

STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES

Chebeague Island Oyster Company LLC

CAS NLC2x

Experimental Aquaculture Lease Application

Suspended Culture of American/eastern
oysters (*Crassostrea virginica*)

December 13, 2019

Casco Bay, Town of Chebeague Island

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Chebeague Island Oyster Company LLC applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located northwest of Little Chebeague Island in the Town of Chebeague Island, Cumberland County. The proposed lease is 1.61 acres and is for the suspended cultivation of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on April 23, 2019. 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 Chebeague Island and its Harbormaster, and others on DMR’s mailing list. Notice of the application and comment period was published in the May 9, 2019 edition of the *Forecaster*. The evidentiary record regarding this lease application includes the application, DMR’s site report dated October 10, 2019, and the case file. Evidence from each of these sources is summarized below.¹

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant is proposing to culture American/eastern oysters (*Crassostrea virginica*) using stacking trays that would sit atop the ocean floor (App 4, SR 2). The applicant intends to use the proposed experimental lease to determine the viability of overwintering oysters at the depths within the bounds of the proposal (App 4). Cages of oysters from the applicant’s lease CAS NLC would be moved onto the proposed site between October 1st and November 15th annually, and removed from the site in April of each year (App 4). Helical or pyramid anchors², sinking

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

² In their review of the draft decision, the applicant indicated they’d like to be able to consider using pyramid anchors instead of the originally proposed helical anchors. The total number of anchors used

longlines, buoys marking the longlines, and corner markers would remain on the site year-round (SR 2).

B. Site Characteristics

The proposed lease occupies subtidal waters north of Little Chebeague Island and west of Great Chebeague Island in Casco Bay (SR 2). A tidally exposed sandbar connects the islands at lower tidal stages (SR 2). Little Chebeague Island is undeveloped, while the neighboring shoreline of Great Chebeague Island hosts residential and commercial buildings (SR 2). Correcting for tidal variation on measurements collected during DMR's site visit indicate that, at mean low water, depths at the corners of the proposed lease site range from 11.4 – 18.9 feet. (SR 6).

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 available source of organisms to be cultured on the lease site.

A. Riparian Access

Little Chebeague Island, owned by the Bureau of Parks and Lands within the Maine Department of Agriculture, Conservation, and Forestry, is regularly used by recreational boaters and beachgoers. There are no docks on the island, so access from the water requires anchoring offshore or landing vessels directly on the shoreline (SR 7). The proposed lease site is 875 feet to the northwest of Little Chebeague Island at mean low water. Because most of the proposed gear would be removed from the site during summer months when public use of Little Chebeague Island is heaviest, and because the proposed site is located 875 feet away, it is unlikely the proposed lease would impede access to Little Chebeague Island (SR 7).

DMR staff observed houses and docks along the western shoreline of Great Chebeague Island (SR 7). At the closest point, the proposed lease is located 1,070 feet from the shore of Great

would not change. Due to the similarity in how these two anchor types function, and their respective footprints, DMR will allow the applicant to use either helical or pyramid anchors.

Chebeague Island at mean low water. The Indian Point dock is approximately 1,430 feet to the northeast of the proposed site. Given these distances, it is unlikely that access to docks and moorings on Great Chebeague Island would be affected by the proposed lease.

DMR staff did observe one red and one yellow buoy approximately 100 feet from the proposed lease site. These buoys may have been marking a mooring, however no other moorings were observed near the proposed site (SR 8), and no comments were received regarding the lease application and interference with any moorings.

No public comments were received regarding the potential impact of the proposed lease on riparian ingress and egress. Based on the lack of public comments, the undeveloped nature of Little Chebeague Island, and because the proposed site is located more than 1,000 feet from any dock along Great Chebeague Island, it is reasonable to conclude that 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 in an area that experiences heavy vessel traffic, especially during the summer (SR 8). At high tidal stages some vessels have the ability to travel between Great and Little Chebeague Island, but at lower tidal stages a tidally exposed sandbar prevents navigation between the two islands (SR 8). During the site visit, DMR staff observed recreational and commercial vessels in the area, and boats were seen anchored near the Indian Point Dock, northeast of the proposed site (SR 9). The proposed lease is located over 875 feet from both Little and Great Chebeague Islands, and it is unlikely vessels navigating in the area would have difficulty travelling between the proposed lease and the shorelines of either island if the lease were granted. In addition, during the summer months when vessel traffic in the area is heaviest, the stacking trays would not be on the site (SR 9).

There is a marked navigation channel between the Chebeague Islands and Lower Basket Ledge to the west of the proposal. The proposed lease is approximately 1800 feet southeast of the red nun that marks the eastern side of the channel (SR 9). Given the distance from the marked navigational channel, the proposed aquaculture activities are unlikely to interfere with use of the channel.

During the comment period for this application no comments were received regarding navigation. Based on the evidence, it appears that the proposed aquaculture activities will not unreasonably interfere with navigation.

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 July 9, 2019 no commercial or recreational fishing was observed within the boundaries of the proposed lease; some lobstering was observed in the general vicinity (SR 9). While the applicant has proposed to remove trays from the site between April 30th and October 1st, helical or pyramid anchors, sinking longlines, buoys, and corner markers will remain on site year-round (SR 9). Due to the presence of year-round sunken lines, it is possible lobstermen would avoid the area. (SR 9). During the comment period, no comments were received regarding fishing.

Exclusivity. The applicant has not requested any exclusive use.

Other aquaculture uses. There are 5 Limited Purpose Aquaculture (LPA) licenses, and six aquaculture leases within one mile of the proposed site (SR 8). There are currently four pending lease applications located nearby Little Chebeague Island. Figure 1 details active and pending aquaculture activity near the proposed lease³.

³ Figure 1 was published on October 1, 2019, and the Great Ledge Cove Seafood application located southwest of Little Chebeague Island, has since been granted a lease. The decision regarding that application was signed on November 4, 2019. Additional applications for leases in the surrounding area have also since been received.

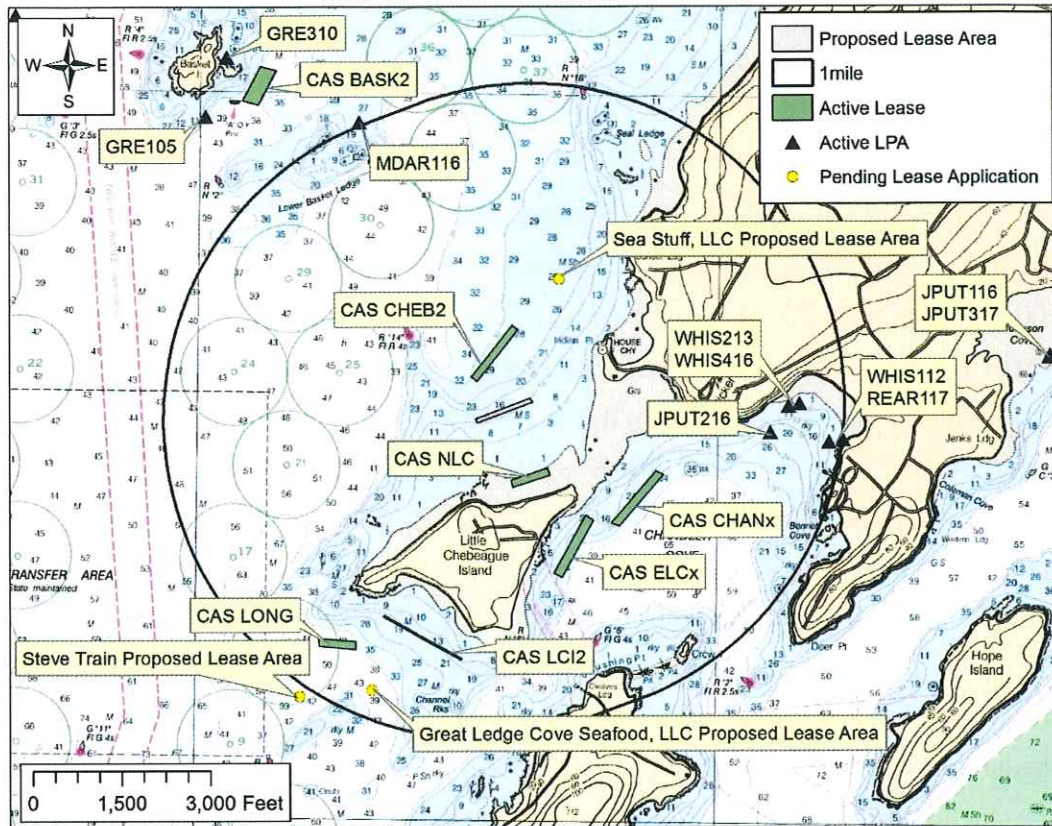


Figure 1: Aquaculture activity near the proposed lease area.

The closet active aquaculture activity to the proposed lease, located approximately 630 feet to the north, is standard lease CAS CHEB2, which is for the suspended culture of marine algae (SR 9). The applicant holds standard lease CAS NLC, located south of the proposal. At the time of DMR’s site visit there was an aquaculture work float located nearby the applicant’s existing lease (SR 9). No comments were received from other aquaculture lease or license holders during the comment period. Based on the evidence, it appears the proposed activities will not interfere with existing aquaculture uses in the area.

Other water-related uses. The applicant noted that while some kayaking occasionally occurs in the vicinity during the summer months, it occurs closer to shore (App 5). During the summer, when recreational use of Little Chebeague Island is greater, trays would be removed from the propose site, but sunken longlines and associated gear would remain. However, the presence of sunken lines is unlikely to hinder other water-related uses of the area (SR 9). During the review period, DMR did not receive any comments detailing other water-related uses that are not already contemplated in other sections of this decision. 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

Historical eelgrass data collected by DMR indicated that, in 2018, the nearest eelgrass to the proposed lease was immediately adjacent to the southeast and southwest corners of the site (SR 11). DMR returned to the proposed lease site on October 8, 2019 to evaluate the abundance of nearby eelgrass. Using a drop camera and transom-mounted depth sounder, eelgrass beds were observed to be over 25 feet from the southwest corner of the proposed site, so should not be impacted by the proposed aquaculture activities (SR 11). However, eelgrass was observed within 25 feet of the proposed southeast corner (SR 11). The Army Core of Engineers (ACOE) recommends a set-back of 25 feet to ensure the proposed lease does not interfere with eelgrass (SR 11). The DMR site report recommends that the proposed eastern boundary be shifted 20 feet to the west to avoid interference with existing eelgrass beds (SR 11). Based on the recommendation in the site report, and to meet the ACOE 25-foot set-back requirements, the southeast and northeast corners of the proposed lease will be shifted 20 feet to the west. This reduces the total size of the proposed site from the requested size of 1.61 acres to 1.57 acres. Table 1 displays the revised proposed lease coordinates.

Table 1: Revised coordinates

Corner	Latitude	Longitude
SE	43.719203° N	70.145277° W
NE	43.719376° N	70.145416° W
NW	43.718429° N	70.148817° W
SW	43.718251° N	70.148722° W

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the southeast and southwest corners of the proposed lease are adjacent to Tidal Wading Bird and Waterfowl Habitat, which is defined under Maine’s Natural Resource Protection Act as Significant Wildlife Habitat (SR 10). This habitat is located along the western shoreline of Great and Little Chebeague Islands (SR 10). Additionally, the site report states that “mapped habitat for the purple sandpiper (*Calidris maritima*) and for an unidentified “rare animal” is located on the northern tip of Long Island, over 3,000 feet to the southeast of the proposed lease” (SR 10).

DMR sent a copy of the application to MDIFW for their review and comment. MDIFW indicated that “so long as the tracks do not intersect with eelgrass, minimal impacts to wildlife are anticipated.”⁴

Based on the evidence that the proposed lease does not interact with mapped wildlife habitat, and because the coordinates of the lease have been adjusted so as not to interfere with mapped eelgrass beds, it appears that the proposed aquaculture activities for this lease site will not interfere with the ecological function 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 ecological significant flora and fauna.

E. Public Use & Enjoyment

Little Chebeague Island is located approximately 875 feet south of the proposed site at mean low water and is owned by the Maine Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands. The island is accessible by foot from Great Chebeague Island at low tide or requires anchoring in the shallows offshore or landing vessels directly on the shoreline (SR 13). The island is popular with recreational boaters, kayakers, and beachgoers. During summer months, when recreational use of the island is heaviest, stacking trays are proposed to be removed from the site (SR 13).

During the public comment period for this application, no comments were received regarding public use and enjoyment of the area surrounding the proposed lease site. Based on the lack of public comments, and that the proposed site is located 875 feet from shore, it appears that the proposed aquaculture activities for this site will not interfere with public use and enjoyment of Little Chebeague Island.

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

F. Source of Organisms

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

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

⁴ CF: Email from R. Settele to C. Burke on June 4, 2019

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. With the revised coordinates, 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 to Chebeague Island Oyster Company LLC, reduced to 1.57 acres by the movement of the southeast and northeast corners of the proposed lease 20 feet to the west, as provided in section 3.D., 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 lessee⁵; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This experimental lease is granted to the lessee for the cultivation of American/eastern oysters (*Crassostrea virginica*). The lessee shall pay the State of Maine rent

⁵ DMR Rule 2.64 (14) provides:

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

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) (s) 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 MSRA §6072-A (15).⁶ Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. 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.

7. REVOCAION OF EXPERIMENTAL LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRS §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: 12.13.19



Patrick C. Keliher, Commissioner
Department of Marine Resources

⁶ 12 MRS §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.”