

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

Standard Aquaculture Lease Application

Suspended Culture of American Oysters

East of Stage Island, Stage Island Bay

High Tide Shellfish Farm

KEN ESI

January 2, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

High Tide Shellfish Farm applied to the Department of Marine Resources (DMR) for a 20-year standard aquaculture lease on 2.25 acres.¹ The proposed site is located off the east side of Stage Island, Stage Island Bay, Town of Georgetown, Sagadahoc County, Maine; and is intended for the cultivation of American/Eastern oysters (*Crassostrea virginica*) using suspended culture techniques.

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on February 21, 2018, and the scoping session was held on April 19, 2018. The application was deemed complete on May 16, 2019. Notice of the completed application was provided to riparian landowners within 1,000 feet of the proposed site, the Town of Georgetown, and other state and federal agencies. The public hearing on the application was held on December 9, 2019. Notice of the public hearing, and copies of the application and DMR site report, were provided to state and federal agencies for their review, the Town of Georgetown, and riparian landowners within 1,000 feet of the proposed site. Notice of the hearing was published in the *Times Record* on November 6, 2019 and November 27, 2019. Notice was also published in the December 2019 edition of *Landings*.

Sworn testimony was given at the public hearing by the following witnesses:

| Name | Affiliation |
|--------------------|--|
| Christopher Warner | High Tide Shellfish Farm, Applicant |
| Marcy Nelson | Marine Scientist, DMR Aquaculture Division |
| Sarah Kulis | Lobsterwoman |
| Brian Kelly | Member of the Public |

Mr. Warner described aspects of the lease application and answered questions about the proposal. Ms. Nelson testified about DMR's site visit and answered questions related to Maine's aquaculture program.

¹ Applicant originally requested 2.06 acres. Based on the provided coordinates, DMR calculated the area at 2.25 acres.

Individuals who testified were not opposed to the proposal but asked for clarification regarding some elements of the application. Woody Hanstein, Georgetown Harbormaster; Jonathan Collins, Georgetown Selectman; and Allison Hepler, State House Representative District #53 attended the hearing, but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis.

B. 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. Proposed Operations

The applicant currently cultivates oysters on Limited Purpose Aquaculture (LPA) license sites off Bragdon Island, in the New Meadows River, in the Town of Harpswell² (App 20). The purpose of the proposed lease site is to expand and diversify the applicant's existing aquaculture operations (App 23). Specifically, this proposed site would be used to temporarily hold oysters from the Bragdon Island LPA sites prior to being harvested for market (App 20). The oysters would be transferred to the proposed site when they are between 2 to 2 ¼ inches in size (App 27). The applicant is proposing to deploy up to 400 oyster bags on five mainlines, which would each contain two longlines that measure 200 feet in length (App 6).

Operations at the proposed lease site would occur from May through December (App 21). The applicant testified that gear and oysters would not be overwintered at the proposed site. During the winter months, the gear would be removed from the proposed site and stored on land. Given that overwintering is not proposed for this site, if any product were to remain at the end of December, the applicant would need to obtain a permit prior to moving oysters from this proposed site to any other aquaculture site or waterbody.³ The applicant would access the site using a 17' and 20' skiff (App 24). The skiffs would contain a culling rack and electric wash pump, which would be powered by the

² Information related to the location of the LPAs was sourced from information maintained by DMR. The location was not included in the application. The LPA acronyms are: CWAR117, 217, 317, and 417.

³ It is DMR's understanding that this proposed lease site will only be used to temporarily hold oysters prior to market and that moving product from this proposed site to other areas is not part of the applicant's proposed operations. Movement of product from this site to other aquaculture areas would require a permit as the site is within a restricted area see Chapter 24.10(4)(F).

outboard battery (App 20). The culling rack and electric wash pump would be used to clean the oysters after they are harvested (App 20). The oysters would be harvested when they reach 2.5 inches in length (App 27). Oysters that are harvested would then be replaced with additional product from the Bragdon Island sites (App 27).

The site would be visited two to three days each week when gear is deployed (App 20). To avoid bio-fouling, the applicant would replace any fouled bags with clean ones as necessary (App 20). At the public hearing, the applicant testified that his other farming operations involve pressure washing at least once a week. When asked to clarify if this proposal would involve pressure washing, the applicant testified that pressure washing would occur from the skiff (Warner/Ellis). The applicant testified that the pressure washer would be powered by a 2,000-kilowatt generator (Warner/Nelson). However, the application did not include pressure washing, or the use of a generator. The application requires an applicant to describe the type of power equipment used on the site and explicitly references generators and pressure washers as the type of power equipment that needs to be described (App 28).

The applicant answered this question with the following: "The Stage Island lease site will not have power equipment present" (App 26). The application further requires applicants to specify what will be used to reduce the noise levels from the powered equipment (App 28). In response to this question, the application also indicates that no power equipment would be present (App 26). At the public hearing, the applicant testified that if pressure washing at the site is problematic, he would conduct those activities on land (Warner/Ellis).

Discussion:

The completed application did not include the use of a pressure washer or generator. Given what was presented at the public hearing regarding the use of a pressure washer and generator, the public was not provided with an adequate opportunity to review the use of such equipment. To contemplate the use of such equipment would circumvent applicable public and personal notice requirements.⁴ Furthermore, other state and federal agencies based their review of the application on the initial proposal. It is possible that use of such equipment would have changed their assessment of the proposed operations and the potential impacts to the resources they manage. Finally, DMR's site report does not account for the use of a pressure washer or generator. This application is contemplated,

⁴ For example, DMR received written comments on the proposal from C. Moffat. The comments raised a variety of concerns with the lease proposal but noted: "it is understood that noise within the area would be no more than that of commercial lobster fishing or recreational boating within the area" (CF: Letter from C. Moffat to C. Burke dated December 7, 2019). C. Moffat did not attend the public hearing on this proposal. However, this demonstrates that for some stakeholders noise was not identified as a concern based on the original proposal.

as originally proposed, without the use of a pressure washer or generator. If the lease is granted, the use of a pressure washer or generator would not be authorized. If the applicant wishes to utilize a pressure washer or generator, or any other powered equipment not included in the original lease application, High Tide Shellfish Farm would need to apply for an amendment.

B. Site Characteristics

On September 13, 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 proposed site is located to the east of Stage Island in Stage Island Bay (SR 2). The shoreline of Stage Island is characterized by ledge and the uplands are a mixed forest (SR 2). DMR staff did not observe any residential buildings on Stage Island (SR 2). There were houses, docks, and moorings observed either on or nearby Kennebec and Indian Point, which are located to the north of the proposal on Georgetown Island (SR 2). Figure 1 depicts the proposed lease area in relationship to Stage and Salter Islands and Kennebec and Indian Points. Correcting for mean low water, depths at the corners of the proposed site were between 13.3-17.5 feet (SR 6). The bottom of the proposed lease site is comprised of sand (SR 6). At mean low water, the SW corner of the proposed lease site is ~280 feet from Stage Island, which is the nearest point of land (SR 7).

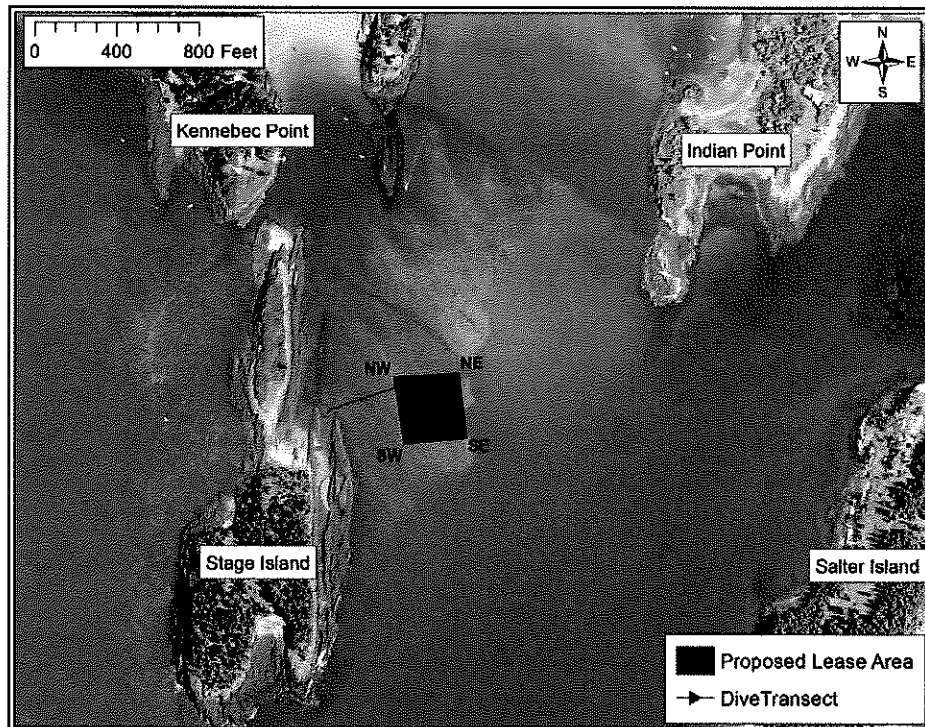


Figure 1: Location of the proposed lease site with corners labeled. Image from site report (SR 2).

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 site is more than 1,000 feet from Salter Island, which located to the southeast and east of the proposal (SR 8). The proposed site is located more than 800 feet from Georgetown Island and ledges to the north and northeast (SR 8). Given these distances, "it is unlikely that navigation north, south, and east of the proposed lease would be obstructed" (SR 8). At mean low water, Stage Island is ~280 feet to the west of the proposed lease site (SR 7). The site report indicates that larger vessels might avoid navigating between Stage Island and the proposed site, but most motorized or hand-powered vessels would be able to navigate within this area (SR 8).

DMR did not receive any comments from the municipality about what effects, if any, this proposal may have on navigation. Members of the public and other stakeholders who attended the hearing did not offer any testimony about navigation. Based on the absence of comments and testimony it is reasonable to conclude that stakeholders do not have significant concerns about possible impacts the proposed site may have on navigation.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site must be marked in accordance with U.S. Coast Guard requirements.

B. Riparian Access

The closest observed docks and moorings to the proposed lease site were located off Kennebec and Indian Points, which are more than 1,000 feet from the proposal (SR 7). No houses, docks, or

moorings were observed on the east side of Stage Island, which is adjacent to the proposed lease (SR 7). The site report indicates that there is a sand beach to the immediate west of the proposal and because most of Stage Island's shoreline is comprised of ledge it is possible that the beach is utilized as a landing site (SR 7). At mean low water, there is ~280 feet of navigable area between the proposed site and the nearest point of land on Stage Island (SR 7). Given this distance, access to the sand beach would not be precluded by the proposed site (SR 7).

DMR did not receive any comments from the municipality about riparian ingress and egress. Members of the public and other stakeholders who attended the hearing did not offer any testimony about riparian ingress and egress. Based on the absence of comments and testimony it is reasonable to conclude that stakeholders do not have significant concerns about potential impacts the proposed site may have on riparian access.

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

C. Fishing & Other Water Related Uses

During the site assessment, lobster fishing was the only observed commercial or recreational fishing activity within or near the boundaries of the proposed lease site (SR 8). At the time of the assessment four lobster boats were operating in the vicinity of the proposal and DMR staff observed an estimated 50 lobster buoys between Stage and Salter Islands (SR 8). Most of the observed buoys were located to the south and east of the proposed site with some present between the proposed site and Stage Island to the west (SR 8). During the SCUBA transect, staff observed many American lobsters (*Homarus americanus*) within the proposed lease boundaries (SR 8).

DMR did not receive any comments from the municipality about commercial or recreational fishing activity. Sarah Kulis, a lobsterwoman who fishes in the area, testified that she had seen buoys marking the proposed lease site.⁵ Ms. Kulis wanted to know if the buoys represented the extent of the proposed area. The applicant clarified that the buoys delineated the proposed area to be leased, and Ms. Nelson noted that the area, as calculated by DMR, encompassed 2.25 acres. The applicant testified that lobstermen would be permitted to deploy their traps within the boundaries of the proposed lease site. Ms. Kulis did not raise any objections to the proposal.

⁵ In accordance with Chapter 2.15(4) of DMR's regulations, at least 30 days prior to the proposed hearing date, applicants are required to place visible markers, which delineate the area proposed to be leased.

Other members of the public did not offer any testimony about commercial or recreational fishing activity. Based on the evidence it is reasonable to conclude that stakeholders do not have significant concerns about the impacts the proposed site may have on fishing activity in the area.

For the reasons described above, it is reasonable to assume that the proposal will not unreasonably interfere with commercial or recreational fishing in the area.

Other aquaculture uses. There are no existing, or other proposed aquaculture sites within one-mile of this proposal (SR 9).

In consideration of the record, it seems reasonable to conclude that the proposed operations will not present an unreasonable interference with other aquaculture leases in the area.

Exclusivity. Based on a review of the application, the applicant is not requesting that other uses of the proposed lease area be excluded or otherwise prohibited.

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

DMR Site Observations. Based on historical data, in 2005, the closest observed eelgrass (*Zostera marina*) bed was documented ~310 feet to the west of the proposed site (SR 9). During the SCUBA transect, DMR staff observed eelgrass to the west of the proposed site, but not within the boundaries (SR 9). It is unlikely that the proposed operations would shade or otherwise disrupt existing eelgrass within the area (SR 9). During the SCUBA assessment, DMR staff observed an abundance of American lobsters (*Homarus americanus*), and sand dollars (*Echinarachnius parma*) within the boundaries of the proposed site (SR 9).⁶ However, no submerged gear is proposed for the lease site.

Fisheries and Wildlife. DMR staff also observed double-crested cormorants (*Phalacrocorax auritus*), herring gulls (*Larus argentatus*), and great blue herons (*Ardea herodias*) near the proposed lease site. Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed lease overlaps a ¼ mile buffer for a bald eagle (*Haliaeetus leucocephalus*) nest (SR 10). The proposed area is also in the immediate vicinity of Essential Habitat for the roseate tern (*Sterna dougallii*), Tidal Wading Bird and Waterfowl Habitat, and eider duck (*Somateria mollissima*) habitat (SR 10). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW provided the following as part of their review:

Minimal impacts are anticipated. However, the proposed lease intersects with a bald eagle protective buffer. Until recently, bald eagles were listed as a Species of Special

⁶ For a list of observed species and their relative abundance see pg. 9 of the site report.

Concern in Maine. However, eagles continue to be protected under the federal Bald Eagle and Golden Eagle Protection Act ("Eagle Act") as well as other federal laws, and will defer to any recommendations the USFWS [United States Fish and Wildlife Service] may have.⁷

MDIFW noted that minimal impacts are anticipated to the resources they manage. DMR did not receive any recommendations or other feedback from USFWS, nor did representatives from this federal agency attend the public hearing.

Based on this evidence, it appears that the culture of oysters as 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

Per the site report, "the proposed lease is not within 1,000 feet of any beach, park, docking facility, or conserved lands owned by federal, state, or municipal governments" (SR 11).

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 stock that would be kept on the proposed site would originate from the following approved source, but will mostly be grown-out at aquaculture sites in the New Meadows River:

| Source | Location | Species |
|---------------|-----------------|--------------------------|
| Mook Sea Farm | Walpole, Maine | Eastern/American oysters |

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

G. Light

Per the application, lights would only be used in an emergency (App 26).

⁷ CF: Email from B. Settele to C. Burke dated June 26, 2019

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 proposed lease site would be accessed and serviced by a 17-foot skiff, powered by a 40 horsepower 4-stroke engine, and a 20-foot skiff, powered by a 90 horsepower 4-stroke engine (App 24). During harvest, the skiffs would contain a culling rack and electric wash pump, which would be powered by the outboard battery (App 20). For the reasons described in other sections of this decision, no other powered equipment is contemplated for this site.

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

I. Visual Impact

Per the site report: “the proposed aquaculture operations comply with MDMR’s height and visual impact limitations” (SR 12).

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 of American/eastern oysters (*Crassostrea virginica*) 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 proposed lease in the amount of 2.25 acres to High Tide Shellfish Farm for 20 years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072(7-B).⁸ Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The following conditions shall be incorporated into the lease:

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
- c. The lease holder must obtain a permit from DMR prior to moving product from the Stage Island lease site to any other aquaculture site or waterbody within Maine.

⁸ 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."

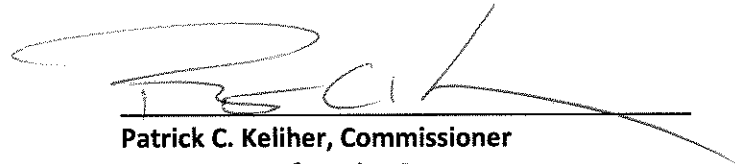
- d. Gear from this lease site must be cleaned of all fouling organisms and disinfected (i.e. bleach or allow to dry in the sun for a minimum of 30 days) prior to being deployed at any other aquaculture site or in any other waterbody in Maine.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §6072(11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated:

January 2, 2020



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