

STATE OF MAINE

CAS SI

DEPARTMENT OF MARINE RESOURCES

The Maine Scallop Company, LLC
Transferor

Wild Ocean Aquaculture, LLC
Transferee
July 11, 2022

Casco Bay, Cumberland

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

1. THE PROCEEDINGS

The Maine Scallop Company, LLC¹ applied to the Department of Marine Resource (DMR) to transfer the lease CAS SI to Wild Ocean Aquaculture, LLC. The lease site is 5.38 acres and is located east of Sturdivant Island, Casco Bay, Town of Cumberland, in Cumberland County. The lease was initially issued on October 15, 2018 and is authorized for the suspended culture of sea scallops (*Placopecten magellanicus*), blue mussels (*Mytilus edulis*), sugar kelp (*Saccharina latissima*), skinny/strap kelp (*Saccharina angustissima*), horsetail kelp (*Laminaria digitata*), dulse (*Palmaria palmata*), and winged kelp (*Alaria esculenta*). The current lease expires on October 14, 2028.

The transfer application was initially received on January 27, 2022 and accepted as complete on February 17, 2022. Notice of the completed application and 30-day comment period was published in the *Northern Forecaster* on March 17, 2022. DMR also provided notice of the completed application and the 30-day comment period to the Town of Cumberland and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state agencies, and to subscribers of DMR's aquaculture list-serve.

During the comment period, DMR received two comments. One of the comments was submitted by Colleen Francke, who owns Summit Point, LLC, which holds the standard lease CAS SI2. This lease was issued to Summit Point, LLC on April 4, 2019 and is ~600 feet to the south of CAS SI. The other comment was submitted by the Maine Department of Inland Fisheries and Wildlife (MEIF&W). A lease transfer does not require a hearing, so no hearing was held.

¹ The lease holder is incorporated as "The Maine Scallop Company, LLC," so "The" is included and capitalized in applicable references. For readability the article "the" has been intentionally omitted prior referencing "The Maine Scallop Company, LLC."

2. STATUTORY CRITERIA & FINDINGS OF FACT

Lease transfer requests are governed by 12 M.R.S.A. §6072 (12-A) and DMR Rule 2.60. They provide that the Commissioner of DMR may grant a transfer upon determining that:

- a) the change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated
- b) the transfer is not for speculative purposes
- c) the transfer is not intended to circumvent the preference guidelines for treatment of competing applications; and
- d) the transfer will not cause the transferee to be a tenant in more than 1,000 acres of aquaculture leases in Maine.

A. Effect of Lessee Change on Lease Criteria

As part of the transfer application, transferees need to provide documentation demonstrating that they have the financial and technical capacity to operate the lease site. As noted in the transfer application, Wild Ocean Aquaculture, LLC. has been in operation since 2010 and holds six other aquaculture leases in Casco Bay. As part of the application, Wild Ocean Aquaculture, LLC. provided the required documentation indicating that it has the financial capacity to operate the lease should the transfer be granted.² DMR reviewed the information and deemed the application complete on February 17, 2022.

Ms. Francke's comment, which DMR received on April 16, 2022, alleges that Wild Ocean Aquaculture, LLC. has "a long history of errant gear" and that they do "not keep adequate tabs on their equipment or predator control methods on their mussel farms and have been known to be inattentive to the dead and decaying sea birds caught in their nets."³ Ms. Francke indicates that her claims are examples of Wild Ocean Aquaculture's "disregard for general gear maintenance."

² See bank letter submitted with application.

³ Pg. 2 of Ms. Francke's letter. Ms. Francke also alleged that multiple pieces of gear from sites held by Wild Ocean Aquaculture, LLC. have washed ashore, and the company does not retrieve the errant gear. She also indicated that a mussel processing barge, belonging to Wild Ocean Aquaculture, LLC., was found off site and towed back to Portland Harbor. As noted in section 2.B. of this decision, Peter Stocks [owner of The Maine Scallop Company, LLC] submitted a response to Ms. Francke's comments. Mr. Stocks noted that at some point a barge owned by Wild Ocean Aquaculture, LLC. broke free, but it was quickly retrieved. None of the comments indicated when the incident occurred. It was not reported to DMR and appears to have been amicably resolved.

These assertions appear to call into question the technical capability of the transferee. However, Ms. Francke did not provide tangible evidence to support her assertions.

Ms. Francke's comment also included photographs taken on or around December 9, 2021. The photographs appear to depict the staging of mooring gear for possible install.⁴ Ms. Francke indicated that she observed a 3,500-4,500-pound cement block with ¾ poly rope, which was not permitted by the U.S. Army Corps of Engineers (USACOE) or DMR. Ms. Francke appeared to be concerned that the lease holder was deploying gear not permitted by the USACOE or DMR, which could jeopardize operations at her site if the gear broke lose.

Discussion:

DMR reviewed the compliance history for all sites held by Wild Ocean Aquaculture, LLC., including inspection reports. There is no evidence in the Department's records to suggest that Wild Ocean Aquaculture, LLC. has a history of errant gear or that they are operating existing sites with a disregard for predator control. DMR has not received any complaints indicating that sea birds are being caught in predator nets or left dead and decaying in nets, and inspection records indicate the sites and predator nets are consistently maintained. The Department sent a copy of the transfer application to the Maine Department of Inland Fisheries and Wildlife (MEIF&W) for their review and comment. On March 15, 2022, MEIF&W indicated that "minimal impacts to wildlife are anticipated for this project."⁵ Notice of the application and opportunity to comment was also provided to the Town of Cumberland and they did not submit any feedback. Each lease held by Wild Ocean Aquaculture, LLC. is in good standing with the Department.

Regarding The Maine Scallop Company's alleged use of unauthorized gear, persons are encouraged to contact the Aquaculture Division, Marine Patrol or the appropriate authority⁶ at the time they observe or think they have observed lease holders operating sites in violation of rules or laws. Persons may also contact the Aquaculture Division, Marine Patrol or the appropriate authority if they have concerns about how a site is operated. The alleged issue is also specific to the current holder of the lease, not the proposed transferee. Ms. Francke's letter also indicated

⁴ No coordinates, time stamps, or other location/date information were provided with the photographs. It is unclear where the equipment was in relationship to the existing lease. Ms. Francke's written remarks indicate the pictured gear was placed on the existing lease on December 9, 2021.

⁵ CAS SI is not currently approved for the use of predator nets.

⁶ For example, persons should contact USACOE if they believe that a holder is violating permits issued by that agency.

that The Maine Scallop Company is “attentive to their equipment and have been a courteous and respectful neighbor.”⁷ If the transfer is granted, Wild Ocean Aquaculture, LLC. would need to comply with the lease agreement governing the site and any associated laws or permits.

The possibility that gear may drift off CAS SI and damage gear on CAS SI2, the site held by Ms. Francke’s company, is speculative. There is no documented history of gear drifting off sites held by Wild Ocean onto CAS SI2. If the transfer is granted and that were to occur, Ms. Francke could seek redress under applicable provisions of law. Furthermore, other lease proposals submitted by Summit Point, LLC. and Brent Nappi, Ms. Francke’s partner,⁸ appear to contradict her concerns about errant gear.

According to Department records, in 2021, Ms. Francke’s company applied for two experimental lease sites near other sites held by Wild Ocean Aquaculture, LLC. In March 2022, after the lease transfer application was deemed complete, Mr. Nappi, submitted an experimental lease proposal for a site ~665 feet to the north of CAS SI.⁹ If errant gear is a significant concern and persistent issue, it is unclear why Ms. Francke’s company and Mr. Nappi would elect to apply for sites near CAS SI or other sites held by Wild Ocean Aquaculture, LLC.¹⁰

DMR did not receive any other comments concerning the lease transfer. Based on a review of the record there is no evidence to indicate that a change in lease holder would otherwise violate the original criteria for granting a standard lease.

Therefore, I find that the change in the identity of the lessee does not violate any of the issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

B. Speculative Purposes

DMR Rule 2.60 provides that in considering whether a transfer is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” In her comments, Ms. Francke alleges that there was no gear on the site until December

⁷ Francke letter, pg. 2.

⁸ In prior correspondence with the Department, Ms. Francke has indicated that Mr. Nappi is her husband and that she has helped him apply for aquaculture leases.

⁹ Ms. Francke noted in her letter that her site CAS SI2 is ~600 feet from CAS SI.

¹⁰ For example, Brent Nappi has applied for an experimental lease site to the north of CAS SI. The application was deemed complete on March 21, 2022. Summit Point submitted two experimental lease proposals for sites to the east of CAS BASK2, which has been held by Wild Ocean Aquaculture since August 28, 2019. The experimental lease proposals were deemed complete on January 25, 2022.

9, 2021 and that the gear was deployed by Wild Ocean Aquaculture, LLC., not the lease holder. Ms. Francke's submission contends that no substantial aquaculture or research has been conducted on the site, by the lease holder, after being granted. After the close of the comment period, DMR sent copies of the comments to the transfer applicants.¹¹ On April 27, 2022, Peter Stocks, Executive Manager of The Maine Scallop Company, LLC filed a response to Ms. Francke's comments.

Mr. Stocks indicated that since late 2018, his company had invested a significant amount of money on scallop spat, gear, and associated operational costs to establish a viable scallop farm on CAS SI. Mr. Stocks' response also indicated that research activities were conducted on the site. In 2019, facing staffing issues and significant biofouling of the scallops, The Maine Scallop Company, LLC began researching the feasibility of transitioning from scallop to marine algae production. On October 12, 2021, The Maine Scallop Company, LLC applied to the Department for a change in gear and species authorization for CAS SI. The amendment was for several species of marine algae and associated gear to cultivate the requested species.

The gear and species amendment were subsequently granted on December 17, 2021. According to Mr. Stocks, after the amendment was granted, the site was seeded with marine algae, which at the time he submitted the letter on April 27, 2022, had reached over a foot in length and was otherwise growing successfully. Per Mr. Stocks, Ms. Francke had expressed an interest in CAS SI being transferred to her company, but those plans never materialized.¹²

Discussion:

The decision granting CAS SI was initially issued on October 15, 2018. However, aquaculture activities cannot occur on a lease until it is fully executed, which means rent has been paid, a bond or escrow agreement secured, and the lease agreement signed by the holder and DMR. According to DMR records, the lease was fully executed on January 17, 2019. The site was inspected by DMR on September 27, 2019, August 28, 2020, and January 13, 2021. During site inspections, staff check to see if the holder is utilizing the site, which on inspection reports is referred to as "Evidence of Aquaculture Activity."

¹¹ It is DMR's policy to send comments received to applicants after the close of the comment period. This helps inform applicants of any concerns raised and if applicable (depending on the type of lease application) whether a public hearing would need to be held.

¹² Ms. Francke also contacted DMR staff about the possible transfer of CAS SI to her company.

In reviewing the inspection reports for CAS SI evidence of aquaculture activity was documented during the September 2019 site visit, but not in August 2020 or January 2021. Based on the operations initially permitted in 2018, the site is operated year-round so it would be reasonable to expect to see evidence of aquaculture activity during each inspection regardless of the time of year the inspection occurred. However, the lack of observed activity in 2020 and 2021 does not mean aquaculture activities or related research were not occurring on the site at other times throughout the year. It is also not dispositive that the lease has been operated for speculative purposes. DMR does not require a certain level of activity to be conducted on the lease site, or that activities be conducted continuously throughout the term.

Based on Mr. Stocks' response to Ms. Francke's comments and DMR's site inspections, aquaculture activities initially occurred on the site shortly after the lease was executed. However, in late 2019, a variety of factors prompted The Maine Scallop Company to explore modifying operations on the site from scallop to marine algae production. It is possible that the lease holder temporarily stopped scallop operations while assessing the feasibility of growing marine algae. In 2021, the holder was issued a gear and species amendment for the culture of marine algae and indicated that the site is currently seeded.

Ms. Francke's comment indicates that the gear she observed on December 9, 2021, belongs to Wild Ocean Aquaculture, LLC. and not the lease holder. Ms. Franke did not provide any additional information to support her claim, so it was unclear how she knew the gear belonged to Wild Ocean Aquaculture, LLC. Even if the gear belonged to Wild Ocean Aquaculture, LLC., lease holders are not precluded from working with other companies or individuals to assist with their lease operations.¹³ The site is currently held by The Maine Scallop Company, LLC, so they are ultimately responsible for operations at the site and compliance with the lease agreement.

In this case, the record demonstrates that The Maine Scallop Company conducted aquaculture activities on the lease site after it was executed and is currently growing kelp on the site.

Therefore, I find that the lease transfer is not for speculative purposes.

C. Effect on Preference Guidelines

¹³ Mr. Stocks' response did not address Ms. Francke's allegation that the gear belonged to Wild Ocean Aquaculture, LLC

There are no competing lease applications for this lease site, so the preference guidelines are not relevant in this case.

Therefore, I find that the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8).

D. Acres Leased by Transferee

In accordance with rule and statute, the proposed transfer cannot result in the transferee being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. According to DMR records, the Wild Ocean Aquaculture, LLC. holds the following leases:

Lease Acronym	Acreage¹⁴
CAS BA2	1.99
CAS BASK2	4.01
CAS CF3	11.00
CAS CHEB2	3.03
CAS LCI2	0.82
CAS LONG	1.74

Wild Ocean Aquaculture, LLC. currently leases 22.59 acres from the State of Maine. If the transfer is granted, Wild Ocean Aquaculture, LLC. would hold 27.97 acres.

Therefore, I find that the lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

3. Conclusions of Law

Based on the above findings, I conclude that:

¹⁴ The acreage provided in the table is based on the GIS database. However, the lease for CAS BA2 lists the acreage at 2.0 acres and the lease for CAS CLI2 lists the acreage at 0.86 acres. In some cases, there may be a difference between the acreage listed in a lease decision/agreement and the acreage calculated from the lease coordinates using relatively new and more accurate mapping software. When such a discrepancy occurs, it is DMR’s policy to use the acreage in the GIS database and update lease decisions and agreements accordingly. The difference does not change the footprint of the lease site or any other elements of the lease agreement. Using the acreage from the database helps ensure that acreage is consistent across the leasing program. DMR will follow-up with the holder to update the lease agreements for those sites, so they reflect the acreage in the GIS database as listed in the table.

- a) The change in the lessee's identity does not cause any of the original criteria for issuing a lease to be violated;
- b) The transfer is not intended to circumvent the preference guidelines for treatment of competing applications
- c) The transfer is not for speculative purposes; and
- d) The lease transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

These findings of fact and conclusions of law having been made as required by 12 M.R.S.A. §6072(12-A) and Chapter 2.60 of DMR's regulations, this transfer may be granted.

4. Decision

Based on the foregoing, I grant the requested transfer of CAS SI from The Maine Scallop Company, LLC, to Wild Ocean Aquaculture, LLC. The term of the lease is not affected by the transfer. All provisions of the existing lease shall continue in full force and effect, including the conditions noted below unless modified by this decision. 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's regulations.

5. Conditions

The existing conditions on this lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- b. Navigation shall be allowed on the open areas of the lease.

Condition "a" which pertains to site markings in contemplated in existing rule and is a requirement of lease agreements. Therefore, condition "a" will be removed.

6. Monitoring and Revocation of Lease

In accordance with 12 M.R.S.A. §6072(11), DMR shall monitor the lease on an annual basis. The Commissioner may initiate revocation proceedings if the lease holder fails to comply the provisions set forth in 12 M.R.S.A. §6072(11) and applicable rule.

Dated: 7/11/2022

A handwritten signature in blue ink, appearing to read 'P. C. Keliher', written over a horizontal line.

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



JANET T. MILLS
GOVERNOR

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

PATRICK C. KELIHER
COMMISSIONER

The Maine Scallop Co, LLC
Attn: Peter J. Stocks
98 Colchester Drive
South Portland, ME 04106

Dear Mr. Stocks,

DMR has reviewed the gear and species amendment application submitted for standard aquaculture lease CAS SI, located east of Sturdivant Island in the Town of Cumberland. The application was processed in accordance with DMR Regulations Chapter 2.44, and no comments were received. After review, we find that the requested addition of a variety of marine algae species, which would be sourced from Atlantic Sea Farms in Saco, Maine and your proposed buoy alterations to conduct marine algae culture do not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A), are consistent with the findings of the original decision, and would not result in a change to the original lease conditions. Therefore, your gear and species amendment requests have been approved, effective on the date of this letter.

An updated summary of the species approved for your lease is provided below:

Approved Species
Sea Scallops (<i>Placopecten magellanicus</i>)
Blue Mussel (<i>Mytilus edulis</i>)
Sugar Kelp (<i>Saccharina latissima</i>)
Skinny/Strap Kelp (<i>Saccharina angustissima</i>) ¹
Horsetail Kelp (<i>Laminaria digitata</i>)
Dulse (<i>Palmaria palmata</i>)
Winged Kelp (<i>Alaria esculenta</i>)

An updated summary of the gear approved for your lease is provided below:

The original decision for CAS SI, executed on October 15, 2018 provided authorization to cultivate shellfish using mesh bags, wire cages, lantern nets, plastic containers, and dropper ropes attached to 500-foot longlines. According to the original application, each longline would be suspended by approximately 15 surface buoys. The decision also provided authorization to deploy a raft on CAS SI. The gear amendment approved by this decision allows marine algae to be cultured on the already approved 500-foot longlines. Each longline for the culture of marine algae would be separated by 14 feet, and suspended by up to 7 surface buoys. To ensure the proposed 14-foot space between longlines is preserved, a maximum of 29 longlines are permitted to be deployed. Longlines for marine algae culture and most buoys will be

¹ The application requested the addition of “sugar kelp/skinny (*Saccharina latissima*)”. DMR has approved the use of both sugar kelp (*Saccharina latissima*) and skinny kelp (*Saccharina angustissima*) in this decision.

removed from June until November; only moorings and mooring buoys will remain on site during this time. The originally permitted longlines, buoys and associated gear for the culture of shellfish continue to be approved gear-types on this lease, and therefore gear for the culture of shellfish may be present on the lease throughout the year.

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

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Dragging and lobster fishing are prohibited within the boundaries of the lease site.

Please retain a copy of this letter for your records. Your original lease application and decision, any previously approved amendments, and this amendment approval letter, may serve as the operational plan for the lease.



Patrick C. Keliher, Commissioner,
Department of Marine Resources

Date 12/17/21

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Standard Aquaculture Lease Application

Suspended culture of shellfish

Casco Bay, Cumberland

The Maine Scallop Company, LLC

CAS SI

October 15, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

The Maine Scallop Company, LLC applied to the Department of Marine Resources (DMR) for a ten-year standard aquaculture lease on 5.36 acres¹ located east of Sturdivant Island, Casco Bay, in the Town of Cumberland, Cumberland County, Maine. The proposal is for the suspended culture of sea scallops (*Placopecten magellanicus*) and blue mussels (*Mytilus edulis*). The Department accepted the application as complete on December 11, 2017. A public hearing on this application was held on September 25, 2018 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 of the Department's aquaculture email listserv. Notice of the hearing was published in the *Northern Forecaster* on August 23, 2018 and September 13, 2018. Notice was also published in the September 2018 edition of *Commercial Fisheries News*.

Sworn testimony was given at the hearing by the applicant, represented by Peter Stocks, who described the proposed project. Flora Drury, DMR Aquaculture Scientist, described the site visit. Jay Clement with the United States Army Corps of Engineers (USACOE) attended the hearing, but did not offer testimony. Two members of the public asked general questions of the applicant and the USACOE. The hearing was recorded by DMR. The Hearing Officer was Amanda Ellis. 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
2. Application
3. DMR site report

¹ Applicant originally requested 6.0 acres. The Department verified the coordinates and determined the site is 5.36 acres.

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

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

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 between Sturdivant and Basket Islands (SR 2). At mean low water, the northwest corner of the proposed site is ~760 feet to the east of the closest point of land on Sturdivant Island, (SR 2, 7). The shoreline of Sturdivant Island is characterized by a rocky and sandy shoreline. The upland is comprised of mixed vegetation, maintained lawns, and residential buildings (SR 2). Staff observed a dock on the Sturdivant Island shoreline (SR 2). Multiple moorings were observed near the dock (SR 2). The bottom of the proposed lease site is characterized by mud (SR 2). Correcting for tidal variations, depths at mean low water would range between 41.5 to 38.5 feet (SR 2). The proposed lease is an area currently classified by the Department's Water Quality Classification program as "open/approved" for the harvest of shellfish (SR 16).

B. Proposed Operations

The purpose of the proposed lease is to expand sea scallop production and to explore the possibility of mussel culture (App 17). Shellfish will be cultured using a combination of mesh bags, wire cages, lantern nets, plastic containers, and dropper ropes that are attached to 500-foot longlines (SR 2, App 13-16). The applicant also intends to install a raft on the proposed lease site (App 9). The applicant will utilize a 43-foot lobster boat powered by a muffled diesel engine, a Carolina skiff, and a pontoon boat (App 18). Additional mechanized equipment proposed for the site include electrical winches, water-based power washers, and hydraulically powered conveyers, star wheels, and tumblers (App 18). Production activities will occur year-round. Processing will occur at a land based facility (App 17).

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 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.

A. Navigation

During the site visit, staff observed lobster boats and recreational outboard boats operating between Sturdivant and Basket Islands (SR 9). Sailboats were also noted near the proposal (SR 9). At the nearest point, there is ~2,240 feet of navigable area between the 36-foot contour lines that run laterally between Sturdivant and Basket Islands (SR 9). Navigational aids that mark the channel are over 1,000 feet to the southeast of the proposed area (SR 9). The proposed site is located ~400 feet to the west of the recommended two-way route for deep vessel traffic (SR 9). The proposed site is closer to Sturdivant Island, so if the lease is granted mariners would likely navigate to the east in the channel, in the direction of Basket Island (SR 9). However, ~1,640 feet of navigable area would remain between the proposed lease site and the 36-foot contour line located off the western shoreline of Basket Island (SR 9).

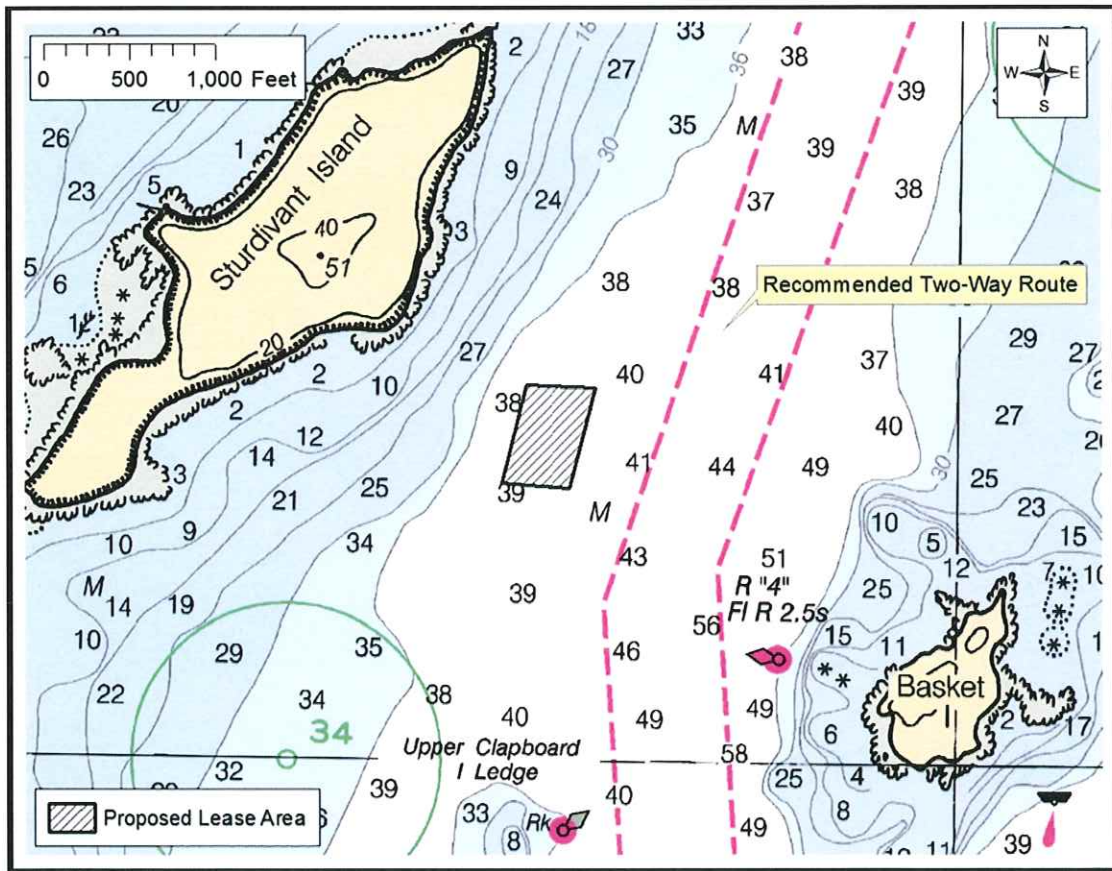


Figure 1: Location of the proposed lease site on a nautical chart. Image taken from site report.

In addition, the Cumberland Harbormaster indicated that the proposed site would not interfere with navigation in designated channels.⁴ 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.

⁴ CF: Harbormaster Questionnaire dated January 11, 2018.

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

B. Riparian Access

The proposed site is near the eastern shore of Sturdivant Island, there are approximately ten houses along this shoreline (SR 7). Four of the ten houses are to the immediate west of the proposed site (SR 7). During the site visit, staff observed one dock with an attached ramp and float along the eastern shoreline (SR 7). The float had a skiff tied to it and a row boat hauled out on top (SR 7). A lobster boat tied up to the float during the Department's site assessment (SR 7). In addition, three moorings were observed near the dock (SR 7).

Per the site report, "the dock and closest mooring are located approximately 770 feet and 555 feet, respectively, to the west of the proposed lease" (SR 7). The Cumberland Harbormaster indicated that the proposed lease could pose a "possible interference as there are landowners with moorings within 1,000 feet of the proposal."⁵ The site report indicates that the proposed lease may alter traditional routes to and from the docks and moorings, because the proposal is located between access points and the main navigational channel (SR 7).

Although the proposal may alter traditional routes riparian landowners may utilize to access docks and moorings, it is unlikely that the deviations are unreasonable. The respective distances from the dock and mooring to the western boundary of the proposed lease site provide for a reasonable navigable area. During the review period and public hearing riparian landowners did not raise any concerns about access. At the hearing, Mr. Stocks presented a written comment from Phil Grondin, Jr., whose family owns land on Sturdivant Island. Mr. Grondin indicated that his family supports the issuance of the proposed lease.⁶

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

C. Fishing & Other Uses

Per the Cumberland Harbormaster, commercial fisheries within the area of the proposed lease include lobster and menhaden fishing.⁷ Recreational uses of the area include striped bass and lobster fishing, and sea duck hunting.⁸ Department staff observed several lobstermen hauling traps between Sturdivant and Basket Islands (SR 10). More than 30 lobster buoys were observed near the proposal, and one lobster trap was located within the boundaries of the proposed area (SR 10). The gear proposed by The Maine Scallop Company, LLC would prevent most fishing activity within the boundaries of the proposed lease site (SR 10).

⁵ Ibid.

⁶ CF: Email from Phil Grondin to David Perkins dated September 25, 2018.

⁷ CF: Harbormaster Questionnaire dated January 11, 2018.

⁸ CF: Harbormaster Questionnaire dated January 11, 2018.

However, Basket Island is ~2,060 feet to the east of the proposal and Sturdivant Island is ~760 to the west of the proposed area (SR 10). These distances provide a reasonable space for lobstermen to set traps and for fishing with hook and line (SR 10). With regards to menhaden fishing: “It is possible that this distance, in combination with existing moorings, would prevent menhaden fishermen from operating between the proposal and Sturdivant Island” (SR 10). 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 menhaden fishermen and others do not have concerns about the effects the proposal may have on fishing or other water-related uses of the area.

Exclusivity. Given the deployment of longlines throughout the year, the applicants are requesting that dragging and lobster fishing be prohibited within the lease boundaries (App 22). 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 leases. There are three Limited Purpose Aquaculture (LPA) licenses within 1,000 feet of the proposed site (SR 12). These LPAs are held by Mr. Stocks, a co-owner of The Maine Scallop Company, for the suspended culture of sea scallops (SR 10).⁹ Mr. Stocks indicated that he intends to renew the LPAs (Stocks/Drury). If the lease is granted and operations are successful, Mr. Stocks may relinquish the LPAs in the future (Stocks/Drury).

Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture activities in 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. During the site visit, Department staff observed multiple species of marine organisms including lobster (*Homarus americanus*), skeleton shrimp (*Caprella sp.*), and sand shrimp (*Crangon septemspinosa*) (SR 12).¹⁰ Based on data collected by the Department, in 2013, the closest eelgrass (*Zostera marina*) bed to the proposed site was over 600 feet to the west (SR 13). No eelgrass was observed within the boundaries of the lease site during the Department’s site assessment (SR 13).

Fisheries & wildlife. Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that Sturdivant Island is encircled by Tidal Wading Bird and Waterfowl Habitat (TWBWH) (SR 14). TWBWH is classified as Significant Wildlife Habitat under Maine’s Natural Resource Protection Act (SR 14). However, none of the area designated as TWBWH intersects with the proposed lease (SR 14). The Department sent a copy of the lease application to MDIFW for their review and comment. MDIFW indicated: “as the lease is outside of mapped resources of our concern, minimal impacts to wildlife

⁹ For a list of aquaculture sites, pending and current, within one mile of the site, please see page 12 of the site report.

¹⁰ For a complete list of observed species and their relative abundance see page 11 of the site report.

are anticipated.”¹¹ 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.

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

The applicant intends to source scallop spat from individuals listed on a Department issued Special License (App 1). Individuals listed on the Special License are an approved source of seed stock. Mussel spat will be collected within the boundaries of the proposed lease site (App 1).

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

G. Light

Except for a navigational light, the application indicates that no lights will be used at the proposed lease site (App 18).¹² Night work would only occur in the case of an emergency (App 18).

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 intends to utilize a 43-foot boat powered by a muffled diesel engine, a Carolina skiff, and a pontoon boat on the proposed site. Star wheels, conveyors, seeding machines, and tumblers powered by inboard engines and hydraulic pumps are also proposed. In addition, electric winches and water based power washers may be deployed. Some form of noise generating machinery will be utilized 80% of the time the applicant is at the proposed site (App 18). During the winter months, the applicant intends to be at the site three days per week for up to five hours (App 18). During other times of the year, the applicant anticipates being at the site four to five days per week for up to eight hours each day (App 18). Typically, work at the site would not start before 7am and would end no later than 6pm (App 18). Based on this

¹¹ CF: Email from J. Perry to C. Burke dated December 10, 2017.

¹² Per Chapter 2.37(1)(A)(8) Lighting standards do not apply to lighting for navigation, emergencies, and construction of a temporary nature.

evidence, it appears that any noise generated by operations on the proposed site 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 utilize mesh bags, wire cages, lantern nets, plastic containers, and dropper ropes attached to 500-foot longlines. Except for corner markers and required marker buoys, most of the gear, which is black in color will be submerged below the surface of the water (App 3, SR 17). The proposed raft “is galvanized gray and natural wood colored” (App 3). No structures are proposed for the top of the raft. The color of the proposed gear and raft satisfies the visual impact criteria. The height of the proposed raft, as measured from the surface of the water to the top of the structure, is approximately 32 to 36 inches (Stocks/Ellis). The height of the raft complies with applicable regulations governing the height of structures on lease sites.

Therefore, the equipment utilized on the proposed lease site will comply with the Department’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 sea scallops (*Placopecten magellanicus*) and blue mussels (*Mytilus edulis*) 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 5.36 acres to The Maine Scallop Company, LLC for ten years for the cultivation of (*Placopecten magellanicus*) and blue mussels (*Mytilus edulis*) 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).¹³ 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. Dragging and lobster fishing are prohibited within the boundaries of the lease site.

7. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S.A §6072 (11) and DMR Rule Chapter 2.42 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: 10/15/18



Patrick C. Keliher, Commissioner
Department of Marine Resources

¹³ 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."