

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**

**Justine Simon**

Experimental Aquaculture Lease Application  
Suspended Culture of American oysters, sea scallops,  
and northern quahogs  
Casco Bay, Chebeague Island

January 2, 2019

**FINDINGS OF FACT AND DECISION**

On January 25, 2018, Justine Simon applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease on 1.44 acres<sup>1</sup> located in Casco Bay, Chebeague Island, Cumberland County, Maine, for the suspended culture of American oysters (*Crassostrea virginica*), sea scallop (*Placopecten magellanicus*), and northern quahog (*Mercenaria mercenaria*) using suspended culture techniques. DMR accepted the application as complete on March 26, 2018. During the 30-day public comment period, more than five requests for a public hearing were received. A public hearing was held on December 4, 2018 on Chebeague Island, Maine. No one intervened in this case.

**1. THE PROCEEDINGS**

Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Chebeague, and others on DMR's electronic notification list. Notice of the application and comment period was published in the *Forecaster* on April 19, 2018. Notice of the public hearing was published in the *Forecaster* on November 8, 2018 and November 15, 2018; and the December edition of *Commercial Fisheries News*. Sworn testimony was given at the public hearing by the following individuals:

<b>Name</b>	<b>Affiliation</b>
Justine Simon	Applicant
Matthew Odlin	Applicant's witness
Flora Drury	DMR, Marine Scientist

<sup>1</sup> Applicant originally requested 1.0 acres. DMR calculations based on the provided coordinates indicate that the area is 1.44 acres.

Bob Earnest	Chebeague Island Oyster Company
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Ms. Simon and Mr. Odlin described the proposed project. Flora Drury, Marine Scientist, discussed DMR's site visit. Bob Earnest, representing Chebeague Island Oyster Company, discussed navigation within the area and raised concerns regarding the proposed operations. Jay Clement, Senior Project Manager, with the U.S. Army of Corps of Engineers attended the hearing and asked questions of the applicant. Each witness was subject to questioning by DMR, the applicant, municipal officials, and members of the public. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis.

The evidentiary record before the DMR regarding this lease application includes the six exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.<sup>2</sup>

#### **LIST OF EXHIBITS**

1. Case file (CF)
2. Application (App)
3. DMR site report dated September 4, 2018 (SR)
4. Revised overwintering plan
5. Revised plan view
6. Frequently used navigational routes as identified by Mr. Earnest

As originally proposed, the applicant intended to deploy two 56' x 20' welded steel frames with attached floatation that would be deployed on the lease site end-to-end (App 4). The end of each float would be anchored by a 4,000-pound concrete block (App 8). Each frame would contain up to 24 oyster cages, measuring 48" x 60" (App 4). A paddlewheel would be attached to one of the steel frames to serve as an upweller. There would also be an 8' x 8' security buoy made of steel that would house a generator on the proposed lease site. This buoy would be sound insulated (App 2).

At the public hearing, the applicant presented a modified proposal. Specifically, the applicant proposed pinning the two welded steel frames side-by-side and utilizing a single point

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<sup>2</sup> These sources are cited below, with page references, as CF (case file), App (application), and SR (site report).

mooring system to secure the floats. The single-point mooring system would allow the floats to swing around the proposed site. The applicant did not bring drawings of the revised plans, but at DMR's request, sketched a modified overwintering plan and an overhead view of the new layout during the hearing. These modified drawings were accepted as evidence and labeled as Exhibits 4 and 5. At the hearing, DMR staff reviewed the revised drawings, and indicated to the applicant that it was unlikely, given the swing radius, that the proposed float and associated cages could be contained within the proposed lease boundaries. The applicant responded to DMR's concerns by indicating that they would be amenable to DMR only considering the original proposal. However, during the hearing much of the testimony focused on the revised proposal.

When portions of the original proposal were discussed there was a lack of consistency between what was in the original application and what was discussed during the hearing. For example, during the hearing the applicant indicated that 20-gallons of diesel fuel would be stored in a buoy on the proposed lease site. When the applicant addressed spill prevention, it was unclear what specific measures the applicant would take to prevent a possible spill and what procedures would be utilized to clean-up such spills. In addition, the applicants indicated that the upweller design might change from a paddlewheel to propeller. Many elements of the original proposal evolved as the hearing progressed.

During the hearing, Bob Earnest, representing Chebeague Island Oyster Company, noted the lack of consistency between the application and what was presented during the hearing. Having an interest in an oyster farm near the proposed lease site, Mr. Earnest was also concerned by the proposed storage of diesel on the site without spill prevention and containment plans. On December 6, 2018, after the close of the hearing, the U.S. Army Corps of Engineers sent the applicant an email requesting a variety of information including depictions of winter configurations, depictions of reconfigured structures, submission of spill prevention and containment plans, etc.<sup>3</sup>

## **2. DISCUSSION**

The original application differed substantially from what was presented and discussed at the public hearing. Given the types of changes that were presented during the public hearing, the public was not provided with adequate opportunity to review the modifications. To consider

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<sup>3</sup> CF: Email from J. Clement to J. Simon dated December 6, 2018. DMR staff were copied on the correspondence.

modifications that differ substantially from what was originally proposed would circumvent the public and personal notice requirements set forth in Chapter 2.64(4). Furthermore, other state and federal agencies based their review of the application on the initial proposal. It is possible that the modifications, presented at the hearing, would have changed their assessment of the proposed operations and the resources they manage. Finally, DMR's site report does not account for the single-point mooring system, or other changes presented during the hearing. DMR staff raised a variety of concerns, at the hearing, about the changes and their feasibility. In consideration of the changes presented at the hearing, it is possible that DMR's assessment of the overall proposal would have changed.

During the hearing, the applicants indicated that if their proposed modifications would not work, they would adhere to the original proposal. However, most of the hearing was devoted to discussing the modifications and not the original proposal. When the original proposal was discussed there was a lack of consistency between the application and what was presented at the public hearing. The original proposal kept evolving as the hearing progressed, which made it difficult for DMR and others in attendance to adequately consider either proposal. For the reasons described above, there is not enough evidence for DMR to determine whether either proposal would meet the criteria specified in Chapter 2.37(A)(1-7). In addition, to consider the modifications proposed by the applicants, during the public hearing, would not provide adequate public notice in accordance with Chapter 2.64(4).

### **3. DECISION**

For the reasons described above, I find that the experimental lease application submitted by Justine Simon could not be granted as there is not enough evidence to demonstrate that it would satisfy all the requirements for granting an experimental lease set forth in 12 M.R.S.A §6072-A. Therefore, no further processing will occur and the application is denied.<sup>4</sup>

Dated: Jan 2, 2019



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

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<sup>4</sup> If the applicants submit another proposal it should reflect all possible gear configurations and a complete description of their operations.