

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Chebeague Island Oyster Company LLC

CAS NLC

Standard Aquaculture Lease Application
Suspended culture of shellfish
Casco Bay, Chebeague Island

April 29, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Chebeague Island Oyster Company LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 1.96¹ acres located in the intertidal zone on the northwest side of Little Chebeague Island, Casco Bay, in the Town of Chebeague Island, Cumberland County, Maine. The proposal is for the suspended culture of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on October 2, 2018. A public hearing on this application was held on April 8, 2019² at the Chebeague Island Hall Community Center on Chebeague Island, Maine. No one intervened in this case.

1. THE PROCEEDINGS

Notice of the hearing, and copies of the application and DMR site report, were provided to state and federal agencies for their review, the Town of Chebeague Island, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in *The Northern Forecaster* on February 28, 2019, March 14, 2019, and March 28, 2019 and in the *Portland Press Herald* on March 21, 2019. Notice was also published in the April 2019 edition of *Commercial Fisheries News*.

Sworn testimony was given at the hearing by the applicant, represented by Robert Earnest and Caitlin Gerber, who described the proposed project. Marcy Nelson, DMR Aquaculture Scientist, described the site visit. Colin Greenan, with the United States Army Corps of Engineers (USACOE), Marjorie Stratton, the Chebeague Island Town Administrator, and Genaro Balzano, the Chebeague Island Harbormaster, attended the hearing but did not offer testimony. One member of the public asked general questions of DMR.

The hearing was recorded by DMR. The Hearing Officer was Flora Drury. The evidentiary record before DMR regarding this lease application includes three exhibits introduced at the hearing (see exhibit

¹ Applicant originally requested 1.9 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 1.96 acres.

² The public hearing for the Chebeague Island Oyster Company LLC application was originally scheduled for April 2, 2019. The hearing was postponed until April 8, 2019 to ensure that adequate time was available between the publication of the April 2019 edition of *Commercial Fisheries News*, in which notice of the hearing was posted, and the public hearing.

list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.³

LIST OF EXHIBITS⁴

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

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On December 4, 2018, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease (SR 1). The proposed lease site occupies intertidal waters on the northwest side of Little Chebeague Island in Casco Bay. The tidally exposed sandbar on which the proposed lease is located connects Great and Little Chebeague Islands at low water (SR 2). During the site visit, which was conducted at slack low water during a low tide with a tidal height of -0.4 feet, the entirety of the site was located within the intertidal zone (SR 5). In the site report, the bottom of the proposed lease site was characterized as firm mud and sand (SR 5).

B. Proposed Operations

The applicant proposes to culture American/eastern oysters (*C. virginica*) on the proposed lease site using suspended culture techniques (App 1). Shellfish would be cultured in polyethylene mesh bags contained within stackable wire trays (App 22-23). The stackable wire trays would be deployed directly on the ocean floor (App 24). The applicant proposes to deploy trays in stacks of two; a stack of two wire trays would measure 4' long x 3' wide x 14" tall (App 24). A maximum of 6 rows of stackable wire trays, with a maximum of 125 trays per row, are proposed for the lease site (App 25). Wire trays would be removed from the site during the winter months; corner markers, sinking longlines and associated helical anchors would be installed on the site year-round (App 5 & Earnest/Drury). The applicant plans to service the site from a 22-foot pontoon boat (App 5).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. This statute provides that a lease may be granted by the Commissioner upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other uses of the area, taking into consideration other aquaculture uses of the area; with the ability of the lease site and

³ In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.

⁴ Exhibits 1, 2, and 3 are cited below as: Case file – "CF"; Application – "App", site report – "SR". Other exhibits are cited by number.

surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

A. Riparian Access

The proposed site is located in intertidal waters on the northwest side of Little Chebeague Island (SR 8). No public or private docking facilities are located on the island, which is owned by the State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands (App 38 & SR 8). To access Little Chebeague Island by boat, mariners must land directly on the island's shoreline (SR 8). According to the site report, landing by boat is more common on Little Chebeague Island's east beach and "the proposed activities would not inhibit access to this beach" (SR 8). As the proposed lease is less than 700 feet in length, and Chebeague Island has a northern shoreline of over 4,000 feet, it appears that room is available on either side of the proposed lease for mariners to land on and access Little Chebeague Island via its northern shore, on which the proposed lease is located. Additionally, because 250 feet separates the proposed lease from Little Chebeague Island, room is available for depth-appropriate vessels to navigate to the Chebeague Island shoreline immediately southeast of the proposed site at higher tidal stages (SR 8).

According to the site report, the proposed lease would not interfere with access to the nearest dock, which is located on Great Chebeague Island, over 2,200 feet to the northeast (SR 8).

Based on this evidence, it appears that access to Little Chebeague Island and nearby docking facilities will not be prevented or unduly affected by the proposed lease.

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 on the tidally exposed sandbar that connects Little and Great Chebeague Islands (SR 8). According to the site report, navigation in this area is restricted by the shallow water depths and intertidal nature of the area (SR 8). Per page 8 of the site report, "At higher tidal stages there is adequate room for vessels to navigate between the proposed lease area, Great Chebeague Island, and Little Chebeague Island". Additionally, at mean high water (MHW) a minimum of 250 feet separates the proposed lease from Little Chebeague Island (SR 8). This distance is adequate for depth appropriate vessels to navigate around the proposed lease.

During the public hearing, the applicant stated that the top of the wire trays would sit 6-8 feet below the surface of the water at high tide (Earnest/Nelson). The applicant proposes to mark the corners of the lease and to deploy markers indicating the location of longlines that connect the proposed wire

trays (Earnest/Nelson). During the public hearing, Marcy Nelson, DMR Aquaculture Scientist, stated that vessels navigating in the area might benefit from markers indicating the location of submerged wire trays. A condition requiring additional marking on the site will be included in the lease.

During the review period and public hearing no one, including the Chebeague Island Harbormaster, provided comment or testimony about the effect of the proposed lease on navigation in the area. Based on the evidence, it is reasonable to conclude that navigation in the area will not be unduly affected by the presence of the proposed lease site.

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

C. Fishing & Other Uses

Fishing. During the December 4, 2018 site visit, no commercial or recreational fishing activities were observed in the vicinity of the proposed lease (SR 8). Per the site report: “lobster fishing is known to occur in the deeper subtidal waters to the north and beyond the influence of the proposed lease” (SR 8). Additionally, the site report indicates that recreational fishing likely occurs in the area during the summer months (SR 8). Although the proposed lease may prevent recreational fishing within its boundaries, it would “not hinder recreational fishing in the area” (SR 8).

Due to the timing of the site visit and because, per the site report, “commercial and recreational fishing are more prevalent in the summer months” it is possible that uses of the area, including fishing, were not observed by DMR staff (SR 8). However, according to the Chebeague Island Harbormaster, minimal commercial and recreational fishing occurs within the area of the proposed lease.⁵ Additionally, during the review period and public hearing, no one raised concerns about how the proposed lease may affect commercial and recreational fishing in the area, including the Chebeague Island Harbormaster. It is reasonable to conclude, due to this absence of comments, that there are no concerns about the effects the proposal may have on fishing in the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other uses of the area.

Other aquaculture uses. There are six active aquaculture leases and five existing Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease site (SR 9). The applicant, Chebeague Island Oyster Company LLC, currently holds a lease (CAS NLCx) within the boundaries of the proposed lease (SR 9-10). If granted, the proposed lease would replace CAS NLCx (SR 9). According to the site report, the proposed lease would “not interfere with culture activities at any of the leases in the surrounding area” (SR 9).

No other comments from aquaculture lease and/or license holders were provided, and therefore it is reasonable to conclude that there are no concerns regarding the effects of the proposed lease on other aquaculture uses in the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

⁵ CF: Harbormaster Questionnaire dated January 3, 2019.

Other water-related uses. During the site visit on December 4, 2018, DMR staff did not observe other water-related uses of the proposed lease area not described elsewhere in this decision. During the review period and public hearing, 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, the aquaculture activities proposed for this site will not unreasonably interfere with fishing, existing aquaculture operations, or other water related uses of the area.

D. Flora & Fauna

Site observations. Department staff observed marine algae, periwinkles (*Littorina sp.*), American/eastern oysters (*C. virginica*), and unidentified colonial ascidians within the proposed lease boundaries during the site visit conducted on December 4, 2018 (SR 10). Surf clam (*Spisula solidissima*) and razor clam (*Ensis directus*) shells were also noted (SR 10). No eelgrass (*Zostera marina*) was observed within the boundaries of the lease site during the DMR's site visit (SR 12). DMR staff did, however, observe eelgrass (*Z. marina*) in subtidal waters to the north and west of the proposal. Per page 12 of the site report:

Because the proposed lease area is located more than 30 feet above the mean low water line..., minimal to no impact to nearby subtidal eelgrass beds is expected.

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located within Tidal Wading Bird and Waterfowl Habitat (SR 14). The Department sent a copy of the lease application to MDIFW for their review and comment⁶; MDIFW did not comment on the proposed lease. During the review period and public hearing, neither MDIFW nor members of the public provided evidence detailing how the proposed lease may affect ecological functioning in the area. Based on this evidence, it appears that the proposed lease site will not interfere with the ecological functioning of the area.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

E. Public Use & Enjoyment

Little Chebeague Island, owned by the Maine Department of Agriculture, Conservation, and Forestry, Bureau of Parks and Lands is located within 1,000 feet of the proposed lease site (SR 14-15). Permission to conduct aquaculture activities on intertidal land associated with Little Chebeague Island was provided to the applicant by the Bureau of Parks and Lands on August 28, 2018⁷ (App 37-39).

⁶ CF: Email to J. Perry from C. Burke dated December 10, 2018.

⁷ The letter of permission provided by The Maine Department of Agriculture, Conservation, and Forestry, Bureau of Parks and Lands includes a written description of the uses, activities, and access for which permission was provided. These uses, activities, and access, align with those described in the lease application and at the public hearing.

According to the site report, Little Chebeague Island is used regularly by boaters, kayakers, and beachgoers (SR 14). Per section “A. Riparian Access”, public access to Little Chebeague Island will not be prevented or unduly affected by the proposed lease. Additionally, according to the Chebeague Island Harbormaster, the proposed lease would not interfere with any local, state, or federally owned beaches parks, or docking facilities within 1,000 feet.⁸

During the review period and public hearing no one provided comment or testimony about the effect of the proposed lease on the public use or enjoyment of Little Chebeague Island. 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 public use or enjoyment of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments within 1,000 feet.

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

Seed stock for this proposed lease site would be obtained from Mook Sea Farm in Walpole, Maine (App 1). The proposed source is an approved source of seed stock.

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

G. Light

According to the application, no lights would be used on the proposed lease site, other than those required for night work during an emergency (App 7).

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

H. Noise

The applicant proposes to service the site from a 22-foot pontoon boat powered by a 30 horsepower, 4-stroke engine and equipped with a winch-powered crane (App 5 & Earnest/Drury). No other mechanical equipment would be used on the lease site (Earnest/Drury).⁹ A work float, moored outside of the boundaries of the lease site, would host the tumbler and water pump referenced by the applicant in the application and the public hearing (Earnest/Drury). According to the application, the site would be visited an average of three days per week “in season” and during daylight hours (App 5). Based on this evidence, it appears that reasonable measures would be taken by the applicant to mitigate noise impacts and that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

⁸ CF: Harbormaster Questionnaire dated January 3, 2019.

⁹ A work float, moored outside of the boundaries of the lease site, will host the tumbler and water pump referenced by the applicant in the application and the public hearing.

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 applicant plans to deploy up to 750 stackable wire trays, measuring 4' long x 3' wide x 14" tall, on the ocean floor of the proposed lease site (App 23). Due to the intertidal nature of the site, these stackable wire trays will be visible during part of the tidal cycle. The proposed gear will be primarily black in color (App 4). According to the application, no other structures will be stored on the site (SR 4).

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site will not unreasonably interfere with fishing or other water-related uses of the area, taking into consideration other aquaculture uses in the area.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.
- e. The aquaculture activities proposed for this site will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of American/Eastern oysters (*Crassostrea virginica*) to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of 1.96 acres to Chebeague Island Oyster Company LLC for twenty years 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. The lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(A) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072 (7-B).¹⁰ 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. The applicant shall mark the site to indicate the presence of submerged gear. Any such markings must comply with any applicable U.S. Coast Guard requirements.

7. REVOCACTION 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: _____

4-29-19



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

¹⁰ 12 M.R.S.A §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."