

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

Experimental Aquaculture Lease Application  
Suspended culture of oysters, Damariscotta River,  
South Bristol

**Mook Sea Farms, Inc.  
DAM PI**

Docket # 2012-06E  
January 10, 2013

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

Mook Sea Farms, Inc., a Maine corporation, applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 0.66 acres located in the coastal waters of the State of Maine, off the east side of Peters Island in the Damariscotta River in the Town of South Bristol in Lincoln County, for the purpose of cultivating American oysters (*Crassostrea virginica*) using suspended culture techniques. DMR accepted the application as complete on September 19, 2012.

**1. THE PROCEEDINGS**

Notice of the application and the 30-day public comment period were sent to state and federal agencies which were requested to review the project, as well as to riparian landowners, the Town of South Bristol 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 27, 2012. No comments or requests for public hearing were submitted during the statutory 30-day comment period, and no hearing was held.

The evidentiary record before the Department regarding this lease application includes the application and the Department’s site report dated December 10, 2012. The evidence from all of these sources is summarized below.<sup>1</sup>

**2. DESCRIPTION OF THE PROJECT**

This proposed experimental aquaculture lease is for commercial research and development, testing the suitability of the site for holding market-size oysters during the winter months. The application states that “Demand for high quality Maine oysters goes unmet in the winter months because many growers are unable to harvest due to ice conditions. Furthermore, the ability to provide oysters to customers year-round translates to a strong market advantage when oysters are plentiful in the warmer months”, because wholesalers are likely to favor growers who can provide oysters year-round (App 2).

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<sup>1</sup> The application and site report are cited as “App” and “SR” with page numbers.

Mook Sea Farms tested this proposition during the winter of 2011-12, when Mr. Mook obtained four limited-purpose aquaculture (LPA) license sites in the same location as that proposed for this lease. The applicant took market-size oysters from its lease sites upriver and held them in approximately 60 OysterGro cages at the Peters Island location, which enabled the company to maintain “a very low level of sales,” according to the application. The application states, “We have satisfied ourselves that survival and meat condition of the oysters *during an exceptionally mild winter* at the Peters Island site are acceptable” (App 2). The purpose of this proposed lease is “to test the suitability of the Peters Island site” for ongoing use in this fashion.

### **Proposed Operations**

The applicant proposes to deploy 250 OysterGro cages on the lease site from October through mid-April. Approximately 350,000 oysters will be taken from the Mook lease sites in the upper Damariscotta River in late fall or early winter and placed in the cages at the Peters Island site. There, they will be taken from the cages throughout the winter and early spring as necessary to supply the company’s markets. The cages will be removed from the lease site in mid-April (App 3). The application states:

Culture and harvest techniques consist of transferring market-sized oysters to the site beginning in late October or November and placing them in floating OysterGro cages. “Once or twice each week MSF personnel will travel to the site by boat to remove oysters from the cages for packing and shipping (App 3).

Once the cages are removed from the site in spring, only the lease marking buoys will be visible at the site. The mooring system, consisting of 16 helix anchors and 3/8” mooring lines, will remain at the site but be sunk to the bottom. The site will be completely open to navigation, other than mooring or anchoring, and to all fishing other than that involving gear placed on the bottom (App 4).

Based on the information in the application regarding the time when floating gear will be deployed, the Department will place a condition on the lease that no such gear may be deployed on the site from April 30 to September 30 each year.

### **Site Characteristics**

The propose lease site is laid out as a rectangle 354.4 ft. x 81.3 ft. running roughly northeast-southwest parallel to the southeast shore of Peters Island. Department biologists conducted a site visit on December 4, 2012. According to the site report,

The proposed lease occupies subtidal waters to the east of Peters Island. Water depths are approximately 5-8 feet at mean low water. Tidal currents run to the north on a flood tide and to the south on an ebb tide; generally parallel with the proposed lease site.... This area is reported to remain ice free allowing access to the oysters when the northern portions of the river are frozen-over (SR 2).

According to the application,

The license site is a sheltered cove formed by Peters Island, its ledges, and the east side of the Damariscotta River. There are no houses within view of the site along the adjacent, heavily wooded shores. There is one mooring, and a dock and float in the cove. The bottom is soft mud and there are no eelgrass beds. At MLW [mean low water] there is 5+ feet of water (App 4).

The proposed lease is in an area currently classified by the Department of Marine Resources Water Quality Classification program as “open/approved for the harvest of shellfish”.

The proposed lease is located approximately 14 to 40 feet east of Peters Island. To the east of the site, distances to the nearest mainland shore are 155 ft. from the northeast corner of the lease and 207 from the southeast corner (SR 2). Distances from those same corners eastward to the nearest dock are 298 ft. and 510 ft., respectively.

### **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**

The site report describes the surrounding shoreline as follows:

The surrounding uplands are steep and rocky and are generally unsuitable for landing. Approximately 155-207 feet of water exists between the proposed lease site and the mainland shoreline. This is adequate for all vessels likely to transit the area to navigate through on the way to or from nearby docks. There are no houses, docks nor moorings with which the proposed activities might interfere (SR 3).

In 2011, when William Mook applied for four LPA licenses off the southeast shore of Peters Island, a riparian property owner (who is also a riparian for purposes of this lease application) contacted the Department because of his concern that the gear might be located too close to the site of a dock he was planning to build on Peters Island. Mr. Mook and the riparian

agreed on a mutually suitable location for the LPAs that would not interfere with the proposed dock, and the LPAs were then sited accordingly.

This same location is now being proposed for the experimental lease, although the lease site will be somewhat larger in size than the 1,600 sq. ft. occupied by the LPAs. As noted above, no comments on this application were received in response to the personal notice sent to the riparians and others. No complaints were received by the Department in conjunction with the operation of the LPA sites over the winter of 2011-12. The South Bristol Harbormaster signed the LPA applications, indicating his opinion that the LPA sites would not interfere with riparian access, navigation, fishing, or other uses.

Based on all of this information, it appears that the lease site will not hamper access of riparian landowners to and from the surrounding shore.

**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,

Should the lease be granted, a minimum of 155 feet of open water would exist in the channel separating Peters Island from the mainland. This should be adequate for any vessel to move through. Mean low tide water depths in this channel are approximately 8-10 feet. Navigation through this area during the months of October through April would be greatly reduced from what is expected during the summer months (SR 3).

Thus, it appears that there is ample room remaining for navigation even with the oyster cages in place.

**Therefore, I find** that the aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease must be marked in accordance with U.S. Coast Guard requirements.

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

According to the application,

There is no evidence of commercial uses of the lease area. There undoubtedly is clamming that occurs in the cove to the north of the proposed site, and lobstering occurs to the northwest, west, and southwest of Peters Island. These activities would be minimal during much of the time the site will be used (October through mid-April) (App3).

The site report drew a similar conclusion:

On December 4, 2012 no fishing activities were observed in the area. Given the time of year this was not unexpected. Lobster pot buoys and a single vessel hauling traps were noted to the west of Peters Island in the main body of the Damariscotta River. During summer months some lobster traps are likely set in these shallow waters and some recreational angling may occur. During the months when the proposed activities are to take place (October through mid-April) no interference with fishing would be expected.

**Exclusivity.** The application states:

OysterGro cages and surface buoys will be present on the site from late October to mid-April. From mid-April to October no surface gear would be present other than any requisite lease marking buoys. The mooring system would be present but sunk to the bottom. The only uses which would be excluded from the site would be placement of moorings and other uses requiring placement of gear that might interfere with the moorings or the cages. Navigation in and around the site or "line and hook" fishing, even when cages are present, would not be excluded (App 4).

**Other aquaculture leases.** There are two other aquaculture lease sites and one license site in this portion of the Damariscotta River; all are well over a mile upriver, north of the proposed site. The site report states "Due to both distance and the season in which the proposed operations are to occur the proposed activities would have no ecological effects on existing aquaculture operations in the area" (SR 4).

Based on this evidence, it appears that fishing activity in the area is minimal at times when the lease site would be in active use. The proposed lease activities will not interfere with existing aquaculture leases. To preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purposes, navigation and hook-and-line fishing will be allowed in the open areas of the lease site, but dragging, mooring, anchoring, and lobstering will be prohibited within the lease boundaries.

**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. Navigation and hook-and-line fishing will be allowed in the open areas of the lease site, but dragging, mooring, anchoring, and lobstering will be prohibited within the lease boundaries. The lease must be marked in accordance with DMR Rule 2.80.<sup>2</sup>

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<sup>2</sup> **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.

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

The application notes that there will be no disturbance to the bottom, other than the setting of the moorings. The site report notes:

No underwater video was collected as part of the review of this limited purpose lease application. From what we observed at the surface the nearshore bottom appeared to be a mixture of gravel, sand, and shell-hash. Because the oysters would be floated at the surface and contained in bags and cages, no interference with the bottom dwelling marine organisms would be anticipated.

No eelgrass was observed in the vicinity of the proposed lease and records of eelgrass distribution at DMR do not indicate any historical presence in the area (SR 4).

Department biologists did note the presence of a seal haul-out more than 900 ft. south and west of the lease site. Their observations were as follows:

On December 4, 2012 approximately 40 harbor seals (*Phoca vitulina*) were hauled out on three intertidal ledges located more than 900 feet to the south and west of the proposed lease site (Figure 1). Taking into consideration the local fishing effort (as identified by nearby trap buoys) and riparian traffic the proposed activities will have little additional impact on the continued use of these haul-outs. The animals observed at the time of the Department's site visit appeared habituated to the presence of vessels and did not abandon the ledges when we passed within a few hundred feet (SR 4).

Based on this evidence, it appears that the lease operations will not interfere with other flora and fauna or natural processes at the site.

**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 government-owned beaches, parks, or docking facilities located within 1,000 ft. of the proposed lease site (SR4).

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2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
  3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
  4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.

**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, oysters placed on the proposed lease site will have been grown to market size at the applicant's existing lease sites in the upper Damariscotta River (DAM EL3 and DAM PP2).

**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:

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. The lease site shall be marked in accordance with U. S. Coast Guard requirements.
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. Navigation and hook-and-line fishing will be allowed in the open areas of the lease site, but dragging, mooring, anchoring, and lobstering will be prohibited within the lease boundaries. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80.
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 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 0.66 acres to Mook Sea Farms, Inc., 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<sup>3</sup>; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed. This lease is granted to the lessee for the purpose of cultivating American 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 2.64 (10) (D) in the amount of \$5,000.00, conditioned upon its 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 leased area and impose limitations on aquaculture activities, pursuant to 12 MRSA §6072-A (15)<sup>4</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 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. No gear may be deployed on the surface of the site from April 30 to September 30 each year.
3. Navigation and hook-and-line fishing will be allowed in the open areas of the lease site, but dragging, mooring, anchoring, and lobstering are prohibited within the lease boundaries.

## **7. REVOCATION OF 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

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<sup>3</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.”

<sup>4</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.”

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: 01/10/13

A handwritten signature in black ink, appearing to read 'P. C. Keliher', written over a horizontal line.

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