

**STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES**

Experimental Aquaculture Lease Application  
Suspended Culture of Sea Scallops  
Penobscot Bay, St. George

**Peter Miller, Ira Miller, Gordon  
Connell, Christopher Cook, and  
Merritt Carey**

**PEN MHx**  
October 1, 2018

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

Peter Miller, Ira Miller, Gordon Connell, Christopher Cook, and Merritt Carey applied to the Department of Marine Resources (DMR) for an experimental aquaculture lease on 3.99 acres<sup>1</sup> located in western Penobscot Bay, northeast of Mosquito Head, St. George, Knox County, Maine, for the cultivation of sea scallops (*Placopecten magellanicus*) using suspended culture techniques. DMR accepted the application as complete on March 27, 2018. One request for a public hearing was received during the comment period. No public hearing was held.<sup>2</sup>

**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 St. George, and others on the Department's mailing list. Notice of the application and comment period was published in the *Courier Gazette* on April 12, 2018.

The evidentiary record before the Department regarding this lease application includes the application, the Department's site report dated September 4, 2018, and the case file. The evidence from these sources is summarized below.<sup>3</sup>

**2. DESCRIPTION OF THE PROJECT**

**A. Proposed Operations**

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<sup>1</sup> Applicant originally requested 4.01 acres. The SW corner was modified to ensure the acreage requested was four acres or less. Pursuant to statute, experimental leases are required to be four acres or less in size.

<sup>2</sup> By law, the Department is required to hold a public hearing if 5 or more written requests for a hearing are received.

<sup>3</sup> These sources are cited below, with page references, as CF (case file), App (application), and SR (site report).

The purpose of the proposed lease is to explore the commercial feasibility of cultivating sea scallops using suspended culture techniques (App 4). The applicants plan to deploy three longlines measuring 487 feet in length (App 11). The longlines will be submerged ten feet below the surface of the water (App 12). The applicants intend to suspend 48 sets of lantern nets and 30 vertical ropes of ear hung scallops from the longlines (App 13). The applicants anticipate harvesting year-round and will visit the site on a regular basis (App 4). The applicants will access the site from their commercial fishing wharf in Tenants Harbor, or the wharf at Spruce Head Fisherman's Co-op (App 4).

### **B. Site Characteristics**

On August 6, 2018, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an experimental aquaculture lease. The proposed site occupies subtidal waters in western Penobscot Bay, northeast of Mosquito Head (SR 2). Tenants Harbor is located to the north of the proposed area and Mosquito Island is located to the southwest (SR 2). The mainland shoreline located to the west of the proposed site is steep and rocky (SR 2). The uplands are characterized by forests and fields with some houses observed (SR 2). At mean low water, the distance from the northeast corner of the proposed lease to the western mainland is ~2,915 feet (SR 5). Calculating for mean low water, depths ranged from 89.2 feet to 99.2 feet (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 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**

During the site visit, staff did not observe any docks or moorings nearby the proposed lease (SR 7). There are no riparian landowners within 1,000 feet of the proposal. Per the site report:

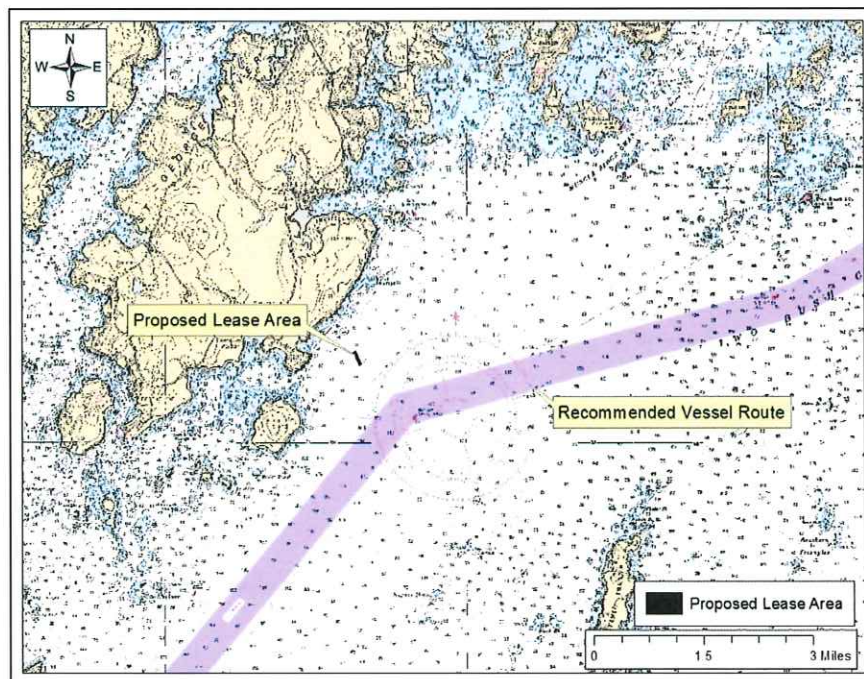
The closest parcel to the proposal is located 2,900 feet to the northwest. Due to this distance, the proposed lease would not interfere with riparian ingress or egress (SR 7).

Activities at the proposed lease site in subtidal waters are unlikely to hamper access to and from the shore.

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

**B. Navigation**

During the site visit, staff observed sailboats, lobster boats, and motorized vessels within the vicinity of the proposed site (SR 7). Most of the vessels were traveling along the suggested vessel route that is located to the east of the proposed site (SR 7). The route is more than 3,000 feet from the proposed site, so vessels traveling within this area would not be impacted by the proposal (SR 7).



**Figure 1:** Location of recommended vessel route in relationship to the proposed lease area. Image from the Site Report.

In addition, the proposed site is more than 1,500 feet from any shoreline or ledge, so vessels within the immediate vicinity would be able to navigate around the lease unencumbered (SR 7). The longlines would be submerged ten feet below water, so most vessels would be able to navigate through the proposed area without hindrance (SR 7).

**Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with navigation. The lease site must be marked in accordance with U.S. Coast Guard requirements.

### **C. Fishing & Other Uses**

During the site visit, lobster buoys were observed within the vicinity of the proposed site and several lobster boats were operating nearby (SR 8). The density of lobster buoys decreased near the proposed site, and none were present within the boundaries (SR 8). The area where the proposed lease is located is managed by the Department as a Limited Access Area for the commercial scallop fishery (SR 8). Scallop harvesting, via drag and dive, occurs seasonally during the winter months (SR 8). The Department received a comment from Travis Fogg, who fishes for scallops in the area. Mr. Fogg indicated that the proposed area is “in close proximity to existing scallop fishing bottom.”<sup>4</sup> However, as indicated in the site report:

The proposed lease site would occupy a relatively small space in a large, open section of western Penobscot Bay. Therefore, it is unlikely that the proposed lease would pose an unreasonable interference to lobstering or other commercial or recreational fishing activities that may occur in the area (SR 8).

**Exclusivity.** To avoid gear conflicts, the applicants are requesting that fishing with fixed gear be prohibited within the boundaries of the proposed lease site (App 6). Such a restriction is reasonable to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). A condition reflecting this restriction will be included in the lease.

**Other aquaculture uses.** There are two Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease area (SR 8). The LPAs are held by Peter Miller, one of the applicants, for the culture of sea scallops using suspended culture techniques (SR 9).<sup>5</sup>

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<sup>4</sup> CF: Email from Travis Fogg to C. Burke dated May 10, 2018.

<sup>5</sup> LPA acronyms: PMIL117 and 217.

**Therefore**, considering existing aquaculture activities, the proposed site will not unreasonably interfere with fishing or other water related uses of the area.

#### **D. Flora & Fauna**

**Site Observations.** During the site visit, Department staff observed herring gulls (*Larus argentatus*) within the proposed lease site (SR 9). Historical eelgrass (*Zostera marina*) cover data, collected in 2005, show the closest eelgrass beds to the proposed lease were located over ~5,000 feet to the west (SR 10).

**Fisheries and Wildlife.** Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW), indicate that the proposed lease is located approximately 4,800 feet to the east of Tidal Wading Bird and Waterfowl Habitat, approximately 2.25 miles to the northeast of Essential Habitat for the roseate tern (*Sterna dougallii*), and approximately 2.3 miles to the northeast of seabird nesting islands (SR 9). DMR sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated that “minimal impacts to wildlife are anticipated.”<sup>6</sup>

Based on this evidence, it appears that the culture of sea scallops as proposed for this lease site will not interfere with the ecological functioning of the area.

**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**

Per the site report, there are no beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site (SR 11).

**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, or docking facilities owned by municipal, state, or federal governments.

#### **F. Source of Organisms**

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<sup>6</sup> CF: Email from J. Perry (Environmental Review Coordinator, MDIFW) to C. Burke dated May 2, 2018.

The applicants intend to source scallop spat from individuals listed on a Department issued Special License (App 1).<sup>7</sup> Individuals listed on the Special License are an approved source of seed stock (SR 11).

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

#### **4. CONCLUSIONS OF LAW**

Based on the above findings, I conclude that:

- A. The aquaculture activities proposed for this site will not unreasonably interfere with riparian ingress and egress.
- 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 uses of the area, taking into consideration existing aquaculture uses in the area.
- D. 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. 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. The applicant has demonstrated that there is an available source of sea scallops to be cultured for the lease site.

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**

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.99 acres to Peter Miller, Ira Miller, Gordon Connell, Christopher Cook, and Merritt Carey, for

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<sup>7</sup> SL #2018-80-02

three years, the term of the lease to begin within twelve months of the date of this decision, on a date chosen by the lessee<sup>8</sup>; 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 sea scallops 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 MRSA §6072-A (15)<sup>9</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. The following conditions shall be incorporated into the lease:

- A. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- B. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
- C. Fishing with fixed gear is prohibited within the lease boundaries.

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<sup>8</sup> 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.”

<sup>9</sup> 12 MRSA §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.”

**7. REVOCATION OF EXPERIMENTAL LEASE**

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §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.

**Dated:** 10/1/18



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