

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of marine algae
Clark Cove, Damariscotta River

Maine Fresh Sea Farms, LLC
DAM CC3x
Docket # 2016-02-E
September 6, 2017

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Maine Fresh Sea Farms LLC, a Maine company, applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 3.62 acres¹ located in Clark Cove, Damariscotta River, South Bristol, in Lincoln County, for the purpose of cultivating fourteen species of marine algae (*Laminaria saccharina*, *Alaria esculenta*, *Laminaria digitata*, *Agarum cribrosum*, *Palmaria palmata*, *Porphyra* spp, *Chondrus crispus*, *Ulva lactuca*, *Gracilaria tinkalite*, *Chorda tomentosa*, *Gabriella* spp, *Demersal verities*, *Scytosiphon* spp, and *Petalonia* spp.) using suspended culture techniques. DMR accepted the application as complete on February 16, 2016. During the 30-day public comment period, six requests for a public hearing were received by the Department. A public hearing was held on May 17, 2017 at the South Bristol Town Hall in Walpole, Maine. No one intervened in this case.

1. THE PROCEEDINGS

Notice of the application, the DMR site report, the comment period, and the public hearing were sent to state and federal agencies which were requested to review the project, as well as to riparian landowners, the Town of South Bristol and its Harbormaster, members of the Legislature, representatives of the press, aquaculture and environmental organizations, and others on the Department’s mailing list. Notice of the public hearing was published in the *Lincoln County News* on April 13, 2017 and May 11, 2017 and in the May 2017 edition of *Commercial Fisheries News*.

Sworn testimony was given at the hearing by the applicant represented by Seth Barker and Peter Fischer; Jon Lewis, Aquaculture Program Lead, DMR Aquaculture Division; Chester Rice, Selectman, Town of South Bristol, and Zone 8-E Lobster Council member; Cecil Burnham, Harbormaster, Town of South Bristol; and Dirk Brunner a riparian landowner in Walpole. Seth Barker and Peter Fischer described the proposed project. Mr. Lewis described the Department’s site visit. Mr. Rice and Mr. Burnham discussed navigation and commercial fishing activity within Clark Cove. Mr. Brunner described how the proposed lease site would affect his use of Clark Cove. David Rice, Assistant Harbormaster, Town of South Bristol, asked the applicant questions about the proposed operations. Flora Drury, Marine

¹ The applicant originally applied for 3.92 acres, but the acreage was reduced by the Department to accommodate for navigation within Clark Cove.

Scientist, DMR Aquaculture Division, answered questions about Limited Purpose Aquaculture Licenses (LPAs). No representatives from federal, or other state agencies indicated their presence at the hearing.

Each witness was subject to questioning by the Department, the applicant, the intervenors, and members of the public. The hearing was recorded by DMR. The Hearing Officer was Diantha Robinson. The evidentiary record before the Department regarding this lease application includes three exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.²

LIST OF EXHIBITS³

1. Case file (CF)
2. Application signed and dated (App).
3. DMR site report dated (SR).

2. DESCRIPTION OF THE PROJECT

A. Site History

The managing partners of Maine Fresh Sea Farms LLC are Seth Barker and Peter Fischer (Barker/Robinson). Mr. Barker holds two LPAs within the proposed lease boundaries.⁴ The LPAs were originally issued in 2015 for the cultivation of marine algae using suspended culture techniques.

Peter Fischer, managing partner of Damariscove Seafood, LLC operates DAMCC2 a standard lease which abuts the proposed lease site to the south. The lease was originally issued on February 5, 1976 to Abandoned Farm, Inc. for a five-year term. The lease was renewed for ten years successively in 1981, 1991, and 2001. It was transferred to Damariscove Seafood, LLC in 2004 for the suspended culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue mussels (*Mytilus edulis*), hard-shell clams/quahogs (*Mercenaria mercenaria*), and soft-shell clams (*Mya arenaria*). In 2008, the lease was reduced in size from 15 acres to 12 acres at the leaseholder's request. On August 25, 2011, the lease was renewed for a ten-year term. The renewal included a species amendment for the cultivation of marine algae (*Saccharina latissima*, *Alaria esculenta*, *Laminaria digitata*, *Agarum clathratum*, *Palmaria palmata*, *Porphyra spp.*, *Chondrus crispus*, and *Ulva lactuca*) and it removed a condition from the original lease that had prohibited storage.⁵

² In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.

³ Exhibits 1, 2, and 3 are cited below, with page references, as CF1 (case file), App2 (application), SR3 (site report). Other exhibits are cited by exhibit number.

⁴ BARK215 and BARK 315

⁵ See Docket#2011-07R, Damariscove Seafood, LLC, Renewal and Species Amendment

In 2012, the Department granted a gear variance for three parallel, 300 foot longlines, placed along the western edge of the lease site.⁶ In 2014, the Department approved a species amendment for marine algae (*Gracilaria tikvahiae*), and a gear amendment for eight longlines organized in two sets of four.⁷ In 2015, the Department authorized a gear variance for the deployment of a porphyra net frame.⁸ In addition to the gear variance, the Department issued a species amendment for Atlantic sea scallops (*P. magellanicus*) and marine algae (*Chorda tomentosa*, *Agardhiella* spp, *Desmarestia viridis*, *Scytosiphon* spp, and *Petalonia* spp).

B. Site Characteristics

On August 4, 2016, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an aquaculture lease. The proposed site occupies subtidal waters in the center of Clark Cove (SR 2). The upland is characterized by a rocky shoreline that gives way to mixed forests and grassy fields (SR 2). Several houses are present along the shoreline of Clark Cove (SR 2). Water depths, at mean low water, range from 21 feet at the northeast corner of the proposed site to 46 feet at the southwest corner of the proposed site (SR 4). The nearest distance to shore at mean low water is ~260 feet from the northwest corner of the proposed site (SR 4). The bottom of the proposed site is characterized by a soft mud, and the current varies from 0.5 to 1 knot (App 5).

The proposed lease is in an area currently classified by the Department of Marine Resources Water Quality Classification program as “open/approved for the harvest of shellfish” (SR 10). However, this classification will not affect the harvest of marine algae, because such classifications are currently only relevant to shellfish operations.

C. Proposed Operations

The purpose of the proposed operation is to explore the commercial feasibility of cultivating various species of marine algae (App 3). During the hearing, Mr. Fischer and Mr. Barker testified that the proposed lease site and an adjoining portion of DAM CC2 would be utilized by Maine Fresh Sea Farms, LLC for the cultivation of marine algae (Barker/Robinson). Mr. Barker noted that the proposed lease site in conjunction with a portion of DAM CC2 would create a more uniform growing area and consolidate the layout of longlines (Barker/Robinson).

Mr. Fischer testified that only half of DAM CC2 is being utilized for aquaculture operations. When asked why the entirety of DAM CC2 could not be used for the proposed operations, Mr. Fischer indicated that the portion of DAM CC2, south of the mussel rafts, is used by lobstermen who set their traps within the lease boundaries (Fischer/Robinson). Although Mr. Fischer has never expressly granted permission

⁶ CF variance approval from Diantha Robinson to Peter Fischer dated October 2, 2012.

⁷ CF variance approval from Diantha Robinson to Peter Fischer dated July 29, 2014.

⁸ CF variance approval from Diantha Robinson to Peter Fischer dated September 12, 2015. A porphyra net frame may also be referred to as a “nori rack.”

for lobster fishing activities within the southern portion of DAM CC2, he has no issues with fishermen setting their traps within that section of the lease site (Fischer/Robinson). Mr. Barker also testified that current speeds and depths in the southern portion of DAM CC2 are not conducive for the proposed operations (Barker/Robinson).



Figure 1 depicts the boundaries of the proposed lease site in relation to DAM CC2, and the proposed layout of longlines on both sites. The number of longlines are not displayed to scale. Figure 1 was made by DMR staff after the public hearing.

The applicant plans to deploy 21 longlines that are approximately 530 feet in length (App 15). The longlines would be arranged horizontally, spaced 20 feet apart, and would be submerged 3 to 10 feet below the surface of the water (App 3, 15). Mr. Barker testified that the longlines will remain on the site year-round. According to the application, Maine Fresh Sea Farms, LLC also plans to deploy a porphyra net frame to experiment with seeded netting (App 3-4). The proposed net frame measures 64' L x 6' W and would be exposed ~ 3.5 feet above the water two to three times each week for several hours (SR 2, App 16). At the hearing, the applicant indicated that a total of three porphyra nets may be deployed on the site (Barker/Robinson). The application notes:

The amount of each species will vary, but the primary crops during the winter season (September to June) will be sugar kelp, alaria, and dulse. We will investigate candidate species for the warmer periods, May through October also (App 3).

Harvesting will occur February through June, but may change as the experimental design progresses (App 4). Harvesting will be conducted by hand from small vessels measuring between 18 feet and 24 feet (App 4). The applicant anticipates that harvesting would occur one to two days per week, and may increase to four to five days per week during seasonal peaks (App 4). Eventually the applicant may utilize mechanized equipment, which would be powered by hydraulics (App 4). Access to the proposed site will be from a dock located in Clark Cove (Barker/Robinson).

DAM CC2 is authorized for the cultivation of the same species of marine algae as the proposed site, is permitted to deploy one porphyra net, and is permitted to deploy eight longlines. Since operations on the proposed lease site will overlap with DAM CC2, the Department will require Maine Fresh Sea Farms, LLC to submit renderings of how their gear will be deployed on the DAM CC2 site. A condition reflecting this requirement will be included in the lease.

D. Site Markings

During the Department site visit on August 4, 2016, it was difficult for staff to differentiate the boundaries of the proposed lease site from gear associated with Mr. Barker's LPAs (SR 6). Staff observed the following:

The current level of marking at the applicant's LPA sites (BARK215 and BARK315) does not adequately notify mariners of aquaculture activity. On August 4, 2016 MDMR staff could not readily differentiate boundary markers from other gear. There were no buoys present with the words "Sea Farm" or the LPA identifier per MDMR Chapter 2 regulations (SR 6).⁹

The lack of appropriate markings, observed during the site visit, did not "adequately notify mariners of aquaculture activity" (SR 6).

As noted in the site report, on September 1, 2016, Marine Patrol Officers inspected DAM CC2 and were unable to determine the lease boundaries.¹⁰ The Officers indicated that buoys in the area were "scattered everywhere."¹¹ The lack of marking at Mr. Barker's LPAs, and DAM CC2 is of concern to local users. Individuals encountered during the Department's site assessment "expressed concern about the confusing nature of the buoys and unlit raft that occupy the existing lease and LPA license in Clark Cove and indicated to MDMR scientists that they give the area a "wide berth" when operating boats" (SR 7).

⁹ Chapter 2.90(6)(B) related to LPA maintenance standards specifies the following:

Each LPA site must be clearly marked at each corner, or at the center, as is appropriate to the gear type deployed, with a marked floating device, such as a buoy or buoys able to support at least two (2) inch high letters spelling "Sea Farm." The license-holder's name, homeport, or home address, and LPA license number must be clearly displayed on every marked floating device and piece of gear or equipment. The marked floating devices shall be readily distinguishable from interior markers and aquaculture gear.

¹⁰ See page six of the Site Report, which references: MPO Kilgore and MPO Tourtelotte. Aquaculture Lease/License Inspection Form 2015: DAMCC2. 9.1.16.

¹¹ See page six of the Site Report, which references: MPO Kilgore and MPO Tourtelotte. Aquaculture Lease/License Inspection Form 2015: DAMCC2. 9.1.16.

Jon Lewis testified that given the confusing layout of multiple buoys on DAM CC2 and on the Barker LPAs at the time of the site visit, he was unable to distinguish where the lease boundaries were or how the longlines were laid out. Mr. Lewis noted his concern with the “lack of orderliness” on the proposed lease site.

The Maine Fresh application indicates deployment of 21 longlines 530 feet long, with line floats 50 feet apart (approximately 210 buoys) and buoys at the ends of the lines (42 buoys), as well as corner markers, for a total of more than 250 buoys on the lease site when the longlines are fully deployed (App 15). The number of surface buoys, if not adequately differentiated and maintained, would create a hazard to mariners attempting to navigate in and around Clark Cove.

Given the lack of adequate marking observed at the existing aquaculture license and lease sites held by Damariscove Seafood, LLC and Mr. Barker, the Department will require a marking plan for the proposed site. This is necessary to ensure that mariners can adequately navigate around the proposed operations and that the Department can determine the location of the boundaries of both the proposed lease site and the existing lease site.

Therefore, the applicant will be required to submit a marking plan for the entire site of the proposed operations, including both the proposed lease site and the portion of DAM CC2 that will be used as part of the project. A condition reflecting this requirement will be added to the lease.

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 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. Navigation

During the site assessment, DMR staff observed four docks, two moored floats, and 13 assumed moorings within 1,000 feet of the proposed lease site (SR 5). One mooring was observed within the boundaries of the proposed lease site (SR 5). The mooring belongs to Pemaquid Mussel Farms, LLC and it will be relocated outside the proposed lease boundaries with the permission of the Harbormaster¹² (Fischer/Robinson). At the time of the hearing, the applicant had not yet asked the Harbormaster to move

¹² Mr. Fischer has an interest in Pemaquid Mussel Farms, LLC, which holds a **PEN STH2** a 1.86-acre standard lease.

the mooring, but planned to do so pending the outcome of the lease decision (Fischer/Robinson). The second closest mooring is 175 feet to the northeast of the proposed site and holds floats owned by Pemaquid Oyster Company. The floats are utilized for the wet storage of shellfish (SR 7).

Mr. Burnham testified that corner 6 located on the northeast side of the proposed lease site is “very close” to the floats owned by Pemaquid Oyster Company (Burnham/Robinson). The close proximity between corner 6 and the moored floats will make navigation along the northeast side of Clark Cove more difficult (Burnham/Robinson). Mr. Burnham stated that in foggy conditions a boat could collide with the aquaculture gear. Mr. Burnham recommended that corners 1 and 6 of the proposed lease be moved 50 to 75 feet to the west, so that there would be a greater distance between corner 6 of the proposed lease and the moored floats (Burnham/Barker).

David Rice, riparian owner of a dock in Clark Cove northwest of the proposed lease site, stated that he can navigate between the Pemaquid Oyster floats and corner 6 of the proposed lease site, but the space is constricted, and mariners unfamiliar with the area may be unable to safely navigate between these two obstacles.

The evidence indicates that if the lease is granted navigation along the northeastern side of the proposed site would become unreasonable, especially during inclement conditions. The Department will require the northeastern boundary of the proposed lease, depicted as corners 1 and 6, to be moved 75 feet to the northwest. This will result in a reduction of acreage from the proposed 3.92 acres to 3.62 acres. Such a reduction is necessary to allow for the proposed aquaculture activities, while also providing a reasonable navigable area between corners 1 and 6 of the proposed site and moored floats.

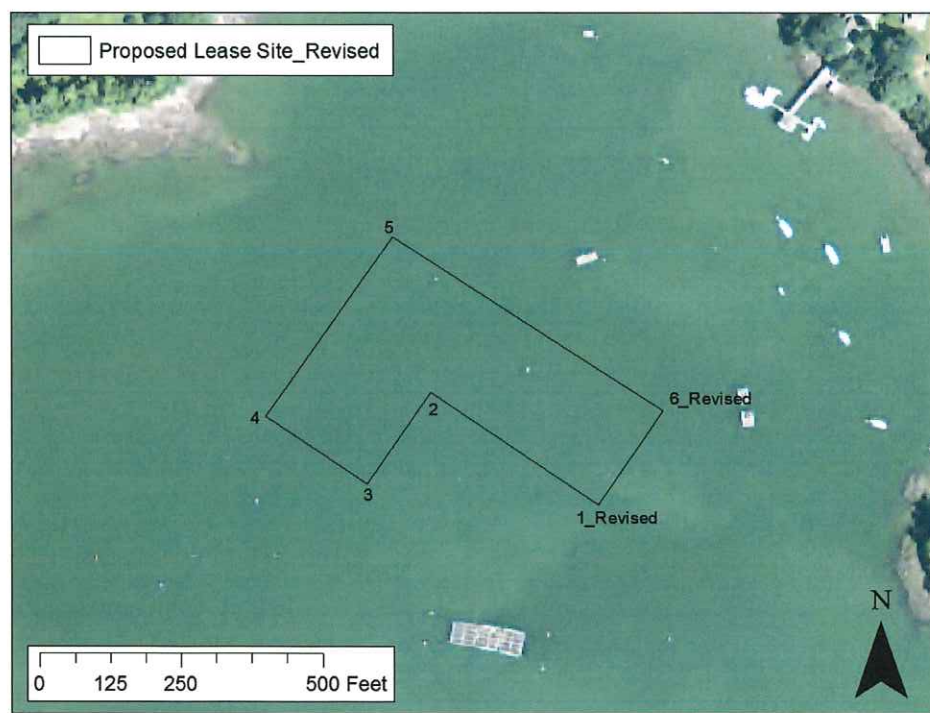


Figure 2 depicts the revised boundary of the proposed lease site after moving corners 1 and 6 75 feet to the northwest. Figure 2 was made by DMR staff after the public hearing.

After moving corners 1 and 6 of the proposed lease site 75 feet to the northwest, it appears that navigation will not be unduly affected by the presence of the proposed lease site. The revised coordinates for corner 1 and 6 are as follows:

	<u>Latitude</u>	<u>Longitude</u>
Corner 1:	43 ° 55' 43.068" N	69° 34' 20.7408" W
Corner 6:	43° 55' 45.822" N	69° 34' 19.2072" W

Aquaculture lease sites are required to be marked for navigation purposes in accordance with U.S. Coast Guard requirements.

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

B. Riparian Access

As originally proposed, the requested lease area would not preclude "water-borne access to and from riparian property," but it would make it more challenging (SR 6). Specifically, it may "change the route riparian owners have traditionally taken to and from their property and moorings" (SR 6). The issues related to riparian access identified in the site report may be exacerbated during periods of inclement weather. The Harbormaster noted that the proposed lease site would not make riparian access impossible "but it would be some concern in a foggy condition."¹³

Mr. Brunner, a riparian landowner, has a dock and mooring located on the southeast shore of Clark Cove. Mr. Brunner's dock is approximately 387 feet away from corner 6 of the proposed lease site. He regularly sails his 27-foot boat along the eastern portion of Clark Cove within the boundaries of the proposed lease site (Brunner/Robinson). Mr. Brunner indicated that navigating around the proposed lease site, without the use of a motor, would be much more difficult (Brunner/Robinson). Mr. Brunner agreed with Mr. Burnham's assessment that moving the northeast boundary of the proposed lease 50 to 75 to the west could help alleviate some of the navigation concerns along the northeast side of the proposed lease site (Brunner/Robinson).

As described in section 3(A) of this decision, the Department will require corners 1 and 6 of the proposed lease site to be moved 75 feet to the west. After moving corners 1 and 6 of the proposed lease site, it appears that the proposed aquaculture activities will not unreasonably interfere with the ingress or egress of any riparian owner.

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

¹³ CF, Harbormaster Questionnaire dated March 25, 2016

C. Fishing & Other Uses

Clark Cove is primarily utilized for sailing, lobster fishing, and aquaculture activities (App 4). During the site visit, staff observed lobster pot buoys which were owned by at least two different license holders (SR 7). The site report notes the following:

Two of these buoys were located between the west side of the proposed lease and the western shore of Clark Cove and one buoy was set to the north of the proposed lease site further inside Clark Cove. All other active lobster fishing noted on August 4, 2016 occurred in the main navigational channel to the south of the proposed lease area and existing mussel rafts. No lobster pot buoys were observed within the proposed lease area at this time (SR 7).

The harbormaster indicated that there may be some kids who set lobster traps in the area during the summer months.¹⁴

Exclusivity. The applicant is not requesting exclusive use of the area (App 4). However, once the longlines are deployed certain activities such as lobster fishing, trawling, or dragging could damage the proposed gear. In addition, motorized vessels may become entangled in the proposed gear. Therefore, commercial fishing, recreational fishing, and motorized vessels will be prohibited within the proposed lease area. These restrictions are 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). Conditions reflecting these restrictions will be included in the lease.

Other aquaculture leases. Besides the LPAs held by Mr. Barker and the lease held by Damariscove Seafood, LLC, the closest aquaculture sites to the proposed lease are located ~335.7 feet to the northwest of corner four of the proposed lease site, and ~541.3 feet to the west of corner four of the proposed lease site. The sites are LPAs and are issued for the cultivation of sugar kelp (*Laminaria saccharina*).¹⁵ It is reasonable to conclude that the proposed operations are unlikely to negatively affect existing aquaculture activities in the area.

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with fishing or other uses of the area. The lease must be marked in accordance with DMR Rule 2.80¹⁶

¹⁴ CF, Harbormaster Questionnaire dated March 25, 2016

¹⁵ MNEW116 is ~335.7 feet to the northwest of corner four of the proposed site, and MNEW216 is ~541.3 feet to the west of corner four of the proposed site. The LPAs were not included in the original site report. CF, email from F. Drury to A. Ellis dated August 22, 2017.

¹⁶ **2.80 Marking Procedures for Aquaculture Leases**

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.

Therefore, considering the number and density of aquaculture leases in the area, I find that the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

D. Flora & Fauna

Site Observations. During the site visit, DMR scientists observed herring gulls (*Larus argentatus*), double-crested cormorants (*Phalacrocorax aureus*), and common terns (*Sterna hirundo*) within the vicinity of the proposed lease site (SR 9). The benthos consisted of a soft mud bottom, occasional burrows, and the presence of *Mysida* species was noted (SR 8). Eelgrass was not observed during the site visit and records of eelgrass distribution suggest a lack of historical presence in Clark Cove (SR 9).

Fisheries and Wildlife. DMR sent a copy of the lease application to the Maine Department of Inland Fisheries and Wildlife (MDIF&W) for their review and comment. MDIF&W has not classified Clark Cove as a Tidal Wading Bird and Waterfowl Habitat (SR 9). MDIF&W commented “As there are no apparent direct impacts to resources under MDIFW jurisdiction, we have no comment on this project.”¹⁷

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

Therefore, I find that 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

According to the site report, there are no government-owned beaches, parks, or docking facilities located within 1,000 ft. of the proposed lease site (SR 9).

Therefore, I find that 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

The application indicates that stock will be sourced from the Maine Fresh Sea Farms nursery, which is located at the Darling Marine Center in Walpole, Maine, and from the Maine Sea Grant nursery, which is located at the Cooperative Center for Aquaculture Research in Franklin, Maine.

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3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
 4. Lease sites must be marked in accordance with the United State’s Coast Guard’s Aids to Private Navigation standards and requirements.

¹⁷ CF, email from J. MacLaine to C. Burke, dated March 4, 2017

Therefore, I find that the applicant has demonstrated that there is an available source of marine algae (*Laminaria saccharina*, *Alaria esculenta*, *Laminaria digitata*, *Agarum cribrosum*, *Palmaria palmata*, *Porphyra* spp, *Chondrus crispus*, *Ulva lactuca*, *Gracilaria tikvahiae*, *Chorda tomentosa*, *Agardhiella* spp, *Desmerestia viridis*, *Scytosiphon* spp, and *Petalonia* spp.) 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, with corners 1 and 6 of the proposed lease site being moved 75 feet to the west, as provided in sections 3.A and 3.B above, will not unreasonably interfere with the ingress and egress of any riparian owner.

2. The aquaculture activities proposed for this site, with corners 1 and 6 of the proposed lease site being moved 75 feet to the west, as provided in sections 3.A and 3.B above, will not unreasonably interfere with navigation. The lease site shall be marked in accordance with U. S. Coast Guard requirements.

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. The lease boundaries must be marked in accordance with the requirements of DMR Rule 2.80.

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 marine algae (*Laminaria saccharina*, *Alaria esculenta*, *Laminaria digitata*, *Agarum cribrosum*, *Palmaria palmata*, *Porphyra* spp, *Chondrus crispus*, *Ulva lactuca*, *Gracilaria tikvahiae*, *Chorda tomentosa*, *Agardhiella* spp, *Desmerestia viridis*, *Scytosiphon* spp, and *Petalonia* spp.) 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 to Maine Fresh Sea Farm, LLC, reduced to 3.62 acres by the movement of corners 1 and 6 of the proposed lease 75 feet to the west, as provided in sections 3.A and 3.B above, 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 applicant¹⁸; however, no

¹⁸ 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.”

aquaculture rights shall accrue in the lease area until the lease is fully executed. This limited-purpose (experimental) lease is granted to the lessee for the purpose of cultivating marine algae (*Laminaria saccharina*, *Alaria esculenta*, *Laminaria digitata*, *Agarum cribrosum*, *Palmaria palmata*, *Porphyra* spp, *Chondrus crispus*, *Ulva lactuca*, *Gracilaria tikvahiae*, *Chorda tomentosa*, *Agardhiella* spp, *Desmarestia viridis*, *Scytosiphon* spp, and *Petalonia* spp.) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. As this is an experimental lease with 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)¹⁹. 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:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Commercial fishing, recreational fishing, and motorized vessels are prohibited except by authorization of the leaseholder.
3. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
4. Maine Fresh Sea Farms, LLC must submit a marking plan within 90 days of the lease decision date for the entire site of the proposed operations, including both the proposed lease site and the portion of DAM CC2 that will be used as part of the project. The plan must show the location of all buoys and specify their color, size, shape, and markings. The Department must review and approve this plan before markers are set and gear is installed.
5. Maine Fresh Sea Farms, LLC must submit a drawing of how their gear will be deployed on the DAM CC2 site within 90 days of the lease decision date. The drawing submitted by Maine Fresh Sea Farms, LLC must comply with what is currently authorized for DAM CC2.

¹⁹ 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: 9.6.17



Patrick C. Keliher, Commissioner
Department of Marine Resources