

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Lessee: Georgetown Island Oyster  
Company, Inc**

Standard Aquaculture Lease Application  
Suspended culture of American oysters  
Robinhood Cove, Georgetown

**Acronym: SAS RC**

Docket # 2017-14

February 15, 2018

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

Georgetown Island Oyster Company Inc., a Maine company, applied to the Department of Marine Resources (“DMR”) for a ten-year standard aquaculture lease on .45 acres<sup>1</sup> located in Robinhood Cove, Sasanoa River, Georgetown, Sagadahoc County, Maine for the cultivation of American oysters (*C. virginica*) using suspended culture techniques. DMR accepted the application as complete on September 26, 2017. A public hearing on this application was held on February 1, 2018 at the Georgetown Town Hall in Georgetown, Maine. No one intervened in this case.

**1. THE PROCEEDINGS**

Notice of the hearing, copies of the application, and the DMR site report were provided to state and federal agencies for their review, the Town of Georgetown and the Georgetown Harbormaster, members of the Legislature, representatives of the press, and riparian landowners. Notice of the hearing was published in the *Times Record* on December 28, 2017 and January 18, 2018 and in the January edition of the *Commercial Fisheries News*.

Sworn testimony was given at the hearing by: Joshua Stoll, representing Georgetown Island Oyster Company, Inc., and Jon Lewis, Aquaculture Division Director. The applicant described the proposed project and Mr. Lewis described the site visit. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis. The evidentiary record before the Department regarding this lease application includes three exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.<sup>2</sup>

**LIST OF EXHIBITS**<sup>3</sup>

- a. Case file
- b. Application

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<sup>1</sup> Applicant originally requested .50 acres. The Department verified the coordinates and determined the site was .45 acres.

<sup>2</sup> In references to testimony, “Smith/Jones” means testimony of Smith, questioned by Jones.

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

- c. DMR site report

## **2. DESCRIPTION OF THE PROJECT**

### **A. Site Characteristics**

On October 19, 2017 DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease. The proposed lease site occupies shallow subtidal waters near the eastern shore of Robinhood Cove (SR 2). The uplands are characterized by a rocky shoreline, which gives way to a mixed mature forest (SR 2). At mean low water, the minimum distance from the southeast corner of the proposed lease site to the eastern shore of Robinhood Cove is ~150 feet (SR 6). Water depths, at mean low water, vary between ~3.4 and 3.9 feet (SR 5).

The bottom of the proposed site is characterized by a fine substrate (SR 9). The proposed lease is an area currently classified by the Department's Water Quality Classification program as "open/approved for the harvest of shellfish" (SR 12).

### **B. Site History**

Joshua Stoll, the owner of Georgetown Island Oyster Company, Inc., operates two LPAs within the boundaries of the proposed lease site.<sup>4</sup> The LPAs are held for the suspended culture of American oysters (*C. virginica*). Since their respective issuance, the LPAs have been renewed each year and the Department has not received any complaints regarding the operation of these licenses. The application notes that the proposed standard lease would replace the LPA sites (App 2).

### **C. Proposed Operations**

The purpose of the proposed lease is to increase existing production activity (App 8). Oysters will be cultivated using floating cages, which measure 38"L X 32"W X 8"H (App 5, SR 5). The cages will be deployed in rows that measure ~160 feet in length. During the growing season, which extends from April-November, each cage will occupy ~4" of the water column (App 4&8, SR 5). In the winter months, the cages will be submerged and extend ~8" from the bottom of the proposed site (App 4&8, SR 5). During harvest, the cages will be removed from the site and transported to a nearby dock where the oysters will be sorted and cleaned by hand (App 8). While reviewing the proposal, DMR staff noted that the mooring tackle would extend beyond the boundaries of the proposed lease site (SR 6). The Department requires all gear, including moorings, to be contained within the boundaries of a lease site. Mr. Stoll testified that he would reduce the number of cages so that all gear, including moorings, are contained within the boundaries of the

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<sup>4</sup> STOL114, STOL216



lease site (Stoll/Ellis). Mr. Stoll will use private property to access and service the site. In accordance with DMR Rule 2.64(C)(6), Mr. Stoll has obtained written permission from the riparian landowner to access and service the proposed lease site (App 17).

### **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 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 relating to color, height, and mass.

#### **A. Navigation**

Per the site report:

The proposed lease activities are not expected to interfere with commercial and recreational navigation in Robinhood Cove. The site is located more than 260 feet from the 6-foot contour and deeper channel waters. Especially at lower tidal stages, it is likely that boats navigating through the area would remain in the deeper water to the west and avoid the proposed lease site due to its shallow nature (SR 8).

In addition, the proposed lease site is more than 1,200 feet from the western shore of Robinhood Cove, and ~150 feet from the eastern shore of Robinhood Cove (SR 8). Given these distances, it is reasonable to conclude that navigation between the eastern and western shores would not be impeded (SR 8). During the review period, DMR did not receive any comments regarding navigation. Based on the absence of comments, it is reasonable to conclude that the municipality, riparian landowners, and others who received notice of this proposal do not have any concerns about navigation.

**I. Alternate Marking:** DMR Rule 2.80(2) specifies, in part: *marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners.*<sup>5</sup>

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#### <sup>5</sup> **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.

Mr. Stoll has requested an alternate marking plan. Instead of placing marker buoys at the corners of the proposed lease site, the markers will be placed “where the mooring connects to the line” (Stoll/Lewis). The purpose of Mr. Stoll’s request is to reduce the total amount of gear in the water (Stoll/Ellis). In accordance with DMR Rule 2.80(3), the Commissioner has reviewed Mr. Stoll’s request and will allow him to place marker buoys on the ends of the rows of gear. A condition will be added to the lease providing for this modification.

Based on the evidence, it is reasonable to conclude that navigation in the area will not be unduly affected by the presence of the proposed lease site.

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

### **B. Riparian Access**

During the site visit, staff observed one dock ~550 feet to the northwest of the proposed lease site (SR 7). A dinghy and oyster sorting gear were stored on floats attached to the dock (SR 7). Mr. Stoll uses the dock and floats as part of his existing operations and intends to utilize them in conjunction with the proposed lease operations (Stoll/Ellis). The two moorings are located ~550 and ~570 feet to the north of the proposed site (SR 7). The application indicates that the proposed lease site will not interfere “with the landowner’s current use of their property and does not impede egress to or from their existing dock or moorings” (App 10). Per the site report, “it is unlikely that the proposed lease will interfere with riparian ingress and egress because of the distance it is located away from existing infrastructure” (SR 7).

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

### **C. Fishing & Other Uses**

During the site visit, staff observed ~5 lobster pot buoys in deeper waters to the west of the proposed lease site (SR 8). Lobster traps were not observed within the boundaries of the proposed lease site (SR 8). No other commercial or recreational fishing activities were observed near the proposed lease area (SR 8). Recreational fishing may occur from the shore or by boat in the general

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2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
  3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
  4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.



vicinity of the proposed lease site (SR 8). In addition, clam and worm harvesting could occur in the tidally exposed mud flats between the proposed lease area and the eastern shore of Robinhood Cove (SR 8). However, “the proposed activities will not preclude access to the intertidal area” (SR 8). Mr. Stoll acknowledged that a variety of water dependent activities occur near the proposed site including commercial and recreational fishing, sailing, and kayaking (Stoll/Ellis). However, the activities do not occur within the boundaries of the proposed lease site (Stoll/Ellis).

During the review period, the Department did not receive any comments regarding fishing or other uses of the area. Based on the absence of comments, it is reasonable to conclude that the municipality, local fishermen, and others who received notice of this proposal do not have any concerns about fishing or other uses of the area.

**Exclusivity.** The applicant is not requesting exclusive use of the area.

**Other aquaculture leases.** Including the two LPAs held by the applicant, there are 12 aquaculture sites within one mile of the proposed lease site (SR 9). All of the sites are LPAs and are held for the cultivation of American oysters (*C. virginica*) (SR 9). Other than the two LPAs held by the applicant, the closest aquaculture site is located ~1,300 feet to the northwest of the proposed lease<sup>6</sup> (SR 9). Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

**Therefore, considering the number and density of aquaculture leases in the area, I find** that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

#### **D. Flora & Fauna**

**Site observations.** During the site assessment, Department staff observed mud shrimp (*Crangon septemspinosa*) and the occasional green crab (*Carcinus maenas*) on the bottom of the proposed lease site (SR 9). Based on data collected by the Department between 2001 and 2013, there are no historical records of eelgrass (*Zostera marina*) within the boundaries of the proposed lease site, and no eelgrass was observed during the Department’s site assessment (SR 10).

**Fisheries & wildlife.** DMR sent a copy of the lease application to the Maine Department of Inland Fisheries and Wildlife (MDIF&W) for their review and comment. MDIF&W indicated: “there are no MDIFW resources of concern in this area.”<sup>7</sup>

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, I find** that 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.

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<sup>6</sup> License BOL517.

<sup>7</sup> CF, email correspondence from MDIFW dated October 18, 2017.

**E. Public Use & Enjoyment**

Per the site report, “there are no public facilities within 1,000 feet of the proposed lease” (SR 12).

**Therefore, I find** that 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 application indicates that the source of stock for this proposed lease site is Muscongus Bay Aquaculture located in Bremen, Maine (App 1).

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

**G. Light**

The application indicates that no lights will be used at the proposed lease site and operations will take place during daylight hours (App 12). Night work would only occur in case of emergency (App 12).

**Therefore, I find** that the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

**H. Noise**

The applicant will use a 16’ skiff powered by a 60 hp gasoline engine to access and service the site (App 9, SR 13). Other than the skiff, no other powered equipment will be used on the proposed lease site (App 9).

Based on this evidence, it appears that any noise generated by operations on the site is unlikely to have a significant effect at the boundaries of the lease.

**Therefore, I find** that 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 floating cages are constructed with a yellow colored wire, black mesh inserts, and white PVC floats (SR 13). These hues satisfy the gear color requirements specified in regulation. The proposed gear is 8” in height, which is within the 20-foot height limitation for any aquaculture structures (SR 13).

**Therefore, I find** that the equipment 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 oysters (*C. 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 requested lease of .45 acres to Georgetown Island Oyster Company Inc. for ten years for the cultivation of American oysters (*C. 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)<sup>8</sup> 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. In lieu of the requirements of DMR Rule 2.80(2), the lease site may be marked with buoys on the ends of each row of gear. The lease site must be marked in accordance with all other requirements of DMR Rule 2.80 and the U.S. Coast Guard.
- b. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

#### **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: 2/15/18

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

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<sup>8</sup> 12 MRSA §6072 (7-B) states: "The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose."