

Standard Aquaculture Lease Application  
Suspended Culture of Shellfish  
Damariscotta River, South Bristol

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

Mook Sea Farms, Inc. (the applicant), applied to the Department of Marine Resources (DMR) for a 20-year standard aquaculture lease on 2.97 acres.<sup>1</sup> The proposed site is located south of Wiley Point in the Damariscotta River, South Bristol, Lincoln County, Maine, for the cultivation of American/eastern oysters (*Crassostrea virginica*), surf clams (*Spisula solidissima*), sea scallops (*Placopecten magellanicus*), bay scallops (*Argopecten irradians*), and northern quahogs (*Mercenaria mercenaria*) using suspended and bottom culture techniques.

#### 1. THE PROCEEDINGS

The pre-application meeting for this proposal was held on February 14, 2019 and the scoping session was held on April 17, 2019. Mook Sea Farms, Inc. submitted the final application to DMR on August 2, 2019, which was deemed complete by DMR on August 22, 2019. Notice of the completed application was provided to riparian landowners within 1,000 feet of the proposed site, the Town of South Bristol, including the Harbormaster, and other state and federal agencies. DMR's site report was issued on March 31, 2020.

A public hearing on this application was tentatively scheduled for May 18, 2020. However, due to the COVID-19 pandemic, the tentative May 18, 2020 hearing was cancelled before DMR could process public and personal notice of the hearing. The hearing was not immediately rescheduled because DMR was unsure when it would be safe to conduct the proceeding. Due to the uncertainty and evolving situation regarding COVID-19, and to limit any potential public health risks associated with gathering in groups, DMR elected to conduct this proceeding remotely, using a virtual meeting platform<sup>2</sup>. The remote hearing was scheduled for November 16, 2020 at 3:00pm, and public notice was published in the October 15, 2020 and November 5, 2020 editions of the *Lincoln County News*. Notice of the hearing was also provided to the Town of South Bristol 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-

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<sup>1</sup> Applicant originally requested 3.0 acres. Based on the provided coordinates, DMR calculated the area at 2.97 acres.

<sup>2</sup> The Department of Marine Resources uses Microsoft Teams for all virtual conferencing, so this was the platform used for the Mook Sea Farms, Inc. remote hearing.

serve. The public notice for the November 16 hearing indicated that the proceeding would be conducted remotely and directed interested persons to contact DMR to sign up to participate in the proceeding. Each person who contacted DMR to participate was provided with instructions on how to join the hearing.

The remote hearing on the application submitted by Mook Sea Farms, Inc. was held on November 16, 2020, and sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
Jeff Auger	Applicant, Mook Sea Farms, Inc.
Marcy Nelson	Acting Director, DMR Aquaculture Division

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

**Exhibits**

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

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

**2. DESCRIPTION OF THE PROJECT**

**A. Proposed Operations:**

The applicant proposes to culture American/eastern oysters (*C. virginica*), surf clams (*S. solidissima*), sea scallops (*P. magellanicus*), bay scallops (*A. irradians*), and northern quahogs (*M. mercenaria*) using suspended culture techniques. The application submitted by Mook Sea Farms, Inc. indicated that both suspended and bottom culture techniques would be used on the site, however, at the hearing, Mr. Auger testified that there is no bottom culture planned for the site, and shellfish will be grown using only suspended culture (Auger, testimony). The applicant proposes to deploy a maximum of thirty strings, each measuring 360’ long, that will contain either OysterGro cages or bottom cages. Each string will be spaced 12’ from any other string and contain up to 50 bottom cages or OysterGro cages (App 39). During the winter, floating cages will be sunk to the bottom or towed to Mook Sea Farm, Inc.’s Peters Island lease site (App 9).

Oyster seed will be stocked on the site between May and August, while scallops and clams will be stocked later in the season (typically July through September). Typical other routine on-site activities will include raising cages from the bottom in the spring or sinking cages in the winter, flipping cages to control fouling, attending to any cage maintenance, and removing and replacing bags from the cages for grading and harvesting (App 8). Product will be harvested by removing the bags from within each cage and pulling the bags into the boat. Bottom cages are first raised to the surface before bags are removed for harvesting (App 9). Between seeding/stocking, site tending and maintenance, and harvesting the applicant expects to be on site daily, for varying amounts of time (App 8). During his testimony, Mr. Auger also mentioned that the site would be used as a 'stop over' for strings of cages that are in route from other lease sites held by the applicant in the Damariscotta River to their lease site near Peters Island for overwintering.

For harvesting, seeding, and maintaining gear the applicant intends to use large, flat bottom skiffs that are powered with 4 stroke, 150-200hp engines (App 10). For flipping, sinking, and raising cages the application states they will use double hull vessels powered by smaller 4 stroke engines (App 10). Outside of the outboard boat engines, the applicant is proposing the use of a 10 hp gas engine that is used to operate the hydraulic flipper and winches that are used when flipping cages or raising cages from the bottom in the spring. A small generator is also proposed to be used for some cage maintenance (App 10).

In the application, Mook Sea Farms, Inc. indicated that they intend to possess, transport, or sell whole or roe-on scallops (App 2). The applicant will need to obtain a Memorandum of Understanding from the DMR Bureau of Public Health and may be responsible for covering all costs associated with any biotoxin testing that may be required. According to the case file associated with this application, the applicant has been in contact with DMR's Bureau of Public Health.<sup>3</sup>

## **B. Site Characteristics**

On September 27, 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 south of Wiley Point, and north of Fitch point, along the eastern shore of the Damariscotta River (SR 3). The South Bristol shoreline is located to the east of the proposed lease site, while the Edgcomb and Newcastle shorelines are across the

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<sup>3</sup> CF: email from K. Kanwit to [DMRAquaculture@maine.gov](mailto:DMRAquaculture@maine.gov) on September 9, 2019 in response to a request for review and comment on the application.

river to the west (SR 3). The nearby surrounding uplands are steep and wooded, and residential and commercial properties, including the applicant's shore-based facilities, are visible from the proposed lease boundaries (SR 3). Docks and moorings are located along the South Bristol shoreline to the north and south of the proposed lease (SR 3).

During DMR's site visit, depths at the corners of the proposed site ranged from 16.5 to 26 feet, increasing in depth from the east to west. Correcting for tidal variation, at mean low water, depths across the site range from approximately 7.2 to 16.7 feet (SR 6). The bottom of the proposed lease is composed of soft mud, with boulders present in the eastern portion of the site, and some shell hash scattered sporadically (SR 7).

### **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 site is located south of Wiley Point, and north of Fitch point, along the eastern shore of the Damariscotta River (SR 3). The marked navigation channel, that runs north to south within the river, lies to the west of the proposal (SR 10). The proposed lease parallels the eastern shoreline of the river, and if granted, approximately 2500 feet would separate the proposal from the river's western shoreline (SR 10). DMR's site report notes that this distance likely provides adequate room for vessels navigating north and south within the river. The applicant indicated that boating primary occurs within the main channel of the river, and that the proposed lease is approximately 1,072 feet from the channel (App 16).

In his testimony, Mr. Auger stated that the vessels that are navigating within the area of the proposed lease are generally headed to private docks along the Damariscotta River's eastern

shore, and that due to the presence of a ledge along the north boundary of the proposal, vessels generally avoid venturing too close to the shore (App 16, Auger, testimony). The site report and Ms. Nelson's testimony also indicated that due to this ledge, vessels likely avoid transiting directly through the lease area (SR 10, Nelson testimony).

DMR did not receive any comments or testimony to suggest that the proposed site would interfere with navigation.

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

### **B. Riparian Access**

Commercial and residential properties line both the eastern and western shores of the Damariscotta River (SR 8). Because the western shore of the river is located approximately 2500 feet away from the proposed site, the proposal is unlikely to interfere with riparian ingress and egress along the western shore of the river (SR 8).

During their visit to the site, DMR staff observed docks and moorings to the north and south of the proposal, along the river's eastern shoreline (SR 8). The closest dock to the proposal is approximately 260 feet to the northeast and is owned by the applicant (SR 8). Moorings were also observed nearby this dock, and at the hearing, Mr. Auger testified that these moorings are owned by Mook Sea Farms, Inc. DMR staff also observed two docks and associated moorings to the north of the applicant's dock. Given their location, the proposed lease is unlikely to interfere with access to and from infrastructure north of the proposal (SR 9). Two docks were observed to the south of the proposal, also along the eastern shore of the river (SR 9). The site report notes that the closest of those docks is approximately 500 feet away from the proposal and given this distance it is unlikely the proposed lease would impact access to these docks (SR 9).

Mr. Auger's testimony, as well as the site report, referenced a mooring that is approximately 60 feet south of the proposed lease (Auger testimony, SR 9). While the site report indicated that the proposal could impact access to this mooring, Mr. Auger's testimony indicated that the applicant does not believe their proposal will impede access to this mooring. According to Mr. Auger, all of Mook Sea Farms' leases have moorings in their vicinity, and one of their leases also has a pre-existing mooring within the boundary of the lease site. Mr. Auger testified that there is ample room to the south of the proposal for access, or for this mooring to be re-located if the owners feel they needed more space (Auger, testimony). During questioning, Mr. Auger indicated that there is usually a dinghy or small motorized pleasure craft attached to the mooring (Auger, testimony). According to the application, access to this mooring appears to

be from shore (App 16). No testimony was offered from the owner of this mooring, or any riparian landowners to indicate that there was concern regarding access to this mooring.

DMR's site report, and Ms. Nelson's testimony, did note that while the proposed lease is unlikely to interfere with access to the eastern shore of the Damariscotta river, it sits parallel to the South Bristol shoreline and spans the shorefront land of two parcels, lots 24 and 24-A on South Bristol Tax Map 30 (SR 9). Ms. Nelson testified that at mean low water, there would be approximately 105 feet between the southeastern edge of the proposal and the shore, and approximately 140 feet between the northeastern edge of the proposal and the shore (Nelson, testimony). As a result, it could interfere with installation and subsequent use of docks and moorings associated with those two parcels (SR 9). One individual who asked a question but was not the owner of either lot 24 or 24-A, indicated that one of these parcels was for sale, and expressed concern about a future owner and their ability to install a dock if the lease were approved. Mr. Auger testified that the applicant wants to be amenable to riparian ingress and egress and is more than willing to accommodate the needs of a riparian land owner who wants to install a dock, and would be open to adjusting where their first line of surface gear is deployed to accommodate the installation of a dock (Auger, testimony). Although he was not under oath, Bill Mook, the owner of Mook Sea Farms, Inc., re-iterated that they are happy to work with any future landowner who wants to install a dock if it would not unreasonably interfere with what they're trying to do with the proposed lease. No testimony was provided from riparian landowners or others to indicate concern regarding riparian ingress and egress or the potential use of these shorefront parcels. No testimony was presented to indicate current owners of lots 24 or 24-A have plans to install a dock or mooring.

Because Mook Sea Farms, Inc. is willing to accommodate the future installation of a dock on lots 24 and 24-A, a condition will be added requiring the leaseholder to accommodate the future installation of a dock.

**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 September 27, 2019 site visit DMR staff observed lobster fishing in the deeper water to the west of the proposed site (SR 10). One lobsterman's buoys were observed adjacent to the western boundary of the lease, and two were located within the boundary of the proposal (SR 10). The application states that there is lobstering in the Damariscotta River, and near the lease site between May and September (App 16). Mr. Auger's testimony stated that while there is lobster fishing near the site, and occasionally a lobster pot inside the proposed

lease boundaries, other areas of the Damariscotta are more heavily fished, and lobster traps could still be placed around the perimeter of the lease (Auger, testimony).

DMR staff did not observe recreational hook and line fishing during their visit to the site, but the site report notes that it is possible this type of fishing occurs in the vicinity of the proposed lease (SR 10). The application stated that they have observed very little recreational fishing in or adjacent to the proposed site (App 16), but according to Mr. Auger's testimony, recreational hook and line fishing would not be excluded from within the lease boundaries (Auger, testimony).

No comments or testimony was provided to indicate that the proposed lease would interfere with commercial or recreational fishing in the area. DMR sent a Harbormaster Questionnaire to the Town of South Bristol on September 9, 2019, but no response was received.

Based on the absence of comments from fishermen and the harbormaster for the Town of South Bristol, it is reasonable to conclude that there are no concerns about interference by the site with commercial or recreational fishing. Based on the evidence, it is unlikely the proposal will unreasonably interfere with commercial or recreational fishing in the area.

**Other aquaculture uses.** There are no other aquaculture leases or Limited Purpose Aquaculture (LPA) licenses within 1,000 feet of the proposed site. The closest active aquaculture to the proposed lease is an LPA license that is approximately 1,930 feet away (SR 10).

**Exclusivity.** The application requests that the placement of moorings or other uses requiring gear that might interfere with the site's moorings or cages be excluded, and that no other shellfishing activities take place on site. Navigation in and around the site by small boats or kayaks, and recreational hook and line fishing would not be excluded.

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

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

**Fisheries and Wildlife.** The bottom of the proposed lease is composed of soft mud, with boulders present in the eastern section (SR 11). During their dive of the proposed lease site on September 27, 2019, DMR staff observed many species, including, but not limited to, green crabs, periwinkles, hermit crabs, horseshoe crabs, filamentous algae species, and macro algae species (SR 11). While not observed during DMR's site visit, the application states that striped bass, mackerel and alewives also frequent the area (App 14).

Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed lease area is approximately 1,950 feet to the northeast of Tidal Wading

Bird and Waterfowl Habitat (SR 13). The proposed lease area is also over 1 mile to the north of the ¼ mile buffer associated with bald eagle (*Haliaeetus leucocephalus*) nests in Maine (SR 13). DMR sent a copy of the lease application to MDIFW for their review and comment, and MDIFW commented that “minimal impacts to wildlife are anticipated for this project.”<sup>4</sup>

**Eelgrass.** According to data collected in 2005, the closest eelgrass beds (*Zostera marina*) to the proposed site were approximately 780 feet to the south (SR 12). On DMR’s visit to the site on September 27, 2019, no eelgrass was observed (SR 12). The proposal was also shared with the United States Army Corps of Engineers (ACOE), but no comments were received, and ACOE did not attend the lease hearing.

Based on the evidence in DMR’s site report, and because no comments or testimony was provided to indicate concerns about the proposed site and flora and fauna in the area, it appears that the aquaculture activities proposed for this lease site will not interfere with the ecological functioning of the area.

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

#### **E. Public Use & Enjoyment**

There are no beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal government within 1,000 feet of the proposed lease site (SR 14). The closest publicly owned facility is Dodge Point Preserve, which is approximately 3,000 feet to the northwest of the proposed lease (SR 14).

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

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

#### **F. Source of Organisms**

The applicant intends to obtain stock for American/eastern oysters (*Crassostrea virginica*), surf clams (*Spisula solidissima*), sea scallops (*Placopecten magellanicus*), bay scallops (*Argopecten irradians*), and northern quahogs (*Mercenaria mercenaria*) from Mook Sea Farms in Walpole, Maine.

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<sup>4</sup> CF: Email from R. Settele to C. Burke dated September 12, 2019



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

### **G. Light**

According to the application, there will be no lights or nighttime activities on the site (App 10). Working before or after daylight hours would be for emergency purposes only, storm preparations, or dealing with gear problems that require immediate action (App 11).

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

### **H. Noise**

The applicant proposes to use flat bottom skiffs, powered by four-stroke engines ranging from 150-200 horsepower, to access the proposed site (App 10). In addition, the applicant intends to use a hydraulic cage flipper and winches, powered by a 10-horsepower gas engine, for flipping and raising cages (App 10). A small generator is also proposed to be used on the site for cage maintenance (App 10). The application indicates that the expected noise on site is expected to be less than what a conventional lobster boat hauling gear produces (App 10).

At the hearing, a riparian landowner expressed concern regarding noise generating from Mook's land-based facility that is nearby the proposed lease site but did not express specific noise concerns about the proposed aquaculture site and did not offer testimony. Mr. Auger reiterated that Mook Sea Farms, Inc. is using quieter four stroke engines, and he expects that the hydraulic cage flipper, and small generator are not any louder than lobster boats that may be out on the river. Mr. Auger also suggested that Mook Sea Farms is happy to have conversations regarding noise at their facility with their neighbors.

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

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

### **I. Visual Impact**

The application proposes to use OysterGro™ cages and bottom cages on the lease site (App 5). No support structures, such as barges or sheds would be located on the proposed site (App 6). Per DMR's site report, the proposed aquaculture operations comply with DMR's height and visual impact criteria.

**Therefore**, equipment and structures proposed for the lease site will comply with the

visual impact criteria contained in DMR Regulation 2.37 (1) (A) (10).

#### **4. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area, taking into consideration the number and density of aquaculture leases in the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source American/eastern oysters (*Crassostrea virginica*), surf clams (*Spisula solidissima*), sea scallops (*Placopecten magellanicus*), bay scallops (*Argopecten irradians*), 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 2.97 acres to Mook Sea Farms, Inc. for 20 years for the cultivation of American/eastern oysters

(*Crassostrea virginica*), surf clams (*Spisula solidissima*), sea scallops (*Placopecten magellanicus*), bay scallops (*Argopecten irradians*), 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**

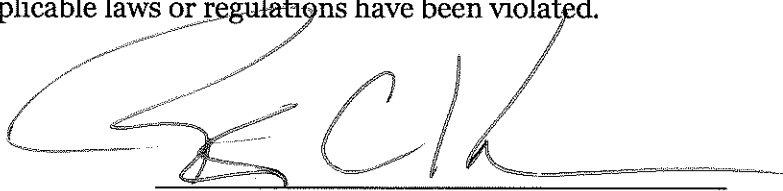
The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072(7-B).<sup>5</sup> The following condition has been imposed on this lease.

1. Should the owners of lots 24 or 24-A, on South Bristol Tax Map 30, receive authorization to construct docks on their properties, the leaseholder is required to reasonably accommodate the installation of such docks in accordance with any specifications authorizing the docks. Should adjustments in gear layout be necessary, the leaseholder shall contact DMR to determine if an amendment to the lease is needed.

**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: 2/5/2021

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

<sup>5</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."