

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

Standard Aquaculture Lease Application

Bottom culture of American oysters

Taunton Bay, Hancock

**Taunton Bay Oyster Company, Inc**

**TAUN SB2**

March 11, 2020

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

Taunton Bay Oyster Company Inc., applied to the Department of Marine Resources (“DMR”) for a ten-year standard aquaculture lease on 13.91 acres<sup>1</sup> located southeast of Cedar Point in Taunton Bay, Hancock, Hancock County, Maine for the cultivation of American oysters (*Crassostrea virginica*) using bottom culture techniques.

**1. THE PROCEEDINGS**

The pre-application meeting on this proposal was held on February 11, 2019, and the scoping session was held on April 11, 2019. DMR accepted the application as complete on May 21, 2019. A public hearing on this application was held on January 21, 2020 at the Hancock Town Hall in Hancock Maine. There were no interveners in this case. Notice of the hearing, copies of the application, and DMR site report were provided to state and federal agencies, aquaculture and environmental organizations, the Town of Hancock and the Hancock Harbormaster, members of the Legislature, representatives of the press, and riparian landowners for their review. Notice of the hearing was published in the *Ellsworth American* on December 19, 2019 and January 9, 2020 and in the January 2020 edition of the *Commercial Fisheries News*.

Sworn testimony was given at the hearing by: Bryan (Michael) Briggs, representing Taunton Bay Oyster, Inc., and Flora Drury, DMR Aquaculture Scientist. The applicant described the proposed project and Ms. Drury described the site visit. No members of the public and no other representatives of federal, state, or local government agencies provided any testimony. The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson.

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>

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<sup>1</sup> Applicant originally requested 13.81. DMR calculations, based on the coordinates provided by the applicant indicate the area is 13.91 acres.

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

<sup>3</sup> Exhibits 1, 2, and 3 are cited below as: Case file – “CF”; Application – “App”, site report – “SR”. Other exhibits are cited by number.

- a. Case file
- b. Application
- c. DMR site report

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

### **A. Site Characteristics**

On September 18, 2019, 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 subtidal waters near the southwestern shoreline of Taunton Bay, southeast of Cedar Point, and north of the U.S. Route One (Sullivan) bridge (SR 2). The shoreline to the southwest of the proposed lease side is sandy and rocky and leads to steep uplands characterized by mixed forest (SR 2). Multiple houses were observed in these uplands (SR 2).

Water depths were not collected during DMR's site assessment. However, geo-referenced aerial photographs indicate the area is entirely subtidal and NOAA nautical charts indicate most of the site is in 1-2 feet of water at mean low water (SR 6). Divers found that the eastern portion of the proposed lease is comprised of a firm bottom of sand and pebble (SR 6), while the shallower sections of the proposed lease were comprised of softer, muddy sediment and mussel hash (SR 6).

The proposed lease site is located within the Taunton Bay Management Area (TBMA)<sup>4</sup> (SR 8). Pursuant to DMR rules governing the TBMA, it is unlawful to take or possess any marine organisms via drag except for wild mussels and organisms cultivated on aquaculture lease and license sites (SR 11). The proposed lease is an area currently classified by DMR's Water Quality Classification program as "open/approved for the harvest of shellfish" (SR 15).

### **C. Proposed Operations**

The applicant proposes to cultivate American oysters using bottom culture techniques. The proposed lease area would contain no gear, except for marker buoys. Oysters would be planted from mid-summer to late fall from a 21' or 24' skiff, or similar boat (App 2). Oysters would be planted using a hinged table that will be shaken to stock oysters at desired density. The applicant indicates that a conveyer belt may replace the hinged table in the future (App 3). Harvesting would occur 3-6 days per week, throughout the year, except when ice prevents harvesting (App 3). Oysters would be primarily harvested by divers; however, a small dredge (maximum width of 3 feet) or hand tools may be used when harvest by divers is not suitable (App 3). One or two boats would be used to harvest oysters, which would be hand graded on the boat (App 3).

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

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<sup>4</sup> See DMR Chapter 90.20

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 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**

As noted in the site report, vessels navigate in Taunton Bay for both commercial and recreational uses (SR 10). The proposed lease site is located approximately 400 feet from the 18-foot contour line that delineates the deeper part of the channel and it is likely that boats would remain in the bay's deeper channel and avoid the proposed lease site given its shallow depths (SR 11). Per a Town of Hancock Selectman, "the areas identified will have no effect on navigation. This is a result of their close proximity to the shoreline and minimal depth."<sup>5</sup>

Outside of a completed Harbormaster Questionnaire, DMR did not receive any comments regarding navigation. Based on the evidence, and because no gear would be deployed on the site except for required marker buoys, 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 DMR's visit to the site, moorings and stairways for shoreline access were seen within and nearby the proposed lease site (SR 9). Stairways leading to the shoreline of Taunton Bay were observed to the southwest of the proposed lease, and kayaks and a rowboat were observed nearby some of these stairways, indicating riparian owners may launch vessels from the shoreline (SR 9). Two moorings were observed within the bounds of the proposed lease, and both were in use during DMR's visit to the site (SR 9). However, except when Taunton Bay Oyster Company is actively working on the site, the proposed aquaculture activities are unlikely to hinder riparian ingress and egress because no gear is proposed for the site (SR 9).

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<sup>5</sup> CF: Harbormaster Questionnaire completed by Randy Ewins, Selectman, Town of Hancock. Signed July 22, 2019

Response to the Harbormaster Questionnaire indicated that “there are no known permanent moorings within the three areas identified,” and also stated that “due to the nature of the use and fact that no gear is present, no risks have been identified.”<sup>6</sup> During the review period, no comments were received regarding riparian ingress and egress, and because no gear is proposed for the site, it is reasonable to conclude that riparian ingress and egress 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 the ingress and egress of any riparian owner.

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

The application indicates that clammers, wormers, and recreational boaters traverse the area in the channel, outside the proposed leases boundaries, 1-3 times per day (App 5). Lobster and crab fishing occur in the channel, but its nearly non-existent within the proposed site (App 5). According to a Hancock Town Selectman, clam and worm harvesting occurs within the area of the proposed lease and lobster, scallop and other fishing occurs in abutting areas.<sup>7</sup> The extent to which clam and worm harvesting occurs at the site was not noted by the Selectmen, and no comments were received regarding fishing. No fishermen attended or testified at the public hearing. Department staff observed approximately five lobster buoys within the proposed lease boundaries, with heavier lobstering activity observed in the channel between the proposed lease site and the eastern shore of Taunton Bay (SR 11). The site report notes that no other commercial or recreational fishing activities were observed within the immediate vicinity of the proposal, and that except when Taunton Bay Oyster Company is activity working on the site, the proposed aquaculture activities are unlikely to hinder recreational or commercial fishing in the area (SR 11). Based on this evidence, it appears the proposed lease will not unreasonably interfere with commercial and recreational fishing in the area.

**Exclusivity.** The applicant requests that shellfish harvesting and mussel washing within the boundaries of the proposed lease site be prohibited (App 5). Other uses such as lobster and crab or recreational fishing should have no impact on the proposed aquaculture activities and should not be limited (App 5). This 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 M.R.S.A. §6072 (7-B). A condition reflecting these restrictions will be included in the lease.

**Other aquaculture leases.** The only other aquaculture activities located within one mile of the proposed site is lease TAUN SB, located immediately adjacent to the southeast boundary

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<sup>6</sup> CF: Harbormaster Questionnaire completed by Randy Ewins, Selectman, Town of Hancock. Signed July 22, 2019

<sup>7</sup> CF: Harbormaster Questionnaire completed by Randy Ewins, Selectman, Town of Hancock. Signed July 22, 2019

of the proposed lease, and is held by the applicant. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

**Therefore, I find** that 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**

**Site observations.** DMR scientists conducted a dive transect of the proposed site on September 18, 2019. During their dive, they found the bottom of the proposed lease site to be comprised of sand, pebble, mud, and shell hash (SR 12). They also observed several species of marine flora and fauna including, but not limited to, common periwinkle (*Littorina littorea*), colonial tunicate (*Didemnum sp.*), crustose algae (*Phymatolithon sp.*), and blue mussel (*Mytilus edulis*) (SR 12).

**Eelgrass.** Historical records collected by DMR in 2008 indicate eelgrass beds were located within the boundaries of the proposed site (SR 12). During their dive of the site, DMR scientists observed the occasional eelgrass plant, and a patch of eelgrass measuring less than approximately 16 square feet in the center of the proposed lease (SR 13). Because no gear will be proposed on the site, the proposed aquaculture activities are unlikely to shade eelgrass within the site (SR 13). The applicant proposes to primarily dive harvest for oysters. However, the applicant has also proposed the use of hand tools and a 3-foot-wide dredge as a secondary harvest methods (App 3). Dive harvest is unlikely to harm eelgrass beds, but the use of hand tools or dredge could harm existing eelgrass beds within the proposed lease area (SR 13). At the hearing, Ms. Drury questioned Mr. Briggs as to how often he expects to use a method other than dive harvesting for his site. Mr. Briggs responded that in his experience with his other leases, he has never needed to use alternative methods of harvesting but would like to ensure an alternative harvest method in the event that no divers were available. There was further discussion that given the shallow nature of the site, avoiding eelgrass when using hand tools or a small dredge would be possible at low tides since most of it is within only 1-2 feet of water, and therefore the bottom of the lease would be visible to the harvester. The lease will be conditioned to allow the use of hand tools or a dredge for harvesting, but only in a way that avoids eelgrass.

**Fisheries & wildlife.** The area surrounding the proposed lease site is designated as Tidal Waterfowl and Wading Bird Habitat, which is defined as Significant Wildlife Habitat under Maine's Natural Resources Protection Act (SR 12). DMR provided a copy of the lease application to the Maine Department of Inland Fisheries and Wildlife (MDIF&W) for their review and comment, however no response was received. MDIF&W did comment on the application for lease TAUN SB, which was approved in 2018, and suggested the applicant avoid areas associated with abundant to common flora and fauna that were listed on that application because TAUN SB would be located in

high-value Significant Wildlife Habitat mapped as a reef-mudflat complex.<sup>8</sup> MDIF&W was not opposed to the location of the proposed lease site, but encourages the applicant to focus activities in areas where flora and fauna are less abundant. Because DMR did not receive a response to the request for comment on the current application, and because no gear is proposed for the site, it is reasonable to conclude that the culture of oysters as proposed for this lease site will not interfere with the significant wildlife habitat in 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.

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

Per the site report, “the proposed lease is not within 1,000 feet of any beach, park, docking facility, or conserved lands owned by federal, state, or municipal governments” (SR 15).

**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 work will only occur during daylight hours, except during a breakdown or emergency (app 3-4).

**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**

21’ or 24’ Carolina Skiffs or similar boats would be used to plant oysters, and to transport divers or equipment to the site for harvesting (App 3). As mentioned above, the applicant intends to plant oysters using a hinged table and may use a conveyer belt powered by a gasoline engine/hydraulic pump in the future (App 3). An electric hauler may be used to raise oyster bags onto the boat after being filled by divers during harvest, or if oysters are drag harvested, would be used to lift a drag off the bottom (App 3). Any gasoline engines used to power equipment would be

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<sup>8</sup> CF, email correspondence from MDIFW dated September 20, 2017.

covered with an insulated and louvered box, have a water exhaust, or deploy the best available muffler technology (App 3). Boats and the conveyer belt used for planting would be used 1-2 hours per week, while boats and electric haulers used in harvesting would be used for 3-5 hours per day, six days per week (App 3).

During the application review periods, no comments were received regarding noise. 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 applicant is proposing to bottom plant oysters. Except for required marker buoys, no gear is proposed for this site (App 3, SR 14).

**Therefore, I find** that since there is a lack of surface equipment, the proposed 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. Given the condition related to harvesting, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support 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. PROPOSED LEASE COMBINED WITH TAUN SB FOR NEW LEASE, TAUN SB<sub>2</sub>**

In their application for this lease, Taunton Bay Oyster Company, Inc. indicated that if granted, they would like the lease to be combined with their current lease, TAUN SB, located immediately adjacent to the southeast boundary of the proposed lease. Figure 1 shows the location of the proposed lease in relation to the applicant's existing lease, TAUN SB. At the public hearing, Mr. Briggs expressed that he'd like TAUN SB and this proposed lease, if granted, to be combined so that the leases would be on the same timeline and schedule for renewal.

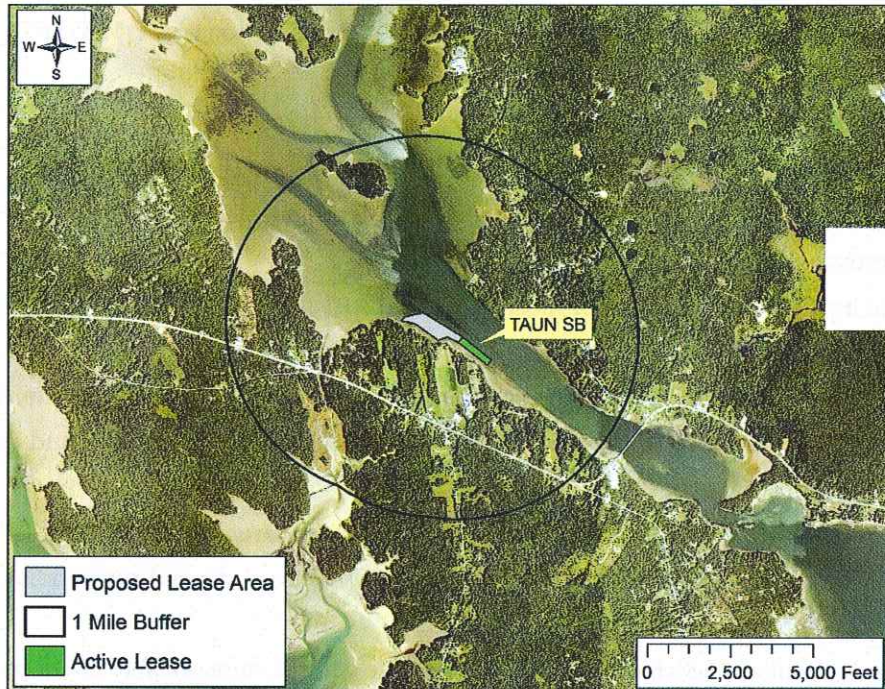


Figure 1: location of proposed lease and existing lease, TAUN SB.

TAUN SB is a 5.07 lease currently authorized for bottom culture of American oysters and expires January 22, 2028, and includes the following conditions:

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Mussel dragging and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site.
- c. Mussel washing is prohibited on the lease site.



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

A lease that combines two leases must be held to the expiration date of the existing lease with the shorter term. Because of the similar characteristics of the proposed lease site and TAUN SB, (the species to be cultured is the same, the operations proposed in the current application are like those authorized for TAUN SB) and because the locations are adjacent to one another, the Department will allow the proposed lease to be combined with TAUN SB. The new, combined lease will be known as TAUN SB2.

## **6. DECISION**

Based on the foregoing, the Commissioner grants the requested lease of 18.98 acres, incorporating the entirety of existing lease TAUN SB (5.07 acres), with the new lease (13.91 acres), to Taunton Bay Oyster Company, Inc., for a term ending on January 22, 2028, the expiration date of the current TAUN SB lease, for the purpose of cultivating American oysters (*C. virginica*) using bottom culture techniques. The lease will be subject to the four conditions listed in Section 5 above, as well as any new conditions listed in Section 7 below.

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.

Once the new combined lease, to be named TAUN SB2, is executed, the existing lease TAUN SB will be replaced. Because TAUN SB2 is being combined with TAUN SB, Taunton Bay Oyster Company Inc. will be required to pay prorated rent for 13.91 acres for the 2019-2020 rent year for TAUN SB2, as rent has already been paid for TAUN SB for the 2019-2020 rent year. Beginning with the 2020-2021 rent year, Taunton Bay Oyster Company, Inc. will be charged rent for 18.98 acres for lease TAUN SB2. Execution by the leaseholder and the Department of the lease authorized by this decision constitutes their consent to terminate lease TAUN SB.

## **7. 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>9</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, which include those originally imposed on TAUN SB, as well as one additional, shall be incorporated into the lease:

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<sup>9</sup> 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."

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Mussel dragging and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site.
- c. Mussel washing is prohibited on the lease site.
- d. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
- e. Harvesting by drag or hand tools is permitted only when water levels are low enough that eelgrass can be seen and avoided and is only allowed in areas of the lease site where eelgrass is not present. Harvesters are required to avoid eelgrass when using hand tools or a dredge for harvesting, and any dredge used may not exceed three feet in width.

**8. REVOCAION 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: 3/11/2020



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