

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Maine Oyster, Inc.

Standard Aquaculture Lease Application
Bottom Culture of Shellfish
Upper Sheepscot River, Newcastle, Maine

SHE LE5

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Maine Oyster, Inc. applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease comprised of two tracts totaling 12.18¹ acres in the Upper Sheepscot River, east and south of Lehman Island, in Newcastle, Maine. The proposal is for the bottom culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on March 5, 2020, and a scoping session was held on January 11, 2021. DMR accepted the final application as complete on May 20, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of Newcastle, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in the *Lincoln County News* on July 13 and August 3, 2023. The public notice for the hearing indicated that the proceeding would be conducted in-person and directed interested persons to register to provide testimony or ask questions during the proceeding. No applications for intervenor status were received by the Department. A public hearing on this application was held on August 23, 2023. One individual registered to attend the hearing and indicated they did not intend to provide testimony.

Sworn testimony was given at the August 23, 2023, hearing by Eric Horne, applicant.

Additional DMR staff attended the hearing but did not offer testimony. No members of the public attended the public hearing and the individual who initially registered to attend did not come to the hearing. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes three exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from all sources is summarized below.²

¹ Applicant originally requested 10.0 acres. DMR calculations indicate Tract 1 is 8.60 acres and Tract 2 is 3.58 acres, totaling 12.18 acres.

² Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

LIST OF EXHIBITS³

1. Case file
2. Application
3. DMR site report, issued on June 15, 2023

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On September 16, 2021, DMR scientists assessed the proposed lease site starting at approximately 11:30 am. During the assessment of the lease proposal, a SCUBA transect was conducted. The proposal is comprised of two tracts in the subtidal waters of the Sheepscot River. Tract 1 is located between Lehman Island and Cunningham Island. The boundaries of Tract 1 closest to shore measure 20 feet to Cunningham Island to the east and 55 feet to Lehman Island to the west at mean low water (MLW). DMR observed one building with a dock on the northeast side of Tract 1 on Cunningham Island. The surrounding area consists largely of mixed forest. Tract 2 is southwest of Lehman Island and is outside from the main navigational channel of the river (SR 2).

At the time of the site visit, the tide was outgoing with the next low tide predicted at 2:06 PM. Depths of the proposed lease site ranged from 4.2 feet to 7.2 feet along the northwest and northeast corners of Tract 1, respectively. Correcting for tidal variations derives water depths at MLW to range from 1.1 feet to 4.1 feet and at the next high tide to range from 10.1 feet to 13.1 feet (SR 2).

³ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

Maine Oyster INC, Sheepscot River, Newcastle Maine

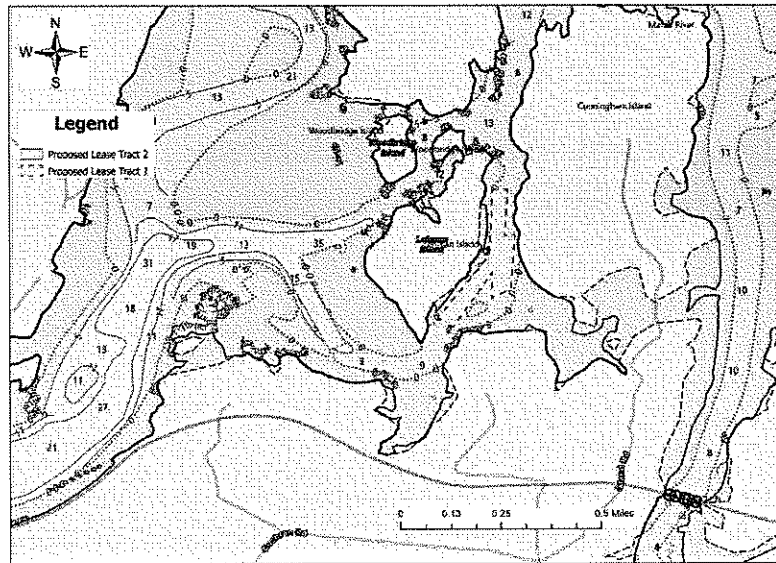


Figure 1: Proposed lease site, with tracts depicted, and surrounding area. Image taken from DMR site report.

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*Crassostrea virginica*) on the proposed lease site using bottom culture techniques (App 1 and 2). Oysters will be seeded on the bottom and no gear will be deployed on-site (App 6, 7).

Seeding will take place in the fall and routine tending/maintenance will consist of site visits approximately every six months. Oysters will be harvested with a skiff-drawn bottom drag approximately once per week year-round (App 7, Horne testimony). The applicant intends to utilize a 24-foot vessel in site operations (App 8).

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 upon determining that the project will not unreasonably interfere with: the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or 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. Riparian Access

DMR's Chapter 2 regulations require the Commissioner to examine whether riparian owners can safely navigate to their shore. In examining riparian owner ingress and egress, the Commissioner "shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures." Chapter 2, § 2.37.

During the site visit conducted on September 16, 2021, DMR observed a dock and boathouse between the two tracts, as well as houses with two docks along the western shore of Lehman Island. Along the western shore of Cunningham Island, DMR scientists observed and obtained coordinates for a dock (Figure 3). They also observed 3 orange buoys off Lehman Island and the mainland within proximity of Tract 1. There was one white buoy observed in the middle of Tract 1 (SR 5). According to the application and available GIS data, the observed docks are approximately 360 feet or more from the lease boundaries (App 12).

No gear or other structures are proposed as part of the operations. A Harbormaster Questionnaire was sent to the Harbormaster for the Town of Newcastle. No response was received. During the public hearing, no one offered testimony or evidence regarding riparian ingress and egress.

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

B. Navigation

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area. There was one boat observed during the site visit on September 16, 2021. The channel between Lehman Island and Cunningham Island, where Tract 1 is proposed, is approximately 170 feet to 200 feet wide at MLW. The channel between Lehman Island and the landmass to the south, where Tract 2 is proposed, is approximately 300 feet to 430 feet wide at MLW. The applicant does not intend to use gear on the proposed site, except the required site markers (SR 6).

During the public hearing, no one offered testimony or evidence regarding navigation.

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

C. Fishing & Other Uses

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area.

Fishing. The applicant stated that there is “extremely light” recreational fishing in the area and that any worm and clam harvesters operate outside of the proposed lease boundaries (App 12). During DMR’s site assessment, scientists observed two lobster buoys north of Tract 2. DMR scientists did not observe lobster (*Homarus americanus*) within the boundaries of the proposal. One boat observed during the site visit appeared to have two shellfish harvesters aboard. DMR scientists observed clams, likely quahog (*Mercenaria mercenaria*), within both tracts but did not observe any shellfish harvesting at the time of the site assessment (SR 7).

No testimony was provided at the public hearing concerning impacts to commercial or recreational fisheries. There is no evidence in the record to indicate there is any significant fishing activity within the lease area.

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

Other aquaculture uses: The applicant has one existing standard lease site, SHE LE, and three experimental lease sites, SHE LE2X, SHE LE3X, and SHE LE4X, within 1,000 feet of the proposal. Should the proposal be granted, the applicant plans to relinquish these sites and consolidate them under this proposal.

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. The application states there is kayaking in the project vicinity. No other water-related uses were noted as observed during the site visit.

As no gear will be deployed on-site, DMR finds that it is unlikely that other water-related uses of the area will be impacted.

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

D. Flora & Fauna

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna.

Site observations. During the site visit on September 16, 2021, an underwater camera was used to document the epibenthic ecology of the area. The relative abundance of epibenthic macro flora and fauna observed throughout the video transects, along with marine species observed from the surface, is included below (SR 8,9).

Species Observed	Species Abundance
American Oyster (<i>Crassostrea virginica</i>)	very common
Blue mussel (<i>Mytilus edulis</i>)	common
Horseshoe Crab (<i>Limulus polyphemus</i>)	common
Cancer Crab (<i>Cancer</i> spp)	common
Green Crab (<i>Cancer maenas</i>)	common
Quahog (<i>Mercenaria mercenaria</i>)	common
Razor clam (<i>Ensis directus</i>)	less common

Eelgrass. Historical records, collected by DMR in 1997, indicate the presence of eelgrass beds within the proposed lease area of Tract 1. Eelgrass was also observed within the 1,000-foot buffer of Tract 2 in 1997. Eelgrass was also assessed in 2010 and none was present within the proposed lease area. During the site visit and underwater assessment on September 16, 2021, conducted by DMR, no eelgrass beds were observed (SR 10).

Wildlife. During the site visit on September 16, 2021, DMR observed seagulls (*Larus argentatus*) in the shallow water off Lehman Island. Data maintained by the United States Fish and Wildlife Service (USFWS) shows a bald eagle (*Haliaeetus leucocephalus*) nest on the west side of Lehman Island. The proposal is located outside of the 660 foot recommended buffer from the mapped nest. DMR scientists did not observe any bald eagles during the site assessment (SR 11).

Based on Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS, the proposal is not located within tidal waterfowl and wading bird habitat (TWWH) but is within close proximity to the habitat (SR 11).

On June 22, 2021, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment”, stating minimal impacts to wildlife are anticipated for this project.⁴

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.

⁴ Email correspondence from MDIFW dated June 22, 2021.

E. Public Use & Enjoyment

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government.

There are no beaches, parks, docking facilities, or conserved lands owned by federal, state, or municipal government within 1,000 feet of the proposed lease site.

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

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

The applicant will source stock from Muscongus Bay Aquaculture in Bremen, Maine (App 2). This is currently an approved source 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, no lights will be used on the proposed lease site (App 8).

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

H. Noise

According to the application, an electric hauler will be used on the skiff to raise the drag during the harvest of oysters. The application indicates the hauler is "essentially inaudible" (App 8). In addition, harvesting would only occur approximately once per week.

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

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 applicant does not propose to deploy gear at the site. All oysters will be seeded on the bottom. **Therefore**, the proposed lease site will comply with the DMR's visual impact criteria.

6. 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 water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. The aquaculture activities proposed 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, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of oysters 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.

7. DECISION

Based on the foregoing, the Commissioner grants a lease to Maine Oyster, Inc. for 12.18 acres for twenty years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using bottom 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 \$500.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

8. 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).⁵ 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. No conditions shall be imposed on this lease.

9. REVOCAION 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: _____

4/31/23



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

⁵ 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."