

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Experimental Aquaculture Lease Application
Suspended Culture of American/Eastern
Oysters
Little Chebeague Island, Casco Bay, Cumberland
County

**Chebeague Island Oyster
Company, LLC.**

CAS NLC3x

August 17, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Chebeague Island Oyster Company, LLC applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease located northwest of Little Chebeague Island, in Casco Bay, in the Towns of Chebeague Island and Long Island, Cumberland County, Maine. The proposed lease is 1.73¹ acres and is for the suspended culture of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on March 5, 2021.

1. THE PROCEEDINGS

Notice of the application and the 30-day public comment period were provided to riparian landowners within 1,000 feet of the proposed site, state and federal agencies, the Towns of Chebeague Island and Long Island and their Harbormasters, and others on DMR's mailing list. Notice of the application and comment period was published in the April 8, 2021 edition of *The Forecaster*. During the comment period, DMR received no requests for a public hearing and no hearing was held. The evidentiary record regarding this lease application includes the application, DMR's site report dated May 25, 2021, and the case file. The evidence from each of these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture American oysters using stacking traysets that would sit on the ocean floor (App 5). Each trayset would consist of 2-3 sets of stacking trays, and within each individual tray are up to 2 mesh bags. If 3 sets of trays are used within a single trayset the entire set measures 36" x 48" x 18.5" (App 28). The application indicates that traysets would be

¹ Applicant requested 1.72 acres. DMR calculations indicate the area is 1.72 acres.

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

deployed in 3 rows of 166 traysets, with a maximum of 498³ traysets on site (App 24). The traysets would be attached to sinking longlines, with a maximum of 15 buoys used to keep the longlines suspended at 6 feet below the water's surface (App 25). According to the application, the proposed site is for overwintering oysters only, and traysets would be deployed on the site no earlier than October 1st and would be removed from the site by April 30th each year. Between April 30th and October 1st only 4 corner buoys, longlines (sunk on the bottom), a buoy on each end of the longlines (6 total), and 6 helical anchors would remain on site (App 6). During the times when the applicant is moving traysets to or from the site in the fall and the spring, they expect to be on site 3-7 days per week, for 2-6 hours per day (App 6). The applicant does not expect to be conducting any visits to the site for routine maintenance or harvesting (App 6), has not proposed the use of any power equipment, and expects to service the site via a 22' pontoon boat (App 7).

B. Site Characteristics

DMR scientists conducted a site visit of the proposed lease area on April 7, 2021 and returned to the site on May 11, 2021 (SR 2). The proposed lease is in subtidal waters northwest of Little Chebeague Island in Casco Bay, in the Towns of Chebeague Island and Long Island (SR 2). The adjacent shoreline is rocky and leads to an uninhabited, mixed forest upland. A tidally exposed sandbar, to the northeast of the proposal, connects Great and Little Chebeague Islands at low tidal stages (SR 2). During the April 7, 2021 site visit depths at the corners of the proposed site ranged from 21.9 to 25.3 feet. Correcting for tidal variation derives depths between 13.74 and 17.14 feet deep at mean low water. (SR 3). The bottom of the proposed site is composed of firm mud and gravel (SR 3).

According to the site report, from the proposed southeast corner to the nearest point on Little Chebeague Island there are approximately 830 feet, and from the proposed southwest corner to the ledge off Little Chebeague Island there are approximately 660 feet (SR 4). From the proposed northeast corner to the nearest point on Great Chebeague Island there are approximately 2,750 feet (SR 4).

³ Page 14 of the application indicates that a maximum of 500 traysets would be deployed on the site, however the gear configuration provided on page 24 of the application indicates a maximum of 498 traysets would be used.

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 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 water related uses of the area, taking into consideration other aquaculture uses in the 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 on the lease site.

A. Riparian Access

The proposed lease is in Casco Bay, northwest of Little Chebeague Island and to the southwest of Great Chebeague Island (SR 5). Little Chebeague Island is used by recreational boaters and beachgoers and is approximately 830 feet to the southeast at mean low water (SR 5). No docks are present on Little Chebeague Island, so users must access the island by anchoring in the shallow waters offshore, or by landing vessels directly on the shoreline (SR 5). DMR's site report notes that given the distance between the proposal and Little Chebeague Island, and because the applicant is only proposing to have gear deployed during the winter months when recreational use of the island is not as heavy, it is unlikely that the proposed aquaculture activities will impede access to the island (SR 5).

At the closest point, Great Chebeague Island is located 2,750 feet away from the proposed lease at mean low water (SR 6). During the summer, it is common for boats to be moored and anchored to the northeast of the proposed lease, near the Indian Point dock and beach on Great Chebeague Island. Given the distance between the proposal and the closest point on Great Chebeague Island, it is unlikely that access to these points would be obstructed or prevented by the proposed activities. DMR's site report also notes that use of these areas is also likely the heaviest during summer months, when the applicant is not proposing to have stacking traysets deployed (SR 6).

No public comments were received regarding riparian ingress and egress during the comment period for this application. Because DMR did not receive any comments regarding riparian access, and considering the evidence presented in DMR's site report, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on 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

The proposed lease is located southwest of Great Chebeague Island in Casco Bay. This area experiences heavy vessel traffic, especially during the summer months (SR 5). According to DMR's site report, there is a marked navigation channel located between Great Chebeague Island and Lower Basket Ledge to the west of the proposed lease, and the proposal is approximately 1,560 feet to the south of red nun "14", which marks the eastern side of the navigation channel (SR 5).

The proposal is located approximately 660 feet to the northwest of Little Chebeague Island at mean low water, and it appears that the majority of that distance is within the 6-foot contour line on the NOAA Charts, indicating that that area would be equal to or shallower than 6 feet at mean low water. DMR's site report notes that because of this, it is likely that most vessels in the area would likely navigate within the marked channel, and not between the proposal and the Little Chebeague Island shoreline (SR 5). However, adequate room would likely be available for depth appropriate vessels to navigate between the proposal and the Little Chebeague shoreline (SR 5). DMR's site report states that during the winter months when gear is deployed, sinking longlines are proposed to be deployed 6 feet below the surface of the water with floats, so if the proposal is granted, the applicant should ensure the area is clearly marked, and any floats should be visible, so that vessels navigating in the area are aware of the suspended lines and can avoid entanglement. In addition, in their review of the application, a Town Administrator for the Town of Long Island indicated that the site should be properly marked so individuals are aware of the potential navigational hazard.⁴ Chapter 2.80 of DMR Regulations requires that all leaseholders mark their site, and lease sites must be marked in accordance with the United States Coast Guard's Aid to Private Navigation standards and requirements.

During the comment period, DMR did not receive any comments related to navigation from members of the public.

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

⁴ A Harbormaster Questionnaire was sent to the Towns of Long Island and Chebeague Island. Brian Dudley, a Town Administrator for Long Island provided a completed questionnaire to DMR on May 20, 2021.

C. Fishing & Other Uses

Fishing. During DMR's site visit on April 7, 2021, two lobster buoys were observed within the vicinity of the proposal. During a visit in July 2019 to a lease located about 800 feet east of the current proposal, 'light' lobstering activity was observed (SR 6). Given the seasonality of Maine's lobster fishing, this activity is likely most prevalent during the summer and fall. The applicant has proposed that stacking trays would be removed from the site between April 30th and October 1st each year, but helical anchors, sinking longlines, buoys marking the longlines, and corner makers would all remain on the site year round. As such, the presence of sunken lines may hinder lobstering from occurring within the boundaries of the site due to possible gear entanglement. In their application, the applicant stated that lobstering does occur in the area during the summer and fall, but that it appears to be a lightly used area compared to lobster activity in the rest of Casco Bay (APP 7)

The applicant has indicated that some recreational fishing boats have been observed in the summer months, but usually closer to shore than where the proposed lease is located (App 7). No comments were received regarding any commercial or recreational fishing in the area during the comment period.

Based on the lack of public comments, the seasonality of the proposed operations, and the evidence that the proposed lease area is only used for light lobstering activity, it is reasonable to conclude that the proposed aquaculture activities will not unreasonably interfere with fishing.

Exclusivity. The applicant has not requested exclusive use of the site.

Other aquaculture uses. There are 4 Limited Purpose Aquaculture (LPA) licenses and 9 aquaculture leases within 1 mile of the proposal. The closest aquaculture activity to the proposal are two LPAs that are permitted for suspended culture of marine algae. According to the site report, the proposed lease, at the closest point, would be approximately 500 feet away from the gear associated with these LPAs (SR 6). The closest aquaculture lease to the proposal is lease CAS NLC2x, which is approved for the suspended culture of shellfish and is held by Chebeague Island Oyster, the applicant of the current proposal (SR 6). According to the application, if the current proposal is approved, lease CAS NLC2x will be terminated (APP 9). DMR expects the applicant to move forward with relinquishment of CAS NLC2x when a new lease for this proposal is executed, and DMR's Aquaculture Division will work with the applicant on ensuring CAS ELC2x is relinquished in a timely manner.

Other water-related uses. During the review period, DMR did not receive any comments detailing other water-related uses that are not already contemplated in other sections

of this decision. DMR's site report notes that because stacking trays will be removed from the site during the summer, the impact of the proposed lease on water related activities occurring on or nearby the lease should be decreased (SR 6). Based on the absence of public comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on other water-related uses of the area.

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

D. Flora & Fauna

Based on historical eelgrass (*Zostera marina*) data collected in 2018 by the Maine Department of Environmental Protection, in partnership with the Casco Bay Estuary Partnership, the closest observed eelgrass beds to the proposed site were located immediately adjacent to the proposed eastern boundary (SR 8). During DMR's visit to the site on April 7, 2021, they assessed the abundance of eelgrass in the vicinity via a drop-camera, and eelgrass was observed near the eastern boundary of the proposal. DMR returned to the site on May 11, 2021 to conduct a dive transect along the eastern boundary of the proposal. No eelgrass beds were observed, and only the occasional, single eelgrass plant was seen (SR 8). DMR's site report notes that because of this, it appears the proposal meets the Army Core of Engineers recommended 25-foot setback from existing eelgrass beds and DMR science staff did not recommend a reduction to the proposed lease acreage (SR 8).

According to data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the northeast and southeast corners of the proposed lease are adjacent to Tidal Wading Bird and Waterfowl Habitat, which is defined as significant wildlife habitat by Maine's Natural Resource Protection Act (SR 7). In addition, mapped habitat for the purple sandpiper (*Calidris maritima*) is located on Long Island, over 4,000 feet to the southeast of the proposed lease. DMR sent the application to the MDIFW for their review and comment, but no response was received.

No public comments were received regarding the flora and fauna in the area. Based on the evidence that the proposed lease does not interfere with significant wildlife, and because no other comments were received regarding the flora and fauna in the area, it appears that the proposed aquaculture activities for this lease site will not interfere with the ecological functioning of the area.

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.

E. Public Use & Enjoyment

Little Chebeague Island, which is owned by the Maine Department of Agriculture, Conservation, and Forestry, Bureau of Parks and Lands, is located approximately 830 feet to the southeast of the proposed lease at mean low water (SR 9). Access to Little Chebeague Island is available via foot from Great Chebeague Island via a tidally exposed sandbar, via boat when anchoring in shallow waters offshore, or landing vessels directly on the shoreline (SR 9). Recreational use of the island by boaters, kayakers, and beachgoers is popular during the summer months. Stacking trays will be removed from the site during the summer months, when use of Little Chebeague Island is expected to be at its peak, and access to the island is not expected to be prevented by the proposed aquaculture activities. No comments were received to indicate there is a concern regarding the public use and enjoyment of this area if the proposed lease is approved.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal governments.

F. Source of Organisms

The applicant intends to source American/eastern oysters from Mook Sea Farms in Walpole, Maine, which is an approved source by DMR.

Therefore, the applicant has demonstrated that there is available source of stock to be cultured for the lease site.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

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

2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.

3. 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.

4. 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.

5. 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.

6. The applicant has demonstrated that there is an available source of stock 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 an experimental lease of 1.73 acres to Chebeague Island Oyster Company, 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 lessee;⁵ however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This lease is granted to the lessee for the cultivation of American/eastern oysters (*Crassostrea virginica*). 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 (12)(B) 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.

⁵ 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.”

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 MSRA §6072-A (15)⁶. 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 purpose of the lease. No conditions have been imposed on this lease.

7. REVOCAION 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: 8/17/21



Patrick C. Keiher, Commissioner

Department of Marine Resources

⁶ 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.”