

Standard Aquaculture Lease Application
Suspended Culture of Oysters and Quahogs
Damariscotta River, Newcastle

June 14, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Glidden Point Oyster Company, Inc applied to the Department of Marine Resources (DMR) for a 10-year standard aquaculture lease on 5.25 acres.¹ The proposed site is located south of Jack's Point in the Damariscotta River, Newcastle, Lincoln County, Maine, for the cultivation of American/eastern oysters (*Crassostrea virginica*) and northern quahogs (*Mercenaria mercenaria*) using suspended and bottom culture techniques.

1. THE PROCEEDINGS

The pre-application meeting for this proposal was held on May 16, 2018 and the scoping session was held on October 29, 2018. The application was submitted to DMR on January 28, 2019. The application was deemed complete by DMR on June 20, 2019. Notice of the completed application was provided to riparian landowners within 1,000 feet of the proposed site, the Town of Newcastle, including the Harbormaster, and other state and federal agencies. DMR's site report was issued on January 24, 2020.

A public hearing on this application was originally scheduled for April 6, 2020. Public notice of the hearing was initially published in the *Lincoln County News* on March 5, 2020 and was scheduled to be published a second time on March 26, 2020. Public notice of the hearing was also provided to riparian landowners within 1,000 feet of the proposed site, the Town of Newcastle, other state and federal agencies, and subscribers of DMR's aquaculture email list-serve. However, due to the COVID-19 pandemic, the hearing was postponed on March 20, 2020. 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 health risks associated with public gatherings, DMR decided to conduct this proceeding remotely, using a virtual meeting platform.² The remote hearing was scheduled for October 27, 2020 at 3:00pm, and

¹ Applicant originally requested 5.5 acres, but DMR calculations based on the provided coordinates indicated the area is 5.25 acres.

² DMR uses Microsoft Teams for all virtual conferencing, so this was the platform used for the remote hearing.

public notice was published in the September 24 and October 15, 2020 editions of the *Lincoln County News*. Public notice of the hearing was also provided to the Town of Newcastle and its Harbormaster, riparian landowners within 1,000 feet of the proposal, other state and federal agencies, and subscribers of DMR’s aquaculture email list-serve. The public notice for the October 27, 2020 hearing indicated that the proceeding would be conducted remotely and directed interested persons to contact DMR 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 was held on October 27, 2020, and sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
Jonathan Turcotte	Applicant, Glidden Point Oyster Company, Inc
Marcy Nelson	DMR, Acting Aquaculture Division Director
Paul Bryant	Harbormaster, Newcastle/Damariscotta
Michael Herz	Assistant Harbormaster, Newcastle/Damariscotta

Mr. Turcotte described aspects of the lease application and answered questions about the proposal. Ms. Nelson testified about DMR’s site visit. Paul Bryant, Harbormaster for the Towns of Newcastle and Damariscotta, and Michael Herz the Assistant Harbormaster for the Towns of Newcastle and Damariscotta shared their feedback about the proposal and asked clarifying questions. Ryan McPherson, the owner of Glidden Point Oyster Company attended the hearing but did not ask questions or offer testimony. Crystal Canney, with Protect Maine’s Fishing Heritage, asked DMR a question about lease density. A few other members of the public participated in the proceeding but did not ask any questions or offer testimony. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis.

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

This proposed site is within the footprint of an existing lease site, DAM JP2, which is also held by the applicant (SR 2). DAM JP2, initially issued in 2008 and renewed in 2018, is a 7.75-acre site authorized for the bottom culture of American oysters (*Crassostrea virginica*), quahogs (*Mercenaria mercenaria*) and soft-shell clams (*Mya arenaria*). A second site, DAM JP, also held by the applicant is to the west and directly adjacent to the proposed lease site. DAM JP was initially issued in 1993 and was most recently renewed in 2013. DAM JP is 2.29 acres and is authorized for the suspend culture of American oysters and European oysters (*Ostrea edulis*). If this proposal is granted, suspended culture would be authorized above the remaining entirety of DAM JP2 as shown in Figure 1.

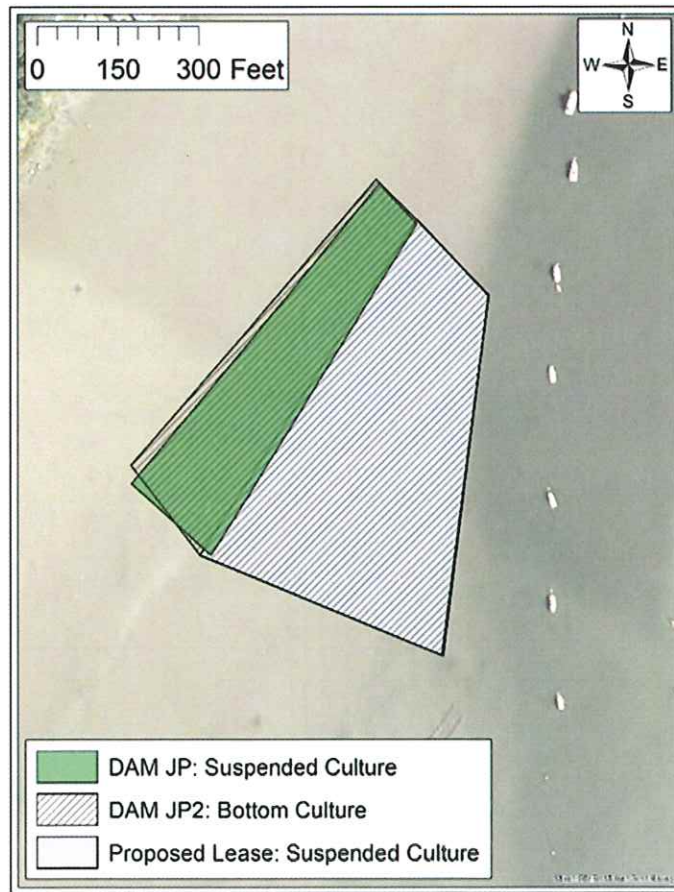


Figure 1: Locations of DAM JP and DAM JP2 in relationship to the proposed lease site. Image from Figure 3 of the Site Report.

B. Proposed Operations

During the hearing Mr. Turcotte testified that the purpose of the proposed site is to cultivate juvenile oyster seed in floating bags and trays, which would allow Glidden Point Oyster Company to

cultivate more product to help meet market demand.³ The applicant is proposing to deploy up to two 22 longlines that range between 200 and 300 feet in length (App 21-23).⁴ The floating bags and trays would be secured at each side to the longlines. Gear would typically be deployed in April and removed by the end of December (App 2). Product would be overwintered on a different lease site or stored on land in an industrial cooler (App 3).

The site would be serviced by skiffs between 16 and 28 feet in length (App 2). The site would be frequented up to four days each week for routine maintenance (App 2). Proposed maintenance includes flipping the bags by hand to prevent fouling and grading product throughout growing periods (App 2). The applicant would also utilize a 1/2-horsepower wash pump up to two days each week, for up to 3 weeks (App 3). The pump would most likely be utilized in June to help remove fouling debris from the floating mesh seed trays (App 3). The pump would run for less than an hour during these periods and would be kept in a covered box to reduce noise and exposure to the salt water (App 3-4).

B. Site Characteristics

The proposed lease site is located south of Jacks Point in the Damariscotta River (SR 3). The Newcastle shoreline is located to the west of the proposal and the Damariscotta shoreline is to the east (SR 2). Commercial properties, including a boat yard, are visible from the boundaries of the site (SR 3). Residential properties were also observed from the boundaries of the site. A mooring field is located to the northeast and east of the proposed lease area (SR 3). The closest observed mooring was ~170 feet from the eastern boundary of the proposed lease site.

On September 27, 2019, water depths at the corners of the proposed site ranged from 12 to 18.5 feet and increased from west to east (SR 6). Adjusting for tidal variation, depths at mean low water range from 1.56 to 8.06 feet (SR 6). At mean low water, the western shoreline of the Damariscotta River is ~540 feet to the northwest of corner A (SR 8). See Figure 2 below for the location of the proposed site, with labeled corners, in relationship to the observed moorings, and boat yard.

³ Much of the testimony focused on juvenile oysters, but the application further specifies that the proposed site would be used as nursery to “raise juvenile shellfish from spat to planting size using floating culture techniques” (App 2). If this lease is approved, it would also authorize the culture of quahogs.

⁴ See site development renderings and site development aerial view.



Figure 2: Proposed lease site in relationship to observed moorings and the boat yard. Image from Figure 2 of the Site Report.

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 application indicates that the area around the proposed lease site is used seasonally by recreational boaters (App 7). The applicant has observed small sail boats, kayaks, and vessels with small outboards in the area (App 7). These vessels are observed most frequently, in the area, from June through September (App 8). The applicant testified that the most common types of vessels observed in the area are kayaks, or powered vessels owned by other aquaculturists with sites near the proposal. The application indicates that the proposed site is “extremely shallow at mid to low tide and navigationally hazardous except to craft with extremely low draft” (App 7). The applicant is not requesting exclusive use of the area, so boating would be permitted within the boundaries of the lease site (App 8).

The marked, main navigational channel in the Damariscotta River runs approximately north to south and is used by recreational and commercial boaters (SR 9). At its closest point, the western boundary of the navigational channel is ~50 feet from the eastern boundary of the proposed site (SR 9). At mean low water, depths within the boundaries of the proposed site range from ~1.5 to 8 feet (SR 9). Given the shallow water depths within the boundaries of the proposed lease site and that it is located outside of the main navigational channel, it is unlikely to interfere with vessels operating within the main channel (SR 10).

The site report indicates that vessels operating to the west of the navigational channel may be impacted by the lease proposal as the site would increase the amount of suspended gear along this stretch of the upper Damariscotta River (SR 10). As depicted in Figure 3, this section of river contains several existing lease sites also permitted for suspended culture (SR 10). The closest existing lease site, not held by the applicant, is DAM NP. The northern boundary of DAM NP is ~10 feet from the SE corner of the proposed site (SR 11). This site is held by Eric Peters for the culture of American and European oysters using suspended and bottom culture techniques (SR 11).

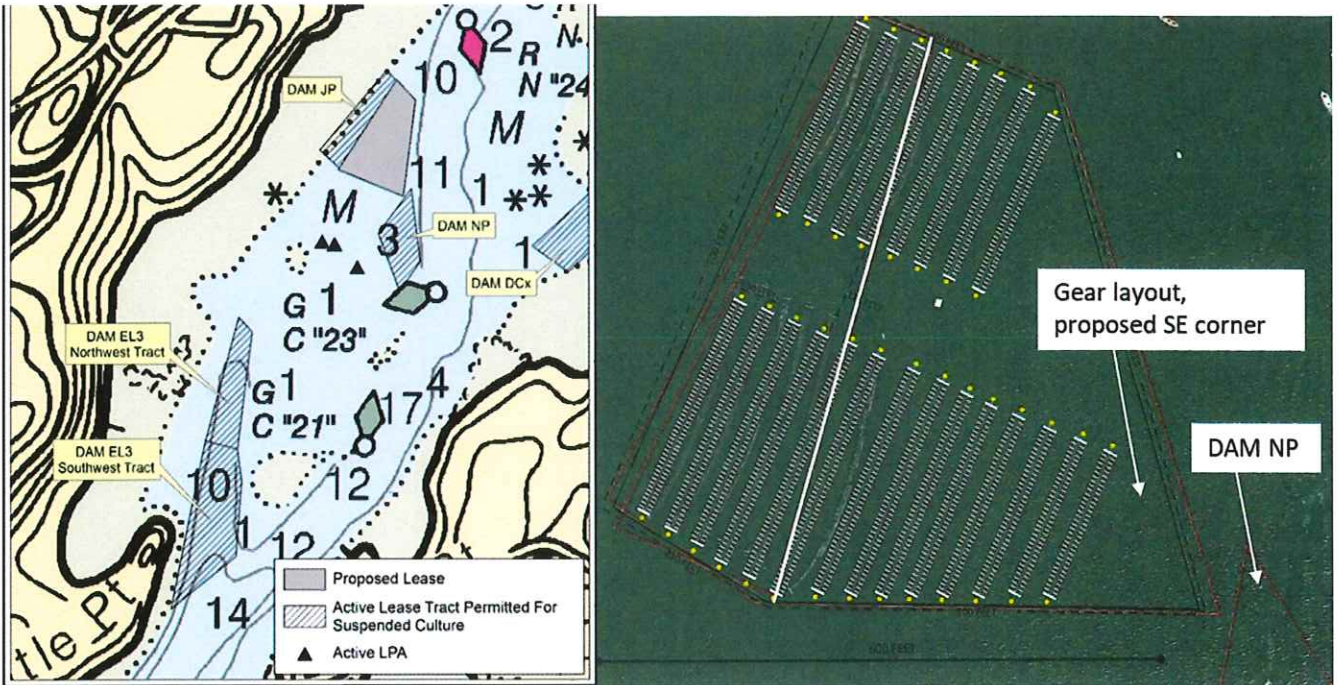


Figure 3 (image to left): Active lease sites near the lease proposal that are authorized for suspended culture. Image from Figure 4 of the Site Report. **Figure 4 (image to right):** Gear orientation on DAM JP and the proposed site with the northern boundary of DAM NP partially depicted. The white line running north to south, is the approximate boundary shared by DAM JP and the proposed site. Image adapted from page 23 of the application.

The applicant testified that there would be ~150 feet of navigable area between the first longline on the bottom row of gear and the SE corner of the proposed site. The applicant further specified that there would be ~250 feet of navigable area as measured from the first longline on the bottom row of gear and the first row of gear on DAM NP. Ms. Nelson testified that the distance between the first longline on the bottom row of gear and the northern boundary of DAM NP is ~160 feet.⁵

On October 30, 2018, after the scoping session was held for the lease proposal, DMR staff received a letter from Paul Bryant, the Newcastle/Damariscotta Harbormaster. The letter indicated, in part, that “the south corner of DAM JP2, if approved as drawn, will make passage by small sailboats impossible when sailing from the channel westward into the area north and west of DAM JP2.”⁶ In a review for a different lease proposal, the same harbormaster also indicated that it is imperative that vessels powered by motor and sail be able to access the boatyard on the Newcastle side of the river.

⁵ The 160 feet reflects the distance from the first longline of gear to the SE corner and the 10 feet of distance between the boundary of the proposed site and DAM NP.

⁶ CF: Letter from Paul Bryant to Marcy Nelson dated October 30, 2018.

In consideration of the information provided by the applicant and DMR, the Hearings Officer asked Mr. Bryant if the ~160 feet between the first longline on the bottom row of gear and the boundary of DAM NP addressed the concerns raised in the letter he submitted to DMR. Mr. Bryant testified that the ~160 feet did address the concerns he initially raised about the proposal. He indicated that, depending on wind conditions, some novice sailors may still find it challenging to tack through that area. Mr. Bryant also indicated that there are ~11 people who navigate small sail boats in the area. Mr. Bryant estimated that 5 or 6 of those people could be considered novice or beginner sailors. DMR did not receive additional testimony or comments from others who sail in the area.

Michael Herz, the Assistant Harbormaster of Newcastle, testified that the ~160 feet would be a reasonable amount of navigable area. Mr. Herz expressed general concerns about marking the proposed site and making it clear to mariners about where they can navigate. This proposal would overlap DAM JP2, which is for bottom culture only. Mariners who routinely navigate in the area are likely accustomed to seeing the floating markers that delineate the corners of DAM JP2, but the site is otherwise devoid of gear. If this proposal for suspended culture is granted, mariners would see suspended gear in addition to the corner markers. Although gear would not be deployed in an area near the SE corner, it would still contain a corner buoy.

Mr. Herz noted that this section of the river contains several existing lease sites. Mr. Herz also indicated that the municipal Harbor Committee is discussing gear marking requirements with aquaculturists that would help distinguish sites with suspended gear and those with bottom gear. The goal of these proposed marking requirements is to help mariners better navigate along the river. The Hearings Officer asked Mr. Herz if he could provide an example of the types of marking requirements being considered. Mr. Herz indicated that the conversations around new marking requirements had been slowed by the pandemic and that specific requirements had not been agreed upon. However, Mr. Herz indicated that Ryan McPherson, the owner of Glidden Point Oyster Company, had been participating in those conversations.

According to the application, gear would not be deployed in the middle of the site (App 23). This would create a ~125-foot gearless corridor that is oriented NW-SE through the proposed lease site and the existing lease site, DAM JP (SR 10). According to the site report, the gearless corridor may be adequate for depth appropriate vessels, powered by hand or motor, to navigate through when travelling from the western shore of the Damariscotta River to the main navigational channel (SR 10). However, the area may not be suitable for vessels under tow or sail in consideration of environmental conditions or the experience of a mariner (SR 10). Mr. Herz, who also uses a stand-up paddleboard in the area and

operates a small sailboat, felt that the proposed 125-foot corridor was adequate. Mr. Bryant also felt the corridor would be adequate.

Discussion:

In this instance, the applicant is requesting a lease site that utilizes surface gear. The proposed area is currently within the same footprint as a bottom culture site held by the applicant. Although the overall acreage utilized for aquaculture would not increase the amount of surface culture would increase. Therefore, if this proposal is granted, it would increase the overall amount of aquaculture leases in this stretch of river that are authorized for surface gear. The SE boundary of the surface lease proposal is within ~10 feet of the boundaries of DAM NP, which is also authorized for surface gear.

When this application was in the initial stages of review, Mr. Bryant was concerned that the proposed site would hinder sailboat access from the navigational channel westward into the area north and west of DAM JP2. During the public hearing on this proposal, Mr. Turcotte described two navigational corridors or areas. One would be ~125 feet in width and oriented NW-SE through both the proposed lease site and the existing lease site, DAM JP. Although this corridor is not a condition of DAM JP, it appears the lease holder has oriented the gear on DAM JP to allow for navigation through the site. On July 6, 2020, DMR authorized an amendment for new gear on DAM JP, which included the gear oriented in a manner that allowed for navigation through the site. If the current proposal is granted, it will be conditioned so that the ~125-foot navigational corridor, or gear free area, must be maintained as proposed. DAM JP will be up for renewal in 2023, so DMR can evaluate whether a similar condition should be placed on that site as part of the renewal process.

In addition, there would be ~150 feet of navigable area between the SE corner of the proposed site and the last row of bottom gear for a total of ~160 feet of navigable area between the boundary of DAM NP and the first row of bottom gear on the proposed site, should it be granted. During the hearing, the applicant, DMR, and others referred to the ~160 feet as being measured from the northwestern boundary of DAM NP to the first longline on the bottom row of gear. However, if this lease is granted, ~160 feet of navigable area would need to be maintained throughout that entire area, not just between the reference points discussed at the hearing.

At the hearing, Messrs. Bryant and Herz testified that both corridors would be adequate for navigation in the area. Mr. Bryant further indicated that the ~160 feet between the boundaries of DAM NP and the first row of bottom gear on the proposed site addressed the concerns he initially raised in 2018. Mr. Bryant also testified that individuals who are beginner sailors may still find it challenging to navigate in the ~160-foot area near the SE corner and DAM NP, but sailing would not be precluded, or

otherwise adversely impacted. If this proposal is granted, it will be modified in the manner depicted below, so that the distance between the eastern boundary of the proposed site and the northwestern boundary of DAM NP is at least ~160 feet. This modification is necessary to address concerns raised by Messrs. Bryant and Herz and eliminates the need to create and maintain a secondary gear free channel. The reduction means that corner C as originally proposed would no longer be part of the suspended proposal, would result in two new corners as listed below, and would revise the acreage from 5.25 to 4.76 acres.

Mid E: 44.027446, 69.53885

SE: 44.026778, 69.539523

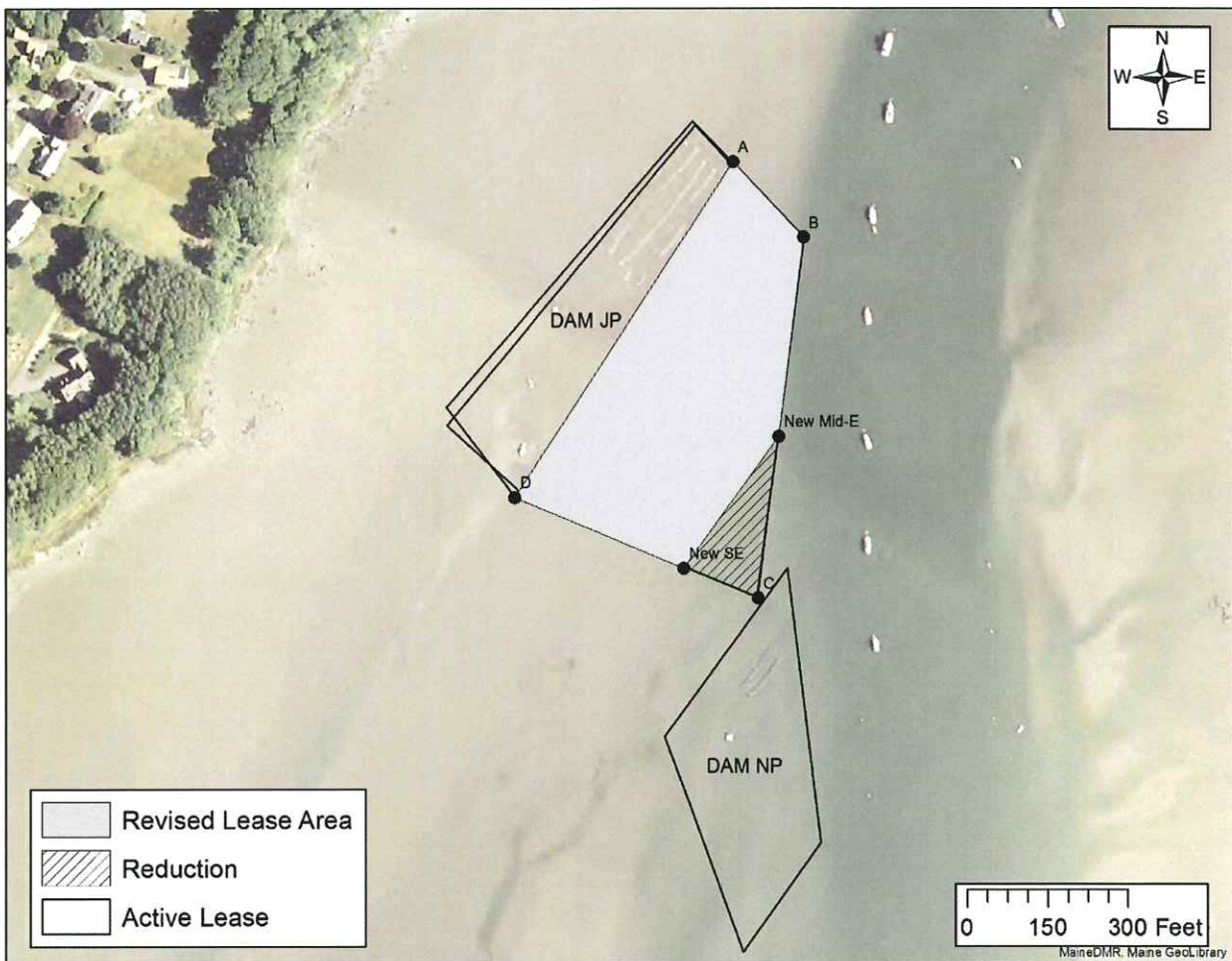


Figure 4: Reduction of the proposed suspended lease site with two new corners depicted (New SE and New MID-E). Image generated by DMR staff.

Mr. Herz raised some concerns about additional site marking, so it would be clear to individuals where they can navigate within or near the site. Mr. Herz indicated that the Harbor Committee has been

working with aquaculturists on marking requirements for lease sites. The Harbor Committee is interested in developing local marking requirements that would make it easier for mariners to distinguish between site types (gear versus no gear) and where navigation is possible. At the time of the hearing, there were no specific requirements available, but Mr. Herz indicated that the owner of Glidden Point Oyster Company had been part of those conversations.

Chapter 2.80 of DMR's regulations specify the marking requirements for lease sites. These regulations require that marked floating devices be deployed at each corner of the lease that is occupied, or at the outermost corners. The floating devices need to be marked with the lease identifier assigned by DMR and must include the word "SEA FARM" in letters that are 2 inches in height. The Commissioner does have the authority to place alternative marking requirements on a lease site when the provisions of Chapter 2.80 are unnecessary or impractical in certain lease locations.

However, based on the record, the Commissioner is not proposing alternative marking requirements. The modification to the SE boundary will, as noted above, create a gear free area between the proposal and the northwestern boundary of DAM NP. If this lease is granted, Glidden Point Oyster Company is highly encouraged to work with the municipality on marking the ~125-foot gear free corridor that would run NW-SE through the proposed lease site and existing lease, DAM JP. Furthermore, if the local marking requirements comply with the provisions of Chapter 2.80, the applicant and municipality may agree to mark sites in a manner not expressly contemplated in Chapter 2.80.

For the reasons described above and in consideration of the conditions placed on this site, should it be granted, the lease will not unreasonably interfere with navigation.

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

B. Riparian Access

During the site visit, DMR staff observed docks on the eastern and western shorelines of the Damariscotta River (SR 8). The eastern shoreline of the river is ~1,300 feet from the proposed site (SR 8). The eastern shoreline and proposed site are separated by the main navigational channel and tidally exposed mudflats (SR 8). Per the site report, it is unlikely the proposal would interfere with riparian access in the Town of Damariscotta (SR 8). At mean low water, the proposal is ~550 feet from the western shoreline of the river (SR 8). During the site visit, six docks and a boatyard were observed to the west of the proposal (SR 8). Two moorings were observed approximately 170 and 180 feet to the east of

the proposal (SR 9). Accessing these observed moorings from the west could be more challenging if the proposal is granted (SR 9).

This proposal is adjacent and to the east of DAM JP, which is authorized for suspended gear (SR 8). The proposal would not expand gear closer to the western shoreline than what is already permitted, but it would increase the amount of surface gear in the area (SR 8). Specifically, the proposal would add gear between the existing sites DAM JP and DAM NP (also permitted for suspended culture), which would eliminate a gear free course between the western shore and main navigation channel (SR 8).

However, as noted in section 3.A of this decision, the applicant proposed two gear free areas to facilitate navigation in the area and provide access to the western shoreline. For the reasons contemplated in section 3.A, if the lease is granted, DMR will condition one of the proposed corridors and reduce the SE boundary to provide for navigation between the proposed site and DAM NP.

DMR did not receive testimony from any riparian landowners about this proposal, but access to the western shoreline was contemplated as part of DMR's assessment of navigation. Based on the discussion and findings noted in section 3.A, it is unlikely that 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 September 27, 2019, no commercial or recreational fishing was observed (SR 10). However, clams and oysters are harvested from tidally exposed mudflats and ledges within the area (SR 10). The site report indicates that at extreme low water, sections of the existing lease DAM JP2 may be a harvest area. However, the lease is conditioned so that dragging and shellfish harvesting by anyone other than the lease holder is prohibited (SR 10). Recreational fishing also occurs in the area (SR 10). The applicant would permit fishing within the boundaries of the site, but this proposal is for suspended gear, which may make the site difficult for anglers to utilize. However, it may be possible to fish within the ~125-foot corridor within the boundaries of the proposed site, or other open areas around the proposed site.

Based on the absence of comments from fishermen and those who attended the hearing, it is reasonable to conclude that it is unlikely the proposal will unreasonably interfere with commercial or recreational fishing in the area.

Other aquaculture uses. There are five aquaculture leases and four Limited Purpose Aquaculture (LPA) licenses within 1,000 feet of the proposed site (SR 11). There are additional lease sites to the north and south of the proposal within the Damariscotta River (SR 11). DMR did not receive testimony from other aquaculture lease or license holders about this proposal.

Exclusivity. The applicant requests that the harvest of shellfish (except harvest associated with the lease operations) be prohibited within the boundaries of the lease site. If the proposal is granted, DMR will include this as a lease condition.

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other water related uses of the area.

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 site is mostly comprised of soft mud (SR 12). During their dive of the proposed lease site on September 27, 2019, DMR staff observed a variety of species including hermit crabs (*Pagurus sp*), American oysters (*Crassostrea virginica*),⁷ and filamentous algae species (SR 12).

Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed lease area is ~60 feet to the east of an area designated as Tidal Wading Bird and Waterfowl Habitat (SR 14). The proposal is located over 3,000 feet to the north of a ¼ mile buffer associated with a bald eagle (*Haliaeetus leucocephalus*) nest. DMR sent a copy of the lease application to MDIFW for their review and comment, and MDIFW indicated that “minimal impacts to wildlife are anticipated for this project.”⁸

Eelgrass (*Zostera marina*). Based on data collected in 2005, there is no eelgrass within the vicinity of the proposed lease site (SR 13). DMR did not observe any eelgrass during the site assessment (SR 13).

Based on the evidence, it appears that the aquaculture activities proposed for this lease site will not interfere with the ecological functioning of the area.

⁷ Ms. Nelson testified that the American oysters were likely part of the applicant’s current aquaculture operations.

⁸ CF: Email from R. Settele to C. Burke dated July 30, 2019

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 14).

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*) and northern quahogs (*Mercenaria mercenaria*) from Muscongus Bay Aquaculture in Bremen, Maine and Mook Sea Farm in Walpole, Maine (App 7). These facilities are approved sources of stock.

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, lights will not be utilized on the proposed site (App 3).

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

H. Noise

The applicant is proposing to utilize a 1/2-horsepower pump up to two days each week, for up to 3 weeks (App 3). The pump would most likely be utilized in June to help remove fouling debris from the floating mesh seed trays (App 3). The pump would run for less than hour during these periods and would be kept in a covered box to reduce noise and exposure to the salt water (App 3-4).

No comments or testimony were received to indicate there is concern with noise associated from the proposed operations. The applicant would also keep the pump in a covered box to help reduce the noise. Furthermore, the pump would only be utilized an hour or less, up to two times each week, for a three-week period in the summer.

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 proposed floating bags measure 30''L x 23''W x 4''H and the wooden trays measure 38''L x 23''W x 4''H (App 13 & 16). There are no support structures, such as barges or sheds, proposed for the site (App 1). Per DMR's site report, the proposed aquaculture gear types comply with DMR's height and visual impact criteria (SR 15).

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. Based on modifications to the southeastern boundary and a lease condition governing a navigational corridor, 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*) 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 4.76 acres to Glidden Point Oyster Company Inc for 10 years for the cultivation of American/eastern oysters (*Crassostrea virginica*) and northern quahogs (*Mercenaria mercenaria*) 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).⁹ The conditions placed on this lease are as follows:

- 1) Except with authorization from the lease holder, the harvest of shellfish is not permitted within the boundaries of the lease site.
- 2) The lease holder must maintain a marked 125-foot-wide navigational corridor that is oriented SW to NE across the site. The corridor must remain free of all gear.

⁹ 12 M.R.S.A §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."

7. REVOCATION 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: June 14th 2021



Patrick C. Keliher, Commissioner
Department of Marine Resources