

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Norumbega Oyster Inc.  
DAM DUx**

Experimental Aquaculture Lease Application  
Suspended Culture of American Oysters  
Damariscotta River, Newcastle

November 19, 2018

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

Norumbega Oyster Inc., a Maine company, applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease on 3.93 acres located in the Damariscotta River, east of Upper Dodge Cove, Newcastle, Lincoln County, Maine, for the suspended culture of American oysters (*Crassostrea virginica*). DMR accepted the application as complete on April 12, 2018. One request for a public hearing was received during the comment period. No hearing was held.<sup>1</sup>

**1. THE PROCEEDINGS**

Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the towns of Damariscotta and Newcastle, and others on the Department's mailing list. Notice of the application and comment period was published in the *Lincoln County News* on May 3, 2018.

The evidentiary record before the Department regarding this lease application includes the application, the Department's site report dated September 14, 2018, and the case file. The evidence from these sources is summarized below.<sup>2</sup>

**2. DESCRIPTION OF THE PROJECT**

**A. Proposed Operations**

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<sup>1</sup> For experimental leases, the Department is required to hold a public hearing if five or more written requests are received. The Department received one request for a hearing and comment from Wendy Strothman. Ms. Strothman was concerned about odor, the adequacy of the helix moorings, and the reason for the experimental lease. Ms. Strothman's letter also raised concerns about property values. The Department wrote to Ms. Strothman to address her concerns. Copies of the correspondence are in the case file.

<sup>2</sup> These sources are cited below, with page references, as CF (case file), App (application), and SR (site report).

The purpose of the proposed lease is to explore the commercial feasibility of cultivating American oysters using suspended culture techniques (App 4). The applicant plans to deploy a total of 450 floating cages that are secured to six longlines (App 5). The proposed spacing between each row of cages is 25-30 feet (App 5). The applicant will control biofouling by flipping the cages every 7 to 14 days (App 5). During the winter months, the cages will be submerged on the bottom of the proposed lease site (App 5). The applicant will access and service the site from a 22-foot Carolina skiff and a pontoon raft (App 5).

### **B. Site Characteristics**

On August 2, 2018, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an experimental aquaculture lease. The proposed site occupies subtidal waters east of Dodge Upper Cove in Newcastle, Maine (SR 2). The uplands to the immediate west and south of the proposed lease site are an undeveloped mix of mature forests, which are owned by the State of Maine (SR 2). The shoreline to the north of the proposal contains several homes (SR 2). At mean low water, the distance from the southwest corner of the proposed lease to the nearest point of land is ~120 feet (SR 6). Calculating for mean low water, depths ranged from 7.8 feet at the northwest corner to 26 feet at southeast corner (SR 7). The bottom of the proposed site is characterized by soft mud (App 6).

## **3. STATUTORY CRITERIA & FINDINGS OF FACT**

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner 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, or docking facilities 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.

### **A. Riparian Access**

Per the site report:

At low water, the proposal is a minimum of ~120 feet and a maximum of ~175 feet from the state-owned conserved land known as Dodge Point. Recreational boaters, particularly kayaks and canoes, may land on the beach to the southeast or, more likely, utilize the dock located greater than 3,000 feet to the south (SR 8).

Therefore, if the proposed lease is granted, it will not unreasonably interfere with access to and from the Dodge Point property (SR 8).

The closest observed private residence and dock was approximately 770 feet to the northwest of the proposal (SR 8).<sup>3</sup> The proposal is separated from the private residence and dock by a tidally exposed finger of land (SR 8). If the lease is granted, riparian ingress and egress from the dock would remain unimpeded (SR 8). Four additional docks were observed to the northwest of the proposed site (SR 8). Per the site report: “the proposed lease, if granted, would not restrict access to these properties.” (SR 8).

The closest observed mooring was approximately 660 feet to the northeast of the proposal with several other moorings located further to the northeast (SR 9). There would be adequate room for vessels to navigate between the proposed lease and observed moorings (SR 9). Based on this evidence, activities at the proposed lease site in subtidal waters are unlikely to hamper access to and from the shore.

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

## **B. Navigation**

Per the site report: “the Damariscotta River is heavily traveled year-round by commercial and recreational mariners” (SR 9). The proposed site is located on the western edge of the navigational channel in this section of the river, and is situated between the 10 and 30-foot contour lines. If the lease is granted, “more than 800 feet to the east of the proposal would remain available for navigation at all tidal stages” (SR 9). During the review period, the Department did not receive any comments concerning navigation.

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<sup>3</sup> The site report indicates that this is a straight-line distance.



**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.

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

During the site visit, staff did not observe any lobster buoys or other evidence of commercial fishing within the boundaries or vicinity of the proposed lease site (SR 9). However, it is likely that soft shelled clams (*Mya arenaria*) and polychaete worms are harvested from the tidally exposed mud flats to the west of the proposed lease area (SR 9). If the proposed lease is granted, it will “not hinder the ability of harvesters to access the surrounding intertidal” (SR 9). Department staff observed a recreational angler fishing from the beach at Dodge Point. If the lease is granted, it will not hinder access to or fishing from Dodge Point (SR 9). In addition, the applicant would permit recreational fishing within the boundaries of the proposed lease site (App 6). During the review period, the Department did not receive any comments about how the proposal may affect recreational or commercial fishing activities.

**Exclusivity.** To avoid gear conflicts, the applicant requests that lobster fishing and dragging be prohibited within the boundaries of the proposed lease.<sup>4</sup> Such a restriction is reasonable to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). A condition reflecting this restriction will be included in the lease.

**Other aquaculture uses.** There are three aquaculture sites located within 1,000 feet of the proposed lease site (SR 10).<sup>5</sup> There is one Limited Purpose Aquaculture (LPA) license within the boundaries of the proposed lease site. The LPA is held by the applicant for the suspended culture of shellfish (SR 10).<sup>6</sup> Per the application, the LPA license will be relinquished if the lease is granted (App 6). There is an LPA for the suspended culture of shellfish approximately 530 feet from the proposed lease site<sup>7</sup>, and an aquaculture lease for the bottom culture shellfish approximately 820 feet from the proposed lease area (SR 10). The respective LPA and lease holder were notified of the proposed lease site and they did not submit any comments.

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<sup>4</sup> CF: Email for E. Peters to A.Ellis dated October 26, 2018.

<sup>5</sup> See page 10 of the site report for a list of aquaculture sites within one mile of the proposal.

<sup>6</sup>LPA acronym: EPETE317

<sup>7</sup> Lease acronym DAM WP

**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**

**Site Observations.** During the site visit, double-crested cormorants (*Phalacrocorax auritus*) and common terns (*Sterna hirundo*) were seen perched on the cages associated with the applicant's existing LPA license site (SR 11). Common terns and gulls (*Larus sp.*) were observed along the Dodge Point shoreline (SR 11). One juvenile harbor seal (*Phoca vitulina*) was documented near the proposal. Based on historical eelgrass (*Zostera marina*) data, in 2005, the closest eelgrass beds were over 1,000 feet to the east of the proposed area (SR 12). The proposed lease activities would not cause shading or other physical disturbances of the resource (SR 12).

**Fisheries and Wildlife.** Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the proposed site is located approximately 110 to 160 feet from an intertidal area designated Tidal Waterfowl and Wading Bird Habitat (SR 12). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated that "minimal impacts to wildlife are anticipated."<sup>8</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**, 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**

At mean low water, the proposed lease site is approximately 120 feet to the east of Dodge Point, which is owned by the State of Maine Bureau of Parks and Lands (SR 13). The associated dock is more than 3,800 feet to the south of the proposal (SR 13). The Department did not receive any comments from the Bureau of Parks and Lands concerning this lease proposal. Per the site report, "there are no other beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site" (SR 13).

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<sup>8</sup> CF: Email from J. Perry (Environmental Review Coordinator, MDIFW) to C. Burke dated May 8, 2018.

**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, or docking facilities owned by municipal, state, or federal governments.

**F. Source of Organisms**

Seed stock for the proposed lease site will be sourced from Muscongus Bay Aquaculture located in Bremen, Maine (App 1). This is an approved source of seed stock.

**Therefore**, the applicant has demonstrated that there is an available source of American oysters (*C. virginica*) to be cultured for the lease site.

**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 riparian ingress and egress.
- 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 existing aquaculture uses 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.

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-A.



## 5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.93 acres to Norumbega Oyster Inc., for three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee<sup>9</sup>; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessee 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. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (D) 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 MRSA §6072-A (15)<sup>10</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. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- B. Lobster fishing and dragging are prohibited within the boundaries of the proposed lease site.

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<sup>9</sup> DMR Rule 2.64 (14) provides:

“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

<sup>10</sup> 12 MRSA §6072-A (15) provides that:

“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. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

C. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

**7. REVOCATION OF EXPERIMENTAL LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

**Dated:**

11/19/18



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