

Date: July 6, 2022

To: Protect the Passage: Peter Shepard

CC: Rich Jordan (Flycatcher)

From: Rodney Kelshaw (Flycatcher)

Subject: Agency Outreach Summary: Proposed Bailey Coffin Aquaculture Lease – West of Sow and Pigs Island in Casco Bay: Freeport, ME

Peter,

In April 2022 Protect the Passage (PtP) contracted Flycatcher LLC (Flycatcher) to provide a potential wildlife impact review for a proposed aquaculture lease. We understand Bailey Coffin submitted an application to the Department of Marine Resources (DMR) for a standard lease to develop an offshore aquaculture facility for bottom and suspended culture of American/eastern oysters (*Crassostrea virginica*), northern quahogs (*Mercenaria mercenaria*), Arctic surf clams (*Mactromeris polynyma*), razor clams (*Ensis leei*), European oysters (*Ostrea edulis*), bay scallops (*Argopecten irradians*), and soft shell clams (*Mya arenaria*). This is a proposed 6.84-acre facility located in Casco Bay to the west of Sow and Pigs Island.

Flycatcher provided PtP a proposed scope of services on April 4, 2022 to assess the potential impacts to wildlife if the lease request is granted. Although this scope of services was not approved, PtP did request that Flycatcher review project documentation and serve as liaison between PtP and Maine agencies involved in the review and approval of the aquaculture lease application. The goal was to connect the regulators with available information so that they can make an informed decision regarding the approval of a proposed aquaculture lease in this location. In preparation for this consultation, Flycatcher reviewed:

- Bailey Coffin Standard Lease Application (deemed complete 2021-05-17)
- aerial photographs,
- publicly available wildlife habitat maps,
- reports from consultants hired by PtP,
- Maine Department of Marine Resources (DMR) on-site inspection report, and
- DMR Chapter 2: Aquaculture Lease Regulations

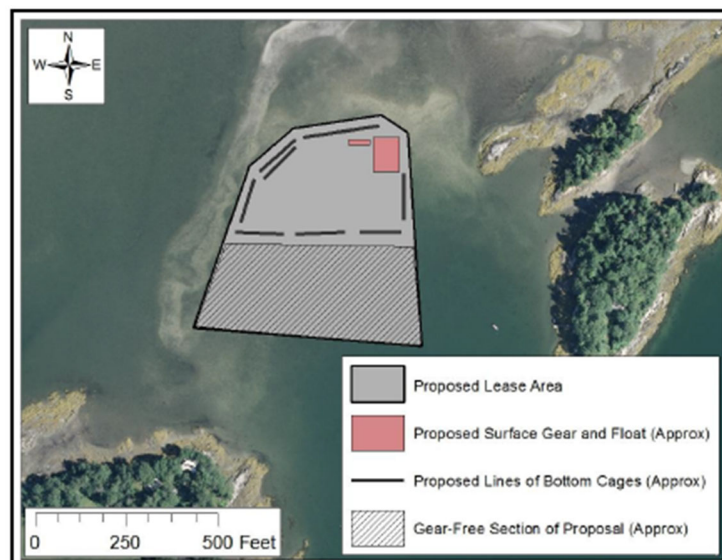


Figure 1. Approximate lease area and gear configuration (from DMR Site Review Report)

This review identified two resource areas in proximity to the proposed lease area, where Flycatcher consulted with state regulators to update the existing record. These resource areas include eel grass (*Zostera mariana*) and Tidal Waterfowl and Wading Bird Habitat.

Eelgrass (*Zostera mariana*)

In the Coffin application, Section 11. Environmental Characterization Subsection 5 it states, *“According to the Maine DMR Aquaculture Map (2013 and 2018 eelgrass layers), there is no eelgrass present within the proposed lease area. I visited the site throughout the summer months of 2020 to conduct a visual observe and did not find eelgrass within the proposed lease area.”* However, a DMR site review conducted in July 2021 observed eelgrass within and nearby the proposed lease area. Additionally, as detailed in the DMR report *“Eelgrass was also observed within the proposal during an eelgrass survey conducted in 2018 by the Maine Department of Environmental Protection (MDEP) in cooperation with the Casco Bay Estuary Partnership; the survey transect cut through the southern portion of the proposed lease. According to MDEP, this eelgrass observation was omitted from the MDEP maintained feature layer in error, but underwater video conducted in 2018 as part of this survey shows “sparse but regularly distributed, healthy appearing eelgrass” within the proposed lease area.”*

Through email correspondence with staff at the MDEP Marine Unit, Flycatcher learned that they will be mapping Casco Bay for eelgrass distribution in the summer of 2022 and that this 2022 low tide imagery and eelgrass polygon layer will be publicly available in early 2023. The MDEP has asked the consultant doing these field verifications to include specific focus areas, which will include the Sow and Pigs shallow subtidal areas.

Tidal Waterfowl and Wading Bird Habitat

The Maine Department of Inland Fisheries and Wildlife (MDIFW) is responsible for mapping Tidal Waterfowl and Wading Bird Habitat (TWWH). As detailed in the MDEP Chapter 335 Significant Wildlife Habitat, the TWWH identification criteria is as follows, *“a high or moderate value tidal habitat is as defined in IF&W’s rating procedure or is a tidal habitat that has documented outstanding use by waterfowl or wading birds or use by a rare species of waterfowl or wading birds. Habitat type is determined using the classification system published by Cowardin et al. (1979) and defined in the IF&W rating procedure. Four habitat types considered as potential high or moderate value tidal habitat are described below.”* One of the four habitat types described is “aquatic bed habitat”, the extent of which is defined in Chapter 335 *“by the eelgrass (*Zostera marina*) beds currently mapped by Maine Department of Marine Resources. Eelgrass beds greater than 25 acres in size are high value. Eelgrass beds greater than or equal to 2.5 acres but less than 25 acres are moderate value.”*

According to Geographic Information System (GIS) data maintained by MDIFW, the northern and western portions of the proposed lease overlap with a 508.33-acre TWWH that is rated as “High” in terms of value (see Figure 2). On July 16, 2021 the DMR sent a Request for Agency Review and Comment to MDIFW for the proposed aquaculture lease application. The MDIFW concluded that *“The lease intersected with a Tidal Waterfowl and Wading Bird Habitat, which is considered a Significant Wildlife Habitat. However, based on our assessment there was approximately 1.7% overlap with this habitat. Therefore, based on this assessment, our biologists anticipate minimal impacts to wildlife resulting from this lease.”*

Based on review of Chapter 335 and consultation with MDIFW, we understand that the TWWH should include the eelgrass bed mapped in 2018 (that was omitted from the map in error) and likely should include additional areas based on the DMR site inspection in July 2021. It is unclear if this increase in the acreage of TWWH intersected by the proposed lease area would be significant enough to alter MDIFW’s previous conclusion of minimal impacts to wildlife.

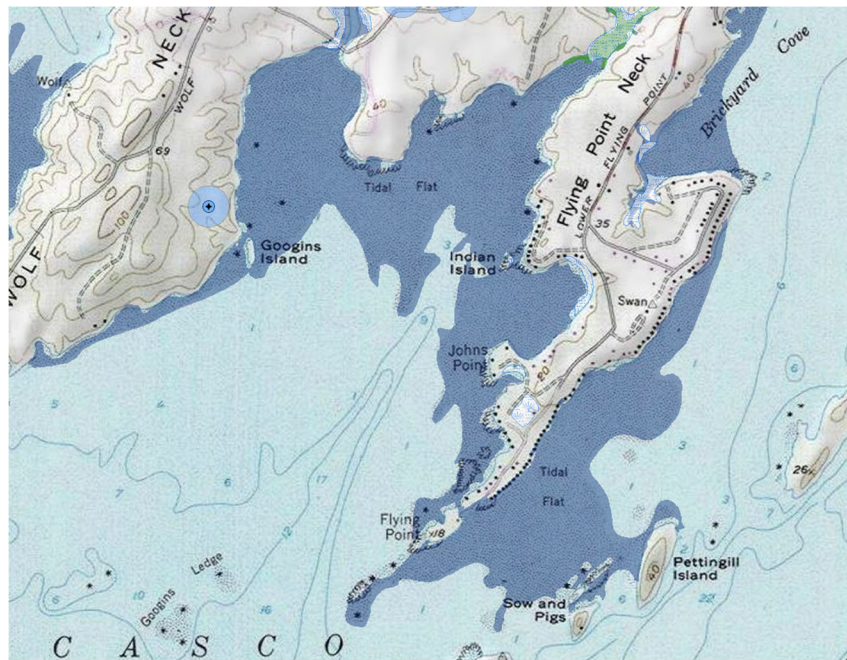


Figure 2. MDIFW TWWH (mapped in dark blue)

Results of Consultation To Date

From March to May of this year, a Flycatcher wildlife biologist corresponded with staff at the DMR, MDEP and biologists with the MDIFW regarding this proposed project and the agencies understanding of wildlife resources that may be impacted. It became apparent during the initial background information review that there was an error in the Bailey Coffin lease application statement that there is no eelgrass within the proposed lease area. That error was the result of a mapping error on the MDEP 2018 eelgrass dataset, which omitted a portion of an eelgrass bed that is located within the proposed lease area. Additionally, DMR observed eelgrass within the proposed lease area in 2021 using “drop camera, snorkel, and scuba transect video footage”.

Since one of the four TWWH habitat types, aquatic bed habitat, is defined by the presence of eelgrass, it appears likely that the TWWH is actually larger than is currently mapped and may include more of the lease area than was contemplated by MDIFW during their review. Flycatcher requested that MDIFW update the TWWH map in the vicinity of the proposed lease area to allow for MDIFW biologists to fully assess the potential impact on TWWH. This request for a “spot” update was denied because the eelgrass mapping for the entire Casco Bay will be completed in 2023. However, to avoid delaying the lease review process, after receiving authorization from PtP, Flycatcher provided this new information to MDIFW, who in turn recommended to the MDEP in an email dated April 19, 2022 that “the lease area be sited to avoid eelgrass beds”.

It is our recommendation that this updated information be provided to the DMR to aid their review of the Bailey Coffin aquaculture lease application. If you have questions or comments, please feel free to contact me. Thank you for the opportunity to work with you on this project.

Respectfully submitted,

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