



JANET T. MILLS
GOVERNOR

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

PATRICK C. KELIHER
COMMISSIONER

Timothy Ehle and Isaac Lash
Attn: Timothy Ehle
255 Four Rod Road
Warren, ME 04864

RE: Decision on Species Amendment Request (Experimental Lease, MUS ECIX)

Dear Mr. Ehle:

DMR has reviewed your application for a species amendment for the experimental aquaculture lease, MUS ECIX, located in Muscongus Bay, Friendship. Your request was processed in accordance with DMR Regulations Chapter 2.44.

After careful review, we find that the request to add winged kelp (*Alaria esculenta*), laver/nori (*Porphyra umbilicalis*) to your lease 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 species amendment request has been approved, effective on the date this letter was signed by the Commissioner.

Please note that this decision only authorizes the addition of the species noted above. It does not authorize any other changes to the lease site.

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

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

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

1. Except for required marker buoys, all gear including lines, buoys, and anchors must be removed

from the water between April 23 and October 31 each year.

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,
Maine Department of Marine Resources

Date 10/20/2020

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Experimental Aquaculture Lease Application
Suspended Culture of Marine Algae
East of Cranberry Island, Muscongus Bay

Timothy Ehle & Isaac Lash
MUS EClx

March 11, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Timothy Ehle and Isaac Lash applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease located east of Cranberry Island, Muscongus Bay, in Friendship, Knox County, Maine. The proposed lease is 3.85 acres¹ and is for the suspended cultivation of sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*²), and dulse (*Palmaria palmata*³).

1. THE PROCEEDINGS

DMR accepted the application as complete on June 20, 2019. Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Friendship and its Harbormaster, and others on DMR's mailing list. Notice of the application and comment period was published in the July 18, 2019 edition of the *Courier Gazette*. During the comment period, DMR did not receive any requests for a public hearing, and no hearing was held.⁴ The site report was issued on December 19, 2019. The evidentiary record regarding this lease application includes the application, DMR's site report, and the case file. The evidence from each of these sources is summarized below.⁵

2. DESCRIPTION OF THE PROJECT

A. Site Characteristics

The proposed lease occupies subtidal waters between Cranberry and Otter Islands in Muscongus

¹ The applicant originally requested 4 acres, but DMR calculations based on the provided coordinates indicates that the proposed site is 3.85 acres.

² The site report indicates that in the application, skinny kelp was referred to as a morphotype of *Saccharina latissima* (*Saccharina latissima forma angustissima*). However, skinny kelp is now considered a separate species (*Saccharina angustissima*) and is referred to as such in both the site report and this decision.

³ The site report notes that in the application, dulse was referred to as "Palmeria palmata"

⁴ DMR received one comment on this proposal from B. Simmons, but it was not germane to any criteria the agency can legally consider when evaluating an experimental lease proposal.

⁵ These sources are cited, with page references, as CF (case file), App (Application), SR (site report).

Bay (SR 2). Cranberry Island is located to the west of the proposed site and is characterized by a rocky shoreline and an upland of mixed forest and shrub (SR 2). Three houses were observed along the eastern shoreline of Cranberry Island, which is adjacent to the proposed site (SR 2). A dock and house were observed on Otter Island to the southeast of the proposal and Joe’s Island to the southwest (SR 2). Correcting for mean low water, depths at the proposed lease site ranged from ~15.3-35.8 feet (SR 6). At mean low water, the northwest corner of the proposed site is ~390 feet to the nearest point of land on Cranberry Island (SR 7). Figure 1 shows the location of the proposed lease and the surrounding area in relationship to observed docks and moorings.

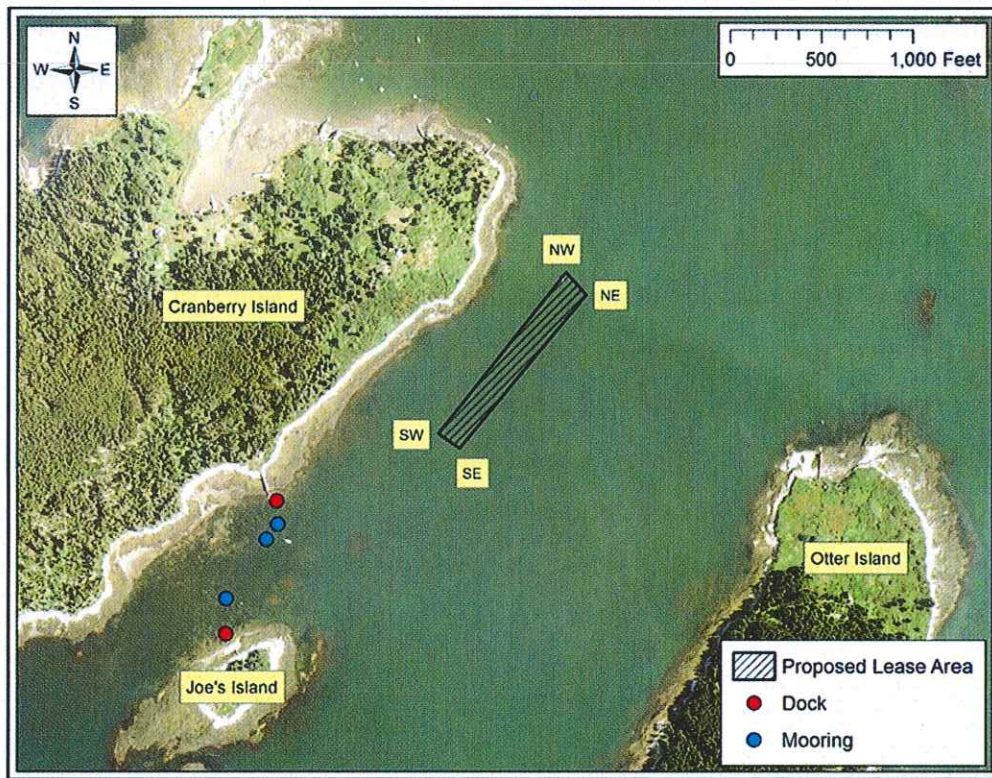


Figure 1: Proposed lease site and surrounding area. Image taken from site report.

B. Proposed Operations

The applicants are proposing to cultivate marine algae on five horizontal longlines that measure 1,000 feet in length (App 6). The longlines would be suspended seven feet below the surface of the water (App 21, SR 2). At the earliest, the applicant intends to deploy seeded line November 1st each year. when seeded line is deployed (App 5). Harvesting would be complete by April 15 each year (App 5). The

applicants indicate that seeding and harvesting would last no more than three weeks and during that period the applicants would visit the site daily (App 5). Routine site maintenance would occur on a bi-weekly basis (App 6). During the off season all ropes, anchors, and buoys would be removed from the proposed site and stored on land (App 6).

3. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture leases is governed by 12 M.R.S.A. §6072-A. This statute provides that a lease may be granted by the Commissioner of DMR upon determining that the project will not unreasonably interfere with the ingress and egress of riparian owners; with navigation; with fishing or other water related uses of the area, taking into consideration other aquaculture uses in the area; with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or with the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is available source of organisms to be cultured on the lease site.

A. Riparian Access

The proposed site is located between Cranberry and Otter Islands in Muscongus Bay, with Joe's Island located to the southwest of the proposal (SR 8). DMR staff observed houses, docks, and moorings along the nearby shorelines (SR 8). Staff also observed docks on the northern end of Otter and Cranberry Islands (SR 8).⁶ The closest observed dock to the proposed lease was located ~800 feet to the northwest of the proposal, around the northern end of Cranberry Island (SR 8).⁷ The closest observed dock and mooring on the southeastern shore of Cranberry Island were located ~960 feet and ~1,100 feet, respectively, to the southwest of the proposed lease site (SR 8). If the proposal is granted, these distances would provide an adequate area for riparians to access existing infrastructure (SR 8).

At mean low water, the western boundary of the proposal is located ~305 feet to the southeast shoreline of Cranberry Island (SR 8). Staff observed one house on the uplands of Cranberry Island to the immediate west of the proposal (SR 8). The site report indicates that access to the southeast shoreline of Cranberry Island should not be precluded by the proposed lease, but the proposal could interfere with the installation, and the subsequent use of a dock or mooring along this shoreline (SR 8).

⁶ See Figure 1 of this decision for the locations of observed docks and moorings. Figure 1 in this decision is the same as Figure 2 from the site report.

⁷ This dock is not depicted in Figure 2 of the site report, so it is not included in Figure 1 of this decision.

DMR sent personal notice of the application and opportunity to comment to riparian landowners within 1,000 feet of the proposal and the Town of Friendship. Notice of the application and comment period was also published in the local newspaper. DMR did not receive any comments from riparian landowners about their ability to navigate to shore or other access points. There were no comments about the possible installation of docks or moorings. Based on the lack of comments, it is reasonable to conclude that riparian ingress and egress will not be unduly affected by the proposed application.

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

B. Navigation

The proposed lease is in Otter Island Passage, a navigable waterway, that is part of Muscongus Bay (SR 8). Commercial and recreational vessels were observed operating in the general vicinity of the proposed lease (SR 8). One vessel navigated through the proposed lease site during the site visit (SR 8). The proposal is ~1,360 feet to the northeast of Otter Island, so vessels would not be precluded from navigating the Otter Island Passage if the site is granted (SR 8). At mean low water, the proposal is ~ 305 feet from Cranberry Island, so it is possible that larger vessels may avoid navigating in the area between the proposal and the Cranberry Island shoreline to the northwest (SR 8). However, if the proposal is granted, most vessels that operate in the area would be able to navigate between Cranberry Island and the lease site (SR 8).

The application indicates that recreational boating, sailing, and kayaking occurs during the summer months (App 7). The application indicates that gear would be on the site from November 1st through April 15th. In the off season all the gear would be removed from the proposed site. The lease, if granted, would not contain cultivation gear during the summer months when recreational boating, sailing, and kayaking are most likely to occur. During the review period, DMR did not receive any comments pertaining to navigation. Based on the evidence and lack of public comment it appears that navigation will not be unduly affected by the proposed application.

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

C. Fishing & Other Uses

Fishing. The application indicates that commercial lobster fishing occurs with moderate frequency beginning in July and ending in November (App 7). During DMR's site visit on October 21, 2019, lobster

fishing was observed nearby and within the proposal (SR 8). Based on the density of observed lobster buoys, heavy fishing occurred to the north of the proposed lease area, with heavy to moderate buoy densities noted between Cranberry and Otter Islands (SR 8). There were ~20 lobster buoys within the boundaries of the proposed site and buoys were observed in all directions around the outside of the proposal (SR 8). There were also five lobster boats in operation within the vicinity of the proposed site during MDMR's visit (SR 9). Staff did not observe any other commercial or recreational fishing activities, but it is possible that the area is utilized by other fisheries (SR 9).

During the review period, DMR did not receive any comments about lobster fishing or other fishing activities. According to the applicants, marine algae would be cultivated from November 1st through April 15th. During other times of the year, all gear would be removed from the proposed site. If the proposal is granted, DMR will condition the lease so that except for required marker buoys all gear will be removed from the site from April 16th through October 31st. This condition is intended to accommodate lobster fishing activity, while also providing for the proposed aquaculture activities.

Exclusivity. The applicants are not requesting exclusive use of the proposed lease site (App 8).

Other aquaculture uses. There are no active aquaculture sites within one mile of the proposed lease site (SR 9).

Other water-related uses. During the review period, DMR did not receive any comments detailing other water-related uses that are not already contemplated in other sections of this decision. Based on the absence of public comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on other water-related uses of the area.

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

D. Flora & Fauna

Based on historical eelgrass (*Zostera marina*) data collected by DMR in 2005, the closest observed eelgrass was ~275 feet to the west of the proposed site, along the shoreline of Cranberry Island (SR 10). Per the site report, this distance makes it unlikely that the proposed lease operations will disrupt mapped eelgrass beds (SR 10).

Data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) indicate that the proposed lease is located ~275 feet to the east of Tidal Wading Bird and Waterfowl Habitat, which is defined under Maine's Natural Resource Protection Act as Significant Wildlife Habitat (SR 10). DMR sent

a copy of the application to MDIFW for their review and comment. MDIFW indicated that “minimal impacts are anticipated to wildlife are anticipated for this project.”⁸

Based on the evidence, it is reasonable to conclude that the proposed lease will not have an unreasonable impact on the ecological function of the area.

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

E. Public Use & Enjoyment

Per the site report, “there are no beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site” (SR 11).

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

F. Source of Organisms

The applicant intends to source stock from Springtide Seaweed in Gouldsboro, Maine. This source is approved by DMR (SR 11).

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

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

1. The aquaculture activities proposed for this site will not unreasonably interfere with the ingress and egress of any riparian owner.
2. The aquaculture activities proposed for this site will not unreasonably interfere with navigation.
3. Given the timing of gear deployment, 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.

⁸ CF: Email from R. Settele to C. Burke on July 24, 2019

4. The aquaculture activities proposed for this site will not unreasonably interfere with the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna.

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

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

Accordingly, the evidence in the record supports the conclusion that the proposed aquaculture activities meet the requirements for the granting of an aquaculture lease set forth in 12 M.R.S.A. §6072-A.

5. DECISION

Based on the foregoing, the Commissioner grants the requested experimental lease of 3.85 acres to Timothy Ehle and Isaac Lash, 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 lessee⁹; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessees for the cultivation of sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), and dulse (*Palmaria palmata*) using suspended culture techniques. The lessees shall pay the State of Maine rent in the amount of \$100.00 per acre per year. Since this is an experimental lease with more than 400 sq. ft. of structures and no discharge, a bond or escrow account is required. The lessees shall post a bond or establish an escrow account pursuant to DMR Rule 2.64 (10) (s) in the amount of \$5,000.00, conditioned upon performance of the obligations contained in the aquaculture lease documents and all applicable statutes and regulations.

6. CONDITIONS TO BE IMPOSED ON LEASE

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 MSRA §6072-A (15).¹⁰ Conditions are designed to

⁹ 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.”

¹⁰ 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

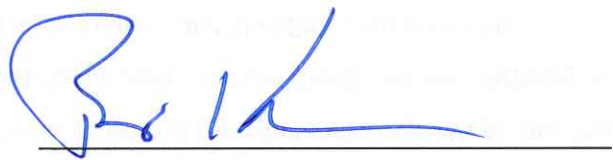
encourage the greatest multiple compatible uses of the lease area, while preserving the exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. The following conditions will be incorporated into the lease:

1. Except for required marker buoys, all gear including lines, buoys, and anchors must be removed from the water between April 23 and October 31 each year.¹¹

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: 03/11/2020



Patrick C. Keliher, Commissioner
Department of Marine Resources

commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

¹¹ As noted in other sections of this decision, the applicants originally proposed to remove gear by April 15th each year. In the draft decision, DMR conditioned the lease so that except for required marker buoys, all gear including lines, buoys, and anchors must be removed from the water between April 16 and October 31 each year. In accordance with applicable law, the applicants were given 10-days to review the proposed decision and file any comments or exceptions to the draft decision. The applicants requested that the condition be modified, so that they have until April 23 to remove the gear. The applicants noted that fishing in the area does not commence until the beginning of May and that they anticipate starting operations later than November 1st. Based on a review of the record, extending the date of gear removal from April 16th to April 23rd would not alter any findings made in the decision and is reasonable to encourage the greatest compatible uses of the area.