



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
21 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0021

PATRICK C. KELIHER
COMMISSIONER

Dear Ms. Francke:

DMR has reviewed your application for a species amendment for your standard lease, CAS SI2, located southeast of Sturdivant Island in Casco Bay, in Cumberland Maine. Your request was processed in accordance with DMR Regulations Chapter 2.44, and no comments were received. After careful review, we find that the request to add dulse, skinny kelp, laver, horsetail kelp and winged kelp does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A), is consistent with the findings of the original decision, and would not result in a change to the original lease conditions. Therefore, your request has been approved, effective on the date of this letter.

An updated summary of the [species or gear type] approved for your lease with this amendment is provided below.

Approved Species
Sugar kelp (<i>Saccharina latissima</i>)
Dulse (<i>Palmaria palmata</i>)
Skinny kelp (<i>Saccharina angustissima</i>)
Laver (<i>Porphyra umbilicalis</i>)
Horsetail kelp (<i>Laminaria digitata</i>)
Winged kelp (<i>Alaria esculenta</i>)

The following conditions, which were imposed on your lease remain in place:

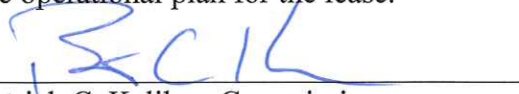
1. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80.
2. Except for moorings, mooring markers, and required marker buoys, no gear shall be deployed on the lease site from June 1st through November 1st.
3. Longlines for the suspended culture of sugar kelp (*Saccharina latissima*) must be spaced no closer than 30 feet apart, and moorings along a single longline must be spaced at least 300 feet apart, as proposed in the application.
4. Towing for menhaden (*Brevoortia tyrannus*) and dragging for sea scallops (*Placopecten magellanicus*) are prohibited within the lease boundaries.

However, because additional species of marine algae have been added to your lease, condition 3 will be adjusted to reflect the added species of marine algae and remain consistent with the intent of the original condition. The condition will be updated to the following:

3. Longlines for the suspended culture of marine algae must be spaced no closer than 30 feet apart, and moorings along a single longline must be spaced at least 300 feet apart, as proposed in the original application.

Please retain a copy of this letter for your records. Because the above condition has been adjusted, a new lease will need to be executed. Your original lease application and decision, any previously

approved amendments, this amendment approval letter, and the to-be executed new lease may serve as the operational plan for the lease.



Patrick C. Keliher, Commissioner,
Department of Marine Resources

Date 8/24/2020

SUMMARY

Summit Point LLC., applied to the Department of Marine Resources to expand their existing 8.62-acre standard aquaculture lease, CAS SI2, by 1.75 acres. CAS SI2 is in subtidal waters to the southeast of Sturdivant Island in Casco Bay. As depicted in Figure 1, the proposed expansion would be adjacent to the southeast boundary of the existing lease. As indicated in the application, the additional 1.75 acres would be used to add three additional lines of gear for growing marine algae on the site. No other changes are proposed. DMR accepted the application as complete on July 11, 2019.

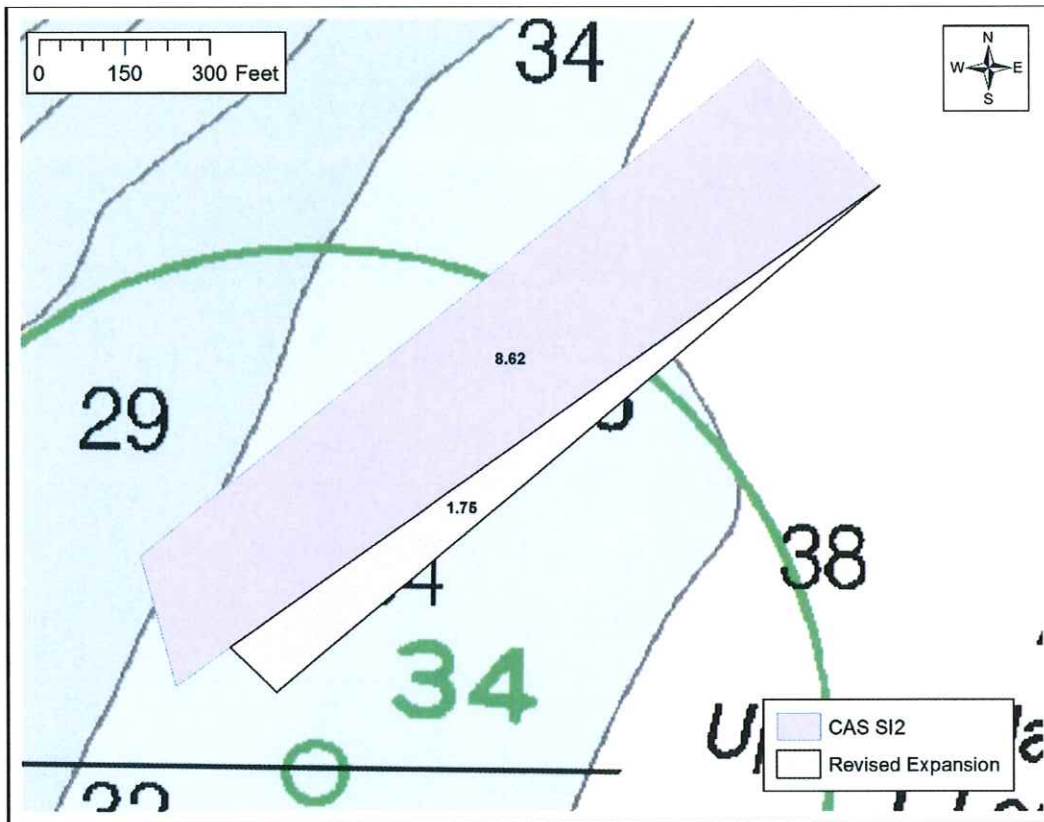


Figure 1: CAS SI2 and proposed expansion

PROCEEDINGS

The Department provided notice of the application and the 30-day public comment period to the Town of Cumberland and other state and federal agencies. There are no riparian landowners within 1,000 feet of the site. Notice of the application and comment period was published in the *Forecaster* on August 8, 2019. Provisions set forth in 12 M.R.S.A. §6072 (12-C) do not provide for an adjudicatory hearing, only for public comment. No comments from the public were received.

PROPOSED OPERATIONS

Summit Point LLC currently operates CAS SI2 for the cultivation of sugar kelp (*Laminaria saccharina*) using suspended culture techniques. The initial lease was executed on April 4, 2019 and is set to expire April 3, 2039. The Department has not received any complaints regarding the operation of CAS SI2 and Summit Point LLC has complied with applicable conditions and requirements governing the operation of CAS SI2. Summit Point LLC is requesting the additional acreage to add 3 more lines of gear to their operation. The applicant had originally hoped to grow seaweed across 11 lines of gear, each line containing 4, approximately 340-foot sections of line, and 5 moorings, but only 8 lines to fit within the boundaries of the existing lease. The additional 1.75 acres would allow the leaseholder to execute the original lease plan, with the addition of 3 more lines of gear to the current operations. These longlines would be spaced 30 feet apart, with each line containing 4, approximately 340-foot sections, and 5 moorings. The proposed aquaculture activities do not involve the discharge of any pollutants into the waters of the State.

FINDINGS, CONCLUSIONS OF LAW, & DECISION on AQUACULTURE LEASE EXPANSION

Pursuant to 12 M.R.S.A §6072 (12-C)(E), a lease expansion may be granted by the Commissioner upon determining that it would satisfy the criteria set forth in 12 M.R.S.A. §6072 (7-A). Pursuant to these criteria, 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, docking facilities, or conserved lands 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; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner. The following discussion, findings, and conclusions are based on the Department's consideration of the

information contained in the application, as well as other information relevant to the decision criteria.

A. FINDINGS

1. Riparian Access: There are no riparian landowners within 1,000 feet of the proposed expansion, and no public comments regarding riparian ingress and egress were received during the comment period. The Harbormaster¹ indicated that the proposed expansion would not affect riparian ingress and egress. Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with riparian ingress and egress.

2. Navigation: The Harbormaster indicated that the proposal will have no effect on navigation in the area.² The proposed area will contain the same type of gear as the existing lease, and only moorings, mooring markers and required marker buoys will remain on site from June 1 through November 1st each year. Based on this evidence, it is unlikely the proposed expansion will unreasonably interfere with navigation in the area.

3. Fishing and other water related uses: Per the application, a small amount of lobstering occurs in the area, and there is some recreational boating and fishing in the summer months. The Harbormaster indicated there is minimal lobster and recreational fishing.³ During the site visit for the original lease application from Summit Point, DMR scientists observed more than 30 lobster buoys in the area near the lease, but given the distance to shore and space available for fishermen to set traps the original site report indicated fishing should remain unhindered by the lease.⁴ The Department did not receive any comments regarding fishing or other water-related uses of the area, and the applicant welcomes individuals to fish and recreate in and around the site, but asks that towing, dragging, or hook fishing within the site be prohibited from November 1st to June 1st. **Other Aquaculture Leases:** There are two other active aquaculture leases and eight Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed expansion. In addition to lease CAS SI2, Colleen Francke, the owner of Summit Point, LLC holds the three closest LPA licenses. The Maine Scallop Company holds the lease for CAS SI, which is located approximately 600 feet northeast of CAS SI2. The Department did not receive any comments regarding this expansion application. Based on this evidence, it is unlikely the proposed expansion will interfere with fishing or other uses of the area.

¹ Harbormaster Questionnaire received from Matt Merriman, signed August 13, 2019.

² Harbormaster Questionnaire received from Matt Merriman, signed August 13, 2019.

³ Harbormaster Questionnaire received from Matt Merriman, signed August 13, 2019.

⁴ Site report from the original application, dated November 18, 2019.

4. Flora and Fauna: The Department sent a copy of the application to the Maine Department of Inland Fisheries and Wildlife (MDIFW) for their review, but they did not provide any comment. The site report for the original lease application did not identify any ecological concerns⁵. Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with significant wildlife habitat and marine habitat or with the ability of the site and surrounding marine and upland areas to support ecologically significant flora and fauna.

5. Public Use: As indicated by the original site report for the Summit Point application⁶, there are no public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government within 1,000 feet of the proposed expansion. Based on this evidence, it is unlikely that the proposed expansion will unreasonably interfere with public docking facilities, beaches, parks, or conserved lands owned by the municipal, state, or federal government.

6. Source of Organisms: The applicant sources seed for the current lease, CAS SI2 from Oceans Balance and Sea Green Farms, which are Maine based companies that obtain seed from the area in which the proposed lease is located⁷. Therefore, the applicant has demonstrated that there is an available source of stock to be cultured for the lease site.

7. Light: The application indicates that no lights will be used at the proposed site, except for what may be required by the Coast Guard for marking or navigational purposes. Therefore, the lease expansion will not result in an unreasonable impact from lights at the boundaries of the proposed area.

8. Noise: The proposed expansion should not increase the amount of noise from the site, as the applicant is not requesting to add any gear that would result in an increase in noise. Therefore, the lease expansion will not result in an unreasonable impact from noise at the boundaries of the proposed area.

9. Visual Impact: Gear used on the expansion will be of the same type and size as that used on the existing lease. Therefore, the proposed expansion complies with the Department's visual impact criteria set forth in Chapter 2.37(1)(A)(10).

10. Marking: The applicant has agreed to mark the site as specified by DMR Rule 2.80 and applicable U.S. Coast Guard requirements.

⁵ Site report from the original application, dated November 18, 2019.

⁶ Site report from the original application, dated November 18, 2019.

⁷ Original Decision, page 7, dated April 4, 2019

11. Conditions: The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. Since the expanded area will be combined with the existing lease, all conditions associated with CAS SI2 shall apply to the expanded area. The existing conditions are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Except for moorings, mooring markers, and required marker buoys, no gear shall be deployed on the lease site from June 1st through November 1st.
3. Longlines for the suspended culture of sugar kelp (*Saccharina latissima*) must be spaced no closer than 30 feet apart, and moorings along a single longline must be spaced at least 300 feet apart, as proposed in the application.
4. Towing for menhaden (*Brevoortia tyrannus*) and dragging for sea scallops (*Placopecten magellanicus*) are prohibited within the lease boundaries.

B. CONCLUSIONS OF LAW

Based on the above, I conclude that:


- a. The aquaculture activities proposed for this expansion will not unreasonably interfere with the ingress and egress of any riparian owner.
- b. The aquaculture activities proposed for this expansion will not unreasonably interfere with navigation.
- c. The aquaculture activities proposed for this expansion will not unreasonably interfere with fishing or other uses of the area, taking into consideration other aquaculture leases in the area.
- d. The aquaculture activities proposed for this expansion 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 expansion will not unreasonably interfere with the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of stock to be cultured for the lease site.
- g. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from light at the boundaries of the expanded area.
- h. The aquaculture activities proposed for this expansion will not result in an unreasonable impact from noise at the boundaries of the expanded area.

- i. The aquaculture activities proposed for this expansion will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

Accordingly, the application and other information supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease expansion as specified in 12 M.R.S.A §6072 (12-C).

DECISION

Based on the foregoing, the Commissioner grants the requested lease expansion of 1.75 acres to Summit Point LLC. The expanded area will be combined with the existing lease CAS SI2 to total 10.37 acres and will expire on April 3, 2039. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The lessee shall post a bond or establish an escrow account that reflects the expanded acreage pursuant to DMR Rule 2.40 (2)(A), conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

Signed:  Date: 11/19/19

Patrick C. Keliher, Commissioner
Maine Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Summit Point, LLC

CAS SI2

Standard Aquaculture Lease Application
Suspended culture of shellfish and marine algae
Casco Bay, Cumberland

April 4, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Summit Point, LLC applied to the Department of Marine Resources (DMR) for a twenty-year standard aquaculture lease on 8.62¹ acres located southeast of Sturdivant Island, Casco Bay, in the Town of Cumberland, Cumberland County, Maine. The original application submitted to DMR was for the suspended culture of American/eastern oyster (*Crassostrea virginica*), blue mussel (*Mytilus edulis*), and sugar kelp (*Saccharina latissima*²).³ DMR accepted the application as complete on June 4, 2018. A public hearing on this application was held on March 12, 2019 at the Cumberland Town Hall in Cumberland, Maine. No one intervened in this case.

1. THE PROCEEDINGS

Notice of the hearing, and copies of the application and DMR site report, were provided to state and federal agencies for their review, the Town of Cumberland, riparian landowners within 1,000 feet of the proposed site, and subscribers to DMR's aquaculture email listserv. Notice of the hearing was published in *The Forecaster* on February 7, 2019 and February 28, 2019. Notice was also published in the March 2019 edition of *Commercial Fisheries News*.

Sworn testimony was given at the hearing by the applicant, represented by Colleen Francke, who described the proposed project. During the public hearing, the applicant modified its proposal by removing the request to culture American/eastern oyster (*C. virginica*) and blue mussel (*M. edulis*) (Francke/Randlett). The hearing proceeded in consideration of the amended application, which sought authorization solely for the suspended cultivation of a sugar kelp (*S. latissima*). Jon Lewis, DMR Division Director, described the site visit. Jay Clement with the United States Army Corps of Engineers (USACOE) attended the hearing and asked questions of the applicant and DMR, but did not offer testimony. Municipal officials and members of the public asked general questions of the applicant and DMR. Public testimony was provided by Michael Breton and Matthew Moretti.

¹ Applicant originally requested 9.32 acres. DMR calculations in the site report, based on the provided coordinates, indicate the area is 8.62 acres.

² Referred to in the application as *Laminaria saccharina*, which is a synonym for *Saccharina latissima*. DMR uses *Saccharina latissima* as the scientific name for sugar kelp, and for consistency, will refer to sugar kelp as *S. latissima* in this document.

³ The applicant removed the request to culture of American/eastern oyster (*Crassostrea virginica*) and blue mussel (*Mytilus edulis*) from its application during the public hearing.

The hearing was recorded by DMR. The Hearing Officer was Flora Drury. The evidentiary record before DMR regarding this lease application includes four 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.⁴

LIST OF EXHIBITS⁵

1. Case file
2. Application
3. DMR site report
4. Francke - #1

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

On July 10, 2018, DMR staff assessed the proposed lease site and the surrounding area in consideration of the criteria for granting a standard aquaculture lease. The proposed lease site occupies subtidal waters to the southeast of Sturdivant Island in Casco Bay (SR 2). At mean low water, the northwest corner of the proposed site is ~1,075 feet to the southeast of the closest point of land on Sturdivant Island (SR 7). The southeast shoreline of Sturdivant Island is composed of rock and sand (SR 2). The upland is comprised of mixed vegetation, residential buildings, and maintained lawns (SR 2). In the site report, the bottom of the proposed lease site was characterized as soft mud (SR 3). Correcting for tidal variations, depths within the site would range between 29.8-37.8 feet at mean low water (SR 2).

B. Proposed Operations

The applicant proposes to culture sugar kelp (*S. latissima*) using suspended culture techniques on the proposed lease site (App 1). Sugar kelp is proposed to be cultured on up to eleven, 1,265-foot, longlines spaced approximately thirty feet apart (App 25). The site report, however, indicates that the southern boundary of the proposed lease is 233.72 feet in length, and given the proposed mooring spacing, it appears that only eight longlines would fit within the boundaries of the proposed site (SR 6).

According to the application, the proposed longlines would be submerged approximately seven feet below the surface of the water (App 26). Depth control buoys, comprised of a floating buoy and a small cement weight, would keep the longline positioned below the water's surface (App 28A). At the public hearing, the applicant testified that kelp would be seeded on the site in the fall and harvested in the late winter or early spring. Longlines and depth control buoys would be removed from the site June 1st through

⁴ In references to testimony, "Smith/Jones" means testimony of Smith, questioned by Jones.

⁵ Exhibits 1, 2, and 3 are cited below as: Case file – "CF"; Application – "App", site report – "SR". Other exhibits are cited by number.

November 1st (Francke/Drury). Moorings and mooring markers would be installed on the site year-round (App 5).

The applicant plans to service the site from a 24-foot Carolina skiff and from a non-powered barge (App 5-6). A hydraulic generator used to power a hauler and winch rig, a wash down hose, and an oyster tumbling machine would be stored on the barge (App 7).⁶

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture leases is governed by 12 M.R.S.A. §6072. 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 other aquaculture uses of 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, docking facilities, or conserved lands 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; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

A. Riparian Access

The proposed site is located over 1,000 feet to the southeast of Sturdivant Island in Casco Bay (SR 8). A single dock, with a ramp and float attached, was observed on the southeastern shore of Sturdivant Island, approximately 1,140 feet to the north of the proposed lease, by DMR staff during their site visit on July 10, 2018 (SR 8). A skiff, a row boat, and a lobster boat were observed attached to this dock during the time DMR staff were on site (SR 8). Three moorings were also observed by DMR staff near the dock on Sturdivant Island's southeastern shore (SR 8). The closest of these moorings was approximately 900 feet from the proposed lease (SR 8).

During the public hearing, a member of the public questioned the applicant about riparian access to the dock located on the southeastern shoreline of Sturdivant Island. The applicant testified that during the summer months, nothing would be floating on the site other than mooring markers (Francke/ Breton). The applicant also indicated that because the longlines would be positioned seven feet below the water's surface, small crafts could also traverse over the site when longlines are present during the fall, winter, and spring (Francke/ Breton).

A lease, held by The Maine Scallop Company, LLC, is located approximately 600 feet to the northeast of the lease proposed by Summit Point, LLC (SR 8).⁷ Per the site report, "a ~600-foot corridor would be available for riparian owners navigating between the moorings/dock and the main navigation

⁶ Because shellfish are no longer requested for culture on the proposed lease, the oyster tumbling machine is not likely to be used.

⁷ CF: Executed Lease CAS SI

channel that bisects Sturdivant and Basket Islands” if Summit Point LLC’s application were granted (SR 8).

According to the site report, because “the proposed lease is located ~1,075 feet from Sturdivant Island at mean low water, adequate room is available for riparian owners to navigate to and from this shoreline at all tides” (SR 8).

Based on this evidence, it appears that access to the southeastern shoreline of Sturdivant Island, including access to the dock located there, will not be prevented or unduly affected by the proposed lease.

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 is located between Sturdivant and Basket Islands in Casco Bay. During the site visit, staff observed commercial fishing vessels, recreational outboard boats, and sailboats in the vicinity of the proposed lease site (SR 10). According to the site report, adequate room would be available for navigation to the west of the proposed lease because the proposal is 1,075 feet from Sturdivant Island’s southeastern shoreline at mean low water (SR 10).

A marked navigation channel is located to the east of the proposed lease, between the proposal and Basket Island (SR 10). This navigation channel is also a recommended two-way route for deep draft vessels (SR 10). According to the site report, the proposed lease is located approximately 860 feet to the west of this route and “therefore, boats navigating northeast-southwest in the marked channel between Sturdivant and Basket Islands would not be hindered” (SR 10).

During the review period and public hearing no one provided comment or testimony about the effect of the proposed lease on navigation in the area. Based on the evidence, it is reasonable to conclude that navigation in the area will not be unduly affected by the presence of the proposed lease site.

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

C. Fishing & Other Uses

Fishing. On the July 10, 2018 site visit, lobstermen were observed hauling lobster traps between Sturdivant and Basket Islands. During this time, “more than 30 lobster buoys of varying colors were observed between these islands and at least five lobster buoys were located within or directly next to the proposed lease boundaries” (SR 10). Per page 11 of the site report:

The Cumberland Harbormaster, when asked about another aquaculture lease application located 600 feet to the northeast, indicated that commercial fisheries in the area include lobster (*Homarus americanus*) and menhaden (*Brevoortia tyrannus*), and recreational activities include striped bass (*Morone saxatilis*) and lobster fishing, along with sea duck hunting.⁸

⁸ For ease of reference, a copy of the Harbormaster Questionnaire completed for The Maine Scallop Company, LLC’s application is included in the Summit Point, LLC case file.

According to the site report, the original gear proposed by Summit Point, LLC would prevent most fishing activities from occurring within the lease boundaries (SR 11). During the public hearing, however, the applicant removed the request to deploy floating oyster bags, originally proposed to be present on the site year-round, and testified that all gear, other than the moorings and mooring markers, would be removed from June 1st through November 1st (Francke/Drury). The applicant also testified that the mooring layout was designed so that “especially during the summertime, when there are no longlines in the water...lobstermen can come in and they can set their gear, on this location, on this farm”. It appears, therefore, that during the months when longlines are not installed on the proposed lease, certain fishing activities, including hook and line fishing and lobster fishing, will be able to occur within the proposed lease boundaries. Conditions defining the dates in which longlines may be installed on the proposed lease, and defining the proposal’s mooring layout, will be included in the lease.

Per the site report, because “Sturdivant Island is located approximately 1,075 feet to the northwest of the proposed lease, room is available for lobstermen to set traps, and hook and line fishermen to fish, west of the proposal” (SR 11). Additionally, Basket Island is located over 2,400 feet to the east of the proposed lease and, according to the site report, fishing to the east of the proposal would remain unhindered as result of this distance (SR 11). During the public hearing, Jay Clement of the USACOE asked if, when describing the room available for fishing activities to the east of the proposal, DMR had considered the navigational channel located approximately 860 feet to the east of the proposal, given that the “prudent fishermen” might avoid using the channel. Mr. Lewis, representing DMR, acknowledged there are approximately 860 feet available for people to fish outside of the navigation channel to the east of the proposed lease (Lewis/Clement).

During the review period and public hearing, no one raised concerns about how the proposed lease may affect commercial and recreational fishing in the area. Based on the absence of comments, it is reasonable to conclude that commercial and recreational fishermen do not have concerns about the effects the proposal may have on fishing in the area.

Exclusivity. The applicant is requesting that towing be excluded from the site (App 10). During the public hearing, the applicant clarified that by towing, she meant “towing for pogies⁹” and “dragging for scallops¹⁰” (Francke/Drury). Such a restriction is reasonable to accommodate the proposed operations, while also encouraging the greatest number of compatible uses of the area. A condition reflecting this restriction will be included in the lease.

Other aquaculture uses. There are two active aquaculture leases¹¹ and eight existing Limited Purpose Aquaculture (LPA) licenses within one mile of the proposed lease site (SR 11). The three LPA licenses closest to the proposed lease are held by Colleen Francke, the owner of Summit Point, LLC (SR 11). The closest existing aquaculture operation held by another individual is CAS SI¹², a standard lease held by The Maine Scallop Company, LLC (SR 11). This lease is located approximately 600 feet to the northeast of

⁹ Menhaden (*Brevoortia tyrannus*)

¹⁰ Sea scallops (*Placopecten magellanicus*)

¹¹ At the time the site report was written, CAS SI, a lease now held by The Maine Scallop Company, LLC, had not been executed.

¹² CAS SI was not executed at the time the site report was written.

Summit Point, LLC's proposal (SR 11). During the public hearing, David Perkins, a representative of The Maine Scallop Company, LLC, asked questions of the applicant and DMR, but did not provide public testimony. Also during the public hearing, Matthew Moretti, an aquaculturist who holds a standard lease to the south of the proposed lease, provided testimony in support of the applicant's proposal.

No other comments from aquaculture lease and/or license holders were provided, and therefore it is reasonable to conclude that there are no concerns regarding the effects the proposed lease on other aquaculture uses in the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in the area.

Other water-related uses. During the site visit on July 10, 2018, DMR staff did not observe other water-related uses of the proposed lease area not described elsewhere in this decision. During the review period and public hearing, the Department did not receive any public comments detailing other uses of the area. 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 sea duck hunting or other water-related uses of the area.

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

D. Flora & Fauna

Site observations. Department staff characterized benthic diatoms, mysid shrimp (*Mysis sp*), and skeleton shrimp (*Caprella sp*) as abundant along the dive transect conducted within the proposed lease during the site visit (SR 13). Department staff characterized lobster (*Homarus americanus*) as rare (SR 13). Additionally, per the site report, "Burrows in the mud were observed in abundance" (SR 13). No eelgrass (*Zostera marina*) was observed within the boundaries of the lease site during the DMR's site assessment (SR 14).

Wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that "Tidal Wading Bird and Waterfowl Habitat encircles Sturdivant Island but does not intersect the proposed lease site" (SR 15). The Department sent a copy of the lease application to MDIFW for their review and comment¹³; MDIFW did not comment on the proposed lease. During the public hearing, DMR testified that the proposed lease does not intersect with MDIFW-mapped Sea Bird Nesting Islands, Essential Habitat, or habitat designated for Endangered, Threatened, or Species of Special Concern (Lewis/Drury). Based on this evidence, it appears that the proposed 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.

¹³ CF: Email to J. Perry from C. Burke dated June 8, 2018.

E. Public Use & Enjoyment

There are no publicly-owned beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments within 1,000 feet of the proposed lease site (SR 15).

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, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.

F. Source of Organisms

Seed stock for this proposed lease site would be obtained from Oceans Balance, Sea Green Farms, and/or from wild sources. In the public hearing, the applicant testified that both Oceans Balance and Sea Green Farms are Maine-based companies that obtain seed from the area in which the proposed lease is located (Francke/Drury). The proposed sources are approved sources of seed stock.

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

G. Light

According to the application, no lights would be used on the proposed lease site other than those that might be required by the Coast Guard for navigational purposes (App 8).

Therefore, the aquaculture activities proposed for these sites will not result in an unreasonable impact from light at the boundaries of the lease site.

H. Noise

The applicant proposes to service the site from a 24-foot Carolina skiff and from a non-powered barge (App 5-6). The application provides that a hydraulic generator, no larger than 25-horsepower, is also proposed to be used on the site to power a hauler and winch rig, a wash-down hose, and an oyster tumbling machine (App 7). With the change to marine algae cultivation only, however, it is unlikely that an oyster tumbling machine would be used. A hot tank for removing biofouling is also proposed, and would be powered by a propane bottle (App 7).

According to the application, this equipment would be used during daylight hours, up to five days per week (SR 7). Per the application, a muffler and a sound box would be used to mitigate the noise produced by the hydraulic generator (App 8). Based on this evidence, it appears that reasonable measures would be taken by the applicant to mitigate noise impacts and that any noise generated by the proposed operations is unlikely to have a significant effect at the boundaries of the lease site.

Therefore, the aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease.

I. Visual Impact

The applicant is proposing to use 1,265-foot longlines suspended approximately 7 feet below the surface of the water for the culture of sugar kelp (*S. latissima*) (App 5-6). Orange corner markers, white mooring markers, and white depth control buoys comprise the proposed surface gear (App 5 & 28E). According to the application, no structures will be stored on the site (SR 5).

Therefore, the equipment utilized on the proposed lease site will comply with the DMR's visual impact criteria.

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 the ingress and egress of any riparian owner.
- 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 water-related uses of the area, taking into consideration other 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, docking facilities, or certain conserved lands owned by municipal, state, or federal governments.
- f. The applicant has demonstrated that there is an available source of marine algae to be cultured for the lease site.
- g. The aquaculture activities proposed for this site will not result in an unreasonable impact from light at the boundaries of the lease site.
- h. The aquaculture activities proposed for this site will not result in an unreasonable impact from noise at the boundaries of the lease site.
- i. The aquaculture activities proposed for this site will comply with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10).

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.

5. DECISION

Based on the foregoing, the Commissioner grants the requested lease of 8.62 acres to Summit Point, LLC for twenty years for the cultivation of sugar kelp (*Saccharina latissima*) using suspended culture techniques. The lessee shall pay the State of Maine rent in the amount of \$100.00 per acre per year. The

lessee shall post a bond or establish an escrow account pursuant to DMR Rule 2.40 (2)(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. 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 M.R.S.A §6072 (7-B).¹⁴ 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:

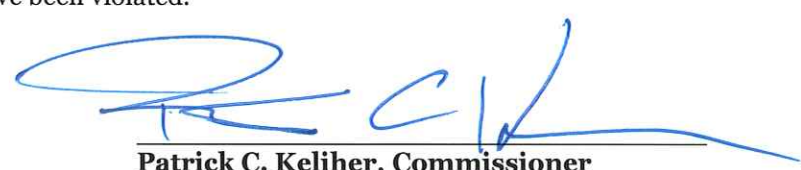
- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
- b. Except for moorings, mooring markers, and required marker buoys, no gear shall be deployed on the lease site from June 1st through November 1st.
- c. Longlines for the suspended culture of sugar kelp (*Saccharina latissima*) must be spaced no closer than 30 feet apart, and moorings along a single longline must be spaced at least 300 feet apart, as proposed in the application.
- d. Towing for menhaden (*Brevoortia tyrannus*) and dragging for sea scallops (*Placopecten magellanicus*) are prohibited within the lease boundaries.

7. REVOCAION OF LEASE

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A §6072 (11), that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

Dated: _____

4/4/19



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

¹⁴ 12 MRSA §6072 (7-B) states: "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."