Ninth Circuit, *Ass’n to Protect Hammersley, Eld, & Totten Inlets v. Taylor Res., Inc.*, 299 F.3d 1007 (9th Cir. 2002), “this activity would not require [the applicant] to obtain a [MEPDES] permit . . . from the DEP.”

environment.” Though Friends contends that “the record does not reflect that [Acadia’s equipment] is PFOA and PFAS free,” the more significant point is that the record does not establish that Acadia’s equipment contains such chemicals at all or that, if it did, they would be released into the marine environment naturally or by virtue of equipment maintenance. On this record, there is no basis for us to second-guess the Commissioner. *See Maquoit Bay*, 2022 ME 19, ¶ 20, 271 A.3d 1183 (holding that deference to the Department’s designation of an application for a shellfish aquaculture lease as a non-discharge application was appropriate where assertions that power washing equipment would result in the discharge of pollutants were merely speculative).

[¶35] Finally, the federal regulatory changes that Friends cites as a basis for reopening the record, including the EPA’s May 2024 designation of PFAS chemicals as hazardous substances and subject to regulation under CERCLA, *see supra* n.11, occurred after the close of the administrative record. We review an agency’s denial of a request to reopen the record for an abuse of discretion, *Ellsworth ME Solar, LLC v. Pub. Utilities Comm’n*, 2026 ME 10, ¶ 32, 353 A.3d 952, and find none here. There was no evidence in the record that Acadia’s equipment contains PFOA or PFAS chemicals, and Friends’ argument that the gear and power washers that Acadia plans to use in its operations will cause a

discharge of those chemicals into the water still “is speculative and does not persuade us to disturb [the Commissioner’s] conclusion.” *Maquoit Bay*, 2022 ME 19, ¶ 20, 271 A.3d 1183.

The entry is:

Judgment affirmed.

Stacey L. Caulk, Esq., and David M. Kallin, Esq. (orally), Drummond Woodsum, Portland, for appellant Friends of Eastern Bay

Aaron M. Frey, Attorney General, and Valerie A. Wright, Asst. Atty. Gen. (orally), Office of the Attorney General, Augusta, for appellee Department of Marine Resources

Patrick W. Lyons, Esq., Viridian Law, P.C., Ellsworth, for appellee Acadia Aqua Farms, LLC

Business and Consumer Docket docket number APP-2025-1
FOR CLERK REFERENCE ONLY