

**STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES**

**Deep Blue Aquaculture, LLC
PEN P1x**

Experimental Aquaculture Lease Application
Suspended Culture of Sea Scallops
Eastern Penobscot Bay, Deer Isle

September 9, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Deep Blue Aquaculture, LLC applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located west of Hog Island in Eastern Penobscot Bay, Deer Isle, Hancock County, Maine. The proposed lease is 3.91¹ acres and is for the suspended culture of Sea Scallops (*Placopecten magellanicus*). DMR accepted the application as complete on February 13, 2020. 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, the Town of Deer Isle, Maine Marine Patrol, and others on DMR’s mailing list. DMR typically requests that Harbormasters review the application and complete a Harbormaster Questionnaire, but because Deer Isle is not served by a Harbormaster, the application and questionnaire were sent to Lieutenant Troy Dow, with Maine Marine Patrol for their review. Lt Dow sent the application and questionnaire to Marine Patrol Officers assigned to the Deer Isle area, as well as to the Deer Isle Town Manager. Representatives from Deer Isle indicated in their response to Lt Dow that the Deer Isle Select Board would discuss the application at an upcoming meeting. After their initial review of the application, The Deer Isle Select Board reached out to DMR’s Aquaculture Program with several questions, including if the application is posted for the public, if DMR holds a public hearing, and if the Select Board elected to hold a hearing on the application how they would proceed. DMR responded with general information about how lease applications are advertised and posted on DMR’s website, and that a public hearing is not held on an experimental application unless five or more requests are received². No other communication from the Town of Deer Isle was received, and no

¹ Applicant requested 3.86 acres. DMR calculations indicate the area is 3.91 acres.

² CF: Email communications between Marine Patrol, DMR Aquaculture Program, and the Town of Deer Isle Select Board between February 18-March 18, 2020.

responses to the Harbormaster Questionnaire or comments specific to the application were received from the Town or Marine Patrol.

Notice of the application and comment period were published in the February 27, 2020 edition of *The Weekly Packet*. The evidentiary record regarding this lease application includes the application, DMR's site report dated August 6, 2020, and the case file. The evidence from each of these sources is summarized below.³

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

Sea Scallops would be cultured using suspended culture techniques (App 1,2). The applicant intends to collect scallop seed using spat bags that will be distributed throughout Penobscot Bay (App 5). Spat bags will be moved from locations within Penobscot Bay to the proposed site and scallop seed will remain in the spat bags until they grow large enough, at which point they will be removed from spat bags and placed directly into lantern nets (App 5). All the gear will be hung from longlines that are deployed 3-5 meters below the surface of the water (App 5). The applicant proposes a total of 3, 800-foot longlines. At maximum, there would be up to 1,600 lantern nets (20" x 60"), 450 spat bags (14" x 30"), and up to 2,400, 30-foot dropper lines for ear hanging scallops (App 6). According to the application, activity on the site will be heaviest between June-October, while minor gear management will occur throughout the rest of the year (App 5). Seeding and grading activity will occur during the summer months, and in the fall, scallops will be graded and prepared for overwintering. According to the application, there is no change in gear layout for the winter season. The applicant plans to harvest year-round (App 5), and harvesting will consist of grading scallops of harvestable size from the lantern nets or ear hanging dropper lines and cleaning or shucking the shell, depending on the final market product (whole or meat only) (App 7).

A battery powered grading machine will be used to grade scallops once a month, during daylight hours, and a power washer will be used two or three times a year for 3-5 days at a time. The power washer would be powered by a hydraulic pump that runs off the applicant's boat (App 6).

Because this proposal includes the possession, transport, or sale of whole or roe on scallops, Deep Blue Aquaculture, LLC, will be required to obtain a Memorandum of

³ These sources are cited, with page references, as CF (case file), App (Application), SR (site report).

Understanding from the DMR Bureau of Public Health. In addition, at present, it is not legally permissible to possess, transport, or sell whole or roe-on scallops without a special license. If the leaseholder intends to pursue this, they must contact DMR.

B. Site Characteristics

The proposed lease occupies subtidal waters to the west of Hog Island and southeast of Pond and Western Islands in Eastern Penobscot Bay (SR 2). Open water extends over 4 miles to the west of the proposed site (SR 2). Beach and Barred Islands are to the southwest and Pickering Island is located to the southeast (SR 2). Figure 1 shows the location of the proposed lease and the surrounding area.

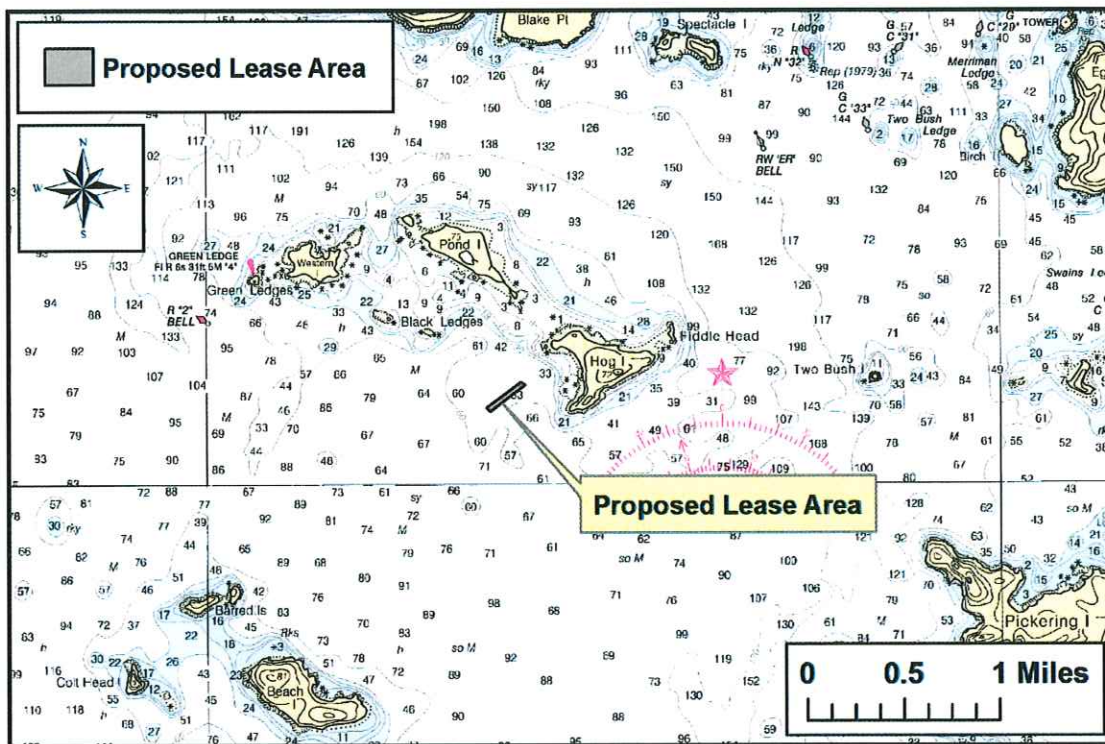


Figure 1: location of proposed lease and surrounding area. Imagine taken from site report.

The Hog Island shoreline, closest to the proposed lease, is comprised of a mix of rocky and sand beach that lead to lawn and coniferous forested uplands and one residential building (SR 2). Shorelines of Pond and Western Islands are similar, with mixed ledge and sand beaches with coniferous forested uplands (SR 2). Marsh grass uplands are also present on Pond Island (SR 2).

A DMR Scientist visited the site on June 15, 2020, aboard the applicant's vessel. During the visit to the site, depths at the corners of the proposed lease ranged from 67 to 69 feet. When correcting for tidal variation, depths are approximately 0.4 feet higher at the nearest high water, and 8.5 feet lower at mean low water (SR 2). According to the applicant, the bottom of the proposed site and surrounding area is mud, and the general vicinity is a large flat area that eventually slopes downward to the south, southeast, and west (App 9). No underwater assessment was conducted on DMR's visit to the site.

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

A. Riparian Access

During DMR's site visit, one residential building was observed on Hog Island (SR 8). According to the site report, it appears that the main access point to Hog Island is a dock that is located on the opposite side of the island from the proposal (SR 8). The application also stated that the mooring and dock area for the island is on the northern side of the island (App 7). A sand beach was observed on the western shore of Hog Island and it is possible this beach could facilitate shore landing (SR 8). However, the proposed lease site is approximately 1,070 feet from the Hog Island shoreline, and this distance is large enough to allow for unimpeded access to the island (SR 8). In addition, because the applicant is proposing to deploy gear on longlines that will be suspended 3-5 meters below the surface, many vessels would likely be able to navigate through the site (SR 8). Pond and Western Islands appeared to be uninhabited at the time of DMR's site visit, and no docks or moorings were observed on or nearby their shores (SR 8). Given their distance from the proposed site, access to these islands would not be impeded by the proposal. The application also states that there are no private docks, moorings, or access points within 1,000 feet of the proposal (App 7).

During the comment period, DMR did not receive any comments regarding riparian access. Based on the lack of public comments, and the evidence presented in DMR's 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.

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 Eastern Penobscot Bay, and as shown in Figure 1, is to the west of Hog Island. Black Ledges, Pond Island, and Western Island are located to the northwest of the proposal. According to the site report, it is likely that most vessel traffic travelling through the area takes place to the south of the proposed lease (SR 8). The closest navigational buoy is located southwest of Western Island, and approximately 1.5 miles to the northwest of the proposed lease site. This buoy, which is marking the Black Ledges and other navigational obstacles, likely further encourages most vessel traffic to remain to the south and west of the proposed lease area (SR 8). However, the sand beaches on Hog and Pond Islands may cause some mariners to be in closer proximity to the proposed lease, especially during the summer months. Because Hog Island is over 1,000 feet from the proposal, and Pond Island is nearly 2,000 feet from the proposal, there is likely enough distance for vessels to be able to navigate to these areas, and vessel flow is unlikely to be significantly impacted should the lease be granted (SR 8). According to the application, between June and August, most pleasure boat traffic is concentrated in the area between Pond Island and Cape Rosier (located to the north of the proposal) (App 7). And while there are boaters who frequent the beaches (both by landing on shore or anchoring) on the southern and eastern shores of Pond Island, the application states there is ample room for boaters to navigate the area (App 7). In addition, because the applicant is proposing to deploy gear on longlines that will be suspended 3-5 meters below the surface, many vessels would likely be able to navigate through the site (SR 8).

During the review period, DMR did not receive any comments regarding navigation. Based on the lack of public comments, and the evidence in the site report, it is reasonable to conclude that navigation in the area will not be unduly affected by the proposed 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 June 15, 2020, approximately 6 lobster buoys were observed to the northwest of the proposal (SR 8). Lobster (*Homarus americanus*) fishing in the area may be more prevalent in the late summer or fall (SR 8), but the application notes that the proposed lease site is entirely mud bottom (App 9), which is not typical of concentrated lobster fishing. No comments from lobster fishermen were received during the comment period for this application.

Sea scallop and green sea urchin (*Strongylocentrotus droebachiensis*) fishing occurs in the fall and winter in Maine as both dive and drag fisheries. The season for both these fisheries had ended before DMR's visit to the site, so no activity associated with these fisheries was observed (SR 9). According to the application, no fishing has been observed at the site during the winter (APP 7), but according to information contained in the site report, the proposal is in a scallop rotational management area that has been closed for the previous two fishing seasons. The DMR scallop program indicates that fishing effort likely does not occur in the proposed lease boundaries, and catch rates are generally low in this management area (SR 9). The application notes that the bottom of the proposed lease site is entirely mud, and DMR typically observes scallops on sand and shell bottom (SR 9). No comments were received from scallop or urchin fishermen during the comment period on this application. No recreational fishing has been observed by the applicant (App 7), and recreational fishing was not discussed in DMR's site report.

Based on the lack of public comments, and the evidence in the record, it is reasonable to conclude that the proposed aquaculture activities will not unreasonably interfere with fishing.

Exclusivity. The applicant has requested that commercial fishing operations (dragging and lobstering) be excluded from the boundaries of the proposed lease site (App 9). However, evidence in the record indicates that the proposed area is not heavily used for commercial or recreational fishing, and therefore conflicts with the aquaculture operations proposed for this site are unlikely. In addition, if this proposal is granted, it would need to be marked in accordance with U.S. Coast Guard and DMR regulations. Marking the site in accordance with these regulations would alert mariners and commercial fishermen to the boundaries of the site. According to information in the site report, as described earlier in this decision, there is enough space to navigate around the lease to access the surrounding area. As such, the lease will not be conditioned to expressly prohibit these uses.

Other aquaculture uses. There are 2 LPA (Limited Purpose Aquaculture) licenses within 1 mile of the proposal, APET318 and APET418 (SR 9). Both LPAs are operated by Andrew Peters, the owner of Deep Blue Aquaculture, LLC, and both are approved for the suspended culture of sea scallops, and marine algae. According to the applicant, both LPAs will be relinquished if the proposed lease is granted (APP 8).

Other water-related uses. 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 the 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 (*Zostera marina*) data collected by DMR in 2004 indicate that there is no eelgrass in the general vicinity of the proposal (SR 11). According to records of eelgrass collected by DMR in 1992, the nearest eelgrass beds to the proposal were located along the Hog Island shoreline, approximately 1,230 feet to the east (SR 11). While DMR did not conduct an underwater assessment of the proposed site, the site report notes that eelgrass is typically observed in shallower water (SR 11).

During their visit to the site, DMR staff observed various gull species (*Larus sp.*) in the general vicinity (SR 10). According to data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), the nearest tidal waterfowl and wading bird habitat is approximately 1,050 feet to the northeast of the proposed lease. Over 2,600 feet from the proposal is habitat for the yellow rail (*Coturnicops noveboracensis*), which is identified in Maine as a species of special concern (SR 10). During the review period for this application, DMR sent the application to the MDIFW for their review and comment, and they indicated that “minimal impacts to wildlife are anticipated for this project.”⁴

DMR did not conduct an underwater assessment of the proposed lease area, but the applicant reports that blue mussels (*Mytilus edulis*), ascidians and sea stars have been observed around the applicants LPAs nearby the proposed lease site. No public comments were received regarding the flora and fauna in the area.

⁴ CF: Email from R. Settele to C. Burke on February 21, 2020.

Based on the evidence that the proposed lease does not interact with historical eelgrass beds, and because no other comments were received regarding the flora and fauna in the area, 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 ecologically significant flora and fauna.

E. Public Use & Enjoyment

There are no beaches, parks, or docking facilities owned by municipal, state, or federal government within 1,000 feet of the proposed lease 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 federal, state, or municipal governments.

F. Source of Organisms

The applicant intends to source sea scallops via wild spat collection, or from Pine Point Oyster Company, in Cape Elizabeth, Maine.

Therefore, the applicant has demonstrated that there is available source of stock 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.
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 3.91 acres to Deep Blue Aquaculture, 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 lessee⁵; 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 cultivation of sea scallops (*Placopecten magellanicus*) using suspended culture techniques. 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 account 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 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

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.”

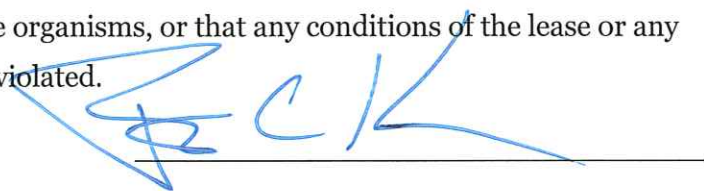
⁶ 12 MRSA §6072-A (15) provides that:

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. No conditions have been incorporated into the lease.

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: 9/9/2000



Patrick C. Keliher, Commissioner
Department of Marine Resources

“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.”