

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

TERRY DUTTON

Experimental Aquaculture Lease Application
Suspended Culture of Marine Algae
Casco Bay, Harpswell

CAS RDx

Findings of Fact, Conclusions of Law, and Decision

Terry Dutton applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease on 3.97-acres¹ located north of Flash Island in Ridley Cove, Harpswell, Cumberland County. The proposal is for the suspended culture of sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), horsetail/fingered kelp (*Laminaria digitata*), shotgun kelp (*Agarum clathratum*)², dulse (*Palmaria palmata*), Irish moss (*Chondrus crispus*), and sea lettuce (*Ulva lactuca*). The proposal is for commercial research and development.

1. Proceedings

On June 13, 2023, DMR accepted the final application as complete. Notice of the completed application and the 30-day public comment period was provided to state agencies, the Town of Harpswell, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. On June 20, 2023, DMR sent a Harbormaster Questionnaire to the Harbormaster for the Town of Harpswell, requesting information about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, among other considerations and received a response from the Harbormaster on July 13, 2023. Notice of the complete application and comment period was published in *The Forecaster* on June 23, 2023.

The version of 12 M.R.S.A. § 6072-A(6) that was in effect when this application was deemed complete provided that the Commissioner may hold a public hearing, and that they shall hold a public hearing if five or more persons request a public hearing within the 30-day comment period. On July 23, 2023, the comment deadline ended. No requests for a public hearing were received during the comment period, so a public hearing was not required, but DMR used its discretion under § 6072-A(6) and elected to hold a public hearing for this application. Notice of the public hearing was published in the *Portland Press Herald* on December 18, 2025 and was provided to the Town, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. The public notice for the hearing stated that the proceeding would be conducted in-person and remotely and directed interested persons to register

¹ Applicant originally requested 3.99 acres. DMR measurements indicate the area is 3.97 acres.

² Application lists the scientific name as *Agarum cribosum*, however the current accepted scientific name is *Agarum clathratum*.

to provide testimony or ask questions during the proceeding. The registration deadline was January 25, 2026. The deadline for requesting intervenor status was January 25, 2026. One application for intervenor status was received by DMR. On January 28, 2026, DMR issued a decision denying the application for intervenor status by Matt Gilley, Elizabeth Gilley, David Gilley, and Landon Harris. Three individuals registered to participate in the hearing, however, two did not testify³. DMR held a public hearing on this application on February 9, 2026.

Table 1. Individuals who provided sworn testimony at the hearing.

Name	Affiliation
Terry Dutton	Applicant
Matt Gilley	Member of the public Zone F lobster council representative

Additional DMR staff and members of the public attended the hearing but did not offer testimony. The hearing was recorded by DMR. The Hearing Officer was Maria Eggett. The record was closed on February 9, 2026.

The evidentiary record regarding this lease application includes the application, DMR's site report dated January 21, 2025, and the case file. The evidence from each of these sources is summarized below.

A. List of Exhibits

1. Case file (CF)
2. Application (App)
3. DMR site report, issued on January 21, 2025 (SR)

The case file, application and site report are referred to in the decision with their designated abbreviations.

2. Description of the Project

A. Site History

Based on DMR records, no prior aquaculture activities have occurred in the area of this proposed lease site.

³ Nathaniel Pulsifer, a member of the public, asked questions on cross-examination but did not offer sworn testimony.

B. Proposed Operations

The applicant is proposing to culture sugar kelp, skinny kelp, winged kelp, horsetail/fingered kelp, shotgun kelp, dulse, Irish moss, and sea lettuce using fifteen 1,000-foot longlines spaced at 10-foot intervals and five 140-foot crosslines (App 14, 24). The applicant also proposes to use PVC pipes, counterweights, moorings with lines and chains, and buoys (App 14-15). The depth control and mooring buoys, counterweights, PVC pipes, crosslines, and longlines would be removed from June 16 through October 14 (App 14-15). Mooring blocks and required lease corner markers would remain on site year-round (App 14-15). Seeding would be conducted between October and December and would take approximately five days (App 5-6). Harvesting would take up to 10 days between April and June (App 5-6). Approximately once every two weeks, a site visit will be conducted to tend the site between seeding and harvesting (App 5-6).

At the hearing, in response to a question from DMR, the applicant stated that the lines will be hauled onto a boat using a pot hauler (Dutton testimony).

The applicant proposes to use a lobster boat with pot hauler and a skiff at the lease site (App 7, Dutton testimony).

No power equipment is proposed to be used at this lease site (App 7).

C. Site Characteristics

Description. On June 26, 2024, DMR scientists assessed the proposed lease site. The proposal is located in subtidal waters in Ridley Cove approximately 180 feet to the north of Flash Island at mean low water (MLW). Ridley Cove consists of several islands, both inhabited and uninhabited, as well as West Cundy Point in Cundy's Harbor located approximately 1,577 feet to the east (Figure 1). The surrounding shoreline consists of a rocky ledge coastline that leads to mixed forest uplands (SR 2).

With correction for tidal variation, depths at MLW at the lease proposal site are between 16.5-36.8 feet. DMR scientists observed the bottom characteristics in the vicinity of the proposed lease site via a remotely operated vehicle (ROV). The bottom of the lease site is primarily composed of mud (SR 2).

Growing Area Classification. Growing Area Classifications are pertinent to bivalve shellfish species cultured and harvested for human consumption. The proposal does not include the cultivation or harvest of any bivalve shellfish species, so Growing Area Classifications do not apply.

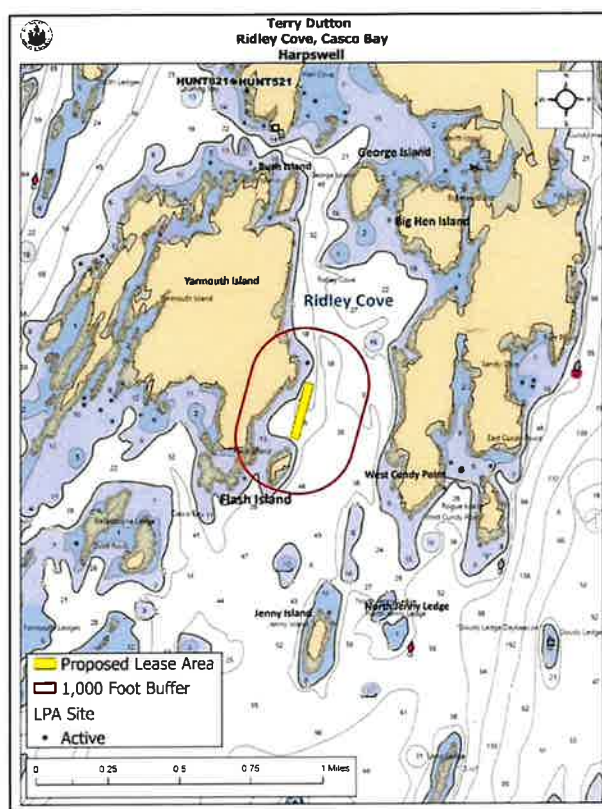


Figure 1. Proposed lease site and surrounding area⁴.

3. Legal Criteria and Findings of Fact

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. § 6072-A and DMR Regulations, Chapter 2.37 and 2.64.⁵ The statute and regulations provide that a lease for commercial aquaculture research and development or for scientific research 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; other aquaculture uses in the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; and 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.

⁴ Unless otherwise noted, all figures in this report were created in ArcGIS Pro version 2.9 using digitized NOAA Nautical Charts or geo-referenced aerial photographs provided by The Maine Office of GIS.

⁵ Chapter 2 of DMR Regulations is published at 13-188 C.M.R. ch. 2 and may be found at <https://www.maine.gov/dmr/rules-enforcement/regulations-rules>.

A. Riparian Owners Ingress and Egress

When examining riparian access, the Commissioner considers whether the proposed lease will unreasonably interfere with the ingress and egress of riparian owners. 12 M.R.S.A. § 6072-A(13)(A). The Commissioner shall examine whether the riparian owners can safely navigate to their shore and consider the type of shore, the type of vessel that can reasonably land on that shore and the types of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures. Chapter 2.37(1)(A)(1).

During DMR's site assessment, scientists did not observe any piers, docks, or residential properties within 1,000 feet of the proposal (SR 5). Although these observations were limited to within 1,000 feet of the proposal, DMR's analysis of impacts to riparian landowner's ingress and egress is not limited to 1,000 feet. Aerial imagery⁶ indicates there are residential properties and piers on the western shore of West Cundy point over 1,600 feet to the east. Imagery also shows that there are residential properties with piers on the northern end of Yarmouth Island, Bush Island, and George Island over 3,000 feet to the north (SR 5).

In a completed Harbormaster Questionnaire submitted to DMR on July 13, 2023, it was stated that there are not any residences near the boundaries of the proposed lease (SR 5).



Figure 2. Proposed lease area with site visit observations.

⁶ Maine Orthoimagery Coastal Casco Bay 2022

No testimony or evidence was offered at the hearing concerning riparian access.

Given the distance from the proposed lease to any riparian structures, the proposed lease activities will not impede access.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with riparian owner ingress and egress.

B. Navigation

When examining navigation, the Commissioner considers whether the proposed lease will unreasonably interfere with navigation. 12 M.R.S.A. § 6072-A(13)(B). The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area and consider the current uses and different degrees of use of the navigational channels in the area. Chapter 2.37(1)(A)(2).

The proposal is located in subtidal waters approximately 180 feet to the north of Flash Island at MLW (SR 5). There is approximately 1,577 feet of navigable water at MLW between the proposed lease area and the West Cundy Point shoreline to the east (SR 5). There is approximately 154 feet of navigable water at MLW between the proposed lease and the Yarmouth Island shoreline to the west (SR 5). There is also a navigable waterway to the north of Yarmouth and Bush Islands that provides additional access into Ridley Cove (Figure 3; SR 5).

During DMR's site assessment, scientists observed a sailboat under sail transiting to the southeast and through the proposal, as well as a sailboat under power transiting to the north of the proposal, and a sailboat under power to the east of the proposal transiting north. DMR scientists also observed a power boat transiting to the east of the proposal.

The Harbormaster Questionnaire stated that commercial vessels exit Ridley Cove from the Hen Island area (SR 5). Hen Island is approximately 2,900 feet northeast of the proposal at MLW (Figure 3; SR 5). In a follow-up letter to DMR on August 15, 2023, the Harbormaster stated that commercial fishing boats transit the inlet between Flash Island and Yarmouth Island during the winter months and if aquaculture gear blocks this inlet, it could interfere with the ability to transit through the area (SR 5).

In his testimony, Terry Dutton stated that the culture lines will be suspended seven feet below the surface and should not create an impediment to vessels with a draft of less than seven feet (Dutton testimony). In response to a question from DMR, Terry Dutton stated that the inlet between Flash Island and Yarmouth Island is very rarely used by boat traffic (Dutton/Eggett).

Matt Gilley testified that he traverses this area when he brings his traps to shore (Gilley testimony). He stated that when fully loaded, the draft of his boat is eight feet (Gilley testimony). In response to a

question from the DMR, Matt Gilley stated that he makes this trip six times per year (Gilley/Eggett). In response to a question from the applicant on cross-examination, Matt Gilley stated that the cost for navigating around Flash Island instead of through the inlet would be negligible, but that he does like the shelter provided by the island (Dutton/Gilley).

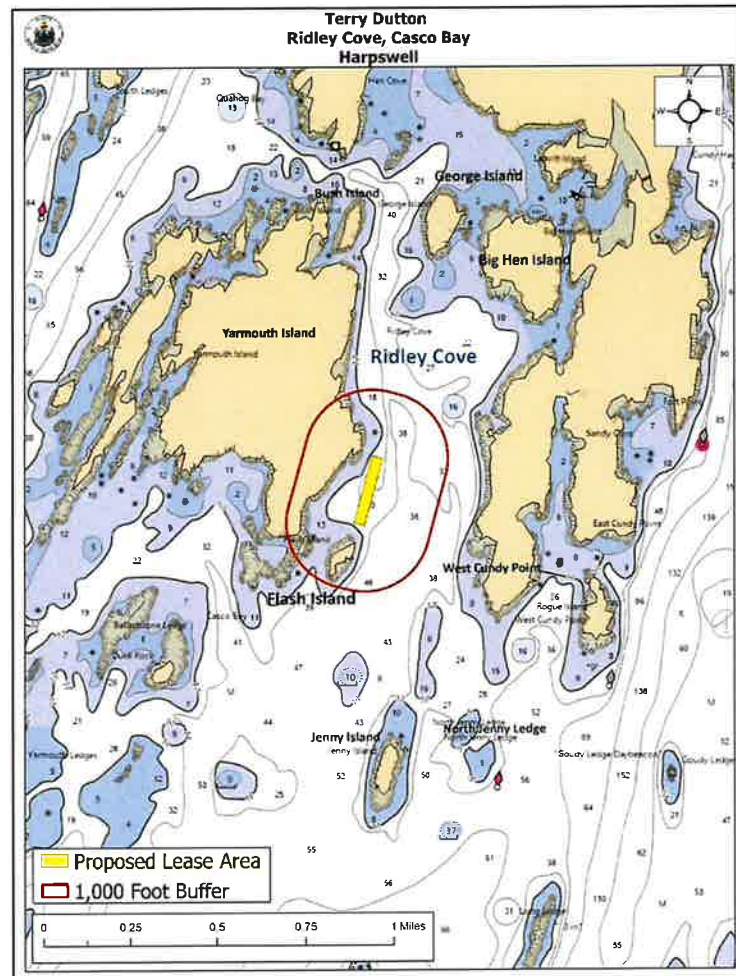


Figure 3. Charted navigational channels in the vicinity of the proposed lease area.

While the Harbormaster stated that the lease would prohibit commercial vessels from transiting the small inlet, no specifics were given as to types of vessels, frequency of travel, or detailed usage times beyond the winter months. The comments also did not provide particulars on what unreasonable impacts would occur should the vessels instead transit to the east of Flash Island. Matt Gilley's testimony implies that while the route is preferable to him, it is not a hardship to navigate around Flash Island. Based on the information in the case file and the hearing testimony, it appears that while the lease as proposed may

require adjustments to traditional navigation, sufficient area still would remain for commercial vessel traffic.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with navigation.

C. Fishing and Other Uses

When examining fishing and other uses, the Commissioner considers whether the proposed lease activities will unreasonably interfere with fishing or other uses of the area. 12 M.R.S.A. § 6072-A(13)(C). The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. Chapter 2.37(1)(A)(3).

Fishing. With respect to fishing, the Commissioner shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area. Chapter 2.37(1)(A)(3).

During DMR's site assessment, scientists mapped 84 lobster buoys within 1,000 feet of the proposal (SR 6). Three of the 84 mapped buoys were located within the boundaries of the proposal (Figure 2; SR 6).

During cross-examination of the applicant, Matt Gilley asked if the moorings could be removed in the off-season to allow menhaden fishing at the site. Terry Dutton responded that it would be cost-prohibitive to remove the moorings, but because the moorings are approximately 1,100-1,200 feet apart, seining for menhaden would still be possible with the moorings in place (Dutton testimony).

Matt Gilley testified he lobster fishes in the proposed lease area from approximately mid-May to July and then again in the fall from approximately September to early November (Gilley testimony).

As detailed in the site report and Matt Gilley's testimony, the proposed lease site is used for lobster fishing and potentially menhaden fishing. No specific information or testimony concerning menhaden fishing is contained in the record, however, Terry Dutton stated that the distance between the moorings would allow a menhaden seine to be set if future fishing is conducted in the lease footprint. To lessen the chance of a conflict with lobster fishing, if the lease is granted it will be conditioned so that all gear, excluding mooring blocks and site markers, be removed during the primary fishing period for lobster and menhaden from May 15 to November 15 each year. With this modification, the proposal will not unreasonably interfere with fishing uses of the area.

Other Uses. The application states there is occasional kayaking in the summer months (App 8). No evidence or testimony was provided at the hearing concerning other uses in the area. If the lease is granted, it will be conditioned requiring removal of gear between May 15 and November 15. Peak

recreational boating times are customarily in the summer months in Maine. There is also ample space for these recreational uses to continue without interference while gear is placed. The proposed activities would not interfere with existing recreational uses.

Therefore, as conditioned, the aquaculture activities will not unreasonably interfere with fishing or other uses, including water-related uses of the area.

D. Other Aquaculture Uses

Pursuant to 12 M.R.S.A. § 6072-A(13)(C), in evaluating the proposed lease, the commissioner shall take into consideration the number and density of aquaculture leases in an area. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area, the intensity and frequency of such uses, the degree of exclusivity required for each use as well as the number, size, location, and type of other aquaculture leases. Chapter 2.37(1)(A)(4).

There is no active aquaculture activity within 1,000 feet of the proposal. The nearest aquaculture sites to the proposal are two Limited Purpose Aquaculture (LPA) sites (HUNT621, HUNT521) located approximately 1.1 miles to the north (Figure 1; SR 6).

No evidence or testimony was provided at the hearing concerning other aquaculture uses in the area. Given the distance between the proposed site and the LPAs, the lease as proposed will not interfere with the existing aquaculture licenses.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with other aquaculture uses in the area.

E. Existing System Support

When examining existing system support, the Commissioner considers whether the proposed lease activities will unreasonably interfere with significant wildlife and marine habitat or with the ability of the lease site and surrounding marine and upland areas to support existing ecologically significant flora and fauna. 12 M.R.S.A. § 6072-A(13)(D). Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination. Chapter 2.37(1)(A)(5).

Site Observations. DMR scientists utilized an ROV to assess the epibenthic ecology of the proposed lease. The relative abundance of epibenthic flora and fauna observed is described below in Table 2 (SR 7).

Table 2. Species observed on underwater video footage.

Species Observed	Abundance
Sheet algal bed	Abundant
Sand shrimp (<i>Crangon septemspinosa</i>)	Occasional
Rock crab (<i>Cancer irroratus</i>)	Rare

Marine Vegetation. Records of eelgrass collected in 2022⁷ indicate that there is mapped eelgrass within 1,000 feet of the proposal. The nearest mapped eelgrass is located approximately 219 feet to the southeast of the proposal. During DMR’s site assessment, scientists did not observe any eelgrass in the vicinity of the proposal (SR 8).

Wildlife. According to Geographic Information System (GIS) data maintained by the Maine Department of Inland Fisheries and Wildlife (IFW) and available through the Maine Office of GIS (MEGIS), the proposed lease is not within 1,000 feet of Tidal Waterfowl and Wading Bird Habitat (TWWH) (SR 9). The nearest TWWH is located approximately 2,703 feet to the northeast (SR 9). There is also mapped roseate tern (*Sterna dougallii*) essential habitat approximately 1,766 feet to the south (SR 9).

Though bald eagles are no longer listed on Maine’s Endangered and Threatened Species List, the United States Fish and Wildlife Service (USFWS) may also have jurisdiction over the management and conservation of the species based on applicable law and rule. Data collected by USFWS in 2023 by aerial nest survey shows there is no mapped bald eagle nesting site within the vicinity of the proposal⁸. The nearest bald eagle (*Haliaeetus leucocephalus*) nest is mapped approximately 1.6 miles to the west-northwest of the proposal (SR 9).

Flash Island, located approximately 180 feet south of the proposal at MLW, is conserved land owned by IFW and is a preserve for sea bird habitat (SR 9). The island is seasonally accessible to the public between August 16 and March 14 (SR 9). It is recommended to not land on the island during nesting season between March 15 and August 15 (SR 9).⁹

On August 8, 2023, a Resource Biologist with IFW responded by email to a “Request for Agency Review and Comment”, stating that minimal impacts are anticipated (SR 9).

⁷ Data obtained from The Maine Office of GIS “GISVIEW.MESEP.Seagrass2022”. Widgeon grass was observed only in the New Meadows River area off Old Brunswick Road near shore. 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.

⁸ Data obtained from USFWS “Bald Eagle Nest Sites” at “<https://gis-fws.opendata.arcgis.com/datasets/fws::bald-eagle-nests-maine/explore?layer=1&location=45.242958%2C-69.027618%2C5>”. This is the most current record of bald eagle nests within the vicinity of the proposal.

⁹ <https://www.harpswell.maine.gov/index.asp?SEC=4617FF2E-3B38-4A4D-9B1A-74540A7FCC93>

During DMR's site assessment, scientists observed double-crested cormorants (*Nannopterum auritum*), common terns (*Sterna hirundo*), osprey (*Pandion haliaetus*), and a bald eagle (*Haliaeetus leucocephalus*) in the vicinity of the proposal (SR 9).

Given the absence of mapped significant wildlife habitat in close proximity to the proposed lease site, IFW's comment, and the absence of eelgrass at the lease site, the proposed activities will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

Therefore, the aquaculture activities as proposed will not unreasonably interfere with significant habitat and the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

F. Source of Organisms to be Cultured

Pursuant to 12 M.R.S.A. § 6072-A(13)(E), in evaluating the proposed lease, the Commissioner shall determine that the applicant has demonstrated there is an available source of organisms to be cultured for the lease site. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices. Chapter 2.37(1)(A)(6).

According to the application, sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), horsetail/fingered kelp (*Laminaria digitata*), shotgun kelp (*Agarum clathratum*), dulse (*Palmaria palmata*), Irish moss (*Chondrus crispus*), and sea lettuce (*Ulva lactuca*) will be sourced from Atlantic Sea Farms (ASF) in Biddeford, Maine (App 2-3). ASF is an approved source of stock for all of these species except *Ulva lactuca*. ASF has a land-based aquaculture license for the culture of *Ulva fenestrata*, a different species of sea lettuce, replacing the previously cultured *Ulva lactuca*. Due to this change in species of sea lettuce, *Ulva fenestrata*, not *Ulva lactuca* will be approved for the lease.

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

G. Interference with Public Facilities

When examining interference with public facilities, the Commissioner considers whether the proposed lease will unreasonably interfere with public use or enjoyment within 1,000 feet of a beach, park, or docking facility owned by the Federal Government, the State Government or a municipal governmental agency. 12 M.R.S.A. § 6072-A(13)(F). Chapter 2.37(1)(A)(7) and 2.64(11)(A)).

The proposed lease is not within 1,000 feet of any beach, park, or docking facility owned by federal, state, or municipal governments (SR 10).

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

4. Conclusions of Law

Based on the above findings, DMR concludes that:

- a. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of riparian owners.
- b. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this site, as conditioned, will not unreasonably interfere with fishing uses of the area, including water-related uses of the area.
- 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, or docking facilities owned by federal, state, or municipal government.
- g. 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 as conditioned 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 an experimental lease to Terry Dutton, for 3.97 acres for three years, the term of the lease to begin within 12 months of the date of this decision, on a date chosen by the lessee; 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*), winged kelp (*Alaria esculenta*), horsetail/fingered kelp (*Laminaria digitata*), shotgun kelp (*Agarum clathratum*), dulse (*Palmaria palmata*), Irish moss (*Chondrus crispus*), and sea lettuce (*Ulva fenestrata*) using suspended culture techniques. The granted lease coordinates are contained in the Appendix to this decision. The lessee shall pay the State of Maine rent at \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account pursuant to Chapter 2.64(12)(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.

6. Lease Conditions

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-A(15) and Chapter 2.64(11)(B). Conditions are designed to encourage the greatest multiple compatible uses of the lease area, while addressing the ability of the lease site and surrounding area to support ecologically significant flora and fauna, and preserving the exclusive rights of the lessee to the extent necessary to carry out the purposes of the lease. The following condition shall be incorporated into the lease:

1. All gear, excluding mooring blocks and site markers, shall be removed during the primary fishing period from May 15 to November 15 each year.

7. Revocation of Lease

The Commissioner may initiate revocation proceedings upon determining pursuant to 12 M.R.S.A. § 6072-A(22) that no substantial aquaculture or research has been conducted on the site over the course of the lease, that aquaculture has been conducted in a manner substantially injurious to marine organisms, or that any condition has been violated.

Dated: 8-10-2026


Carl J. Wilson, Commissioner
Department of Marine Resources

Appendix

Granted Lease Coordinates

<u>Comer</u>	<u>Latitude</u>	<u>Longitude</u>
NW	43.77801°	-69.90957° then 163.5 feet at 105° True to
NE	43.77790°	-69.90897° then 1,057.8 feet at 194° True to
SE	43.77509°	-69.90997° then 163.5 feet at 285° True to
SW	43.77520°	-69.91057° then 1,057.8 feet at 114° True to NW