

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Love Point Oysters, LLC

Standard Aquaculture Lease Application
Suspended Culture of Oysters and Marine Algae
Middle Bay
Harpwell, Maine

MID GI

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Love Point Oysters, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 3.24¹ acres located in Middle Bay, southeast of Upper Goose Island, Harpswell, Maine. The proposal is for the suspended culture of marine algae (*Saccharina latissima*) and American oysters (*Crassostrea virginica*).

1. PROCEDURAL HISTORY

The pre-application meeting on this proposal was held on June 9, 2021, and a scoping session was held on December 7, 2021. DMR accepted the final application as complete on January 31, 2022. Notice of the completed application and public hearing was provided to state agencies, the Town of Harpswell and its harbormaster, riparian landowners within 1,000 feet of the proposed site², and subscribers to DMR's aquaculture email listserv. A Harbormaster Questionnaire was sent to the harbormaster on February 11, 2022, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease. No response was received by DMR. Notice of the public hearing was published in the *Coastal Forecaster* on January 12 and January 26, 2024. The public notice for the hearing stated that the proceeding would be conducted in-person and directed interested persons to register to provide testimony or ask questions during the proceeding. It also directed interested persons to contact DMR for an intervenor application. No applications for intervenor status were received by DMR. A public hearing on this application was held on February 14, 2024. One individual registered to participate in the hearing but did not testify.

¹ Applicant originally requested 3.2 acres. DMR calculations indicate the area is 3.24 acres.

² For purposes of notice, the Department defines "riparian owner" as a shorefront property owner whose property boundary is within 1,000 feet of the proposed site.

Sworn testimony was given at the hearing by Cameron Barner³. Additional members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes one exhibit introduced at the hearing and the record of testimony at the hearing. The evidence from all sources is summarized below.⁴

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report, issued on December 15, 2023
4. Four pages of graphics provided by the applicant

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture marine algae (*Saccharina latissima*) and American oysters (*Crassostrea virginica*) using suspended culture techniques (App 1, 3). The applicant proposes to use 160 OysterGro 6-bag cages (60-inches by 36-inches by 24-inches), 960 HDPE mesh bags (35-inches by 18-inches by 3-inches), and twenty 6-bay oyster condos (45-inches by 40.5-inches by 18-inches) as well as buoys and lines. The application stated that mushroom anchors would be used, however, on cross-examination at the hearing, the applicant testified that 16 helix anchors would be used instead (Barner testimony). Yellow lease marking buoys will be deployed at the corners (Barner testimony). The applicant proposes to use a 24-foot by 10-foot work float containing a table, electric sorter, and storage bin, including a 24-foot by 24-foot wet storage float with four submerged wire cars attached (App 16). The two floats will be removed and stored on land from mid-December to mid-April. All other gear will remain on-site, with four gear lines submerged and four marine algae lines installed above them (App 26).

The applicant anticipates seeding oysters in July and marine algae in early December. The applicant anticipates tending and harvesting the site 3-5 days per week year-round (Barner testimony). The applicant currently operates a 2.86-acre experimental lease MID G1x partially within the boundaries of the standard lease proposal (see Figure 1). The experimental lease was granted on August 18, 2018,

³ According to the application, Mr. Barner is a principal in the LLC.

⁴ Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

for the suspended culture of American/eastern oysters. If the standard lease is granted, it would expand the acreage of existing operations and add the cultivation of marine algae.

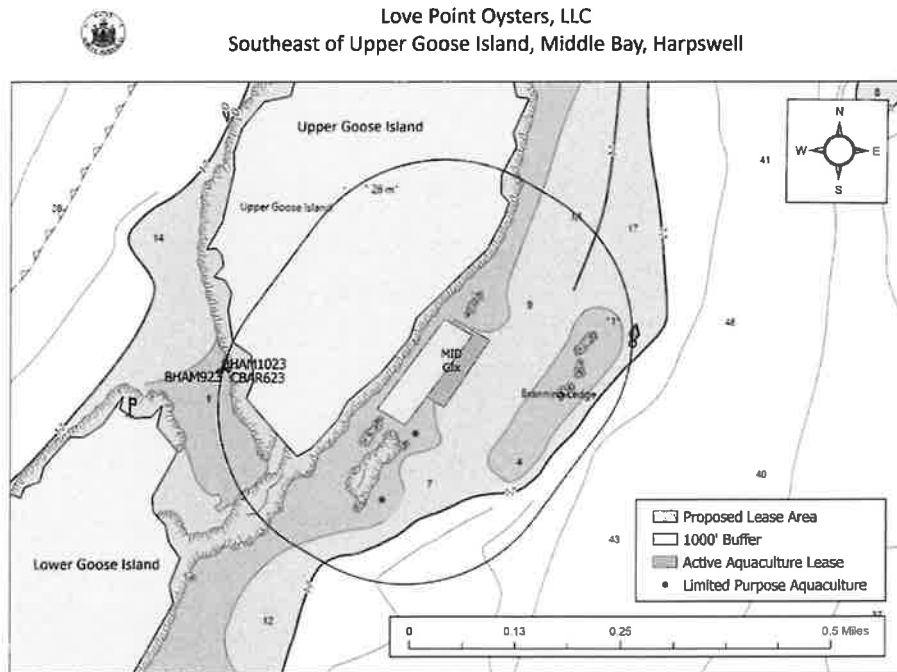


Figure 1: Proposed standard lease boundaries and existing experimental lease boundaries. Image from DMR site report.

B. Site Characteristics

On July 12, 2023, DMR scientists assessed the proposed lease site beginning at 8:00 AM. The proposal is situated on the southeastern shore of Upper Goose Island which consists of a rocky coastline leading to mixed forest (SR 2).

DMR began collecting depths at 8:04 AM. Measured depths at corners of the proposed lease site ranged from 11.5 to 16.9 feet. Correcting for tidal variation derives water depths at the corners of the proposal at the previous high tide to be from 11.6 to 17.0 feet and from 3.0 to 8.4 feet at mean low water (MLW) (SR 2).



Love Point Oysters, LLC
Southeast of Upper Goose Island, Middle Bay, Harpswell

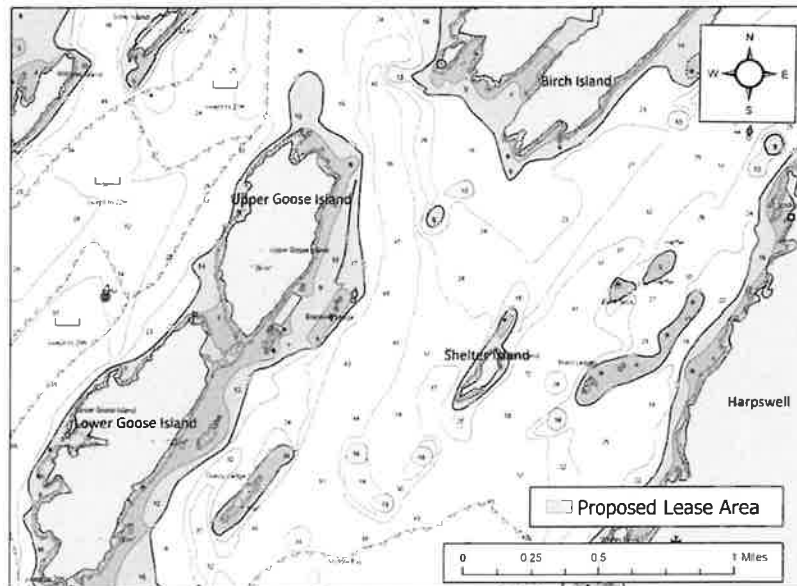


Figure 2: Proposed lease site and surrounding area. Image taken from DMR site report.

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; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or 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

In examining riparian owner ingress and egress (12 M.R.S.A. § 6072(7-A)(A)), the Commissioner “shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures.” Chapter 2.37(1)(A)(1)⁵.

⁵ 13-188 C.M.R. ch. 2.

Upper Goose Island, located approximately 65 feet northwest of the proposal at MLW, is privately owned by the Nature Conservancy for ecosystem conservation. There were no observed moorings, docks, or piers within the vicinity of the proposal during DMR's site assessment (SR 4).

During the public hearing, no one offered testimony or evidence regarding 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

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area (12 M.R.S.A. § 6072(7-A)(B); Chapter 2.37(1)(A)(2)).

According to the site report, the proposal is located approximately 65 feet southeast of Upper Goose Island at MLW. The main navigational channel is located to the east of Branning Ledge, which is approximately 660 feet east of the proposal. Green navigational buoy "1" is located approximately 1,000 feet east of the proposal. During DMR's site assessment, one sailboat was observed transiting north, one commercial fishing vessel traveling south, and one powerboat all operating within the channel to the east of Branning Ledge (SR 5).

During the public hearing, no one offered testimony or evidence regarding potential impacts to navigation.

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

C. Fishing & Other Uses

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area (12 M.R.S.A. § 6072(7-A)(C); Chapter 2.37(1)(A)(3)). Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area (Chapter 2.37(1)(A)(4)).

Fishing. During the site visit, DMR documented two lobster buoys approximately 105 feet and 290 feet southeast of the proposal. DMR observed approximately six lobster buoys in total within 1,000 feet of the proposal (SR 6).

The application states that one lobsterman fishes near the proposed lease boundary. During cross-examination, the applicant testified that the line of lobster traps is approximately 40 feet from the

current lease boundary. However, the applicant also testified that the proposed new boundary is further away from the lobster trapline.

No testimony was given at the public hearing concerning impacts to commercial or recreational fisheries.

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

Other aquaculture uses: The applicant currently operates experimental lease MID G1x partially within the boundaries of this proposal (Figure 1). If the standard lease application is granted, then pursuant to 12 M.R.S.A. §6072-A(20), MID G1x would be terminated. One limited purpose aquaculture (LPA) site, BHAM923, is located within 1,000 feet of the proposed lease site (SR 6).

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. The application states there is occasional kayaking in the area from June through September (App 32). No evidence or testimony was provided at the hearing concerning kayaking in 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

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna (12 M.R.S.A. § 6072(7-A)(D); Chapter 2.37(1)(A)(5)).

Site observations. On July 12, 2023, DMR conducted one SCUBA dive transect and three point dives to assess the epibenthic ecology of the proposed lease. The relative abundance of epibenthic flora and fauna observed in the video transect is described below:

Species observed on underwater footage

Species Observed	Abundance
Crab (<i>Cancer sp.</i>)	Abundant
Hermit Crab (<i>Pagurus sp.</i>)	Abundant
American Lobster (<i>Homarus americanus</i>)	Common
Northern Sea Star (<i>Asterias vulgaris</i>)	Common
Seaweed (<i>Ascophyllum sp.</i>)	Common
Sand anemone (<i>Cerianthus borealis</i>)	Occasional
Sea spaghetti (<i>Gracilaria anderspni</i>)	Occasional

Eelgrass. Since data collected by the Maine Department of Environmental Protection (MDEP) in 2018⁶ showed historical eelgrass presence within the proposal boundaries, DMR conducted one SCUBA transect and three additional point dives to determine if eelgrass was present within the proposal boundaries and/or in the vicinity of the proposal. The dive transect was conducted in the northern half of the proposal, which passed through an area of historically mapped eelgrass. No eelgrass was observed during the transect. No eelgrass was observed during the second dive. The third dive targeted another historically mapped patch of eelgrass, and no eelgrass was observed. The fourth dive was conducted approximately 70 feet east of the proposal boundary to investigate another historically mapped patch of eelgrass. Ultimately, there was no eelgrass observed during the site assessment (SR 7).

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the closest mapped tidal waterfowl and wading bird habitat is approximately 3,100 feet to the southwest of the proposal. Data collected by the United States Fish and Wildlife Service in 2023 by aerial nest survey shows the closest mapped bald eagle nesting site to be approximately 1.2 miles northwest of the proposal. During the site assessment, DMR observed double-crested cormorant (*Nannopterum auritum*), osprey (*Pandion haliaetus*), sea duck (*sp.* unclassified), and gulls (*Larus sp.*) in the general vicinity of the proposal.

On February 15, 2022, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment” stating minimal impacts to wildlife are anticipated for this project.⁷

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.

⁶ Data obtained from The Maine Office of GIS “GISVIEW.MEDEP.Eelgrass2018_CascoBay”.

⁷ Email correspondence between MDIFW and DMR.

E. Public Use & Enjoyment

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government (12 M.R.S.A. § 6072(7-A)(F); Chapter 2.37(1)(A)(7)).

The proposal is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments or certain conserved lands owned by the Federal Government, the State Government, or a municipal government (SR 10).

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

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices (12 M.R.S.A. § 6072(7-A)(E); Chapter 2.37(1)(A)(6)).

According to the application, the source for sugar kelp (*S. latissima*) would be Atlantic Sea Farms in Saco, Maine. American oyster (*C. virginica*) would be sourced from Muscongus Bay Aquaculture in Bremen, Maine or Mook Sea Farms in Walpole, Maine (App 3). These are currently approved sources for these species. If the applicant is unable to obtain stock from these facilities, then it must come from another DMR approved source.

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

G. Light

The Commissioner evaluates lighting in accordance with 12 M.R.S.A §6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(8). The statute specifies that a lease must not result in an unreasonable impact from light at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to lighting, including a requirement that the applicant demonstrate that all reasonable measures will be taken to mitigate light impacts associated with the lease activities.

According to the application, no lights would be used on the proposed lease site (App 28).

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

H. Noise

The Commissioner evaluates noise in accordance with 12 M.R.S.A § 6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(9). The statute specifies that a lease must not result in an unreasonable impact from noise at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to noise, including a requirement that the applicant take all reasonable measures to mitigate noise impacts associated with the lease activities.

According to the application, sources of noise on-site would be two vessels powered by four-stroke outboards, an electric tube sorter, and a gas-powered pressure washer. The pressure washer would be used up to three times per week for approximately 3-10 minutes at a time. The application states that the sorter motor is almost noiseless, and the plastic sorter tubes reduce noise (App 27). The vessel engines will be turned off whenever possible.

Based on this information, 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 Commissioner evaluates visual impact in accordance with 12 M.R.S.A § 6072(7-A)(H) and the regulatory standards specified in Chapter 2.37(1)(A)(10).

The application stated that orange, yellow, white, and/or red toggle buoys would be used on-site. However, in response to a question from DMR at the hearing, the applicant confirmed that if the project is approved, only buoys in the colors approved by Chapter 2.37(1)(A)(10) will be used (Barner testimony).

Two work floats are proposed for the project. The floats would be between 1.5 and 7 feet in height, which complies with DMR's height limitations.

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

6. 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 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 applicants have demonstrated that there is an available source for organisms 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.

7. DECISION

Based on the foregoing, the Commissioner grants a lease to Love Point Oysters, LLC for 3.24 acres for twenty years for the cultivation of marine algae (*Saccharina latissima*) and American oysters (*Crassostrea virginica*) using suspended culture techniques. The lessees shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessees 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.

8. 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).⁸ Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of

⁸ 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."

the lessee to the extent necessary to carry out the purposes of the lease. No conditions shall be imposed on this lease.

9. REVOCAION 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: 4/18/24



Patrick C. Keiner, Commissioner
Department of Marine Resources

**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).

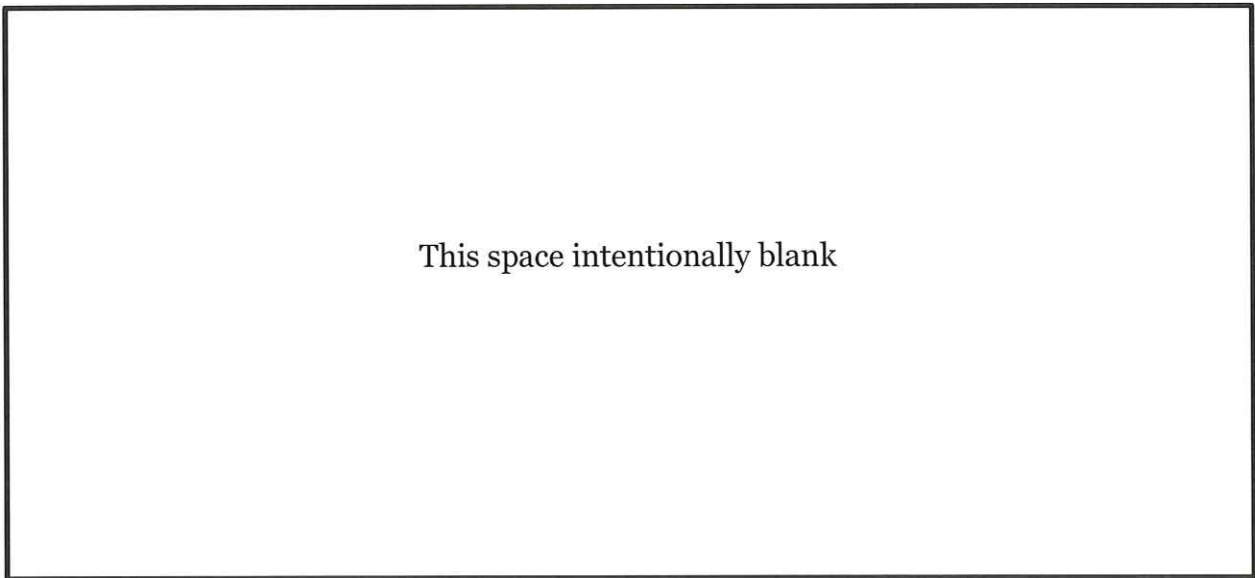
B. Site History

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).



³ LPA Acronyms: BHAM117 and BHAM218.

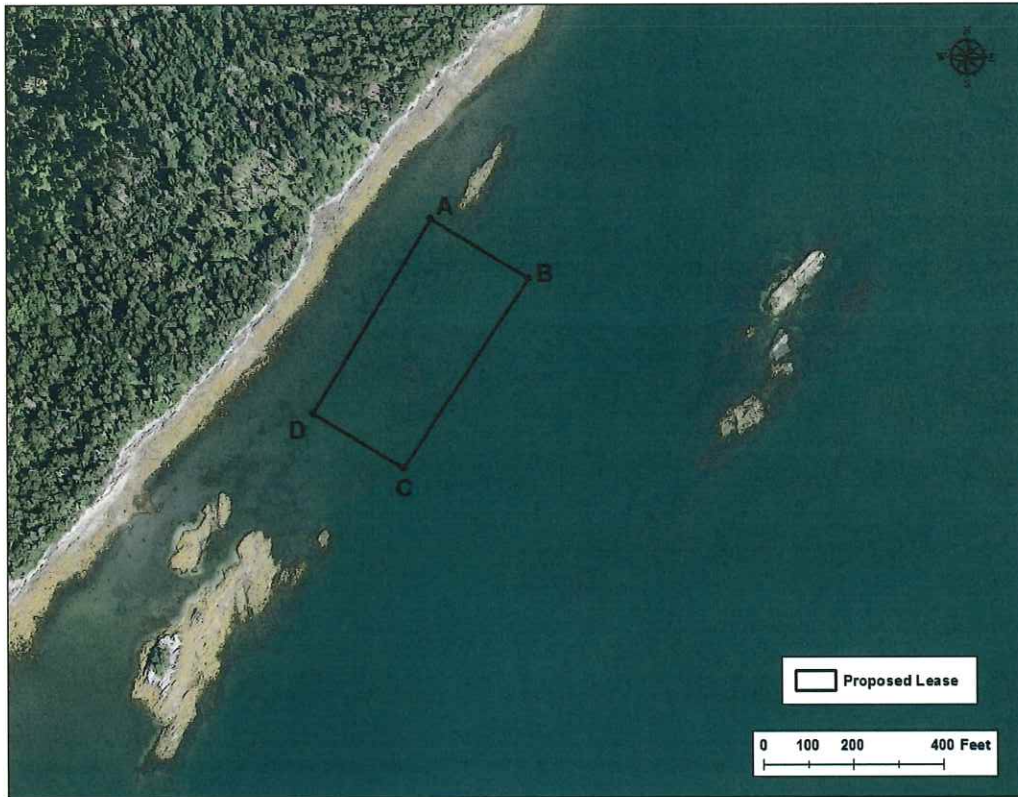


Figure 1: Proposed lease site with labeled corners. Image generated by Department staff.

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:

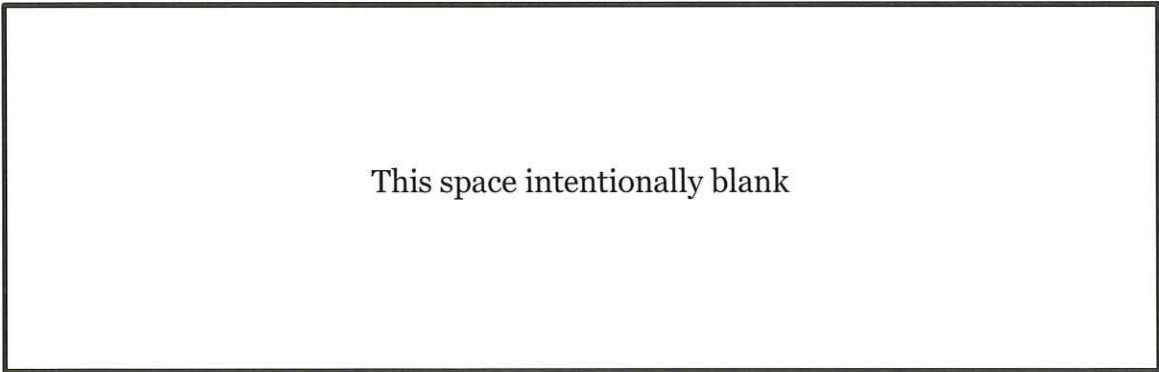
Taking into consideration the separation between the proposed lease and Upper Goose Island, and the island’s undeveloped southeastern shoreline, the proposal, if granted, will not interfere with riparian ingress and egress (SR 6).

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).



⁴ CF: Harbormaster questionnaire dated March 23, 2018.
⁵ CF: Email from D. Kaufholz to C. Burke dated March 6, 2018.

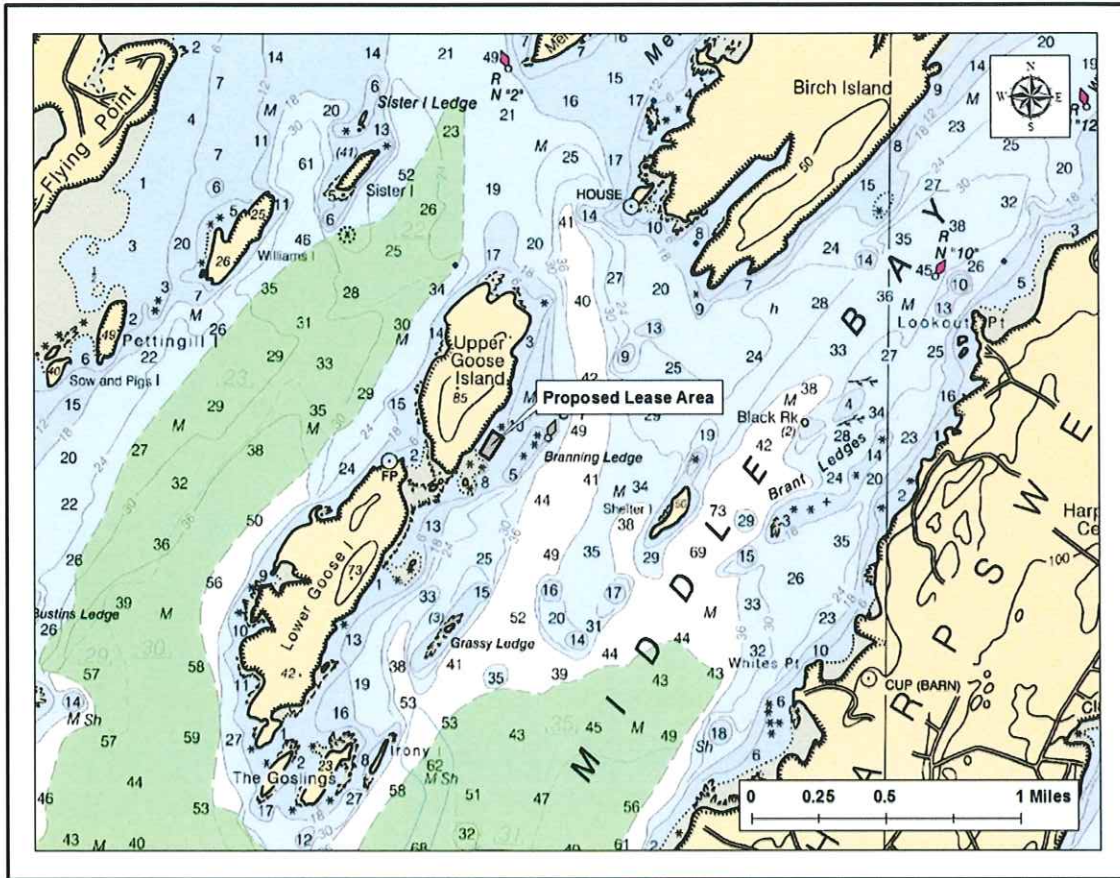


Figure 2: A vicinity map depicting the proposed lease area, the primary navigational channel, and Branning Ledge. Image from site report.

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.”