

**STATE OF MAINE**  
**DEPARTMENT OF MARINE**  
**RESOURCES**

**Greg H. Perkins**  
**PEN CJx**

Experimental Aquaculture Lease Application  
Suspended Culture of marine algae  
Searsport, Maine

January 16, 2020

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

Greg H. Perkins applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located east of Sears Island in Stockton Harbor, in Searsport, Waldo County, Maine. The proposed lease is 3.97<sup>1</sup> acres and is for the suspended cultivation of sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), and winged kelp (*Alaria esculenta*).

**1. THE PROCEEDINGS**

DMR accepted the application as complete on June 11, 2019. Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Searsport and its Harbormaster, and others on DMR’s mailing list. Notice of the application and comment period was published in the July 11, 2019 edition of the *Times Record*. During the comment period, DMR did not receive any requests for a public hearing, and no hearing was held. The site report was issued on November 7, 2019. The evidentiary record regarding this lease application includes the application, DMR’s site report, and the case file. The evidence from each of these sources is summarized below.<sup>2</sup>

**2. DESCRIPTION OF THE PROJECT**

**A. Proposed Operations**

The purpose of the proposed experimental lease site is to determine the viability of a commercial seaweed operation, including determining the best gear configurations and harvest methods (App 4). The applicant is proposing to culture marine algae from October to June, annually, and intends to culture algae on 1,180-foot horizontal lines suspended 6 feet below the

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<sup>1</sup> Applicant requested 3.99 acres. DMR calculations indicate the area is 3.97 acres

<sup>2</sup> These sources are cited, with page references, as CF (case file), App (Application), SR (site report).

surface of the water. There will be 10 longlines in total, spaced 12 feet apart (App 21-22). The applicant proposes that all gear, including longlines, depth control lines and buoys, and mushroom anchors and associated lines, chains and buoys will be removed from the site between June 15<sup>th</sup> and October 15<sup>th</sup>, annually (App 11, SR 2).

### B. Site Characteristics

The proposed lease occupies subtidal waters at the entrance of Stockton Harbor in Penobscot Bay (SR 2). Cape Jellison is northeast of the proposed site, and Sears Island is located to the west (SR 2). The east side of Sears Island is undeveloped with a rocky shoreline and mature forests upland. No docks were observed during DMR's visit to the site, but approximately four houses were observed on Cape Jellison (SR 2). During DMR's site visit on October 16, 2019, depths at the corners of the proposed site ranged from 31.6-35.4 feet. When correcting for tidal variation, depths are approximately 2.1 feet higher at the nearest high water, and 8.5 feet lower at mean low water (SR 6). Figure 1 shows the location of the proposed lease and the surrounding area.

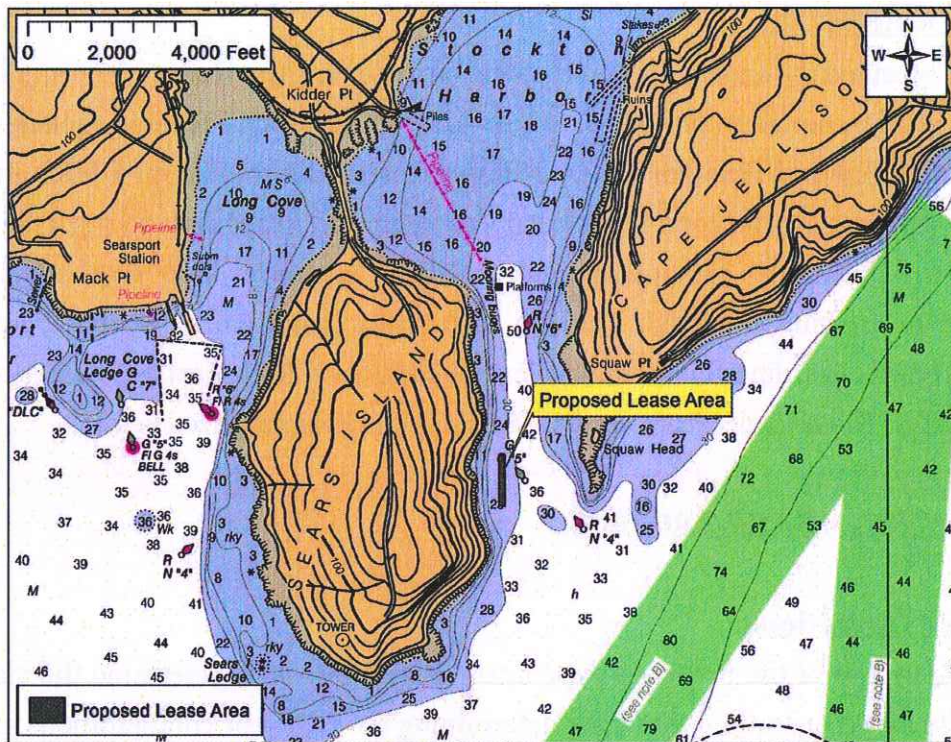


Figure 1: Vicinity Map



### **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 water related uses of the area, taking into consideration other aquaculture uses in the 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 available source of organisms to be cultured on the lease site.

#### **A. Riparian Access**

Per the site report, the proposed lease occupies subtidal waters east of Sears Island in Stockton Harbor (SR 7). During DMR's site visit, no houses, docks, or moorings were observed along the eastern shore of Sears Island, and at the closest point the proposed lease is approximately 460 feet from the island at mean low water (SR 7). Given this distance, vessels would have ample space to land on the shoreline immediately adjacent to the proposed lease. In addition, the Harbormaster for the Town of Searsport did not identify any concerns with riparian ingress or egress in their responses to the Harbormaster Questionnaire provided to them as part of the application review.<sup>3</sup>

During the comment period, DMR did not receive any comments from riparian landowners. Based on the lack of public comments, and the information contained in the site report and Harbormaster Questionnaire, it is reasonable to conclude that riparian ingress and egress will not be unduly affected by the proposed application.

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

#### **B. Navigation**

The proposed lease occupies subtidal waters at the entrance of Stockton Harbor in Penobscot Bay. It is located to the west of a marked navigation channel between Sears Island and Cape Jellison (SR 8). According to DMR's site report, it is likely this channel is heavily used by both commercial and recreational boaters (SR 8). However, the proposed lease is located about 490 feet to the west of green can "5", which marks the western side of the channel (SR 8). This

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<sup>3</sup> CF: Harbormaster Questionnaire signed July 12, 2019.

distance should allow adequate room for boaters to navigate within the channel should the lease be approved.

If the proposed lease is granted, boaters navigating outside the marked channel should have adequate room to maneuver as there is at least 460 feet between the western boundary of the proposed lease and the nearest point on the Sears Island shoreline (SR 8). The applicant has also proposed to remove all gear from the proposed lease site between June 15<sup>th</sup> and October 15<sup>th</sup> each year when vessel traffic is likely the heaviest (SR 8).

During the comment period, DMR did not receive any comments regarding navigation in the area of the proposed lease. Additionally, the Harbormaster for the Town of Searsport had no concerns regarding the proposed lease and navigation.<sup>4</sup> Based on the evidence it appears that navigation will not be unduly affected by the proposed application.

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

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

**Fishing.** During DMR's site visit on October 16, 2019 lobstering activity was observed in the vicinity of the proposed lease (SR 8). Two lobster traps were observed within the boundaries of the proposal, and buoys were observed in higher numbers to the south of the proposal (SR 8). While not observed during the visit to the site, it is possible the area may be used by other commercial and recreational fishermen (SR 8). However, because the applicant has proposed to remove all gear between June 15<sup>th</sup> and October 15<sup>th</sup> each year, the proposed lease should have little to no impact on lobster fishing or other water related uses during the summer months. The Searsport Harbormaster did not note any concerns regarding the proposed lease and commercial or recreational fishing occurring in the area.<sup>5</sup> No public comments were received regarding fishing during the review period for this application.

**Exclusivity.** Due to possible interactions with gear, lobstering and dragging are restricted from the site from October 15<sup>th</sup> to June 15<sup>th</sup>, annually.

**Other aquaculture uses.** There 4 Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease, and all are held by the applicant, Greg Perkins (SR 8). Per the applicant, all will be terminated if the proposed lease is granted (App 7).

**Other water-related uses.** During the review period, DMR did not receive any comments detailing other water-related uses that are not already contemplated in other sections

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<sup>4</sup> CF: Harbormaster Questionnaire signed July 12, 2019.

<sup>5</sup> CF: Harbormaster Questionnaire signed July 12, 2019



of this decision. Based on the absence of public comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on other water-related uses of the area.

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

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

Historical eelgrass data collected by DMR indicated that, in 2004, the nearest eelgrass to the proposed lease was over 300 feet to the west of the proposed site. The proposed aquaculture activities for this site are unlikely to shade or disrupt these eelgrass beds (SR 10).

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located approximately 465 feet to the north of Tidal Wading Bird and Waterfowl Habitat, which is defined under Maine's Natural Resource Protection Act as Significant Wildlife Habitat (SR 9). DMR sent a copy of the application to MDIFW for their review and comment. Mapped habitat for the eastern ribbon snake (*Thamnophis sauritus*) and a bald eagle (*Haliaeetus leucocephalus*) nest are also located nearby (SR 9).

DMR sent a copy of the application to the MDIFW for their review and comment. MDIFW indicated that "minimal impacts are anticipated for this project."<sup>6</sup>

Based on the evidence that the proposed lease does not interact with historical eelgrass beds or mapped wildlife habitat, and because DMR's site report does not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on the ecological function 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 ecological significant flora and fauna.

#### **E. Public Use & Enjoyment**

Most of Sears Island is owned by the Maine Department of Transportation and is located approximately 465 feet to the west of the proposed lease site (SR 11). This area is open to the public and is accessed via a bridge located on the northern end of the island (SR 11). The proposed lease operations are unlikely to interfere with use of this public land.

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<sup>6</sup> CF: Email from R. Settele to C. Burke on July 11, 2019

During the public comment period, no comments were received regarding the public use and enjoyment of the surrounding area.

**Therefore**, the aquaculture activities proposed for this site will not unreasonably interfere with public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal governments.

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

The applicant intends to source sugar kelp, skinny kelp, and winged kelp from Atlantic Sea Farms.<sup>7</sup> This source is approved by DMR.

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

#### **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.

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 stock 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.

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<sup>7</sup> When the applicant applied, Atlantic Sea Farms was known as Ocean Approved. Ocean Approved has since changed their name to Atlantic Sea Farms.



## **5. DECISION**

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.97 acres to Greg H. Perkins, 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 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 sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), and winged kelp (*Alaria esculenta*), 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) (s) 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 MSRA §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 purpose of the lease. The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Due to possible interactions with gear, lobstering and dragging are restricted from the site from October 15<sup>th</sup> to June 15<sup>th</sup> annually.

## **7. REVOCATION OF EXPERIMENTAL LEASE**

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<sup>8</sup> DMR Rule 2.64 (14) provides:

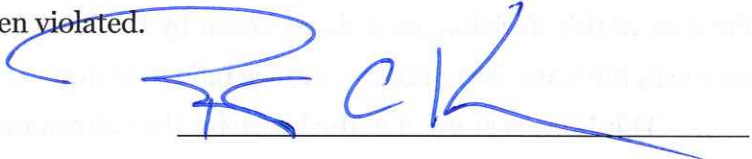
“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

<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.”

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: 01/16/2020



Patrick C. Keliher, Commissioner  
Department of Marine Resources