

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Schoodic Sea Farm, LLC

Standard Aquaculture Lease Application
Suspended and bottom culture of
American/eastern oysters
Mill Pond, Gouldsboro Bay, Gouldsboro, Maine

GBB MP
April 19, 2022

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Schoodic Sea Farm, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 2.32¹ acres in the millpond off from Long Mill Cove in Gouldsboro Bay, Gouldsboro, Hancock County, Maine. The proposal is for the suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on February 18, 2020 and a scoping session was held on July 20, 2020. DMR accepted the final application as complete on September 24, 2020. A public hearing on this application was scheduled for April 5, 2022. Notice of the completed application and public hearing was provided to riparian landowners within 1,000 feet of the proposed site, state and federal agencies, the Town of Gouldsboro, and subscribers to DMR's aquaculture email listserv and published in the Maine Lobstermen's Association's event calendar. Notice of the hearing was published in *The Ellsworth American* on March 3, and March 17, 2022. The hearing was held on April 5, 2022 in Gouldsboro. Members of the public attended, and a member of the public asked questions of the applicant but members of the public did not provide testimony. The hearing was recorded by DMR. The Hearing Officer was Heather Kenyon.

Sworn testimony was given at the April 5, 2022 hearing by the following witnesses:

Name	Affiliation
Joseph Young	Applicant
Flora Drury	Aquaculture Scientist, DMR Aquaculture Division

The evidentiary record before DMR regarding this lease application includes the exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from these sources is summarized below.²

¹ Applicant originally requested 2.2 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 2.32 acres.

² Exhibits 1, 2, and 3 are cited below as: Case file – "CF", Application – "App", site report – "SR"

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

DMR staff initially assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease on October 6, 2020 (SR, 2). The proposed lease is located in the millpond located in Long Mill Cove in Gouldsboro Bay in the Town of Gouldsboro, Maine (SR, 2). The shoreline of the millpond is rocky, with a sandy beach to the northeast of the proposal (SR, 2). A narrow channel connects the millpond to Long Mill Cove. Surrounding uplands are composed of a mixed forest; DMR staff observed a single house from the proposed site (SR, 2). According to the applicant, the proposed site is 1 to 8 feet deep at mean low water (App, 10).³ DMR's site report confirmed the site was subtidal (SR, 6).

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*Crassostrea virginica*) on the proposed lease site using bottom and suspended culture techniques (App, 1 & 2). According to the application, the proposed site would be used primarily for the bottom culture of oysters (App, 7). Bottom planted oysters would be harvested by hand, clam rake, or oyster tongs (App, 7). The only gear proposed to be deployed on the site are (9) oyster condos (45" x 36" x 20") and (9) wire cages (44" x 24" x 15"), which would house soft mesh bags (App, 4). These cages would only be deployed on the site during the winter months, from November to May, and would be sunk to the bottom of the millpond, near corner D (App, 8 & Young/Drury). No on-site support structures are proposed (SR, 5).

The application states that tending and maintenance activities associated with the proposal include regular observations to check on the health and growth of oysters (App, 7). The application goes on to state that individuals might visit the lease daily for harvesting (App, 7). Boats used to service the lease would be under 12 feet in length, which would be pulled behind the applicant at low water or powered by a battery-powered trolling motor (App, 9-10). No other powered equipment or lights are proposed (App, 9).

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 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

³ The application page numbers refer to the PDF page number, not the page number written on the application.

area, taking into consideration other aquaculture uses of 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, 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.

A. Riparian Access

The proposed lease is located in the millpond in Long Mill Cove in Gouldsboro Bay (SR, 9). During DMR's October 6, 2020 site visit, no docks were observed, but multiple moored floats and two small vessels, all owned by the applicant, were located within the millpond. The only gear proposed to be deployed on the lease are up to 18 cages, which would be deployed only in the winter months. According to page 9 of the site report, "As the majority of the proposed lease would be free of gear, it is unlikely to pose an unreasonable interference to riparian access along the shoreline of the pond."

No testimony was provided at the hearing to indicate there is concern about the proposed lease's impact to 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

During the October 6, 2020 site visit, two hand-powered boats owned by the applicant were observed within the millpond. Page 12 of the application states that other than the occasional kayaker, the majority of boating activities that occur in the millpond are conducted by the applicant's family. Per page 9 of the site report:

The millpond in which the proposal is located is connected to Long Mill Cove, and therefore Greater Gouldsboro Bay, by a narrow channel. At certain tidal stages, a fast current develops in this channel which limits the times at which it is safe to navigate into the millpond from Greater Gouldsboro Bay. Due to this, and because of the shallow nature of the millpond which naturally constrains the types of vessels that could operate in the area, it is likely that boating is limited in the millpond.

As the proposed lease operations would not involve the deployment of gear in the summer months, and would, at maximum capacity, result in 18 oyster cages deployed in the winter months, it appears that vessels navigating in the millpond would not be unreasonably impacted by the proposal. No testimony was provided at the hearing to indicate there is concern about the proposed lease's impact to navigation in the area.

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

C. Fishing & Other Uses

Fishing. During the October 6, 2020 site visit, DMR observed a single buoy and trap deployed in the millpond. According to page 10 of the site report “Other traps were observed stacked on a moored float...The applicant indicated to MDMR staff that he occasionally sets traps in the millpond to capture green crabs (*Carcinus maenas*).” No other fishing activity was observed during DMR’s site visit. However, blue mussels (*Mytilus edulis*) were observed in the eastern portions of the mill pond during the dive transect. The highest density of mussels observed was outside of the proposed lease, in the millpond’s narrow entrance (SR, 10). No commercial fishing in the millpond has been observed by the applicant (App, 12). According to the site report “Due to the natural limitations to navigation in and out of the millpond, it is likely that access for most commercial fishing that might occur in the millpond would occur over land, as opposed to by boat.” Furthermore, no testimony was offered indicating that the proposed lease would interfere with commercial or recreational fishing in the area. However, the application requests that commercial fishing activities be prohibited in the lease area “as there is none there now”, to prevent damage to the oysters (App, 13). If the proposed lease is granted, this request is reasonable, and enforceable under provisions of law (see 12 M.R.S.A. §6073(2)).

Other aquaculture uses: The only aquaculture activity within one mile of the proposal are four LPA licenses held by the applicant, which the applicant will maintain as active if the proposed lease is granted (SR, 10).

Other water-related uses: DMR’s site report does not detail any other water-related uses not described elsewhere in the site report. According to page 13, family members of the applicant occasionally play on the pond. At the hearing, the applicant also indicated that people access the millpond and play in the water from another riparian landowner’s shore as well. The application goes on to state that the “area is suitable for swimming” but tide and weather conditions need to line up for this use to occur (App, 13). As the majority of the proposed lease site would be free of gear, the proposed operations are unlikely to interfere with swimming and/or playing in the pond. During the public hearing, DMR did not receive any testimony or evidence to suggest that the proposed site would interfere with other water-related uses of the area.

Therefore, 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 SCUBA transect through the proposed lease area on October 6, 2020. The bottom of the proposed site “transitions from gravel and shell rubble to sandy mud, from east to west” (SR, 7). According to page 7 of the site report, “This is likely due to the narrow entrance of the millpond, which causes the eastern side of the millpond to experience stronger currents than the western, more interior, side of the pond. DMR observed abundant blue mussels (*Mytilus edulis*) in the eastern portion of their dive transect, and common periwinkles (*Littorina littorea*) in abundance throughout the proposal. A variety of other species were observed with abundances classified as “occasional” or “rare”.

Eelgrass. Data collected in 2009 by DMR indicate that the closest eelgrass beds to the proposal were located outside of the millpond when the survey was conducted, over 800 feet from the proposal (SR, 13). No eelgrass was observed during DMR's SCUBA transect of the proposal on October 6, 2020.

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease overlaps shorebird habitat, along with emergent wetland/mudflat complex listed as Tidal Waterfowl and Wading Bird Habitat (SR, 14). The Department sent a copy of the lease application to MDIFW for their review and comment and MDIFW recommended that any boats used in the operations not be grounded out on reefs, aquatic beds and mud flats and that the project footprint and float size be reduced to the minimum size needed.⁴ During the public hearing, the applicant testified that he never grounds his boats out on the bottom of the millpond when working on the lease site (Young/Drury). Furthermore, no floats are proposed.

Based on this evidence, it appears that the proposed 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

The proposed site is not within 1,000 feet of parcels that function as beaches, parks, or docking facilities owned by federal, state, or municipal government (SR 15). Dry Island, located approximately 1,375 feet to the northeast of the proposal and owned by the Maine Bureau of Parks and Lands, is the closest publicly owned parcel to the proposal (SR, 15). During the public hearing, the applicant testified that people occasionally camp and picnic on the island (Young/Drury). According to page 15 of the site report, "Access to and use of Dry Island is unlikely to be impacted by the proposal."

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, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

The applicant lists Muscongus Bay Aquaculture in Bremen, Maine as the source of stock for American oyster seed (App, 2). This hatchery is approved by DMR.

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

G. Light

⁴ Email from Rebecca Settele (Wildlife Biologist, MDIF&W). November 13, 2020.

According to the application, no lighting is proposed for the site (App, 9). During the public hearing, the applicant testified that, other than in an emergency, he would not conduct work on the site after daylight hours (Young/Drury).

Therefore, the proposed aquaculture activities will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The boats proposed for use on the lease would be under 12 feet in length and would either be pulled behind the applicant at low water or powered by a battery-powered trolling motor (App, 9). No other powered equipment is proposed (App, 9).

Based on this evidence, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

Therefore, 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 only gear proposed by the applicant would be deployed on the lease in the winter months and sunk to the bottom of the lease, and as result of this, would sit below the surface of the water (Young/Drury). Therefore, the gear proposed by the applicant complies with DMR's color and height limitations.

Therefore, the equipment utilized on the proposed lease site will comply with the DMR's visual impact criteria.

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 water-related uses of the area, taking into consideration other aquaculture uses 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, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.

- f. The applicant has demonstrated that there is an available source of American oyster seed 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 to Schoodic Sea Farm, LLC for 2.32 acres, for twenty years for the cultivation of American/eastern oysters (*Crassostrea virginica*) using suspended and 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 \$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 M.R.S.A §6072 (7-B).⁵ 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. No conditions will be imposed on this lease.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A §6072 (11), 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: Apr 1 19th, 2022


Patrick C. Keliher, Commissioner
Department of Marine Resources

⁵ 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."