

STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES

Jason and Molly Hooper

Experimental Aquaculture Lease Application
Suspended Culture of marine algae
Unorganized Territory, Knox County, Maine

January 6, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Jason and Molly Hooper applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located in unorganized territory in the Muscle Ridge Channel, northeast of Little Green Island and southwest of Gooseberry Knob, Knox County. The proposed lease is 4¹ acres and is for the suspended cultivation of sugar kelp (*Saccharina latissima*), skinny kelp² (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), horsetail kelp (*Laminaria digitata*), dulse (*Palmaria palmata*), Irish moss (*Chondrus crispus*), and laver (*Porphyra sp.*). For the reasons described below the application is denied and a lease will not be issued.

1. THE PROCEEDINGS

A. Background

DMR accepted the application as complete on April 11, 2019. Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the towns of Saint George, South Thomaston, Rockport, Owls Head, and Rockland³, DMR’s Marine Patrol, and others on DMR’s mailing list. Notice of the application and comment period was published in the April 25, 2019 edition of the *Courier Gazette*. During the comment period, DMR received more than 5 requests for a public hearing. The site report was issued on August 23, 2019, and a public hearing was held on November 13, 2019⁴.

¹ Applicant requested 4 acres, but DMR calculations indicate the area is 4.06 acres. Experimental leases can be for no more than 4 acres. If a lease were to be issued the coordinates would be revised to shrink the proposed area so that the lease encompasses a maximum of 4 acres.

² In the application, skinny kelp was referred to as a morphotype of *Saccharina latissima* (*Saccharina latissima forma angustissima*). Skinny kelp is now considered a separate species (*Saccharina angustissima*) and will be referred to in this decision as such.

³ Because the proposed lease is in unorganized territory, the Department notified all the surrounding towns.

⁴ The public hearing for this application was originally scheduled for October 1, 2019 but was rescheduled to November 13, 2019.

Notice of the hearing and copies of the application and DMR site report were provided to state and federal agencies for their review, the towns of Saint George, South Thomaston, Rockport, Owls Head, and Rockland, and others on DMR’s mailing list. Notice of the hearing was published in the October 10, 2019 and October 31, 2019 editions of the *Courier Gazette*.

The hearing was held on November 13, 2019. Sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
Jason and Molly Hooper	Applicants
Jon Lewis	Director, DMR Aquaculture Division
Richard Carver, Travis Fogg, William Lindahl, David Mahonen, Bill Oliver, Charles Oliver, Maxwell Oliver, Joshua Spearing, PJ Spearing, Steve Sutela,	Lobstermen
Margaret Hilt	Landowner
James Crimp	Atlantic Sea Farms

The applicants, Jason and Molly Hooper, described the proposed project, and location of the lease, and showed a video of the lease area taken June 1, 2019. Jon Lewis, DMR Aquaculture Program Director, described the site visit. James Crimp, with Atlantic Sea Farms, testified about Atlantic Sea Farms and their involvement with the application, and where the source of seed comes from. Members of the public and lobstermen testified about how the proposal may affect other uses of the area. In general, lobstermen who testified were concerned about navigation and the proposed lease interfering with their lobstering in the area, and the popularity of the area for recreational uses. The hearing was recorded. The Hearing Officer was Erin Wilkinson.

B. Exhibits

The evidentiary record before DMR regarding this lease application includes the following:

1. Case File (CF)
2. Application (APP)
3. Site Report (SR)
4. Video of proposed lease area taken on June 1, 2019

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed experimental lease site is to determine the viability of a commercial seaweed operation (App 4). The applicant is proposing to culture marine algae from October 1st to June 30th, annually, and intends to culture kelp on 1,000-foot horizontal lines suspended 7 feet below the surface of the water. There will be 13 longlines in total, spaced 10 feet apart (App 13). Longlines, depth control lines and buoys, stabilizing weights, and 12 moorings and associated lines will be removed during summer months, while 6 moorings and associated mooring lines, and buoys are proposed to remain onsite through the year (App 7, SR 2). At the hearing the applicants proposed to modify the timing of their operations from November 1st to June 15th annually, and to remove all gear, including moorings, from the site between June 15th and November 1st annually.

B. Site Characteristics

The proposed lease occupies subtidal waters northeast of Little Green Island (SR 2). Otter Island is located northwest, Gooseberry Knob to the northeast, and High Island to the southeast (SR 2). The proposal extends into the channel between Little Green Island and High Island (SR 2). The nearest residence to the proposal is on Little Green Island (SR 2). The Otter Island shoreline is wooded, and a dock is present along the southern shore of the island (SR 2). During DMR’s site visit, depths at the corners of the propose site ranged from 35-42 feet. When correcting for tidal variation, depths are approximately 1.3 feet higher at the nearest high water, and 8.4 feet lower at mean low water (SR 8). Figure 1 shows the location of the application and surrounding islands.

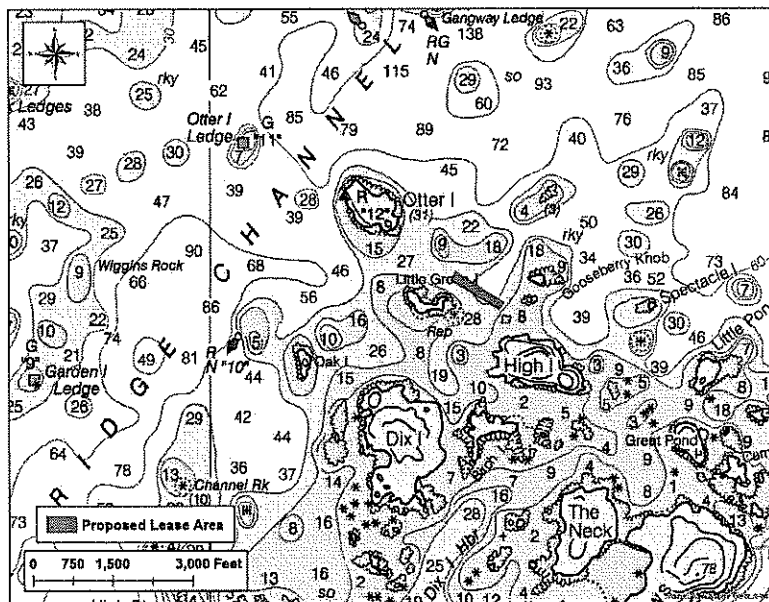


Figure 1: Vicinity Map

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. Navigation

The proposed lease is in the Muscle Ridge Archipelago and is bordered by Little Green Island to the southwest, Otter Island to the northwest, Gooseberry Knob and unnamed ledges to the east, and High Island to the southeast (SR 11). The proposed lease sits outside the marked navigation corridor within the Muscle Ridge Channel, and boats traversing the area, especially those without local knowledge of the area are expected to adhere to the designated channel (SR 11). The proposed lease would occupy most of the channel between Little Green and High Islands, and if granted, would leave less than 110 feet of navigable waters between the proposed eastern boundary and an unmarked ledge (SR 11). Vessels wishing to travel north/south between Little Green and High Islands may be required to alter course to avoid the lease (SR 11). In his testimony about the site visit, Jon Lewis, Aquaculture Program Director, testified that during their visit to the site, DMR scientists observed vessels moored or anchored in the area, and wondered about their ability to navigate in and around the proposed lease if it were granted. Mr. Lewis also testified that between an unmarked ledge and the eastern boundary of the proposed site there would only be approximately 110 feet of navigable waters, and that there would be a 'substantial reduction for those moving south/north' if the lease were granted.

During the comment period, multiple comments were received indicating that the proposal would be a hindrance to navigation as it is in an area commonly used to access known anchorage northeast of Dix Island.⁵ Additional comments questioned if there would be room to

⁵ CF: emails to C. Burke from T. Fogg (received 5.27.19), S. Lindahl (received 5.28.19), J. Lindahl (received 5.28.19)

navigate around the proposal as indicated by the applicants, but the comments were not specific as to what portion of the lease may cause the greatest hazard to navigation.

During the public hearing the applicants were questioned as to why they felt this would be an appropriate location for a lease because it's a popular route for recreational boaters travelling to/from Birch and Dix Islands from Owls Head or Rockland, and that the proposed lease would block the entire channel and force boaters to go very close to unmarked ledges. The applicants testified that there are not that many pleasure boaters travelling in the area before June 15th, and that boaters could go around the other side of Little Green Island. Other members of the public commented that recreational boaters use the area before June 15th, when the longlines would be present on the proposed site, and that people use the area all year.

During the hearing, 10 local lobstermen provided testimony under oath. In their testimony, lobstermen spoke to the popularity of this area for recreational use, including that the area is part of the Maine Island Trail, and is used by an Outward Bound program that trains in the area in the spring. Many who testified have either used the area themselves or been witness to others using the area before Memorial Day, when the applicants propose to have gear in the water. Most also testified about the proposed lease site interfering with navigation, and specifically, that if the lease were granted it would be a hindrance to recreational pleasure boats, kayaks, and sailboats using the area, as well as making it difficult for people to access a beach on Birch Island because it would block off the entire passage way between the islands.

Lobstermen also testified that the proposed lease would be a hinderance to the Island Transporter and other commercial boats tending to moorings and docks located on Dix and the surrounding islands. PJ Spearing, a lobsterman in the area testified that:

“outside just recreational traffic, me and my dad were witness to the island transporter on at least two occasions going through that exact channel heading for what I believe was High Island this spring, so it's also going to get in the way of a larger vessel like that, and that boat is probably 60-80 feet long and 20-25 feet wide and that seemed to be his course of travel in the spring time. So outside of just us and recreational boats using it, it's also a concern for other people with commercial uses trying to get in and out of the islands.”

Mr. Spearing added that the Island Transporter serves more than just High Island, and around the islands there are a lot of moorings for those on Dix and Otter Islands, so boats tending those moorings would also need to travel right through the proposed lease area. Bigger boats, especially those that draw more water would need to go directly through the lease site or have to go closer to unmarked navigational hazards. This type of activity is likely to occur year-round, not just between June and November when all gear would be removed from the proposed site.

While the recreational use and navigation of the area is likely greatest during summer months when the applicant would have all gear removed from the site, public testimony indicates

that use of the area occurs year-round. Based on the evidence in the record, and because the proposed lease would occupy most of the channel between Little Green and High Islands it would be a navigational hazard due to the popularity of this route for accessing Dix, Birch, and High Islands.

Therefore, the aquaculture lease activities proposed for this site will unreasonably interfere with navigation.

4. CONCLUSIONS OF LAW

The evidence in the record supports the conclusion that the proposed aquaculture activities do not meet all the requirements for granting an experimental lease set forth in 12 M.R.S.A §6072-A. Since the application fails to satisfy all the criteria, it must be denied.

5. DECISION

Based on the foregoing, the application of Jason and Molly Hooper for a lease to cultivate marine algae using suspended culture techniques on 4.06 acres in the Muscle Ridge Channel and northeast of Little Green Island and southwest of Gooseberry Knob is denied.

Dated:

JAN 6, 2020



Patrick C. Keliher, Commissioner
Department of Marine Resources