

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Dodge Cove Marine Farm, LLC

Standard Aquaculture Lease Application
Suspended Culture of Shellfish
Damariscotta River, Newcastle, Maine

DAM DPT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Dodge Cove Marine Farm, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 12.42¹ acres in the Damariscotta River, southeast of Dodge Point, Newcastle, Maine. The proposal is for the suspended culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahog (*Mercenaria mercenaria*), and bay scallop (*Argopecten irradians*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on September 27, 2020, and a scoping session was held on February 16, 2021. DMR accepted the final application as complete on June 17, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of Newcastle, 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 *Lincoln County News* on July 13 and August 3, 2023. The public notice for the hearing indicated that the proceeding would be conducted in-person and directed interested persons to register in order to provide testimony or ask questions during the proceeding. No applications for intervenor status were received by DMR. A public hearing on this application was held on August 23, 2023. Two individuals registered to participate in the hearing, including one that indicated an intention to provide testimony.

Sworn testimony was given at the August 23, 2023, hearing by:

Name	Affiliation
Jeff Auger and Nellie Brylewski	Dodge Cove Marine Farm, applicant
Bernard DeLisle	Deputy Harbormaster, Newcastle
Bob Bickel	Member of the public

¹ Applicant originally requested 12.26 acres. DMR calculations indicate the area is 12.42 acres.

Additional DMR staff and members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes three exhibits introduced at the hearing and the record of testimony at the hearing. The evidence from all sources is summarized below.²

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report, issued on December 16, 2022

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On July 22, 2021, DMR scientists assessed the proposed lease site and surrounding area. The surrounding shoreline is rocky with forested and residential uplands. Dodge Point Preserve is located approximately 80 feet to the north of the proposal at mean low water (MLW) (SR 3).

DMR staff began collecting depths at the proposed site at approximately 9:23 AM on July 22, 2021. The tide was in the late flood stage. Depths at the proposed lease site were approximately 14.8 feet at corner A, 20.0 feet at corner B, 21.3 feet at corner C, and 19.3 feet at corner D. Correcting for tidal variation derives water depths at the next high tide to be a range from 15.4 to 21.9 feet. Water depths at mean low water (MLW, 0.0 feet) range from 6 to 12.5 feet (SR 2).

² Exhibits 1, 2, and 3 are cited below as: Case file – “CF”, Application – “App”, site report – “SR”.

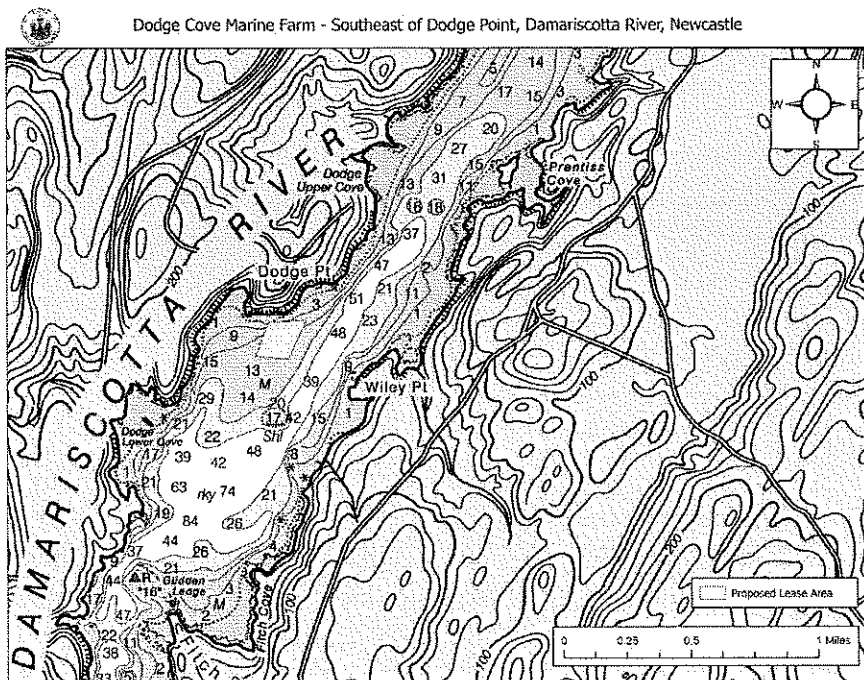


Figure 1: Proposed lease site and surrounding area. Image taken from DMR site report.

B. Proposed Operations

The applicant proposes to culture American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahogs (*Mercenaria mercenaria*), and bay scallops (*Argopecten irradians*) on the proposed lease site using suspended culture techniques (App 1). A maximum of 3,352 6-bag OysterGro cages (67.5" by 36" by 24') and/or 36,500 Hexcyl flip farm baskets (31.5" by 11" by 7") are proposed for the site. Eight lease marking buoys will be deployed along the perimeter (App 7).

The applicant anticipates seeding from June to July, with staff on-site 2-3 days per week. From spring to fall, the cages will be deployed on the surface of the water and will be submerged from October/November to March. Routine tending, maintenance, and harvest activities may occur daily year-round for approximately five hours per day (Auger testimony), although the applicant testified that when the cages are submerged, site visits may be limited to occasional site checks. The applicant intends to utilize skiffs, drag boats, and barges powered with four-stroke engines as part of site operations (App 17).

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; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to

support existing ecologically significant flora and fauna; or 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

DMR's Chapter 2 regulations require the Commissioner to examine whether riparian owners can safely navigate to their shore. In examining riparian owner ingress and egress, the Commissioner "shall consider the type of structures proposed for the lease site and their potential impact on the vessels which would need to maneuver around those structures." Chapter 2, § 2.37.

During the site visit on July 22, 2021, DMR observed a total of one dock and two floats within 1,000 feet of the proposal. The dock was located on Dodge Point Preserve approximately 420 feet to the west of the proposal at MHW. The two floats were presumed to be aquaculture work floats as one of them contained aquaculture gear (SR 5).

A Harbormaster Questionnaire was sent to the Harbormaster for the Town of Newcastle on July 13, 2021. No response was received. During the public hearing, no one offered testimony or evidence regarding riparian ingress and egress.

Sufficient area remains for reasonable ingress and egress by riparian owners.

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

B. Navigation

When examining navigation, the Commissioner considers whether the lease activities would interfere with commercial or recreational navigation around the lease area and considers the current uses of the navigational channels in the area. According to the site report, the proposal is located approximately 750 feet to the west of the center of the deepest channel of the main stem of the Damariscotta River. There is approximately 80 feet of navigable water at MLW between Dodge Point Preserve and the northern boundary of the proposal (SR 3).

Testimony concerning navigation to/from the Dodge Point Preserve was offered at the hearing and is discussed in the Public Use & Enjoyment section, below. In addition, B. DeLisle expressed general concerns about the prevalence and potential expansion of aquaculture in this area of the

Damariscotta River and its impacts on navigation. However, no specific concerns relating to the potential of obstacles or obstructions to general navigation from this proposal were offered.

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

C. Fishing & Other Uses

When examining fishing and other uses, the Commissioner considers whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area.

Fishing. During the site visit on July 22, 2021, DMR scientists observed several lobster buoys in the vicinity of the proposal. The buoy nearest to the proposal was approximately 580 feet to the southeastern corner. There were no buoys within the proposal boundaries at the time of the site visit (SR 5).

No testimony was given at the public hearing concerning impacts to commercial or recreational fisheries.

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

Other aquaculture uses: There is one existing aquaculture lease, DAM DP, and six Limited Purpose Aquaculture licenses (KYOS219, GLAD215, HBUR122, PSMI821, PSMI921, PSMI1021) within 1,000 feet of the proposed lease site. The proposal boundaries overlap with lease site DAM DP in the northwestern corner of the proposal. DAM DP is held by Muscongus Bay Aquaculture (MBAQ) and is for the bottom culture of shellfish. MBAQ wrote a letter, in support of this proposal, stating MBAQ acquired Dodge Cove Marine Farm and operates all leases for Dodge Cove Marine Farm, therefore MBAQ is in support of the proposal in consideration.

No testimony was received by other aquaculture lease or license holders in the area to indicate they have concerns regarding the proposed activities. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. The application states there is occasional kayaking to the north of the lease site (App 21). In his testimony, B. Bickel stated kayakers utilize the area daily.

Based on the record, individuals kayak in the area. However, if the proposed lease is granted there would still be at least 80 linear feet for kayaking or other water-related uses between the lease boundary and the shoreline at the closest location.

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

When examining existing system support, the Commissioner considers the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna.

Site observations. On July 22, 2021, DMR scientists conducted a drop camera transect to assess the epibenthic ecology of the proposed lease. The observed bottom was soft mud. The relative abundance of flora and fauna observed in the vicinity of the proposal is described below (SR 7).

Species observed in the vicinity of the proposal.

Species Observed	Abundance
Common Tern (<i>Sterna hirundo</i>)	Common
Common Eider (<i>Somateria mollissima</i>)	Common

Eelgrass. Historical records of eelgrass (*Zostera marina*) collected by DMR in 1997 and 2010 indicate no eelgrass presence within the vicinity of the proposal. No eelgrass was observed within the proposal boundaries during DMR’s site assessment on July 22, 2021 (SR 7).

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is located approximately 330 feet southwest of tidal waterfowl and wading bird habitat. Data collected by the United States Fish and Wildlife Service in 2022 by aerial nest survey shows the closest Bald Eagle nesting sites to be over two miles away from the proposal (SR 8).

On July 16, 2021, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment”, stating minimal impacts to wildlife are anticipated for this project.³

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.

³ Email correspondence between MDIFW and DMR

E. Public Use & Enjoyment

When examining interference with public facilities, the Commissioner considers the degree to which the lease interferes with public use or enjoyment within 1,000 feet of beach, park, docking facility, or certain conserved lands owned by the Federal Government, the State Government, or a municipal government.

The lease site is located approximately 140 feet south of Dodge Point Preserve, which is owned by the State of Maine and operated by the Maine Bureau of Parks and Lands (BPL), Department of Agriculture, Conservation and Forestry (SR 5). According to the application, the seasonal dock for the Preserve is located 402 feet northwest of the lease boundary (App 21). During the site visit, DMR scientists observed people walking the shoreline of Dodge Point Preserve, as well as people using the seasonal dock associated with Dodge Point Preserve (SR 5).

B. Bickel and B. DeLisle testified concerning potential navigation issues in relation to accessing the seasonal dock at Dodge Point Preserve. Both stated the approach to the Preserve contained some rocky areas near shore. B. DeLisle stated if the lease were approved, only approximately 80-90 linear feet at low water would remain between the lease boundary and the shoreline. Due to the rocks on the north side, this may make navigation more challenging for boaters attempting to access the Preserve dock. Both testified the typical vessel accessing the Preserve is a smaller center console style. B. DeLisle testified that if the lease were approved, boaters should still be able to access the Preserve, but with more difficulty as the boaters would need to go around the lease and use a southern approach instead of using a preferable, more direct route, especially at low or mid-tide (DeLisle testimony).

B. Bickel also expressed a concern that aquaculture projects, including this one, may adversely impact the view from the shore trail within Preserve (Bickel testimony). Applicable visual impacts from the project are discussed in Section I, below.

Given the size of the vessels accessing the Preserve dock and the distance of the proposal from the dock, it is unlikely the lease would prevent the continued use and enjoyment of this conserved land. Additionally, the applicant testified that staff from the Department of Agriculture, Conservation, and Forestry visited the site with the applicant by boat and that changes were made to the final proposal to address concerns the agency had identified (Auger testimony)⁴. The Bureau of Parks and Lands also received notice of the complete application and hearing, but representatives did not attend the proceeding to offer testimony.

⁴ During the applicant's review of a draft proposal, Jeff Auger stated "We did meet with staff on the lease site, but it was after the scoping session and after the final draft was submitted (If my memory is correct). This was in conjunction with Eric Peters and we went over all the leases around Dodge Point Preserve. So there would have not been any changes to the proposal. We made significant changes to the proposal after the scoping session in response to testimony at that meeting."

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

When examining the source of organisms, the Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.

The applicant will source stock for American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahog (*Mercentaria mercenaria*), and bay scallop (*Argopecten irradians*) from Muscongus Bay Aquaculture in Bremen, Maine (App 2). Muscongus Bay is currently an approved source for these species.

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. At the hearing, the applicant testified that in an emergency situation at night, boat running lights and a small spotlight may be used (Auger testimony).

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

H. Noise

According to the application, hydraulic equipment powered by small horsepower engines as well as electric winches will be used on site to raise, lower, and flip cages. To minimize noise output, four-stroke engines will be used on all work boats, and the engines for the hydraulic equipment will be housed in sound attenuating enclosures (App 17).

Based on this information, it appears that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

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 is proposing all grow-out gear to be dark green, black, or blue. No on-site support structures are proposed. The gear proposed complies with DMR's height and visual impact limitations.

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

6. 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 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 oysters, quahogs, and scallops 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.

7. DECISION

Based on the foregoing, the Commissioner grants a lease to Dodge Cove Marine Farm for 12.42 acres for twenty years for the cultivation of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahog (*Mercenaria mercenaria*), and bay scallop (*Argopecten irradians*) 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.

8. 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).⁵ 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. No conditions shall be imposed on this lease.

9. REVOCATION 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: _____

9/18/23



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

⁵ 12 MRSA §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."