



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

Dear Mr. Gaffney:

DMR has reviewed your application for a species amendment for your experimental aquaculture lease, SAS P1x, located in Robinhood Cove, Georgetown. Your request was processed in accordance with DMR Regulations Chapter 2.44, and no public comments were received. After careful review, we find that the request to add hard clams/northern quahogs (*Mercenaria mercenaria*) to your lease does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A), is consistent with the findings of the original decision, and would not result in a change to the original lease conditions. Therefore, your request has been approved, effective on the date of this letter.

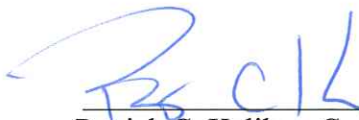
An updated summary of the species approved for your lease is provided below.

Approved Species
American oysters (<i>Crassostrea virginica</i>)
Hard clams/northern quahogs (<i>Mercenaria mercenaria</i>)

The following conditions, which were imposed on your lease remain in place:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

Please retain a copy of this letter for your records. Your original lease application and decision, any previously approved amendments, and this amendment approval letter, may serve as the operational plan for the lease.



 Patrick C. Keliher, Commissioner,
 Department of Marine Resources

Date 5/24/2020

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of oysters
Sasanoa River, Georgetown

Michael and Mark Gaffney
SAS PIx
Docket #2017-17-E

March 5, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Michael and Mark Gaffney applied to the Department of Marine Resources (“DMR”) for an experimental aquaculture lease on 3.99 acres¹ located in Robinhood Cove, north of Phebe Island, Georgetown, Lincoln County, for the suspended culture of American oysters (*Crassostrea virginica*). DMR accepted the application as complete on November 15, 2017. 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, riparian landowners, the Town of Georgetown, and others on the Department’s mailing list. Notice of the application and comment period were published in the *Times Record* on December 1, 2017. The evidentiary record before the Department regarding this lease application includes the application and the Department’s site report dated March 1, 2018, as well as the case file. The evidence from these sources is summarized below.²

2. DESCRIPTION OF THE PROJECT

A. Site History

Michael Gaffney holds a Limited Purposed Aquaculture license (LPA), within the boundaries of the proposed lease site, for the suspended culture of American oysters.³ The LPA was issued in 2017 and the Department has not received any complaints regarding the operation of the license. Mr. Gaffney plans to terminate the LPA if the lease is granted (App 3).

B. Proposed Operations

The purpose of the proposed lease is to explore the commercial feasibility of oyster production using a combination of floating cages and bags (App 3). The cages and bags will be suspended along the surface of the water from six long-lines that measure 250 feet in length (App 3). The applicant will flip the

¹ The applicant originally proposed a lease of 4.32 acres. DMR staff, with the applicant’s consent, modified the boundaries to ensure the site was no greater than 4.00 acres in size. See page 2 of the site report for additional details.

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

³ MGA117

cages to control fouling (App 3). The bags will be removed from the proposed lease site and cleaned with a power washer on a nearby float owned by the applicant (App 3). In the winter months, the cages will be submerged along the bottom of the proposed site (App 16). The oysters will be harvested by hand from the cages (App 3).

C. Site Characteristics

On February 13, 2018, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting an experimental aquaculture lease. The proposed lease site occupies subtidal waters off the western shore of Robinhood Cove, north of Phebe Island (SR 2). The uplands along the western shore of Robinhood Cove are characterized by a mixed forest and a few residential buildings (SR 2). No buildings were observed on the eastern shore of the Cove, or on Phebe Island (SR 2). At mean low water, water depths at the corners of the proposed site vary between ~2.5 and 4 feet (SR 6). The proposed lease is an area currently classified by the Department's Water Quality Classification program as "approved for the harvest of shellfish" (SR 6).

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 closest property to the proposed lease site is owned by the applicant, Michael Gaffney, and is located on the western shore of Robinhood Cove (App 2, SR 7). Department staff observed a pier that extends from the applicant's property and is located ~98 feet to the west of the proposed site (SR 7). Two moorings located within the boundaries of the proposed lease site were also noted (SR 7). The two moorings are owned by the applicant (App 7). A third mooring was observed ~60 feet to the north of the proposed lease site (SR 7). Department staff contacted the mooring's owner, who did not think the proposed operations would affect his mooring (SR 7). The next closest mooring is ~862 feet to the north of the proposed lease site (SR 7). The proposed lease site is ~286 feet to the north of Little Phebe Island and ~493 feet north of Big Phebe Island (SR 7). Per the site report: "it is unlikely that the proposed lease will negatively impact riparian ingress and egress to and from either of these islands" (SR 7).

Based on this evidence, it appears that activities at the lease site are unlikely to hamper riparian access to and from the 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

At mean low water, the eastern boundary of the proposed lease is ~580 feet from the eastern shore of Robinhood Cove (SR 7). Per the site report, “boats navigating north and south in the area will have adequate room to navigate” (SR 7). At mean low water, the proposed lease site is ~89 feet to the east of Robinhood Cove’s western shoreline (SR 7). The water depths at this location are shallow, which limits the size of vessels that can navigate in the area during most tides (SR 7). However, appropriately sized vessels would still be able to navigate between the proposed lease site and the western shoreline of Robinhood Cove (SR 7). In addition, there are two LPA licenses situated between the proposed lease site and Little Phebe Island, which is ~286 feet to the south of the proposed area. Per the site report: “if granted, navigation north of the Phebe Islands will remain possible but navigable space will be diminished” (SR 7).

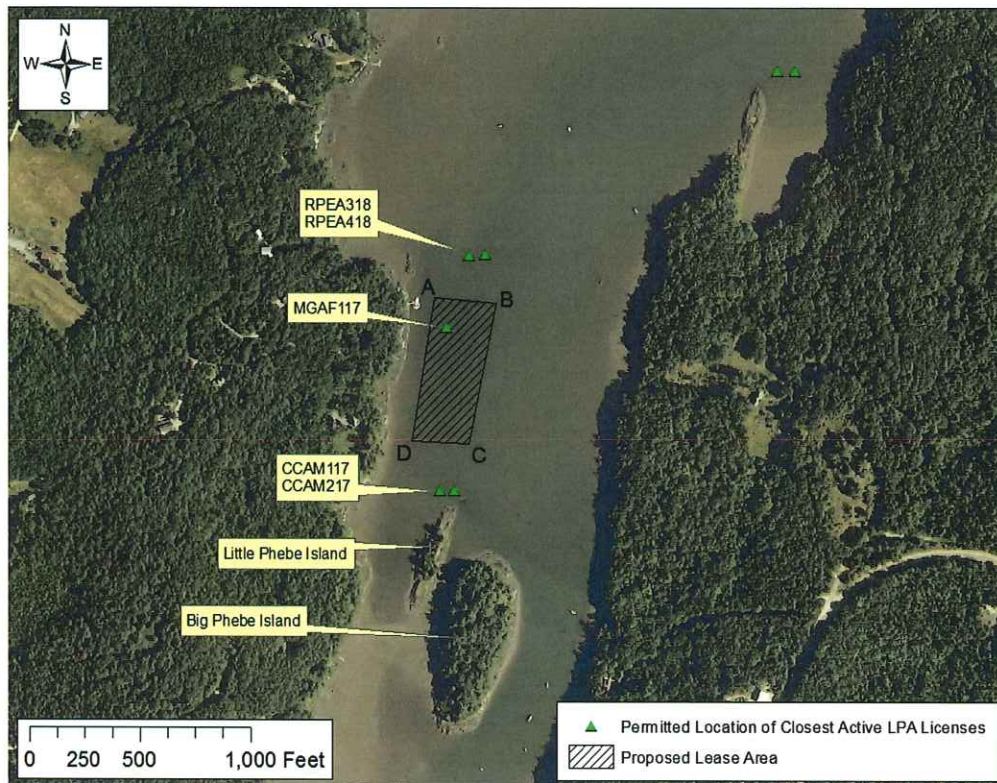


Figure 1: Depicting the LPA sites between the proposed lease and Little Phebe Island. Image generated by Department staff on February 23, 2018.

During the review period, DMR did not receive any comments from the Georgetown Harbormaster. Based on the absence of comments, it is reasonable to conclude that the Georgetown Harbormaster does not have any concerns about navigation.

It appears from this evidence that navigation in the area will not be unduly affected by the presence of the proposed lease site. The lease must be marked in accordance with DMR Rule 2.8o.⁴

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

C. Fishing & Other Uses

The site report notes: “due to the timing of MDMR’s site visit, fishing and other water-based activities that may occur on or near the proposed lease during the warmer months were not observed” (SR 8). Except for neighboring aquaculture operations, there is “very little use of this area by others” (App 4). Other LPA holders, who have operations near the proposed site transit the area as they use floats and property owned by Michael Gaffney to service their respective farms (App 4). Michael Gaffney notes: “none of these uses will change with my expansion from a single LPA to a lease on the same site” (App 4). The Department did not receive any comments from fishermen or other individuals in the area. Based on the absence of comments, it is reasonable to conclude that fishermen and other water-based user groups do not have any concerns with the proposal.

It appears from this evidence that the proposed lease site is unlikely to unreasonably affect fishing or other water dependent uses in the area.

Exclusivity. The applicants are not requesting exclusive use of the proposed lease area.

Other aquaculture leases. There are ten LPA licenses within one mile of the proposed lease site (SR 8). Not including the LPA license held by Michael Gaffney, the closest aquaculture site is a LPA license held by Ryan Pearl for the suspended culture of American oysters (*C. virginica*)⁵. Mr. Pearl’s LPA site is ~205 feet to the north of the proposed lease operation. Michael Gaffney discussed the proposal with Mr. Pearl and the Department notified other LPA license holders within 1,000 feet of the proposed site of the application (App 4). No one raised any objections to the proposed lease site, therefore it is reasonable to conclude that it will not unreasonably interfere with other aquaculture operations.

4 2.8o Marking Procedures for Aquaculture Leases

- A.** 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.
- B.** 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.
- C.** 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.
- D.** Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

⁵ LPA Acronym: RPEA418

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

Site Observations. Historical eelgrass (*Zostera marina*) cover data collected by DMR, in 2005, indicate that eelgrass was not present within one mile of the proposed lease site (SR 9).

Fisheries and Wildlife. The proposed site is situated ~62 feet to the west of designated Tidal Wading Bird and Waterfowl Habitat (SR 10). The Maine Department of Inland Fisheries and Wildlife (MDIF&W) reviewed the application and noted: “As this lease appears to be outside of mapped Tidal Waterfowl and Wading Bird Habitat, minimal impacts to wildlife are anticipated.”⁶

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

Per the site report: “the proposed lease site is not within 1,000 feet of any beach, park, or docking facility owned by municipal, state, or federal governments” (SR 11).

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

The applicant will source stock from Mook Sea Farms in Walpole, Maine.

Therefore, I find that the applicant has demonstrated that there is an available source of American oysters (*C. virginica*).

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.

⁶ CF: Email from J. Perry (MDIF&W) dated December 15, 2017.

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 (*C. virginica*).

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

The Commissioner grants an experimental lease of 3.99 acres to Michael and Mark Gaffney, 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 lessee⁷; 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 American oysters (*C. virginica*) 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 (10) (D) 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 M.R.S.A §6072-A (15)⁸. 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:

⁷ 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.”

⁸ 12 M.R.S.A §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.”

1. The lease site must be marked in accordance with U.S. Coast Guard requirements and DMR Rule 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

7. REVOCAION OF EXPERIMENTAL LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §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.

Date: _____

3/5/18



Patrick C. Keliher, Commissioner
Department of Marine Resources