

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Experimental Aquaculture Lease Application  
Bottom culture of American Oysters,  
Damariscotta River

**Dodge Cove Marine Farm, LLC**  
**DAM HI5**  
Docket # 2014-13-E  
Date: December 16, 2014

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

Dodge Cove Marine Farm, LLC applied on September 19, 2013 to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 3.56 acres<sup>1</sup> located in the Damariscotta River, southwest of Hog Island, Damariscotta, Lincoln County, for the purpose of cultivating American oysters, (*Crassostrea virginica*) using bottom culture techniques. DMR accepted the application as complete on August 1, 2014. No one intervened in this case, and no public hearing was held on this application.

### **1. THE PROCEEDINGS**

Notice of the application, the DMR site report, and the 30-day public comment period were provided to state and federal agencies which were requested to review the project, as well as to riparian landowners, the Town of Damariscotta and its Harbormaster, members of the Legislature, representatives of the press, aquaculture and environmental organizations, and others on the Department’s mailing list. Notice of the application and comment period was published in the *Lincoln County News* on September 21, 2014. No comments were received by the Department.

The evidentiary record before the Department regarding this lease application includes the application (App) dated September 19, 2013, the Department’s site report (SR) dated November 14, 2014, as well as the case file, (CF).

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

#### **Proposed Operations**

According to the application, the proposed lease site will be used for commercial research and development to determine “if the lease site is a viable area to grow oysters” (App 2). The applicant is requesting permission for bottom culture of American oysters (*Crassostrea virginica*), with the maximum stock of 2 million oysters. The oysters will be planted directly on the bottom and later harvested by drag or diver. With the exception of corner marker buoys, no aquaculture gear or other structures are proposed for use in this location (App 2, SR 2).

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<sup>1</sup> There was a typographical error in the applicant’s latitude description of the NW corner, which was corrected by Aquaculture Environmental Coordinator (AEC) Jon Lewis, with the permission of the applicant. The correction increased the size of the site from 3.1 acres to 3.56 (SR 2).

### **Site Characteristics**

According to the application, the lease site is 3.56 acres and is located south of Hog Island, in the Damariscotta River. The area of the proposed lease site is currently classified by the Department of Marine Resources Water Quality Classification Program as “open/approved for the harvest of shellfish” (App 1, SR 7). The proposed lease, if granted, would ultimately function as an extension of the applicant’s existing operations in the shallows to the south of Hog Island. The proposed area abuts the western boundaries of two of the applicant’s three leases in that area. Seeding, cultivation and drag harvesting activities will be no different than those occurring on existing lease DAM HI2 (SR 6). The proposed lease site is directly in the middle of the river so the closest shoreline is Hog Island and Goose Ledges. On the east side of the site, the bottom is rock and shell hash and the west is silt and mud (App 3).

Water depths range at mean low water from 1.3-3.3 feet; at high water, depths range from 11 to 13 feet (SR 2). The distance from the NE corner of the site to Hog Island is 400 feet, 1,000 feet from the NE corner to the eastern shore of the mainland (SR 4).

### **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 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**

According to the site report,

the nearest observed dock was situated off the southern end of Hog Island, approximately 400 feet from the proposed lease. A single mooring was also associated with the above-mentioned property. The proposed lease site, if granted, will not limit water-borne access to Hog Island or the mainland. No floating aquaculture gear is proposed that may preclude navigation through the area. Mariners may, however, need to exercise caution and potentially alter course when vessels are on site. This is particularly important during harvest operations when the harvest vessel has restricted maneuverability due either to a deployed drag or a diver in the water (SR 4-5).

**Therefore, I find** that the aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

## **B. Navigation**

According to the site report, vessels moving through the main channel of the Damariscotta River, more than 400 feet to the west, will not be impeded by the proposed lease activities. The site report further notes that, except when vessels are present during seeding and harvesting, navigation through the lease site would be unobstructed. The site report concludes that "local traffic will maintain the ability to travel through and around the proposed lease area. There remains approximately 400 feet of water of similar depth between Hog Island and the proposed northern boundary. Access to the eastern shore of the Damariscotta River will be hindered more by tidal stage and the resulting shoal water" (SR 5).

It appears from this evidence that navigation in the area will not be unduly affected by the presence of the proposed lease site. Aquaculture lease sites are required to be marked for navigation purposes in accordance with U. S. Coast Guard requirements.

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

## **C. Fishing & Other Uses**

At the time of the DMR site visit, no fishing was observed within the boundaries of the proposed lease site. Additionally, recreational fishing would not be limited because the proposed lease is for bottom culture only and will not preclude access to the area for the purpose of recreational fishing. Access to the intertidal mudflats fished for clams and oysters will not be impeded by the proposed lease activities, as well as, access to the intertidal zone for small outboard vessels used by shellfish harvesters (SR 5).

**Exclusivity.** The applicant requests exclusive use of the bottom of the proposed lease site as follows:

The proposed lease area will require that the applicant have exclusive use to [sic] the bottom area. Access will be limited to the applicant. All forms of commercial and recreational crabbing/lobstering traps, commercial and recreational diving and dragging of any form will be restricted within the boundaries of the proposed lease. Boating traffic will not be restricted in [sic] boundaries of the proposed lease (App 3).

These restrictions are reasonable in order to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). Therefore, commercial or recreational crab and lobster fishing, commercial and recreational diving, dragging and shellfish harvesting will be prohibited. Navigation and recreational hook and line fishing will be permitted on the lease site. Conditions reflecting these restrictions will be included in the lease.

**Other aquaculture leases.** Currently, 134.47 acres are occupied by other aquaculture farms located in the Damariscotta River, primarily raising oysters due to excellent conditions for cultivation. There are twelve leases and 11 Limited Purpose Aquaculture licenses within 1 mile of

the proposed lease site. The proposed site abuts the western sides of two of the applicant's three leases in the vicinity. Seeding, cultivation and drag harvesting activities will be no different from those existing on the adjacent lease site (SR 6).

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other uses of the area. The lease must be marked in accordance with DMR Rule 2.80. Navigation and fishing will be permitted on the lease site.

**Therefore, considering the number and density of aquaculture leases in the area, I find** that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

#### **D. Flora & Fauna**

The site reports notes that the benthos consists of shoal mud bottom with little topographical variation. According to the application, which is consistent with previous observations in this area, attached vegetation is rare and the benthic epifaunal community is dominated by green crabs (*Carcinus maenus*) and, to a lesser extent, horseshoe crabs (*Limulus polyphemus*). Sand shrimp (*Crangon septemspinosa*) are also expected to be a dominant feature of this area. Records of eelgrass (*Zostera marina*) distribution at MDMR do not indicate any historical presence in the area (SR 7).

**Fisheries and Wildlife.** According to the Maine Department of Inland Fisheries and Wildlife's data, an eagle's nest is located on Hog Island. The proposed lease site is 650 feet from the nest and such a distance is sufficient to protect the eagle's nest (SR 7). Moreover, the identical activities occurring on the applicant's adjacent lease sites have not posed any threat to eagles and their habitat.

Based on this evidence, it appears that the activities proposed on this lease site will not interfere with the plants and animals existing in the lease area.

**Therefore, I find** that 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**

According to the site report, there are no public docking facilities or beaches within 1,000 feet of the proposed lease (SR 8).

**Therefore, I find** that 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**

According to the application, seed stock for this proposed lease site will be obtained from Muscongus Bay Aquaculture, a nursery owned by the applicant.

**Therefore, I find** that the applicant has demonstrated that there is an available source of American oysters (*Crassostrea virginica*) to be cultured for the lease site.

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

Based on the above findings, I conclude that:

The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.

1. 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.
2. 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. Commercial or recreational crab and lobster fishing, commercial and recreational diving, dragging and shellfish harvesting will be prohibited. Navigation and recreational hook and line fishing will be permitted on the lease site. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80.
3. 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.
4. 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.
5. The applicant has demonstrated that there is an available source of American 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 3.56 acres to Dodge Cove Marine Farm, 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 applicant; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the applicant for the purpose of cultivating American oysters (*Crassostrea virginica*) using bottom culture techniques. The applicant shall pay the State of Maine rent in the amount of \$100.00 per acre per year. Since this is an experimental lease using bottom culture with no structures and no discharge, a bond or escrow account is not required.

#### **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). Conditions are designed to

encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease.

The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Navigation and recreational hook and line fishing are permitted on the lease site.
3. Commercial or recreational crab and lobster fishing, commercial and recreational diving, dragging and shellfish harvesting will be prohibited.

**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:** 12-16-14

  
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**Meredith Mendelson**  
**Deputy Commissioner**  
**Department of Marine Resources**