



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

April 6, 2021

Dear Wilson Cove Oysters, LLC,

DMR has reviewed your application for a species amendment for your experimental aquaculture lease MID WCx, located in Wilson Cove, Middle Bay, Harpswell. Your request was processed in accordance with DMR Regulations Chapter 2.44. One public comment, which discussed lease operations at MID WCx, but did not contain information relevant to the proposed species amendment, was received. After review, we find that the request to add arctic surf clams (*Spisula solidissima*), sourced from Downeast Institute, and sea scallops (*Placopecten magellanicus*), sourced from the wild, to your lease does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A). Furthermore, this request is consistent with the findings of the original decision and would not result in a change to the original lease conditions. Therefore, your request has been approved, effective on the date of this letter.

Please note that biotoxin testing under a Memorandum of Understanding (MOU), and at the leaseholder's expense, will be required for the harvest of these species. If sea scallop (*Placopecten magellanicus*) harvest will consist only of the adductor muscle (and therefore will not result in whole or roe-on scallop products), no MOU would be required. Please contact DMR's Bureau of Public Health for more information on establishing this MOU. A list of certified biotoxin labs can be found on the DMR website.

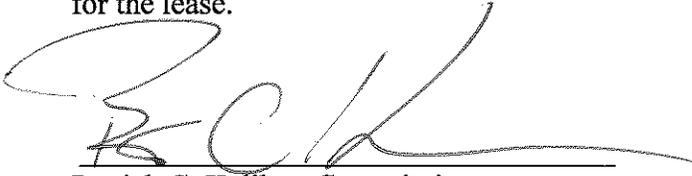
An updated summary of the species approved for your lease is provided below.

Approved Species
American oysters (<i>Crassostrea virginica</i>)
Arctic Surf Clams (<i>Spisula solidissima</i>)
Sea Scallops (<i>Placopecten magellanicus</i>)

The following conditions, which were imposed on your lease, remain in place:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
3. Unless permission is granted by the leaseholder, scallop or oyster dredging is prohibited within the boundaries of the lease site.
4. Running Tide Hatchery cannot be used as a source of seed until they receive approval status from DMR.

Please retain a copy of this letter for your records. Your original lease application and decision, any previously approved amendments, and this amendment approval letter, may serve as the operational plan for the lease.

A handwritten signature in black ink, appearing to read 'P. C. Keliher', written over a horizontal line.

Patrick C. Keliher, Commissioner,
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Experimental Aquaculture Lease Application
Suspended culture of shellfish
Wilson Cove, Middle Bay, Harpswell

Wilson Cove Oysters, LLC

MID WCx

August 19, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Wilson Cove Oysters, LLC applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located in Wilson Cove, Middle Bay, Harpswell, Cumberland County. The proposed lease is 3.21 acres in size and is for the suspended cultivation of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on February 14, 2019. During the 30-day public comment period, more than five requests for a public hearing were received, and a hearing was held on July 22, 2019. No one intervened in this case.

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 its Harbormaster, and others on the Department’s mailing list. Notice of the application and comment period was published in the *Times Record* on June 19, 2019 and July 10, 2019.

Sworn testimony was given at the public hearing by the applicant, represented by Matthew Odlin and Finnian Donovan, who described the proposed project, gear type, and location of the lease. Jon Lewis, DMR Aquaculture Scientist, described the site visit. The Harbormaster for the Town of Harpswell did not provide any comment. No members of the public provided testimony. The hearing was recorded by DMR. Assistant Attorney General Mark Randlett was the hearing officer.

The evidentiary record before the Department regarding this lease application includes the 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.¹

LIST OF EXHIBITS

1. Case File (CF)
2. Application (App)²
3. DMR Site Report (SR)

2. DESCRIPTION OF THE PROJECT

¹ These sources are cited below, with page references, as CF (case file), App (application), SR (site report).

² Application begins with page 3, so page numbers cited here reflect that.

A. Proposed Operations

The purpose of the proposed experimental lease is to assess the viability of the applicant's equipment to grow American/eastern oysters (*C. virginica*) (App 6). Applicants gear will consist of oyster cages arranged in four rafts of five cages each (App 13). The cages will be secured to a single mooring and sunk during winter months. An enclosed equipment float is also proposed to remain on the site (SR 2). Applicants hope to compare growth data across a couple of different sites to determine optimum growing conditions (App 6).

B. Site Characteristics

On April 25, 2019, 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 Wilson Cove, Middle Bay, off the shore of Harpswell Neck in Casco Bay (SR2) The shoreline is rocky with forested upland and is scattered with residential buildings. Houses, ramps, and floats were all observed along the shoreline (SR2).

The proposed lease site is approximately 1,750 feet from Harpswell Neck, and 3,030 feet from Birch Island (SR5). During DMR's assessment, taken while the tide was in flood state, water depth within the proposed lease ranged between 16 and 21 feet (SR5). The bottom of the proposed lease site is comprised of mud (SR 2).

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 for the lease site.

A. Riparian Access

Houses, ramps, and floats were observed to the east of the proposed lease site (SR 6). The proposed lease is located over 1,700 feet from the shoreline and due to this distance, it is unlikely to interfere with riparian access to the ramps or floats observed during DMR's site visit (SR 6). During the review period, the Department did not receive any public comments regarding riparian access. 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 riparian ingress and egress. It appears from the evidence that riparian ingress and egress will not be unduly affected by the proposed lease application.

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 in Wilson Cove, off the western shore of Harpswell Neck, in Middle Bay. Approximately 95 feet to the west of the proposed site is a red nun, which marks the eastern side of the main navigation channel. Most boaters are likely to avoid the proposed lease site due to its location outside of the marked navigation channel (SR 6). For mariners that do wish to access Wilson Cove, over 1,500 feet of navigable waters remain between the southern boundary of the proposed lease site and the 6-foot depth contour line to the south, and more than 1,185 feet of unobstructed waters remain between the eastern boundary of the proposed lease and the intertidal ledges in Wilson Cove (SR 7).

During the review period, DMR did not receive any public comments regarding navigation. 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 navigation within the area. It appears from the evidence that navigation in the area will not be unduly affected by the proposed lease application.

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

C. Fishing & Other Uses

Fishing. During the site visit on April 25, 2019, no fishing activities were observed within the lease site (SR 7). In the site report, DMR acknowledged that commercial and recreational uses of this area are likely “more prevalent in the summer months” (SR 7). If granted, the location and size of the proposed lease would not prevent commercial or recreational fishing activities from occurring in Wilson Cove. The applicant noted that no fishing takes place within their proposed site but seining and lobstering does occur west of the proposed site from April to October (App 8).

Given the absence of public comments expressing concerns regarding interference with fishing, it is reasonable to conclude that there are no concerns about the effects the proposed site may have on commercial or recreational fishing. It appears from the evidence that the proposed lease is unlikely to unreasonably affect commercial and recreational fishing activities in the area.

Exclusivity. The applicant requests that any scallop or oyster dredging be prohibited from the lease site (App 9). Conditions reflecting these restrictions will be included in the lease. Such a restriction is reasonable to enable the project to be carried out while also encouraging the greatest number of compatible uses of area, as provided in 12 MRSA §6072-A(15).

Other aquaculture uses. Five Limited Purpose Aquaculture (LPA) licenses are located within one mile of the proposed lease (SR 5). The closest aquaculture activity to the proposed lease are four adjacent LPAs held by Justin Simon, Vice President of Wilson Cove Oysters, LLC. Should the lease application be approved, those LPA licenses will be terminated (APP 9). Located approximately 3,050 feet

from the proposed lease is LPA license MFIS116, which is permitted for the suspended culture of American/eastern oysters (SR 7). Due to these distances, and given the lack of public comments concerning the impact of the proposal on existing aquaculture operations, it is unlikely that the activities proposed by the applicant will negatively impact existing aquaculture leases and licenses in the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture uses in the area.

Other water-related uses. During the site visit on April 25, 2019, DMR staff did not observe other water-related uses of the proposed lease area not described elsewhere in this decision. During the review period, the Department did not receive any public comments detailing other uses of the area. 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 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

During the site visit on April 25, 2019, DMR observed eider ducks (*Somateria mollissima*), longtail ducks (*Clangula hyemalis*), and scoters (*Melanitta spp*) near the proposed lease site (SR 8). The proposed lease site is located approximately 3,450 feet to the south of the ¼ mile buffer associated with a bald eagle nest. The north side of Birch Island, located to the west of the proposed lease, hosts Tidal Wading Bird and Waterfowl Habitat. This habitat is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat (SR 8). A request for agency review and comment was sent to John Perry (Environmental Review Coordinator) at the Maine Department of Inland Fisheries and Wildlife on March 7, 2019. No response was received (SR 8).

Data maintained by the Maine Department of Environmental Protection and Casco Bay Estuary Partnership indicates that, in 2018, the closest observed eelgrass bed to the proposed lease site was 360 feet to the north (SR 9). No eelgrass was observed within the boundaries of the proposed lease site when DMR staff used a remotely operated vehicle to assess the benthic ecology of the site on April 25, 2019 (SR 9).

Based on the evidence that the proposed lease does not intersect with historical eelgrass beds or mapped wildlife habitat, because the fact that DMR's site report does not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem, and given the lack of any response from the Department of Inland Fisheries and Wildlife expressing concerns for impacts to wildlife, it appears that the culture of shellfish, as proposed 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

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 9).

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

American/eastern oyster seed would be obtained from Mook Sea Farms in Walpole, Maine. Mook Sea Farms is an approved hatchery. The applicant also lists Running Tide Hatchery in Harpswell, Maine as a proposed source of American oysters. Per the site report, Running Tide Hatchery is in the process of obtaining approval status but is not yet an approved source (SR 10). Until Running Ride Hatchery receives approval, they cannot be used as a seed source.

Therefore, the applicant has demonstrated that there is an 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 the requested experimental lease of 3.21 acres to Wilson Cove 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 lessee³; 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*) 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)⁴. 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:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
3. Unless permission is granted by the leaseholder, scallop or oyster dredging is prohibited within the boundaries of the lease site.
4. Running Tide Hatchery cannot be used as a source of seed until they receive approval status from DMR.

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

³ DMR Rule 2.64 (14) provides:

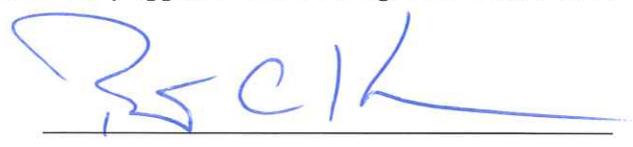
“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

⁴ 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.”

to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: 8/15/17



Patrick C. Keliher, Commissioner
Department of Marine Resources