

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Quahog Bay Conservancy**

**QHB SIx**

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

September 10, 2019

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

Quahog Bay Conservancy applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease totaling 2.98 acres<sup>1</sup> and located east of Snow Island, in Quahog Bay, 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 28, 2019. No requests for a public hearing were received during the comment period and no hearing was held. Two public comments were received during the open comment period.

**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 DMR's mailing list. Notice of the application and comment period was published in the *Times Record* on March 14, 2019. After the close of the comment period DMR received a petition requesting the lease for Quahog Bay Conservancy be revoked<sup>2</sup>. While the petition was received after the comment period ended, it did indicate that one riparian landowner, the owner of Ben Island, was within 1,000 feet of the proposed site and had not been included in the initial notification and public comment period. After reviewing this claim, DMR confirmed that Ben Island is within 1,000 feet of the proposed lease site and the owner had not been notified. As a result, a second 30-day notice period, ending August 25, 2018 was extended to this riparian landowner. On August 8, 2019 the owner of Ben Island waived the comment period.<sup>3</sup>

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<sup>1</sup> Applicant originally requested 2.99 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 2.98 acres.

<sup>2</sup> CF: petition titled 'Save Quahog Bay Petition' submitted by Barry Catlin on July 8, 2019. The petition requested the pending application be revoked. DMR responded to D. Catlin on July 16, 2019 and notified him that the lease had not yet been granted and the proposal was still under review.

<sup>3</sup> CF: Email from G. Vincent to [DMRAquaculture@Maine.gov](mailto:DMRAquaculture@Maine.gov) dated August 8, 2019

The evidentiary record before the Department regarding this lease application includes the application, the Department's site report dated July 2, 2019, and the case file. The evidence from these sources is summarized below.<sup>4</sup>

## **2. DESCRIPTION OF THE PROJECT**

### **A. Proposed Operations**

The purpose of the proposed lease is to explore the feasibility of a commercial scale oyster farm on the east side of Snow Island (App 3). Quahog Bay Conservancy plans to test different types of floating rack-n-bags systems, including OysterGro™ and Flow N Grow™ (App 2). The applicant plans to deploy up to 1,210 floating cages, and 7,260 mesh bags (App 12). If approved, the lease would be split into 5 sections, each one containing varying lengths and numbers of horizontal lines and cages (SR 2).

### **B. Site Characteristics**

On May 31, 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 is in Quahog Bay, east of Snow Island in the Town of Harpswell (SR 2). The eastern shoreline of Snow Island is undeveloped and characterized by a steep rocky intertidal that leads to mature forests. There are buildings present on the interior of Snow Island, and along the northern and southern shorelines (SR 2).

DMR assessed water depths at the site at approximately 9:30am; high tide was predicted to occur at 9:39am. During DMR's assessment, depths at the proposed site ranged from 14 to 24 feet. When correcting for tidal variation, depths at mean low water are approximately 5.52 to 15.52 feet (SR 7).

## **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

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<sup>4</sup> These sources are cited below, with page references, as CF (case file), App (application), and SR (site report).

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**

Access points for Snow Island, located on the northwestern and southern shores, are owned by the President of Quahog Bay Conservancy. Shoreline to the west of the proposed lease site is undeveloped. If the proposed lease is granted, it will not interfere with riparian access to Snow Island (SR 9).

Potato, Woodsy, Burbank and Mouse<sup>5</sup> Islands are located to the east of the proposed site. Potato, Woodsy, and Burbank Islands are privately owned, while Mouse/Little Snow Island is owned by the Maine Bureau of Park and Lands (SR 9). Access to these islands is likely limited to vessels landing directly on the island shorelines (SR 9), and if approved, the proposed lease will be at least 250 feet to the west and will not impede access to these islands (SR 9).

During the review period, the Department received one public comment from a riparian owner expressing support for the proposed lease.<sup>6</sup> Based on the public comment, and the information provided in the 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. It appears from this evidence that the riparian ingress and egress will not be unduly affected by the proposed 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 situated in subtidal waters and borders the eastern shore of Snow Island. Because the site goes right up to the shore of the island, navigating between the western boundary of the proposed lease and the island would require moving among floating oyster bags and cages (SR 10). At least 200 feet of navigable waters would remain to the east of the proposed site (SR 10).

Recreational boating occurs between Snow, Potato, Woodsy, Burbank, and Mouse Islands (SR 10). Mouse Island, which is managed by the Maine Island Trail Association, is state-

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<sup>5</sup> The town of Harpswell refers to this island as "Mouse Island", whereas the Maine Bureau of Parks and Lands refers to it as "Little Snow Island". This document will continue to refer to this island as "Mouse Island".

<sup>6</sup> CF: Letter from A. Burbank to C. Burke, dated March 20, 2019.



owned and open for public use. There are no docking facilities on the island, but smaller vessels land directly on the island and deep-draft vessels may anchor between Mouse Island and the proposed lease (SR 10). Access points (docks) for Snow Island are located on the northwestern and southern shores and are owned by the President of Quahog Bay (SR 9). The location of the lease will not interfere with riparian access to snow island (SR (9)). The applicant noted that kayaking is common in Quahog Bay, and that they welcome kayakers to paddle through their lease (App 14).

During the review period, the Department did not receive any public comments regarding navigation. Based on the absence of public comments, and the information provided in the site report and application, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on navigation. It appears from this evidence that navigation around Snow Island will not be 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 DMR's site visit on May 31, 2019, 2 trap buoys were observed in the area around the proposed lease (SR 11). It is likely that recreational and commercial fishing activities are more common during the summer months, and likely occur near the proposed site (SR11). The applicant indicated that the closest lobster fishing is to the west and south of Snow Island, and outside the proposed lease area (App 12). The applicant also indicated that some harvesting of Eastern oysters occurs in the subtidal waters of Quahog bay, and that there is some lobster fishing in the spring and fall (App 12).

DMR received one comment that the proposed lease would interfere with wild shellfish operation.<sup>7</sup> No other comments were received, and DMR did not receive any response from the Harbormaster for the Town of Harpswell. The applicant has indicated they are willing to allow divers to harvest wild European oysters from within the boundaries of the proposed site, if those activities do not interfere with the proposed operations (App 13). If the lease is granted, DMR will place a condition on the lease requiring wild harvesters to obtain permission from the lease holder prior to any proposed harvest activities. The intent of this condition is to provide the lease holder with an opportunity to determine whether the proposed harvest activities would interfere with the lease activities, but to provide opportunity for the wild harvest of European oysters to continue.

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<sup>7</sup> CF: public comment from P. Farmer, received March 12, 2019.

After the close of the comment period, DMR received a petition stating, ‘many lobstermen actively fish the approved leased area<sup>8</sup>.’ During their site visit on May 31, 2019, DMR did observe two trap buoys (SR 11). Both buoys were located outside of the proposed lease area. While the site report indicates that recreational and commercial fishing activities are more common during the summer months no other comments regarding lobster fishing in the area were received during the applicable comment period, and fishable waters remain near the proposed lease site.

It appears from this evidence, as well as the condition described above, that the proposed lease is unlikely to unreasonably affect the commercial and recreational fishing activities in the area.

**Exclusivity.** The applicant did not request any exclusive use and indicated they are open to commercial and recreational fishing within the proposed site as long as those activities don’t interfere with the lease operations.

**Other aquaculture uses.** The Secretary and Director of Operations for Quahog Bay Conservancy holds three Limited Purpose Aquaculture (LPA) licenses within the boundaries of the proposed lease, and one additional LPA adjacent to the north end of Snow Island. There are no other active aquaculture lessees or licensees in Quahog Bay (SR 11). DMR did not receive any comments concerning the impact of the proposal on existing aquaculture operations, and it is unlikely that the proposed activities will negatively impact existing aquaculture 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.** The applicant notes that kayaking is common in Quahog Bay (App 14). During the review period, the Department did not receive comments detailing other uses that are not already contemplated in other sections of this document. Based on the absence of additional comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on 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 DMR’s site visit, eider ducks (*Somateria mollissima*), a bald eagle (*Haliaeetus leucocephalus*), and cormorants (*Phalacrocorax auratus*) were observed in the area around the

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<sup>8</sup> CF: petition titled ‘Save Quahog Bay Petition’ submitted by Barry Catlin on July 8, 2019. The petition requested the pending application be revoked. DMR responded to B. Catlin on July 16, 2019 and notified him that the lease had not yet been granted and the proposal was still under review.

proposed lease (SR 12). According to data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), Snow Island supports two bald eagle nests. Both nests are within ¼ mile of the proposed lease (SR 12). DMR sent a copy of the application to MDIFW for their review and comment. MDIFW indicated that “minimal impacts to wildlife are anticipated for this project.”<sup>9</sup>

No records of eelgrass (*Zostera marina*) exist for the area around the proposed lease (SR 13). According to data collected by DMR and the Maine Department of Environmental Protection, the nearest eelgrass bed (surveyed in 2018), is located more than 1.7 miles to the southeast of the proposed site (SR 13). The proposed aquaculture activities are unlikely to impact eelgrass beds (SR 13).

**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**

Mouse Island is an undeveloped island owned by the Maine Bureau of Parks and Lands and is located about 250 feet from the proposed lease site (SR 14). While the island is open to the public, there are no docking facilities and boaters must land along the shoreline. If granted, the proposed lease would not interfere with access to this island or prevent boats from anchoring in the channel or cove created by the surrounding islands (Potato, Woodsy, Burbank and Mouse) (SR 14). No other public beaches or facilities owned by federal, state, or municipal government are within 1,000 feet of the proposed site.

**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 municipal, state or federal governments.

#### **F. Source of Organisms**

The applicant intends to source American/eastern oyster seed from Mook Sea Farms Inc., in Walpole Maine, and Muscongus Bay Aquaculture in Bremen, Maine. These sources are approved by DMR.

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

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<sup>9</sup> CF: Email from R. Settele (MDIFW) to C. Burke dated May 1, 2019



#### **4. CONCLUSIONS OF LAW**

Based on the above findings, I concluded 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 2.98 acres to Quahog Bay Conservancy 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<sup>10</sup>; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

The lease is granted for the suspended culture 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 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

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<sup>10</sup> 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.”

performance of 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 MSRA §6072-A (15).<sup>11</sup> 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.

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. SCUBA harvest of wild European oysters from within the boundaries of the lease will be permitted, provided divers obtain permission from Quahog Bay Conservancy prior to harvesting.

**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: \_\_\_\_\_

9/10/19

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

<sup>11</sup> 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.”