

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Love Point Oysters, LLC
MID GIX**

Experimental Aquaculture Lease Application
Suspended culture of American/Eastern oysters
Middle Bay, Harpswell, Maine

August 14, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters, LLC, a Maine company, applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease on 2.86 acres¹ located in Middle Bay, southeast of Upper Goose Island, Harpswell, Cumberland County, Maine, for the cultivation of American/Eastern oysters (*Crassostrea virginica*) using suspended culture techniques. DMR accepted the application as complete on February 6, 2018. No requests for a public hearing were received during the comment period and no hearing was held.

1. THE PROCEEDINGS

Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Harpswell, and others on the Department's mailing list. Notice of the application and comment period was published in the *Times Record* on February 26, 2018.

The evidentiary record before the Department regarding this lease application includes the application and the Department's site report dated August 9, 2018, as well as the case file. The evidence from all of these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed lease is to explore the commercial feasibility of oyster production using suspended culture techniques (App 9-10). The applicant plans to deploy eight long lines measuring 200 feet in length, which will each hold 20 floating cages (App 9-10). The longlines will be spaced ~50 feet apart (App 9-10). From early April through late November, the cages will be suspended on the surface of the water (App 3). During the winter months, the cages

¹ Applicant originally requested 2.30 acres, but DMR calculated the proposed area to be 2.86 acres.

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

will be submerged on the bottom of the proposed site (App 3). Harvesting will occur from August through October as the oysters reach market size (App 3).

B. Site History

The applicant has two Limited Purpose Aquaculture Licenses (LPAs) within the boundaries of the proposed lease site. The LPAs are for the cultivation of American/Eastern oysters (*Crassostrea virginica*) using suspended culture techniques.³ The Department has not received any complaints regarding the operation of the LPAs. If the lease is granted, the applicant intends to relinquish the existing LPAs (App 2).

C. Site Characteristics

On June 15 and July 16, 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 in Middle Bay and is adjacent to the southeastern shore of Upper Goose Island (SR 2). The upland is characterized by exposed rock, which leads to a mature, mixed forest (SR 2). At mean low water, the distance from the northern boundary (A-B) of the proposed lease to the nearest exposed ledge is ~45 feet; the northwest corner (corner A) of the proposed lease is ~110 feet from Upper Goose Island (SR 4). At mean low water, depths ranged from 5.9 feet at corners B and C to 10.4 feet at corners A and D (SR 5).

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³ LPA Acronyms: BHAM117 and BHAM218.

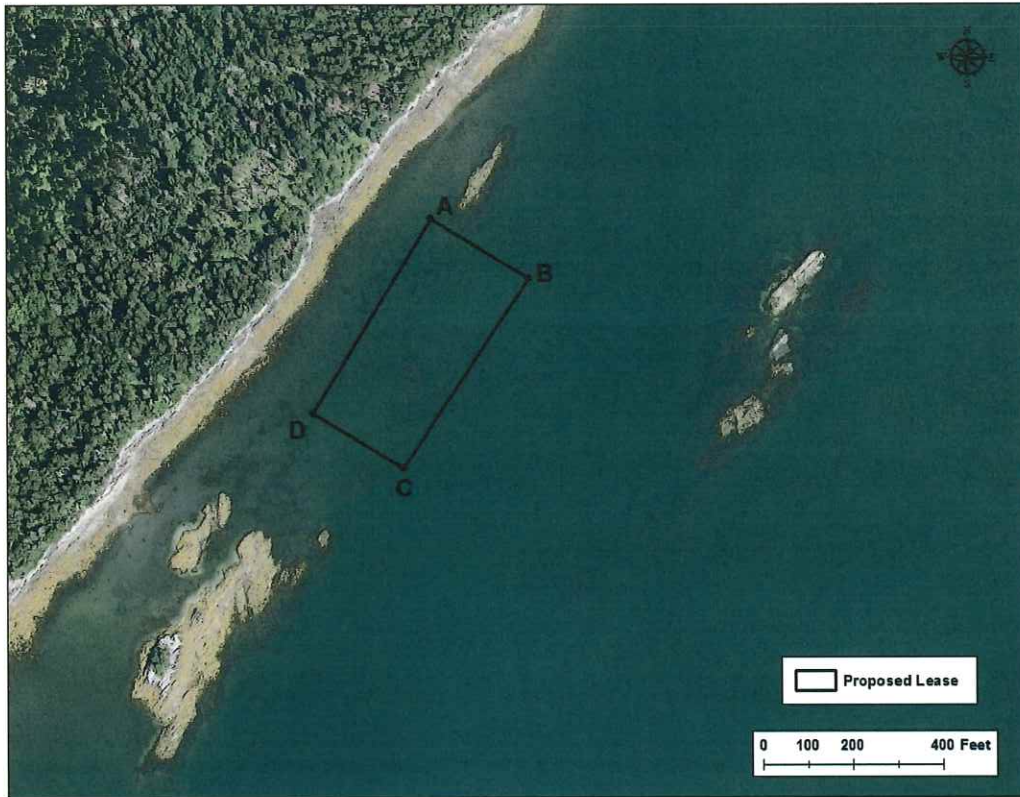


Figure 1: Proposed lease site with labeled corners. Image generated by Department staff.

The bottom of the proposed site is characterized by soft mud that tapers to sand and exposed ledge toward Upper Goose Island (SR 6). The proposed lease is in an area currently classified by the Department of Marine Resources Water Quality Classification program as “approved for the harvest of shellfish” (SR 14).

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

During the site visits, no docks, moorings, or other forms of development were observed along the eastern shore of Upper Goose Island (SR 6). The closest distance from the boundaries of the lease site to Upper Goose Island is ~110 feet (SR 6). Per the site report:

Taking into consideration the separation between the proposed lease and Upper Goose Island, and the island's undeveloped southeastern shoreline, the proposal, if granted, will not interfere with riparian ingress and egress (SR 6).

The Harbormaster also indicated that “the application does not appear to interfere with the ability of riparian owners to get to and from their property.”⁴ David Kaufholz, a riparian landowner on Upper Goose Island, sent the Department a comment in support of the lease proposal.⁵ No other comments were received regarding riparian ingress and egress. Activities at the 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 the ingress and egress of any riparian owner.

B. Navigation

The proposed lease is located more than 800 feet to the west of the primary navigational channel, which runs north to south between Branning Ledge and Shelter Island (SR 6). Branning Ledge lies between the proposed lease site and the primary navigational channel (SR 6). It is likely that most mariners avoid the western side of Branning Ledge and keep to the primary channel (SR 6). However, there is more than 480 feet of navigable area between the eastern boundaries of the proposed site and the western side of Branning Ledge (SR 6). Per the site report, “it is unlikely that mariners traveling through the general area would be negatively impacted by the proposed activities” (SR 7).

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⁴ CF: Harbormaster questionnaire dated March 23, 2018.

⁵ CF: Email from D. Kaufholz to C. Burke dated March 6, 2018.

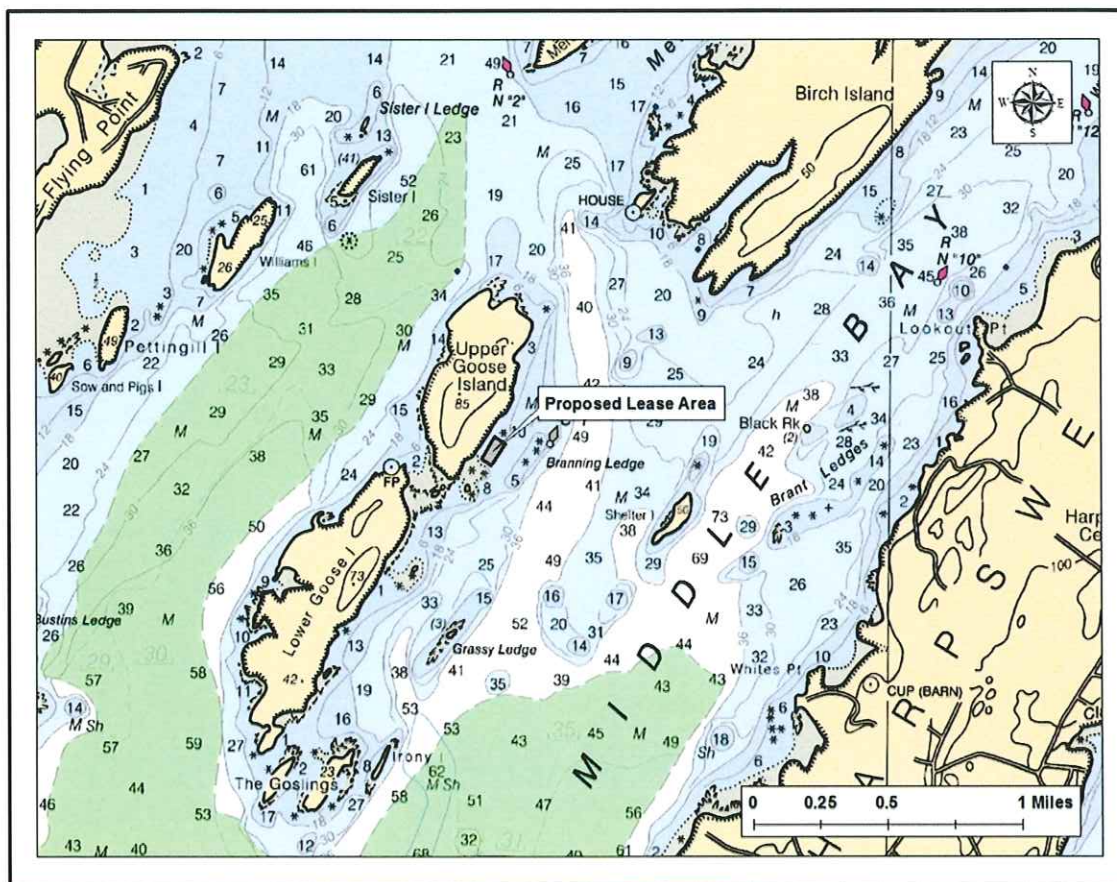


Figure 2: A vicinity map depicting the proposed lease area, the primary navigational channel, and Branning Ledge. Image from site report.

During the July 16, 2018, site visit Department staff observed three kayaks traveling between the proposed southern boundary and the tidally exposed ledges (SR 7). Tidally exposed ledge to the immediate south and northwest of the proposed site limits the type of vessel that can navigate in that area (SR 7). Canoes, kayaks, and shallow draft vessels would be able to navigate the shoal waters around the ledges, and the 110 to 145 feet between Upper Goose Island and the western boundary of the proposed site (SR 7). The Harbormaster indicated that the proposed lease will not interfere with the navigable channel; and the site: “appears to be placed close enough to Upper Goose Island and behind the ledge that it would be difficult for boaters to come in contact with the proposed gear.”⁶

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.

⁶ CF: Harbormaster questionnaire dated March 23, 2018.

C. Fishing & Other Uses

The site report describes the following:

At the time of MDMR's arrival on June 15, 2018, a single lobster trap buoy was observed within the boundaries of the proposed lease (Image 2b). Six additional lobster trap buoys were noted outside the boundaries of the proposed lease. Although not observed by MDMR staff on June 15th or July 16th of 2018, it is likely that recreational fishing occurs in the shallows around the Goose Islands (SR 7).

The Harbormaster indicated that water within the vicinity of the proposed site is likely too shallow for commercial fishing activities, but there may be some recreational fishing activity within the area.⁷ The applicant has observed kayakers and paddleboarders within the vicinity of the proposed site (App 3). The Department did not receive any comments from fishermen or other user groups regarding the lease proposal. Based on the absence of comments it is reasonable to conclude that fishermen and others do not have concerns about the affect the proposed site may have on fishing and other water related uses of the area.

Exclusivity. The applicant is not requesting exclusive use of the proposed site.

Other aquaculture leases. Besides the two LPA licenses held by the applicant, the closest aquaculture site is an LPA for the suspended culture of sea scallops (*Placopecten magellanicus*)⁸ (SR 7). The site is located over 3,000 feet to northwest of the proposed site (SR 7).

Therefore, considering the number and density of aquaculture leases in the area, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water related uses of the area.

D. Flora & Fauna

Site Observations. During the site visit, Department staff observed a variety of marine flora and fauna including periwinkle (*Littorina sp.*), hermit crab (*Pagarus sp.*), and polychaete worm castings (SR 10).⁹ Based on historical eelgrass (*Zostera marina*) data¹⁰, in 2013, ~120 feet of the eastern boundary of the proposed site contained an eelgrass meadow with cover densities ranging between 10 to 40% (SR 13). Department staff assessed the eelgrass resource on June 15, 2018 via drop camera, and on July 16, 2018 via SCUBA dive (SR 13). During the assessments, Department staff observed some individual and smaller patches of eelgrass (SR 13). Per the site report:

⁷ Ibid.

⁸ LPA Acronym: WFER118

⁹ For a complete list of observed species and their relative abundance, see page 10 of the site report.

¹⁰ Data was collected by the Maine Department of Environmental Protection and Casco Bay Estuary Partnership (SR 13).

Because the eelgrass observed June 15, 2018 and July 16, 2018 was intermittent, MDMR staff do not recommend a reduction in the proposed lease acreage. If the lease is granted, the applicant should strive to maintain a separation of 25 feet or more between floating or submerged gear and identified eelgrass (SR 13).

To mitigate the possible displacement of eelgrass, floating or submerged gear should be deployed a minimum of 25 feet from any observed eelgrass. The 25-foot setback is consistent with requirements established by the Army Corps of Engineers.¹¹ A condition, reflecting the 25-foot gear setback, will be included in the lease.

Fisheries and Wildlife. Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the closest bald eagle (*Haliaeetus leucocephalus*) nest is more than 5,000 feet to the northwest of the proposed site (SR 8). The proposed site is also one mile to the northeast of designated Great Blue Heron (*Ardea herodias*) habitat, and more than 3,340 feet from an area designated Tidal Waterfowl and Wading Bird Habitat (SR 8). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated that “minimal impacts to wildlife are anticipated.”¹²

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, given the provisions for gear deployment, 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 beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site (SR 16).¹³

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 this proposed lease site will be obtained from Muscongus Bay Aquaculture, in Bremen, Maine (App 1A). This is an approved source of seed stock.

¹¹ The Army Corps of Engineers permits structure on proposed lease sites.

¹² CF: Email from J. Perry (Environmental Review Coordinator, MDIFW) to C. Burke dated March 19, 2018.

¹³ A portion of Upper Goose Island is owned by the Nature Conservancy, which is a nonprofit organization. The Nature Conservancy did not raise any objections to the proposal.

Therefore, the applicant has demonstrated that there is an available source of American/Eastern oysters (*Crassostrea 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 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 provisions restricting gear deployment near identified eelgrass, 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/Eastern oysters (*Crassostrea 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 2.86 acres to Love Point Oysters LLC, 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 lessee¹⁴; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

¹⁴ 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.”

This lease is granted to the lessee for the cultivation of American/Eastern oysters (*Crassostrea 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)¹⁵. 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. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
- C. The placement of floating or suspended gear shall be 25 feet from any observed eelgrass.

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: _____

Aug 14, 2018



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

¹⁵ 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.”