STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  

Lessee: Taunton Bay Oyster Company, Inc  

Acronym: TAUN SB  

Standard Aquaculture Lease Application  
Bottom culture of American oysters  
Taunton Bay, Hancock  

Docket # 2017-11  
January 23, 2018  

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION  

Taunton Bay Oyster Company Inc., a Maine Company, applied to the Department of Marine Resources (“DMR”) for a ten-year standard aquaculture lease on 5.07 acres located in Taunton Bay, Hancock, Hancock County, Maine for the cultivation of American oysters (C. virginica) using bottom culture techniques. DMR accepted the application as complete on August 4, 2017. A public hearing on this application was held on January 18, 2018 at the Hancock Town Hall in Hancock, Maine. No one intervened in this case.

1. THE PROCEEDINGS  

Notice of the hearing, copies of the application and DMR site report were provided to state and federal agencies for their review, aquaculture and environmental organizations, the Town of Hancock and the Hancock Harbormaster, members of the Legislature, representatives of the press, and riparian landowners. Notice of the hearing was published in the Ellsworth American on December 14, 2017 and January 4, 2018 and in the January edition of the Commercial Fisheries News.

Sworn testimony was given at the hearing by: Bryan (Michael) Briggs representing Taunton Bay Oyster, Inc., and Marcy Nelson, DMR Marine Scientist. The applicant described his proposed project and Ms. Nelson described the site visit. No members of the public and no other representatives of federal, state, or local government agencies attended the hearing.

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.²

LIST OF EXHIBITS³

a. Case file

¹ Applicant originally requested 4.97 acres and the Department verified the coordinates and determined the site was 5.07 acres.
² In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.
³ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”; Application – “App”, site report – “SR”. Other exhibits are cited by number.
b. Application
c. DMR site report

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On October 2, 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 subtidal waters near the southwestern shoreline of Taunton Bay, south of Burying Island, and north of the U.S. Route One (Sullivan) bridge (SR 2). The shoreline to the west of the proposed lease site is characterized by rock and sand, which gives way to steeply sloping uplands (SR 2). The uplands are comprised of mixed forest (SR 2). Department staff observed several houses along the top of the steep embankment (SR 2). At mean low water, the distance from the south corner of the proposed lease site to the nearest point of land is ~115 feet (SR 5). Water depths, at mean low water, are estimated between 1-4 feet (SR 4).

The bottom of the proposed site is comprised primarily of hard mud interspersed with areas of sand and gravel (SR 2). Staff observed an abundance of empty blue mussel (*Mytilus edulis*) and common periwinkle (*Littorina littorea*) shells on the bottom of the proposed lease site (SR 9).

The proposed lease site is located within the Taunton Bay Management Area (TBMA) (SR 8). Pursuant to Department 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 8). 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 14).

C. Proposed Operations

The applicant proposes to cultivate American oysters using bottom culture techniques. The proposed lease area will contain no gear, except for marker buoys. Oysters will be planted from mid-summer to late fall from a 21’ or 24’ skiff using a mechanized conveyer belt (App 3). Harvesting will occur throughout the year at a frequency of three to six days per week (App 3). Harvesting will be conducted primarily by divers (App 3). Dredging and hand raking may also be used to harvest oysters (App 3). An electric hauler may be used to assist divers with harvesting (App 3).

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

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4 See DMR Chapter 90 20
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:

Although boats navigate Taunton Bay for both commercial and recreational purposes, it is unlikely that these vessels will be negatively impacted by the presence of the proposed lease at any tide. The site is located approximately 145 feet from the 18-foot contour line that delineates the deeper part of the channel. Especially at lower tidal stages, it is likely that boats navigating through the area would remain in the bay’s deeper channel and avoid the proposed lease site due to the shallow nature (SR 8).

Except for required marker buoys, no gear will be deployed on the site. Therefore, navigation within the area will remain mostly unencumbered (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.

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. Aquaculture lease sites are required to be marked for navigation purposes in accordance with U. S. Coast Guard requirements.

B. Riparian Access

The application indicates that there are no known moorings in the area and the applicant has not seen “any riparian owners access their property through the proposed lease area” (App 5). During the site visit, no docks, moorings, or stairways for shoreline access were observed within the immediate vicinity of the proposed lease site (SR 6). However, stairways and one mooring were observed in the general vicinity of the proposed lease site. The closest stairway is located ~500 feet from the western corner of the proposed lease site (SR 6). Kayaks were observed near the stairways, suggesting that riparian landowners launch hand-carry vessels near the proposed site (SR 6). The mooring is ~740 feet to the northwest of the proposed lease site and at the time of the site visit was holding a Boston Whaler (SR 6). 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 6). Except for required marker buoys, no gear will be deployed on the site making it possible for riparian owners to navigate over the site (SR 6).

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 commercial and recreational fishing is “nearly non-existent in the proposed site” (App 5). Department staff observed ~40 lobster pot buoys in the channel between the proposed site and the northern shore of Taunton Bay (SR 8). However, no traps were deployed within the boundaries of the proposed lease site during the time of the site assessment (SR 8). During the site visit, Department staff spoke with urchin divers who were in transit from an urchin harvest site south of the proposed lease (SR 8). The divers did not express any concerns with the location of the proposed site, nor did staff observe sea urchins (*Strongylocentrotus droebachiensis*) within the boundaries of the proposed site (SR 8). Although not observed during the site visit, recreational fishing could occur from the shore and by boat in the area (SR 8). Mr. Briggs expressed a willingness to accommodate recreational fishermen on the proposed lease site (Briggs/Ellis). However, Mr. Briggs did not think there would be any recreational fishing in area (Briggs/Ellis).

Exclusivity. The applicant requests that shellfish harvesting and mussel washing within the boundaries of the proposed lease site be prohibited (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. There are no active aquaculture sites within one mile of the proposed lease site (SR 8). The closest aquaculture site is located ~2.6 miles to the north of the proposed lease and is held by the applicant for the culture of American oysters (*C. virginica*) (SR 8). 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.

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5 Footnote five in the site report indicates that the divers are contracted by Taunton Bay Oyster Company, Inc. for oyster harvesting.

6 Lease acronym TAUN HB4
D. Flora & Fauna

Site observations. During the site visit, Department staff observed several species of marine flora and fauna including sugar kelp (Saccharina latissima), Irish moss (Chondrus crispus), green crab (Carcinus maenas), and common slippersnail (Crepidula fornicata) (SR 9). Department staff also observed double-crested cormorants (Phalacrocorax auritus) and a common loon (Gavia immers) (SR 9). Based on data collected by the Department there are historical records of eelgrass (Zostera marina) within the boundaries of the proposed lease site (SR 11). In 2008, the proposed lease site contained areas of eelgrass with cover densities up to 100 percent (SR 11). However, no eelgrass was observed during the Department’s site assessment (SR 11).

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. The area surrounding the proposed lease site is designated as Tidal Waterfowl and Wading Bird Habitat by MDIF&W, which is defined as Significant Wildlife Habitat under Maine’s Natural Resources Protection Act (SR 12). MDIF&W submitted the following comment:

The proposed site is within a high-value Significant Wildlife Habitat mapped as a reef-mudflat complex. According to the application for the proposed project, there are a variety of flora and fauna listed as common which are known to be a benefit to wildlife and are commonly associated with this type of Significant Wildlife Habitat. If possible, avoid areas with abundant to common flora and fauna, and favor areas where they are found at lower levels of abundance.  

MDIF&W is 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.

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.

E. Public Use & Enjoyment

Per the site report, “there are no public docking facilities or beaches within 1,000 feet of the proposed lease” (SR 13).

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.

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7 For a complete list of observed species and their relative abundance see pages 9-10 of the site report.
8 CF, email correspondence from MDIFW dated September 20, 2017.
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 4). Night work would only occur in case of emergency (App 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**

As described in section 2.C. of this decision, the applicant intends to use a mechanized conveyer belt to assist with planting oysters (App 3). The conveyer belt will be powered by a gasoline engine/hydraulic pump (App 3). The engine will be covered with an insulated and louvered box, have a water exhaust, or deploy the best available muffler technology (App 3, SR 14). The conveyer belt would be utilized one to two hours per week from mid-summer to late fall (App 3). An electric hauler may be deployed to assist divers during harvest periods. The electric hauler would be utilized three to five hours per day for three to six days per week (App 3).

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. 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 5.07 acres to Taunton Bay Oyster Company, Inc. for ten years for the cultivation of American oysters (C. 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.

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)9 Conditions are

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9 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.”
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. 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.

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: 1/23/18

[Signature]

Patrick C. Keliher, Commissioner
Department of Marine Resources