

**STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES**

**Summit Point LLC
CAS LB2x**

Experimental Aquaculture Lease Application
Suspended Culture of Marine Algae
Chebeague, Maine

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Summit Point LLC applied to the Department of Marine Resources (DMR) for a three-year experimental aquaculture lease located approximately 1,000 feet north of Lower Basket Ledge, in Casco Bay, Chebeague, Cumberland County. The proposed lease is 3.87¹ acres and is for the suspended cultivation of sugar kelp (*Saccharina latissima*) and skinny kelp (*Saccharina angustissima*). DMR accepted the application as complete on January 25, 2022.

1. THE PROCEEDINGS

Notice of the application and the 30-day public comment period was provided to state and federal agencies, riparian landowners, the Town of Chebeague and its Harbormaster, and others on DMR's mailing list. Notice of the application and comment period was published in the February 17, 2022 edition of the *Northern Forecaster*. Three requests for a public hearing were received during the comment period. M.R.S. §6072-A (6) states that the Commissioner shall hold a public hearing if 5 or more persons request a public hearing within the 30-day comment period. Since five requests were not received by the Department, no hearing was conducted. The evidentiary record regarding this lease application includes the application, DMR's site report dated November 8, 2022, and the case file. The evidence from each of these sources is summarized below.²

¹ The applicant originally requested 4.00 acres. Department calculations, based on the provided coordinates, indicate the area is 3.87 acres.

² These sources are cited, with page references, as App (Application), CF (case file), and SR (site report).

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed experimental lease site is to determine the viability of using removable mooring tackle for a lease (App 4). The applicant is proposing to culture marine algae from November 1st to June 1st, annually, using 300-foot horizontal lines suspended 7 feet below the surface of the water. There would be 23 longlines in total, spaced 20 feet apart (App 20). Longlines, depth control lines and buoys, and weights would be removed by June 1st, annually, while 24 concrete moorings with associated chains, and four mooring lines with buoys are proposed to remain onsite through the year (App 5).

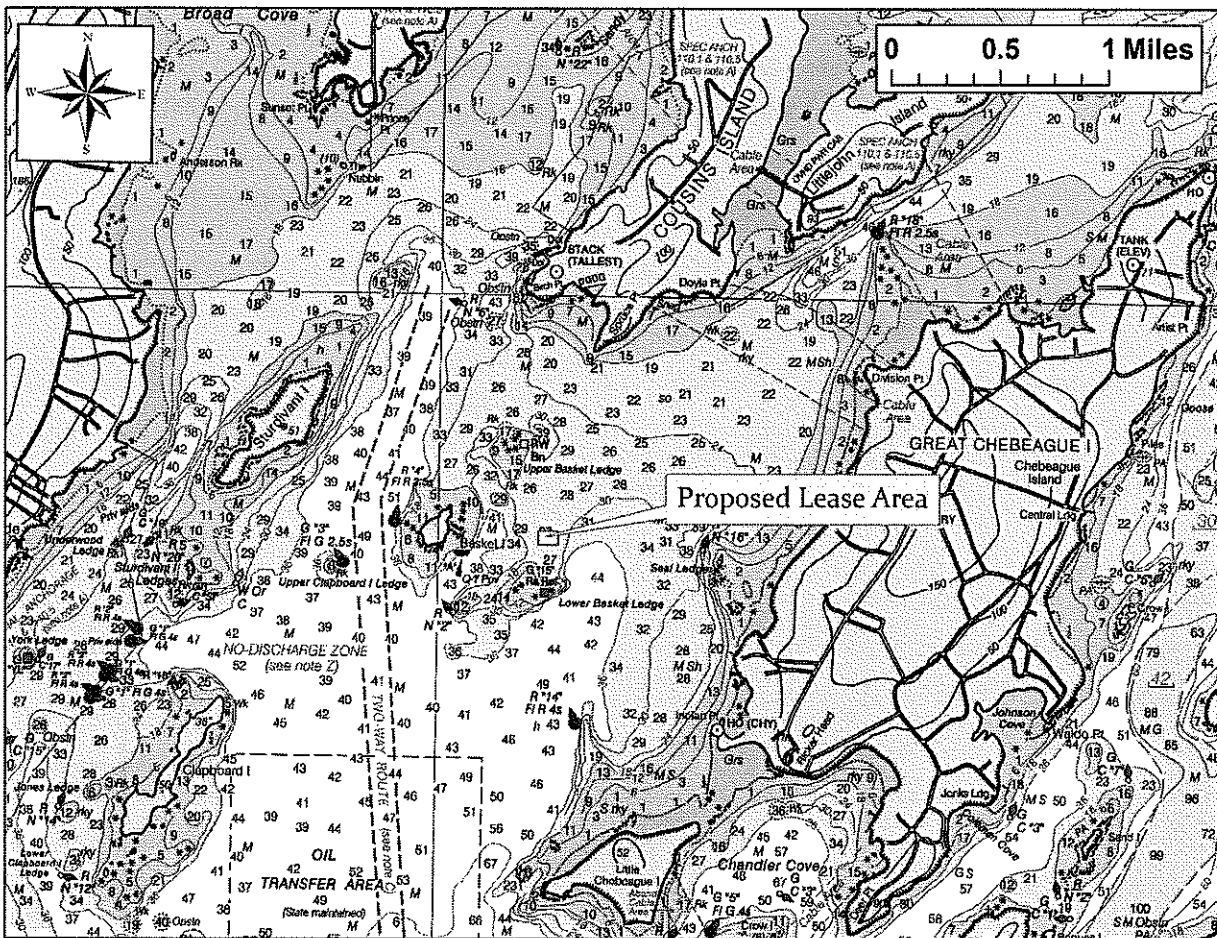


Image 1. Proposed lease and surrounding area. Figure taken from DMR's site report

B. Site Characteristics

On April 4, 2022, Department staff visited the proposed experimental aquaculture lease site. The proposed lease occupies subtidal waters north of Lower Basket Ledge, between Great Chebeague and Basket Islands in Casco Bay. Cousins Island is to the north and features a power plant with forested and residential uplands. Basket Island, to the west of the proposal, exhibits a rocky shoreline with an aquaculture lease off its eastern shore. To the southwest is Clapboard Island, which is forested and residential. Lower Basket Ledge is a natural navigational hazard to the south of the proposal, which is marked by a green navigational beacon. Great Chebeague and Little Chebeague Islands are to the east and southeast, respectively (SR 2).

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 lease is located approximately 800 feet to the north of Lower Basket Ledge at the nearest point, between Basket Island to the west and Great Chebeague Island to the east. There are no riparian properties within 1,000 feet of the proposal, and no moorings were observed in the general vicinity during DMR's site assessment on April 4, 2022. The Great Chebeague Island shoreline exhibits moderate residential development, with sporadic docks and moorings. The nearest point of Great Chebeague Island is approximately 3,840 feet from the proposal, which is likely sufficient for the docks and moorings along the shoreline to be accessed without interference (SR 8).

A Harbormaster Questionnaire was requested from the Chebeague Island Harbormaster on March 19, 2022. No response was received. During the comment period, DMR did not receive any comments regarding riparian access.

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 in navigable waters in an area of Casco Bay that generally experiences heavy commercial and recreational vessel traffic, particularly during the summer months. DMR visited the site on April 4, 2022 and did not observe vessel traffic in the vicinity of the proposal, but the timing of the site visit likely did not coincide with the heaviest vessel traffic in the area. The navigational channel is marked by Red Nun "16", which is to the northeast of the proposal near the Great Chebeague Island shoreline, and a green beacon marking the navigational hazard of Lower Basket Ledge. Therefore, most vessel flow is likely to avoid the proposed lease site, which is located approximately 1,100 feet to the north of the beacon marking Lower Basket Ledge. Additionally, if the proposed lease were granted, approximately 3,500 feet would remain between the proposal and Red Nun "16", where there is currently approximately 3,900 feet between Red Nun "16" and green beacon marking Lower Basket Ledge. (SR 8).

However, not all vessel traffic in the area occurs within the marked navigational channel. Smaller and/or recreational vessels have routinely been observed operating outside of marked navigational channels throughout Casco Bay by DMR staff. Three public comments submitted to DMR during the 30-day comment period for this proposal expressed navigational concerns and indicated that the area experiences a large amount of vessel traffic. Moreover, the Coastal Waters Committee of Chebeague Island (CWCCI) submitted a comment that highlighted potential impacts to navigation and requested that all surface gear, including the four corner mooring buoys, be removed from the site by May 1, annually. The CWCCI further stated that the presence of surface gear after this date would create a hazard to navigation to all boaters. It is therefore possible that granting the lease, as applied for, may interfere with navigation and navigational safety in the area. The site report states that a requirement that all gear except for (24) mooring blocks, connected with chains, be removed from the site between April 30 and November 1 each year would reduce potential impacts to navigation (SR 8).

A Harbormaster Questionnaire was requested from the Chebeague Island Harbormaster on March 19, 2022. No response was received.

Based on the evidence, it appears that the proposed aquaculture activities may unreasonably interfere with navigation. Therefore, the Department requires the removal of all gear, with the exception of mooring blocks and associated chains, and four yellow corner marking devices, from May 1st to October 31st of every year to mitigate potential impacts on navigation.

Therefore, the aquaculture activities proposed for this site will not unreasonably interfere with navigation provided all gear, with the exception of mooring blocks and associated chains, and four yellow corner marking devices, is removed from the site May 1st to October 31st of every year. The mooring row may connect to the mooring of a corner marking device via bottom tackle only to aid in gear reconnection in the spring.³

C. Fishing & Other Uses

Fishing. At the time of DMR's site assessment on April 4, 2022, no lobster trap buoys were observed in the general vicinity of the proposed lease area. However, the lobster (*Homarus americanus*) fishery in nearshore Maine is seasonal, following the migration and molt cycle of lobsters. Therefore, lobster fishing may exist to a greater extent or in closer proximity to the proposal later in the season than when the site visit was conducted. From June 2 to October 31, the applicant is proposing to remove all surface gear from the site except for four corner mooring buoys. The CWCCI comment submitted to DMR during the 30-day comment period indicates that the presence of surface gear, including the four corner mooring buoys, may interfere with lobster fishing in the area after April 30, annually. Potential interference with lobster fishing could occur in the form of either gear entanglement, or perceived risk of gear entanglement resulting in lobster fishermen avoiding the area (SR 9). No public comments were received concerning commercial or recreational fishing.

DMR will require that all gear, except for the mooring blocks and associated chains, be removed from the water between May 1st and October 31st each year. As such, the proposed aquaculture activities should not interfere with any lobstering or other fishing that typically occur in the area during the summer months.

Given the absence of public comments expressing other concerns regarding interference with fishing, it is reasonable to conclude that the condition described above adequately

³ In comments submitted in response to a Department draft decision, the applicant requested the mooring row be allowed to connect with the corner marker for safety reasons.

addresses the potential for unreasonable interference by the proposed lease on commercial and recreational fishing activities in the area.

Exclusivity. Due to possible interference with gear, the applicant has requested that dragging be prohibited within the boundaries of the proposed lease site.

Other aquaculture uses. Five Limited Purpose Aquaculture (LPA) licenses, four leases, and two pending lease applications are located within one mile of the proposed lease. The closest active aquaculture activity to the proposal is the lease CAS BASK2, which is approximately 1,200 feet to the east and authorized for the suspended culture of shellfish.

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

D. Flora & Fauna

Historical eelgrass (*Zostera marina*) data collected by the Maine Department of Environmental Protection (DEP) in partnership with the Casco Bay Estuary Partnership indicates that, in 2018, the closest observed eelgrass bed to the proposed lease was located approximately 700 feet to the south of the proposed site, near Lower Basket Ledge. Additionally, the underwater assessment conducted by DMR staff during the site visit did not find evidence of eelgrass beds within the proposed lease area (SR 11).

According to GIS (Geographic Information System) data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIFW) and available through the Maine Office of GIS, the proposed lease is approximately 715 feet from mapped Tidal Wading Bird and Waterfowl Habitat. This habitat type is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat. The proposed lease is also over 1,080 feet to the east of Great Blue Heron (*Ardea herodias*) habitat, which is considered a Species of Special Concern in Maine (SR 10).

Additionally, what appeared to be an osprey (*Pandion haliaetus*) nest was observed on the green beacon marking Lower Basket Ledge at the time of DMR's site visit on April 4, 2022. Various gulls (*Larus sp.*) were also observed on the exposed portion of Lower Basket Ledge.

On February 15, 2022, a wildlife biologist at MDIFW responded by email to a Request for Agency Review and Comment stating "Minimal impacts to wildlife are anticipated for this project" (SR 10).

The underwater assessment conducted on April 4, 2022 revealed abundant benthic diatoms on sand and mud sediment with burrows, castings, and drifting, unattached macroalgae. (SR 11).

Based on the evidence that the proposed lease does not interact with historical eelgrass beds or mapped wildlife habitat, and because DMR's site report and MDIFW's email response do not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem, it appears that the proposed aquaculture activities for this lease site will not interfere with 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 ecologically significant flora and fauna.

E. Public Use & Enjoyment

There are no beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site. The nearest conserved land to the proposal is Basket Island, which is held in private conservation by the Chebeague and Cumberland Land Trust, Inc. Conserved lands are not included in the decision criteria for granting experimental leases, as per DMR Regulations Chapter 2.64(11)(A)) (SR 13).

During the comment period, DMR did not receive any comments regarding public use and enjoyment. Based on the lack of public comments, and the distance of the project's location in relation to public facilities, it is reasonable to conclude that there are no concerns regarding the effect the proposed lease may have on public use and enjoyment. DMR finds that public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by federal, state, or municipal governments will not be unduly affected by the proposed application.

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 marine algae from Summit Point LLC in Falmouth, Maine. This source is approved by DMR.

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. Given the condition related to gear deployment, the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

3. Given the condition related to gear deployment, the aquaculture activities proposed for this site will not unreasonably interfere with fishing or other uses of the area.

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 3.87 acres to Summit Point LLC, 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 lessee⁴; however, no aquaculture rights shall accrue in the lease area until the lease is fully executed.

This lease is granted to the lessee for the cultivation of sugar kelp (*Saccharina latissima*) and skinny kelp (*Saccharina angustissima*) using suspended culture techniques. The lessee 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 lessee 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)⁵. 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 purpose of the lease.

The following condition shall be incorporated into the lease:

All gear, except mooring blocks and associated chains, and four yellow corner marking devices, must be removed from the water between May 1st and October 31st of each year.

⁴ DMR Rule 2.64 (14) provides:

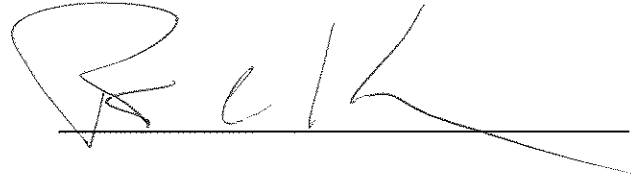
“The term of the lease shall begin within 12 months of the Commissioner’s decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.”

⁵ 12 MRS §6072-A (15) provides that: “The commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”

7. REVOCATION OF EXPERIMENTAL LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 MRSA §6072-A (22) and DMR Rule Chapter 2.64 (13) that no substantial research has been conducted on the site within the preceding year, that research has been conducted in a manner injurious to the environment or to marine organisms, or that any conditions of the lease or any applicable laws or regulations have been violated.

Dated: Feb 6th 2023

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

Patrick C. Keliher, Commissioner

Department of Marine Resources