

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Carlton Yentsch

Standard Aquaculture Lease Application
Suspended Culture of Oysters
Bottle Cove, Boothbay Harbor, Maine

BHB BC

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Carlton Yentsch applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 1.11-acres¹ located in Bottle Cove, Boothbay Harbor, Maine. The proposal is for the suspended culture of American oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The pre-application meeting on this proposal was held on February 23, 2022, and a scoping session was held on June 22, 2022. DMR accepted the final application as complete on October 5, 2022. Notice of the completed application and public hearing was provided to state agencies, the Town of Boothbay Harbor, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR’s aquaculture email listserv. A Harbormaster Questionnaire was sent to the Harbormaster, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations. A response was received by DMR on November 1, 2022. Notice of the hearing was published in the *Boothbay Register* on August 15, 2024. The public notice for the hearing stated that the proceeding would be conducted in-person and directed interested persons to register 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 September 24, 2024. Five individuals registered to participate in the hearing and testify².

Sworn testimony was given at the hearing by:

| | |
|-------------------|-----------------------|
| Carlton Yentsch | Applicant |
| David Phinney | Applicant’s witness |
| Kathryn Hennigar | Members of the public |
| Sybil Hennigar | |
| Virginia Rickeman | |

¹ Applicant originally requested 1.12 acres. DMR calculations indicate the area is 1.11 acres.

² Of the registered participants, three listed in the table testified. Additionally, Susan Hennigar asked questions during cross-examination of the applicant, but did not offer testimony.

The Hearing Officer was Maria Eggett.

The evidentiary record before DMR regarding this lease application includes the record of testimony at the hearing. The evidence from all sources is summarized below.³

LIST OF EXHIBITS

1. Case file
2. Application
3. DMR site report, issued on April 29, 2024
4. Town of Boothbay Harbor Town Manager letter dated July 25, 2024
5. Set of four photographs of the project area and surroundings, submitted by Sybil Hennigar

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The applicant proposes to culture American oysters (*Crassostrea virginica*) using suspended culture techniques (App 1,2). The applicant proposes to use 250 lantern cages (24-inches by 24-inches by 24-inches) plus 150 soft mesh bags (36-inches by 18-inches by 4-inches) as well as an upweller (10-feet by 6-feet by 3-feet). Also proposed are buoys, taglines, and moorings. With the exception of the upweller, all gear may be in the water year-round (App 6).

The applicant anticipates placing oyster seed in the upweller in the late spring. Larger juvenile oysters would then be transferred into the soft mesh bags. The applicant expects to tend the site daily on weekdays (App 14). The application states that oysters will be hand-harvested. Adult oysters will be stored in the lantern cages and will be submerged year-round (App 15). The soft mesh bags will be submerged from November 15 to April 1. From November 15 to April 1, the upweller will be removed from the water and stored on top of an adjacent existing work float (App 15). The applicant currently operates three limited purpose aquaculture (LPA) sites within the boundaries of the standard lease proposal (YENT111, YENT323, YENT423) and is listed as an assistant on another LPA located within the boundaries of the standard lease proposal (CYEN112).

Although the application depicts a specific gear layout, the gear specified in the decision can be utilized within the approved footprint in any configuration.

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



Figure 1: Proposed standard lease boundaries. Image from DMR site report.

B. Site Characteristics

On August 22, 2023, DMR assessed the proposed lease site. The proposal is located on the eastern side of Bottle Cove in Boothbay Harbor between Indiantown Island to the west and the Boothbay Harbor mainland to the east. There is a residential waterfront neighborhood along the eastern shore of the cove with approximately 12-14 houses and 8-10 docks within 1,000 feet of the proposal. The shoreline consists of exposed ledges covered with rockweed. The uplands are residential with a combination of yards and fields, as well as areas of mixed forest. Indiantown Island to the west has a shoreline that consists of exposed ledges and rockweed with forested uplands. There is one residence on Indiantown Island located on the southwestern side of the island approximately 1,235 feet to the west of the proposal (SR 2).

On August 22, 2023, scientists began collecting depths at the proposed site just after low tide at approximately 9:33 AM. Depths were determined to be between 0-12.1 feet. Correcting for tidal variations derives depths at mean low water (MLW, 0.0 feet) to be between 0-11.2 feet. At the time of

the site visit, corner one and corner two were observed to be intertidal, as well as areas along the eastern boundary of the proposal (SR 2).



Figure 2. Proposed lease area with site visit observations. Image from site report.

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. 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 (12 M.R.S.A. § 6072(7-A)(B); Chapter 2.37(1)(A)(2)).

The applicant has operated one LPA within the boundaries of this proposal since 2011 and two additional LPAs since 2023 for the suspended culture of shellfish. During that time, no issues concerning navigation have been reported. As shown in Figure 4, YENT111 and CYEN112 are located near the western boundary of the proposed lease. Vessels utilizing Bottle Cove currently must navigate around the LPAs when transiting the area.

The proposal is located in shallow, partially intertidal waters on the eastern side of Bottle Cove in Boothbay Harbor. According to the site assessment, depths were determined to be between 0-11.2 feet. There is a channel of deeper water (approximately 11 feet at MLW according to NOAA charts) approximately 7 feet to the west of the proposal boundary. This channel allows access to the northern end of the cove and is approximately 128.1 feet wide in the immediate vicinity of the proposal. An area of intertidal ledge approximately 12.6 feet to the north and west of the proposal partially separates the proposal from the access channel. At the time of DMR's site assessment, there were seven docks and ten moorings observed to the north of the proposal in the cove (SR 6).

At the southern entrance of Bottle Cove is the Townsend Gut. The Townsend Gut is a heavily used channel between the Boothbay Harbor mainland and Southport Island that connects Boothbay Harbor to the Sheepscot River. The proposal is located approximately 2,228.8 feet to the north of the Townsend Gut (Figure 3). During DMR's site assessment, scientists observed two kayakers operating to the west of the proposed lease area (SR 5-6).

At the hearing, Kathryn Hennigar stated that, at low tide, the only access to the parcels at the northern end of the cove is from the south, passing the proposed lease site. Ms. Hennigar stated that recently more moorings have been added to the cove, creating more congestion. Ms. Hennigar stated the lease proposal would force everyone with property to the north to pass by the lease site within a narrow channel. In response to a question from DMR, Ms. Hennigar confirmed that the cove is blocked to the north at low water levels due to natural constrictions and not due to the proposed lease. Also, in response to a DMR question, Kathryn Hennigar stated her concerns were that the lease proposal would generate more traffic, but that the use of a single vessel in lease operations was not concerning⁴.

Sybil Hennigar expressed concerns that the placement of lease gear in the channel would restrict the navigable waters and create challenges to navigation. Ms. Hennigar stated the applicant currently

⁴ The application states a 13-foot Boston Whaler is currently used on-site, but the applicant intends to obtain an 18-foot Carolina skiff (App 15). At the hearing, the applicant stated that he will retain the Whaler for use as a dinghy, therefore, the site may employ two vessels (Yentsch testimony).

maintains three moorings with floats within the channel that further restrict navigation⁵. Ms. Hennigar expressed concerns that harvesting activities during the summer months, including the use of multiple commercial vessels, when coupled with the boat traffic from the northern end of the cove would render passage through the channel almost impossible.

During cross-examination, Ms. Hennigar stated she does currently exit the cove under sail at low tide. At DMR's request, Ms. Hennigar marked on one of the photographs she submitted the area that is commonly used for transit. This area, that Ms. Hennigar stated measures 60-65 feet at low tide, is located outside of the lease boundaries.

In the Harbormaster Questionnaire, it was indicated that navigation should not be affected by the proposed lease.

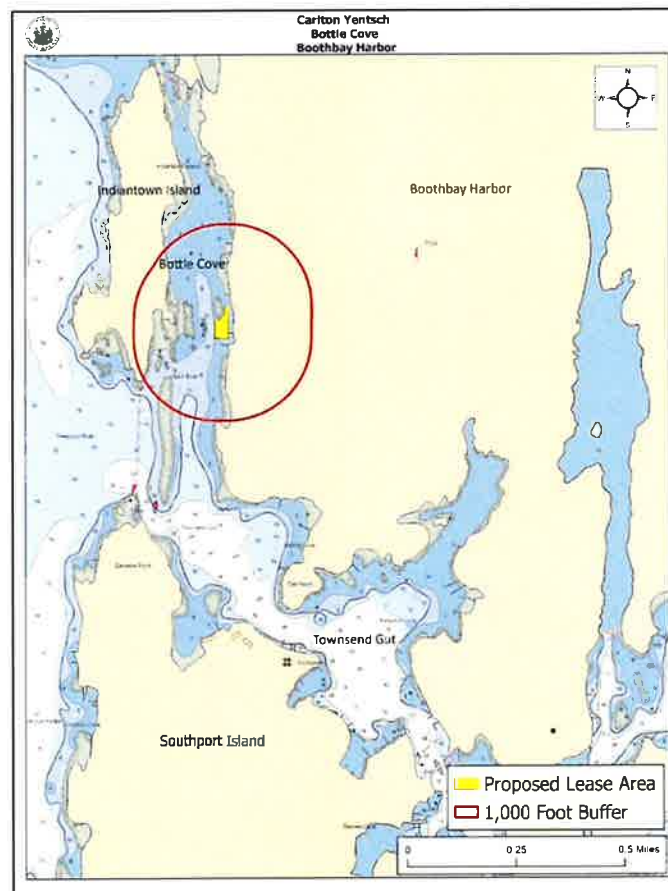


Figure 3. Charted navigational channels in the vicinity of the proposed lease area. Image from site report.

Discussion

According to the site report, there is a 128-foot-wide channel located approximately seven feet from the proposed lease boundary. Figure 1, as well as photographs submitted at the hearing by Sybil

⁵ The three work floats are depicted in Figure 2 and are located outside of the proposed lease boundaries.

Hennigar show several ledges located in the vicinity of the proposed lease site within or near the navigational channel. According to Ms. Hennigar, due to the ledges, the channel is narrowed to approximately 60-65 feet wide at low tide. The depths and exposed ledges within or near the channel may create difficult navigation to the northern end of the cove at low tide. Additionally, during the site visit, multiple moorings, work floats, and lobster buoys were noted within the main channel. To allow additional area for vessels, both riparian and transient, to maneuver, the lease, if approved, will be reduced in size. The modified coordinates and acreage are shown at the end of this decision. This additional area will ensure that the proposed lease will not interfere with safe navigation in the area. As currently depicted in the application, a portion of the proposed gear is located in the reduced area of the lease. Although the application depicts a specific gear layout, the gear specified in the decision can be utilized within the approved footprint in any configuration.

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

B. Riparian Access

Before granting a lease, the Commissioner must determine that the proposed project “will not unreasonably interfere with the ingress and egress of riparian owners[.]” 12 M.R.S.A. § 6072(7-A)(A). 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 2.37(1)(A)(1)⁶.

During DMR’s site assessment, scientists observed a residential area along the eastern shore of Bottle Cove on the Boothbay Harbor mainland. There were approximately 12 houses and 10 piers with docks observed within 1,000 feet of the proposal, including two piers with docks within the proposal boundaries. DMR also observed 13 moorings within 1,000 feet of the proposal. Occupied moorings were observed to have a variety of small powerboats and sailboats attached to them. Three moorings were observed to be unoccupied at the time of the site assessment. The mooring nearest to the proposal is approximately 27.7 feet to the west. The observed moorings were generally located along a channel of deeper water that runs through Bottle Cove. The proposal is located east and inshore of the access channel and all observed moorings. In addition to moorings, DMR observed three swim or work floats within 1,000 feet of the proposal (SR 6) (Figure 2).

Two piers with docks were observed within the boundaries of the proposed lease. According to the lease application, the southern dock is owned by the applicant. The northern dock is owned by the applicant’s brother, Colin Yentsch. During the review of the application, DMR asked for a letter from Colin Yentsch granting permission to use the dock as part of the aquaculture operations. The final

⁶ 13-188 C.M.R. ch. 2.

application contained a letter from Colin Yentsch with written permission for his dock and pier to be within the boundaries of the proposed lease. The northern pier and dock would not be used for aquaculture operations.⁷

Because the proposal is located in the intertidal zone, the applicant is required to obtain written consent from riparian owners for the use of any intertidal land within the proposed lease site. However, the applicant is listed as the owner of the parcel (028-001) that contains the intertidal areas of the proposal.

In a completed Harbormaster Questionnaire submitted to DMR on November 1, 2022, it was stated that riparian ingress and egress should not be affected by the proposal. The applicant has operated one LPA within the boundaries of this proposal since 2011 and two additional LPAs since 2023 (Figure 4). During that time, no issues concerning riparian access have been reported to DMR. The LPAs are authorized for the suspended culture of shellfish.

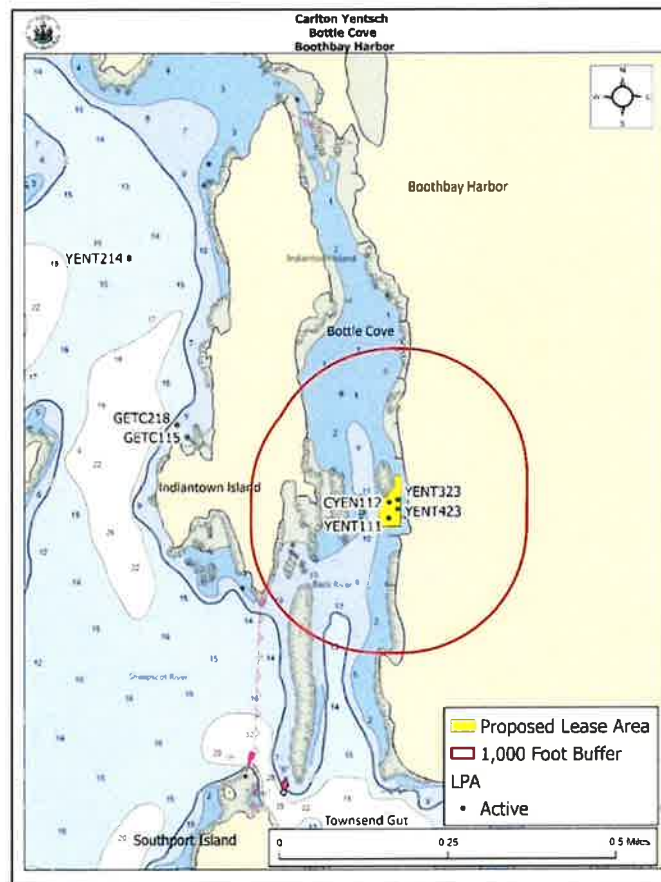


Figure 4. Proposed lease area with existing LPA locations. Image from site report.

⁷ Application page 27

Discussion

Since the proposed lease is located at the entrance to a cove without an alternate exit point at low water levels, it is likely that most of the riparians who own property in the general area will need to transit past the proposed lease site. However, the lease as proposed would not impede direct access to any riparian's shoreline or dock. The lease, if approved, will be reduced in size to address any potential impacts to navigation that may affect boaters in the cove, including riparian owners. Impacts to navigation are discussed above.

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

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 uses, including water-related uses, of the area (12 M.R.S.A. § 6072(7-A)(C); Chapter 2.37(1)(A)(3)).

The applicant has operated one LPA within the boundaries of this proposal since 2011 and two additional LPAs since 2023. During that time, no issues concerning fishing have been reported.

Fishing. During the site assessment, DMR observed light lobstering activity within the vicinity of the proposal. Two lobster buoys were observed within 1,000 feet of the proposal, as well as approximately nine other unidentified buoys. The lobster buoy nearest to the site was located approximately 85.6 feet to the north and west of the proposal (Figure 2).

In the Harbormaster Questionnaire, it was stated that no commercial fishing occurs within the area of the proposal and that there is a small amount of recreational fishing for striped bass (*Morone saxatilis*). The Harbormaster did not express any concerns about impacts from the proposed lease on fishing.

The Town of Boothbay Harbor has a shellfish conservation program in accordance with 12 M.R.S.A. § 6671 and because the site is partially located within the intertidal, the applicant is required to obtain consent from the municipality. The applicant did not provide this permission with the application (SR 8), however, at the hearing, the applicant provided a copy of the Boothbay Harbor Selectman's meeting minutes for June 10, 2024, approving the proposed lease activity in the intertidal.

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

Other uses. The application states there is occasional kayaking in a shallow channel west of the lease site (App 18). In the exclusive use section of the application, the applicant did not seek to restrict these activities if the lease is approved (App 19). During the hearing, Kathryn Hennigar stated that people swim, kayak, water-ski and tube in the area. During cross-examination, Ms. Hennigar stated her concerns about the lease impacts on these activities were due to all boating traffic from the north having

to travel to the south and past her property to exit the cove. In response to a question from DMR, Ms. Hennigar confirmed that the cove is blocked to the north at low water levels due to natural constrictions and not due to the proposed lease. Ms. Hennigar stated the concern was more about additional boat traffic from the lease in the cove, which is considered in the navigation section of this decision.

Therefore, based on the information in the record, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

D. Other Aquaculture Uses

DMR's Chapter 2 regulations require the Commissioner to consider any evidence submitted concerning other aquaculture uses of the area. "The intensity and frequency of such uses as well as the degree of exclusivity required for each use shall be a factor in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner." Chapter 2, § 2.37(1)(A)(4).

There are no active aquaculture leases within 1,000 feet of the proposal. There are four LPAs located within the boundaries of the proposal. The applicant is the license holder for three of the LPAs (YENT111, YENT323, YENT423) and is listed as an assistant on the fourth LPA located within the boundaries of the proposal (CYEN112). YENT111 and CYEN112 would be relinquished if the proposal is granted.⁸ LPAs YENT323 and YENT423 were licensed after the standard lease application was deemed complete on October 5, 2022, and are not referenced in the application. However, at the hearing, the applicant confirmed that YENT323 and YENT423 would also be relinquished if the proposal is granted (Yentsch testimony).

Therefore, based on the information in the record, the aquaculture activities proposed for this site will not unreasonably interfere with existing aquaculture operations in the area.

E. 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 (12 M.R.S.A. § 6072(7-A)(D); Chapter 2.37(1)(A)(5)).

The applicant has operated one LPA within the boundaries of this proposal since 2011 and two additional LPAs since 2023. During that time, no issues concerning flora and fauna have been reported.

Site observations. DMR utilized a remotely operated vehicle to assess the epibenthic ecology of the proposed lease. The relative abundance of epibenthic flora and fauna observed is described below in Table 1.

⁸ Application page 28

Table 1. Species observed using underwater camera footage.

| Species Observed | Abundance |
|--|------------|
| Green crab (<i>Carcinus maenas</i>) | Common |
| American/Eastern Oyster (<i>Crassostrea virginica</i>) | Occasional |
| Rockweed (<i>Ascophyllum nodosum</i>) | Common |
| Bladderwrack (<i>Fucus vesiculosus</i>) | Common |
| Sand shrimp (<i>Crangon septemspinosa</i>) | Common |
| Tunicates (<i>Didemnum vexillum</i> , <i>Ciona intestinalis</i>) | Occasional |
| Blue mussels (<i>Mytilus edulis</i>) | Occasional |

Eelgrass. Records of seagrass collected in 2023⁹ indicate that there is not mapped eelgrass within 1,000 feet of the proposal. The nearest mapped eelgrass is approximately 2,639.3 feet to the west of the proposal. During the site assessment, DMR did not observe any eelgrass (SR 10).

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), there is not mapped Tidal Waterfowl and Wading Bird Habitat (TWWH) within 1,000 feet of the proposal. The nearest TWWH is approximately 3,273.9 feet to the southeast of the proposal. The nearest mapped bald eagle (*Haliaeetus leucocephalus*) nest is located approximately 1.23 miles to the southwest of the proposal (SR 11).

On October 28, 2022, a Wildlife Biologist with MDIFW responded by email to a “Request for Agency Review and Comment”, stating that minimal impacts to wildlife are anticipated.

During the site assessment, DMR observed double-crested cormorants (*Nannopterum auritum*), herring gulls (*Larus argentatus*), osprey (*Pandion haliaetus*), a kingfisher (*Alcedinidae* sp.), great blue heron (*Ardea herodias*), and an unidentified duck species (*Anatidae*) in the vicinity of the proposal (SR 11).

No eelgrass was observed within the boundaries of the proposed site and the comments received from MDIFW did not indicate that the proposal would interfere with resources under their jurisdiction. Furthermore, the applicant has operated LPAs within the footprint of this site for as long as 13 years. During that time, DMR has not received any complaints or concerns about the operations impacting wildlife. Based on the record, it appears that the proposed lease activities will not interfere with the ecological functioning of the area (SR 10).

⁹ Seagrass 2023 – (Phippsburg to Port Clyde): Data obtained from The Maine Office of GIS “GISVIEW.MEDEP.Seagrass2023”. Widgeon grass was observed only in a tributary to the Great Salt Bay, upstream of a culvert that likely restricts tidal flow. Eelgrass was the dominant vascular species in all other locations. This is the most current record of mapped eelgrass within the vicinity of the proposal.

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.

F. 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 (12 M.R.S.A. § 6072(7-A)(F); Chapter 2.37(1)(A)(7)).

The proposed lease is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments. There is state owned conserved land within 1,000 feet of the proposal. A small area of ledges located approximately 684.3 feet to the southwest of the proposal is designated as a coastal island and is owned by the Maine Bureau of Parks and Lands (SR 13).

No evidence or testimony was provided at the hearing concerning conserved land in the area. It is unlikely that the ledges are utilized heavily by the public. Additionally, the proposed lease is likely far enough away to not impact the conserved land.

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.

G. 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 (12 M.R.S.A. § 6072(7-A)(E); Chapter 2.37(1)(A)(6)).

According to the application, American oyster (*C. virginica*) would be sourced from Muscongus Bay Aquaculture in Bremen, Maine (App 2). This is currently an approved source for this species. If the applicant is unable to obtain stock from this facility, then it must come from another DMR approved source.

Therefore, the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

H. Light

The Commissioner considers whether there will be an unreasonable impact from lighting in accordance with 12 M.R.S.A §6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(8). The statute specifies that a lease must not result in an unreasonable impact from light at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to lighting, including a requirement that the applicant demonstrate that all reasonable measures will be taken to mitigate light impacts associated with the lease activities.

According to the application, no lights would be used on the proposed lease site (App 16).

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

I. Noise

The Commissioner considers whether there will be an unreasonable impact from noise in accordance with 12 M.R.S.A §6072(7-A)(G) and the regulatory standards specified in Chapter 2.37(1)(A)(9). The statute specifies that a lease must not result in an unreasonable impact from noise at the boundaries of the proposed site. The applicable regulation imposes specific requirements related to noise, including a requirement that the applicant take all reasonable measures to mitigate noise impacts associated with the lease activities.

According to the application, a power washer, a gas-powered generator, and an electric hoist would be used on-site daily, up to six hours per day (App 16). The application states the generator can be used under a cuddy cabin cover in the bow of the applicant's boat, and the power washer can be contained in an enclosure to lessen noise output. At the hearing, during cross-examination, the applicant stated that he had recently purchased, and is using, an electric power washer with less noise output. The applicant stated that the generator, and any gas-powered power washer, would be contained in noise suppression structures on-site whenever in use (Yentsch, Phinney testimony). On cross-examination, the applicant stated the hoist is manually operated and has minimal noise output (Yentsch testimony).

The level of noise output by the lease operations was identified as a concern by Sybil Hennigar and Virginia Rickeman. At the hearing, during cross-examination, Sybil Hennigar asked about the noise output of the upweller. The applicant stated the noise was similar to a garden hose or bilge pump (Yentsch testimony). Additionally, as stated above, the applicant has recently purchased an electric power washer in response to the neighboring landowners' concerns. The electric power washer will have less noise output when compared to a gas-powered unit.

At the hearing, the applicant presented the change to an electric power washer to address noise concerns. If the lease is approved, only the use of an electric power washer would be authorized.

Given the use of an electric power washer and noise suppression on any gas-powered generator, it is unlikely there will be an unreasonable impact from noise at the boundaries of the proposed site. By

using an electric power washer and housing the generator in a noise suppression structure, the applicant has demonstrated that all reasonable measures will be taken to mitigate noise impacts from the lease activities.

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

J. Visual Impact

The Commissioner considers whether there will be an unreasonable impact from visual impact in accordance with 12 M.R.S.A §6072(7-A)(H) and the regulatory standards specified in Chapter 2.37(1)(A)(10).

The application stated that red and yellow vinyl-coated wire mesh would be used on-site. The color of the other gear is black or green. In accordance with Chapter 2.37(1)(A)(10), approved gear colors are grays, blacks, browns, blues, and greens. In response to a question from DMR at the hearing, the applicant confirmed that if the project is approved, all surface gear will comply with the approved colors of gray, black, brown, blue, or green (Yentsch, Phinney testimony). Lease sites must be marked in accordance with Chapter 2.80 of DMR's regulations, which specify that marker buoys must be yellow in color. If the lease is granted, the holder would be responsible for complying with these marking requirements.

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, the Department concludes that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. Given the reduction in lease size, 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 uses of the area, including water-related uses.
- d. The aquaculture activities proposed for this site will not unreasonably interfere with other aquaculture uses of the area.
- e. 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.

- f. 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.
- g. The applicant has demonstrated that there is an available source for organisms to be cultured for the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site provided that the applicant only utilizes an electric power washer and noise suppression as noted above.
- j. 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 Carlton Yentsch for 0.84 acres for twenty years for the cultivation of 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 2.40 (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).¹⁰ 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 condition shall be imposed on this lease:

- 1. The applicant must use only electric power washers, and must house the generator in a noise suppression structure when in use.

¹⁰ 12 M.R.S.A §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."

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 over the course of the lease, that the lease activities are substantially injurious to marine organisms or public health, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated:

Jan. 21, 2025

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

10. Revised Site Boundaries, Coordinates, and Acreage

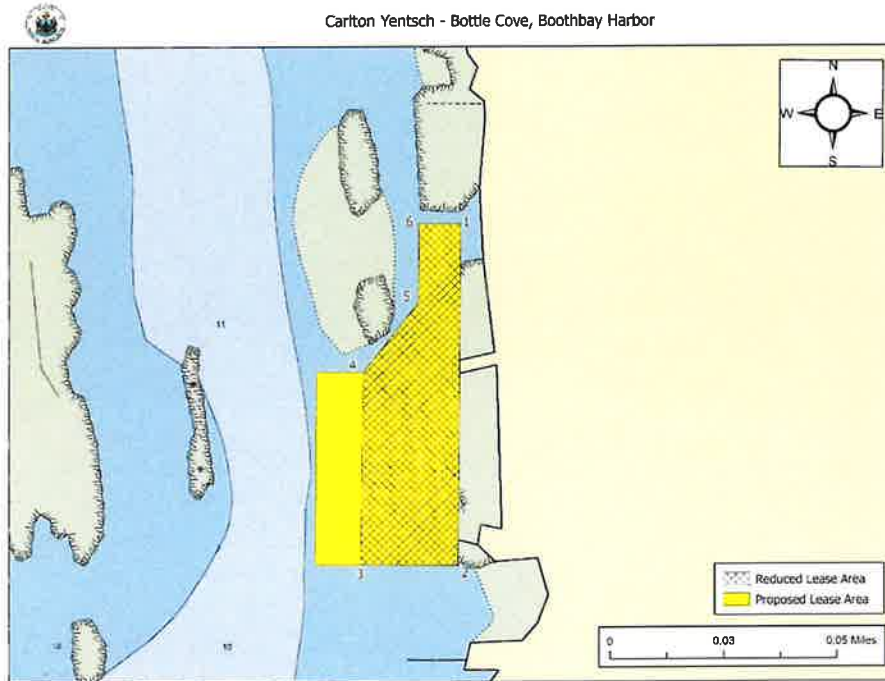


Figure 5. Lease boundaries with reduction.

Reduced Lease Coordinates (WGS84) – 0.84 Acres

| <u>Corner</u> | <u>Latitude</u> | <u>Longitude</u> | |
|---------------|-----------------|------------------|---------------------------------|
| 1 | 43.858056° | -69.663856° | then 401.0 feet at 180° True to |
| 2 | 43.856956° | -69.663856° | then 111.9 feet at 270° True to |
| 3 | 43.856947° | -69.664280° | then 228.9 feet at 0° True to |
| 4 | 43.857575° | -69.664276° | then 103.3 feet at 35° True to |
| 5 | 43.857801° | -69.664040° | then 93.0 feet at 0° True to |
| 6 | 43.858056° | -69.664040° | then 48.5 feet at 90° True to 1 |