



# New Hampshire Fish and Game Department

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May 15, 2018

Sheyne Branconnier  
New England Superior Oyster, LLC  
64 Piscataqua Road  
Dover, NH 03820

## IN THE MATTER OF APPLICATION OF NEW ENGLAND SUPERIOR OYSTER, LLC FOR AN AQUACULTURE LICENSE

Dear Mr. Branconnier,

1. Procedural History: on August 17, 2017 an application was received from New England Superior Oyster, LLC for a shellfish aquaculture license in Royalls Cove. Notice to the public and interested parties was accomplished as follows: notice of a public hearing on December 14 at 10:00 am was printed in the Fosters newspaper on November 18, 2017, the notice and application was posted on the NH Fish and Game Website, all abutters and regulatory agencies were mailed (certified mail) information on the public hearing and the application for the proposed aquaculture site. The public hearing was conducted at the Region 3 office in Durham, NH on December 14, 2017 at 10:00 am (see attachment for list of individuals who attended).

The following persons testified at the hearing:

Opposed to the license:

Arthur Bettencourt, 201 Spur Road, Dover, NH 03820  
Barb MacDonald, 63 Clearwater Drive, Dover, NH 03820  
Barbara Rushmore, 191 Spur Road, Dover, NH 03820  
Christine Goodwin, Bellamy River Village, Dover, NH 03820  
Fred Stepanek, 191 Spur Road, Dover, NH 03820  
Joy Bettencourt, 201 Spur Road, Dover, NH 03820  
Joy Bloom, 83 Spur Road, Dover, NH 03820  
Robert Merwin, 41 Clearwater Drive, Dover, NH 03820

The following persons provided written comment in opposition to the license due to concerns of boating safety, impact on property value, impact on recreational activities, too close to channel, and impact on ecosystem. Additional comments not relevant to the standard of review for the application contained in Fis 807.07(j) included inexperience of applicant, not trustworthy, website concerns, lacks clear business plan, noise, and future expansion concerns:

Arthur Bettencourt, 201 Spur Road, Dover, NH 03820  
Barbara Dee, 13 Clearwater Drive, Dover, NH 03820  
Barbara Rushmore, 191 Spur Road, Dover, NH 03820  
Bob Hall, 133 Spur Road, Dover, NH 03820  
Brad Hilton, 14 Deborah Lane, Dover, NH 03820  
Brett Bacon

Raymond Bardwell, 199 Spur Road, Dover, NH 03980  
Cathy Merwin, 41 Clearwater Drive, Dover, NH 03820  
Celeste Wunder, 16 Blue Heron Drive, Dover, NH 03820  
Christine Goodwin, 10 Deborah Lane, Dover, NH 03820  
Deb Miller  
Donald Hodgkins, 177 Spur Road, Dover, NH 03820  
Donald Schultze, 74 Piscataqua Rd, Dover, NH 03820  
Elizabeth Bratter, 75 Spur Road, Dover, NH 03820  
Fred Stepanek, 191 Spur Road, Dover, NH 03820  
Gail Pentheny  
Gillian na Ranong, 18 Deborah Lane, Dover, NH 03820  
Grace Fershko  
Jamie Joyce, 61 Clearwater Drive, Dover, NH 03820  
Jen Deyo  
Lisa Hall, 133 Spur Road, Dover, NH 03820  
Lynne Pallarino  
Marc Desmarais, 1 Clearwater Drive, Dover, NH 03820  
Marleny Vasquez  
Martha Hilton, 14 Deborah Lane, Dover, NH 03820  
Michael Healy  
Nikki Brown  
Patricia Perkins, 65 Clearwater Drive, Dover, NH 03820  
Paul Chamberlin, 15 Blue Heron Drive, Dover, NH 03820  
Paula Forbes, 242 Central Ave, Dover, NH 03820  
Peg Pirkola  
Robert Merwin, 41 Clearwater Drive, Dover, NH 03820  
Sean Perkins  
Sue Carabott, 43 Clearwater Drive, Dover, NH 03820  
Tom Mindspring, 53 Clearwater Drive, Dover, NH 03820  
Trevor Fitzgerald

The following persons provided written comment in support of the license stating that oysters are beneficial for the environment, the site and gear will not be a navigational hazard, and the site is located in an area with minimal use:

Edda Martin  
John Coon, 102 Raymond Rd, Brunswick, ME 04011  
Karl Leinsing, 77 Spur Road, Dover, NH 03820  
Kirsten Arnold  
Lisa Leslie  
Marc Blumenthal, 11 Nute Rd, Dover, NH 03820  
Patricia Kuziomko, Nute Road, Dover, NH 03820  
Dr. Robert Eckert  
Christos Tsiamis  
Elisha Huggins

There were two petitions on Change.org, one in support to the license and one against. However, neither of the petitions language speaks to the standards of review in Fis807.07(j) :

New England Superior Oysters “Support the Health of Great Bay by Sharing its Use With Oyster Farmers” (351 signatures)

<https://www.change.org/p/nh-fish-and-game-department-support-the-health-of-great-bay-by-sharing-its-use-with-oyster-farmers>

BRV, Cricklewood on the Bellamy, & Friends of the Bellamy River “Keep commercial farming & finishing of oysters & clams away from resident view & waterways” (113 signatures)  
<https://www.change.org/p/nh-fish-game-marine-fisheries-division-reg3-keep-commercial-farming-finishing-of-oysters-clams-away-from-resident-view-waterways>

The New Hampshire Department of Environmental Services also provided a letter with a number of comments they provide for all license applicants that included, among other things, the current seasonal shellfish harvest restrictions in the area, identification of a number of things that could result in changes to the current harvest restrictions, recommendations to contact DES wetlands Bureau and Spill Response Program, etc.. NHDES also provided these unique comments regarding NESO’s reference to “oyster gardening” in their application and concerns about the impact of ice formation at the proposed location in the winter and a suggestion to delay action on the application until the issue is resolved:

8. The site described in the application is subject to impact from ice in the winter. The application does not describe how gear will be protected from ice damage. In a previous public hearing regarding a different application for work in Royalls Cove, the applicant noted that he may wish to move shellfish from this location to another location, perhaps in Little Bay. Potential for ice damage to his gear suggests such movement would almost be necessary for the survival of his business. The applicant is reminded that such movement would not be allowed until the alternative site is identified, evaluated, and a process for labelling, tracking, and record-keep relating to the movement of shellfish is approved by the appropriate state agencies. If NHF&G determines that a secondary site will be needed for the operation of this proposed site in the Bellamy River, perhaps it would be best to delay action on this application until such issues are resolved.
9. During the public hearing the applicant mentioned the term "oyster gardening" several times, in reference to the practice of engaging volunteers to grow young oysters for later transplant in other growing areas, and/or for their own consumption. The term "shellfish gardening" has specific regulatory implications and strict procedures for ensuring young shellfish being raised in waters unsuitable for harvest are handled to ensure minimal chance of creating a public health issue. I would encourage the applicant to discuss his shellfish gardening ideas with me as well as Debra Scoville of the NH DHHS before engaging volunteers.

Almost all the comments in the NHDES letter are informational in nature for the applicant. None, including the concern about ice damage to the gear speaks to the standards of review in Fis 807.07(j).

The comment period was extended past the original date of December 28, 2017 based on the request of abutters and the applicant. The record was closed on February 1, 2018.

2. Standard of Review: Fis 807.07(j) states: *The executive director shall review all of the information to determine that the proposed aquaculture operation would not pose any unacceptable risk as specified in Fis 807.02(g), does not conflict with or negatively impact any recreational, commercial or other use currently being conducted in the area in and around the proposed project area, or does not adversely impact the value or use of private property in and around the projected area before issuing a license.*

3. Findings: Based upon the entirety of the record, I find as follows:

- a) The proposed bottom culture gear would not conflict with or negatively impact recreational boating activities currently being conducted in the area. For the licensed area, the clearance requirement is that no gear be exposed at mean low water.
- b) The location of the aquaculture site is approx. 100 ft. from the closest edge of the boating channel.
- c) At the proposed location, the depth of the water is 1-3 ft. at mean low water (as stated in the application and observed during the Department's site survey) and this will provide sufficient clearance over much of the tidal cycle for most recreational craft used in Royalls Cove to safely navigate over the site.
- d) The location of aquaculture sites are required via a condition in the license to be clearly marked by yellow buoys with reflective tape, at a minimum, on all corners. The required buoys help boaters and other individuals recreating on the water identify the location of the aquaculture site in order to avoid the site should they choose to navigate outside of the channel during the period around low tide or walk through the mud flats in the area of the site.
- e) The depth of the water at mean low tide at this site would limit the appearance of the bottom culture gear proposed for use in the application (cage culture and mesh bags) except during below average low tides.

4. Decision: The application is approved because it meets the Standard of Review contained in Fis 807.07(j).

5. Following this determination, and in accordance with Fis 200 and RSA 541-A:35, individuals have the right within 30 days to seek reconsideration or modification of this decision. If you have any questions, please contact Doug Grout of NH Fish and Game at the Region 3 office in Durham.

Sincerely,



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Glenn Normandeau  
Executive Director

Attachments (1)

# Aquaculture Public Hearing 12/14/2017

## Name

Robert Eckert	NH Fish & Game
Nick Brown	Applicant
SWITT FIELDS	PUBLIC MEMBER
KYLE PEAY	
Barbara Rushmore	191 Spur Rd
Ana Gennaro	King's Dyster
Jay Baker	Fish Dept
Michael Hicks	USACE
Joy + Art Bettencourt	201 Spur Rd Dover
GILLIAN WARRINGTON	18 DEBORAH LANE, Dover
FRED H. STEPHAN	191 SPUR RD
Dick Ferraro	67 Clearwater
Barbara Winter	" "
Troy Payne	97 BAYVIEW DOVER
CLAY HUGGINS	" " "
MARC DESMARIS	1 CLEARWATER DR DOVER
Nathan Roe	55 Nazoo Rd 03844
Debra Scoville	DHHS/FPS
Chris & Bryan Goodwin	10 DEBORAH LANE
Barb Macdonald	103 Clearwater Dr
Robert Merwin	41 Clearwater Dr
J Anderson Blain	83 Spur Rd
Debi Hall	133 Spur Road
Regis Miller	283 Durham Point
Gleny Smith	94 Stratham Heights

## Name

VIVIAN MILLER	287 Durham Pt Rd
Michael Pawluk	236 Raleigh way Durham
	mjpawluk@yahoo.com Portsmouth
Russ Hilliard	196 DENKWATER RD Hampton Falls NH