

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

**Heron Island Oyster Company**

Standard Aquaculture Lease Application  
Suspended and Bottom Culture of Oysters  
Fitch Cove, Damariscotta River  
South Bristol, Maine

**DAM FC**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

Heron Island Oyster Company applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 1.09<sup>1</sup> acres located in Fitch Cove, Damariscotta River, South Bristol, Maine. The proposal is for the suspended and bottom culture of American oysters (*Crassostrea virginica*).

**1. PROCEDURAL HISTORY**

The pre-application meeting on this proposal was held on December 9, 2020, and a scoping session was held on July 1, 2021. DMR accepted the final application as complete on September 10, 2021. Notice of the completed application and public hearing was provided to state agencies, the Town of South Bristol, 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 October 25, 2021. Notice of the hearing was published in the *Lincoln County News* on February 8 and February 22, 2024. The public notice for the hearing indicated 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 March 14, 2024. Two individuals registered to participate in the hearing and testify.

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<sup>1</sup> Applicant originally requested 1.0 acre. DMR calculations indicate the area is 1.09 acres.

Sworn testimony was given at the hearing by the following witnesses:

<b>Name</b>	<b>Affiliation</b>
Rod Melanson	Applicant
Cecil Burnham	South Bristol Harbormaster
Robert Melanson	Member of the public
Jeffrey Auger	Member of the public

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.<sup>2</sup>

### **LIST OF EXHIBITS**

1. Case file
2. Application
3. DMR site report, issued on January 24, 2024

## **2. DESCRIPTION OF THE PROJECT**

### **A. Proposed Operations**

The applicant proposes to culture American oysters (*Crassostrea virginica*) using suspended and bottom culture techniques (App 1). The applicant proposes to use 30 OysterGro cages (55-inches by 36-inches by 8-inches), 300 soft mesh bags (32-inches by 18-inches by 4.5-inches), 20 overwintering cages (48-inches by 36-inches by 48-inches), and 10 nursery trays (38-inches by 23-inches by 4-inches) as well as helix or mushroom anchors, buoys, and lines.

The applicant anticipates seeding oysters in June and July. The applicant anticipates tending and harvesting the site up to five days per week from approximately April to December (App 7, applicant testimony). The applicant<sup>3</sup> currently operates four Limited Purpose Aquaculture (LPA) sites partially within the boundaries of the standard lease proposal (see Figure 1) and the application states overwintering practices would remain as currently performed on the existing LPAs with OysterGro and overwintering cages submerged in the winter months.

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

<sup>3</sup> The LPAs are held by Rod Melanson, who is listed on the application as the president of Heron Island Oyster Company.

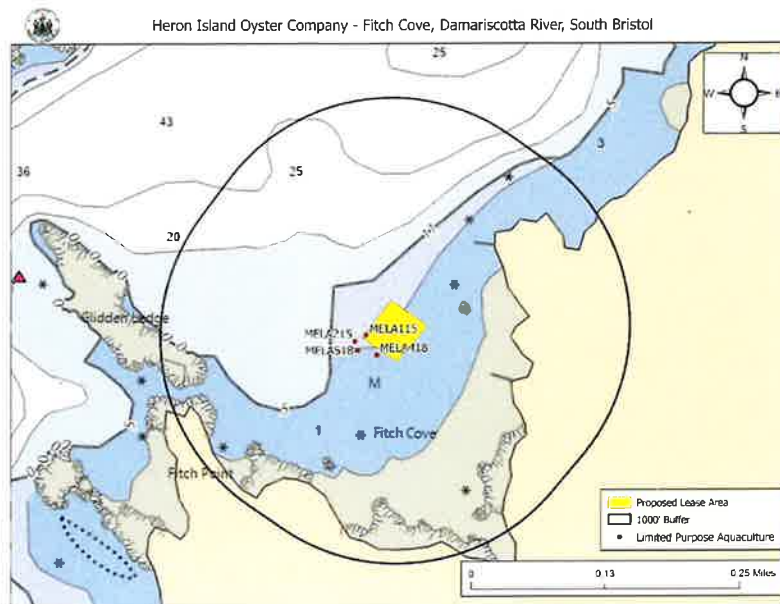
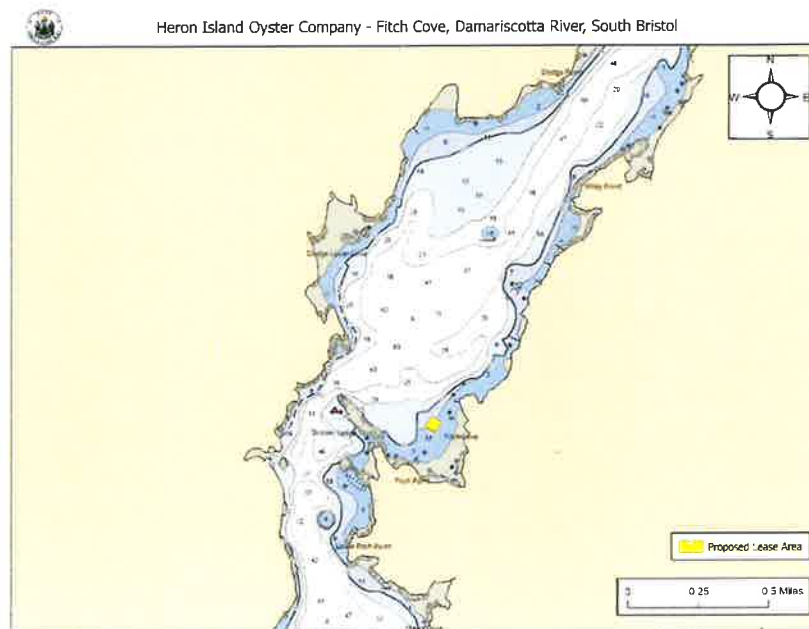


Figure 1: Proposed standard lease boundaries and existing LPAs. Image from DMR site report.

## B. Site Characteristics

On September 30, 2021, DMR scientists assessed the epibenthic flora and fauna of the proposed lease site via SCUBA. DMR scientists returned to the proposed lease site on October 25, 2023, to gather additional data pertaining to the proposed lease site and the surrounding area. The proposal is situated in Fitch Cove. The shoreline of Fitch Cove is mainly cobble with occasional rocky outcroppings that lead to forested uplands. There are three homes and five shorefront parcels located within Fitch Cove (SR 2).

On October 25, 2023, DMR began collecting depths at the proposed site at approximately 9:42 AM. The tide was falling with the next low tide predicted to occur at 2:38 PM. Depths were collected at proposal corners and determined to be between 11.6 and 18 feet. Correcting for tidal variations derives water depths to be approximately 12.5 to 18.9 feet at the previous high tide and 3.3 to 9.7 feet at mean low water (MLW, 0.0 feet) (SR 2).



**Figure 2:** Proposed lease site and surrounding area. Image taken from DMR 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. Riparian Access**

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)<sup>4</sup>.

During the site visit on October 25, 2023, DMR observed three docks located within Fitch Cove and one dock north of Fitch Cove. The dock located to the north of Fitch Cove had been detached from the

<sup>4</sup> 13-188 C.M.R. ch. 2.

pier and ramp for overwintering at the time of the site visit. The three docks within Fitch Cove all had associated piers and ramps and are the following distances from the proposal (north to south): 450 feet, 373 feet, and 780 feet.

DMR observed four moorings within Fitch Cove and one mooring north of Fitch Cove. All five moorings were vacant at the time of the site visit. The four moorings within Fitch Cove are the following distances from the proposal (north to south): 319 feet, 236 feet, 437 feet, and 272 feet (SR 4, 5).

**Therefore**, since no riparian owners offered testimony that the proposed lease would hinder their access, 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 (12 M.R.S.A. § 6072(7-A)(B); Chapter 2.37(1)(A)(2)).

The proposal is located within Fitch Cove outside of the main navigational channel in the Damariscotta River. The main navigational channel is approximately 1,500 feet northwest of the proposal. DMR observed one commercial fishing vessel hauling lobster gear in the main river channel during the site assessment (SR 5).

A Harbormaster Questionnaire was completed by the local harbormaster and submitted to DMR on October 25, 2021. The harbormaster indicated that due to shallow water in Fitch Cove at lower tidal stages, boats may need to navigate towards the deeper water in the center of the cove where the proposal is partially located.

During the public hearing, no one offered testimony or evidence regarding potential impacts to navigation. Due to the distance from the main channel, it is reasonable to assume that sufficient distances for navigation remain.

**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 (12 M.R.S.A. § 6072(7-A)(C); Chapter 2.37(1)(A)(3)). Additionally, the Commissioner considers any evidence concerning other aquaculture uses of the area (Chapter 2.37(1)(A)(4)).

**Fishing.** During DMR's site assessment on October 25, 2023, dense lobster buoys were observed in the main channel of the Damariscotta River. Nine lobster buoys were observed within 1,000 feet of the proposed lease. The closest lobster buoy was approximately 125 feet north of the proposal (SR 6). The harbormaster indicated in the Harbormaster Questionnaire that recreational fishing occurs in the summer months near Glidden Ledge to the west of the proposal.

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

**Other aquaculture uses:** There are four limited purpose aquaculture licenses within 1,000 feet of the proposal. All four LPAs are operated by an individual associated with the company applying for this standard lease proposal: MELA 115, MELA 215, MELA418, MELA518 (SR 6). The applicant intends to relinquish the LPAs if this lease is granted (App 10).<sup>5</sup>

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, rowing, and swimming in the general area, however, typically not within the proposed lease footprint (App 13). DMR received public comments expressing concerns about the impact of a commercial enterprise on the recreational use of the cove. One comment stated the existing LPAs inhibit recreational activities and the larger proposed project would negatively impact them further (van der Hoeven email). However, no specifics were given as to how the proposal would impede or impact other water-related uses. No evidence or testimony was provided at the hearing concerning other water-related uses in the area.

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

**Site observations.** DMR scientists conducted a SCUBA transect to assess the epibenthic ecology of the proposed lease. The relative abundance of epibenthic flora and fauna observed in the video transect is described below:

#### Species observed on underwater footage

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<sup>5</sup> Jeffrey Auger testified that Dodge Cove Marine Farm has an application for an experimental aquaculture lease near this site pending with DMR. The Heron Island application was deemed complete prior to the Dodge Cove proposal, and therefore, was contemplated by DMR first. Mr. Auger stated that in his opinion, the proposed leases would not conflict with each other.

Species Observed	Abundance
Green Crab ( <i>Carcinus maenas</i> )	Occasional
Hermit Crab ( <i>Pagurus</i> sp.)	Occasional
American Oyster ( <i>Crassostrea virginica</i> )	Occasional
Razor Clam ( <i>Ensis directus</i> )	Occasional
Soft-shell Clam ( <i>Mya arenaria</i> )	Occasional
Crab ( <i>Cancer</i> sp.)	Occasional
Horseshoe Crab ( <i>Limulus polyphemus</i> )	Occasional

**Eelgrass.** Historical records of eelgrass collected by MDMR in 2010<sup>6</sup> indicate no mapped eelgrass presence in the vicinity of the proposal. No eelgrass was observed within the proposal boundaries during MDMR's site assessments (SR 8).

**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 not located within mapped 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 mapped bald eagle nesting site to be approximately one mile southwest of the proposal (SR 9).

**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**

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 proposal is not within 1,000 feet of any beach, park, docking facility, conserved lands owned by federal, state, or municipal governments (SR 9).

**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**

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<sup>6</sup> Data obtained from The Maine Office of GIS "GISVIEW.MEDMR.Eelgrass". This is the most current record of mapped eelgrass in the vicinity of the proposal.

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.

#### **G. Light**

The Commissioner evaluates 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 10).

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

#### **H. Noise**

The Commissioner evaluates 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, the only source of noise on-site would be one vessel powered by an outboard motor (App 9). The vessel engine will be turned off whenever possible.

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 proposed 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 Commissioner evaluates 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 orange or red corner marker buoys would be used on-site. In accordance with Chapter 2.80, marker buoys must be yellow. In response to a question from DMR at the hearing the applicant confirmed that if the project is approved, only yellow buoys will be used (Melanson testimony).

**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 applicants have demonstrated that there is an available source for organisms 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 Heron Island Oyster Company for 1.09 acres for twenty years for the cultivation of American oysters (*Crassostrea virginica*) using suspended and bottom 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).<sup>7</sup> 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 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: 6/11/2024



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

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<sup>7</sup> 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."