

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Experimental Aquaculture Lease Application
Suspended culture of marine algae
Rackliff Bay, St. George

Keith Miller and Ben Stendel
PEN RB

January 23, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Keith Miller and Ben Stendel applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease on 3.9 acres located southeast of Elwell Island in Rackliff Bay, St. George, Knox County, for the cultivation of sugar kelp (*Saccharina latissima*) using suspended culture techniques. DMR accepted the application as complete on September 24, 2018. No requests for a public hearing were received during the comment period, and no hearing was held.

1. THE PROCEEDINGS

Notice of the application, the DMR site report, and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of St. George and its Harbormaster, and others on the Department’s mailing list. Notice of the application and comment period was published in the *Courier Gazette* on October 25, 2018.

The evidentiary record before the Department regarding this lease application includes the application, the Department’s site report dated December 13, 2018, and the case file. The evidence from each of these sources is summarized below.¹

2. DESCRIPTION OF THE PROJECT

A. Proposed Operations

The purpose of the proposed lease site is to determine the viability of a commercial seaweed operation at the proposed location (App 4). Sugar kelp would be cultivated using 15 longlines, each 1,000 feet in length (App 5). The longlines would be seeded between October and December and monitored on a biweekly basis (App 4).² Between the months of March and June, marine algae would be harvested from the longlines using a lobster boat and a winch³ (App 5). After harvest, the longlines would be removed from the proposed site; longlines would not be redeployed until seeding resumes in the fall. The moorings and mooring buoys would remain on the proposed site throughout the year (App 5).

B. Site Characteristics

¹ These sources are cited below, with page references, as CF (case file), App (application), SR (site report).

² Longlines will also be tended after storm events (App 4).

³ This machinery was referred to in application as a “wrench”.

On December 6, 2018, DMR scientists visited the proposed lease site and assessed it and the surrounding area in consideration of the criteria for granting an experimental aquaculture lease. The proposed site occupies subtidal waters in Rackliff Bay, southeast of Elwell Island (SR 2). Houses and docks were visible along the mainland shoreline to the north and east of the proposed site. The uplands of Elwell Island are characterized by an evergreen forest; a house and what appeared to be a tent platform were also located on the immediate uplands of Elwell Island, to the northwest of the site (SR 2). At mean low water, the distance from the western boundary of the proposed lease site to the nearest point on Elwell Island is ~215 feet (SR 6). At mean low water, water depths range between 16.2 feet at the northwest corner of the proposed lease and 30.2 feet at the southeast corner (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 an available source of organisms to be cultured for the lease site.

A. Riparian Access

The proposed lease is located in western Rackliff Bay (SR 6). According to the site report, because the proposed lease is located over 1,000 feet from shorefront land to the north and east of the site, it is unlikely to cause unreasonable interference with riparian access to and from these shorelines (SR 6).

Elwell and Eagle Islands are located on the western side of Rackliff Bay. Elwell Island, located approximately 215 feet to the northwest at mean low water, is the closest shoreline to the proposed lease area (SR 7). During the site visit, no docks or moorings were observed along the Elwell Island shoreline immediately west of the proposal (SR 6). According to the site report, the proposed lease would not prevent access to and from Elwell Island, with the potential exception of large vessels looking to land on the southern tip of the island (SR 7).

Eagle Island sits approximately 375 feet⁴ to the southwest of the proposed lease site, at mean low water (SR 6). During the site visit, DMR scientists observed what appeared to be moorings off the shore of Eagle Island (SR 7). Per the site report:

The cove in which these assumed-moorings are located is over 600 feet to the west of the proposed lease. Accessing this cove from both the eastern and western sides of Eagle Island would not be prevented by the proposed lease, and therefore it appears that riparian access will not be hindered (SR 7).

⁴ Page 7 of the Site Report indicates that Eagle Island is located a minimum of 385 feet from the proposed lease.

The St. George Harbormaster stated in written comments that the proposed lease application does not interfere with the ability of riparian landowners located within 1,000 feet of the proposed lease to get to and from their property.⁵ During the review period, the Department did not receive any comments from members of the public concerning access to riparian owned land. Based on the absence of public comments it is reasonable to conclude that there are no concerns about the effects the proposed site may have on riparian ingress and egress. The potential exclusion of large vessels from landing on a small section of Elwell Island does not meet the statutory standard of unreasonable interference as there are many other locations along the island's shoreline that remain unimpacted by the proposed lease, where these vessels could attempt to land. It appears from this evidence that riparian ingress and egress will not be unduly affected by the proposed lease application.

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

B. Navigation

Navigation in and out of Rackliff Bay is influenced by shallow water located centrally in the mouth of the bay (SR 7). Deeper channels are located to the east and west of this shoal (SR 7). The proposed lease is partially located in the deeper channel to the west; approximately 100 feet are located between the eastern boundary of the proposed lease and the contour line that defines this shoal area (SR 7). Per the site report, this distance, and the availability of a second channel to the east of the shoal, make it unlikely that the proposed lease would prevent navigation in and out of Rackliff Bay (SR 7). Additionally, the site report concludes that, because there are approximately 1,190 feet between the proposal and the eastern shore of Rackliff Island, boats navigating within Rackliff Bay, to the east of the proposal, would not be unreasonably impacted by the proposed lease (SR 7).

The St. George Harbormaster indicated that the proposed lease does not interfere with navigation in designated channels.⁶ During the review period, the Department did not receive any public comments regarding navigation. 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 navigation within the area.

It appears from this evidence that navigation in the area will not be unduly affected by the proposed lease application, which includes a commitment to remove the horizontal longlines from the proposed site between harvest time in the spring and seeding time in the fall (App 4-5).

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

C. Fishing & Other Uses

⁵ CF: Harbormaster Questionnaire dated October 29, 2018.

⁶ CF: Harbormaster Questionnaire dated October 29, 2018.

Fishing. According to the St. George Harbormaster, “little recreational fishing” and “very limited lobster/urchin harvesting” occurs within the area of the proposed lease.⁷ During the site visit on December 6, 2018, DMR staff observed lobster buoys between the proposed lease and Elwell Island, to the west (SR 8). No other commercial or recreational fisheries activities were observed at that time.

The applicants intend to remove longlines from the proposed site between harvest time in the spring and seeding time in the fall (App 4-5). Therefore, it is unlikely that the proposed lease would impede commercial or recreational fishing activities in the area during the months of July, August, and September.

Per the site report, “if the proposed lease were granted, lobster fishing would be prevented within the lease area during the months when longlines are present” (SR 8). Additionally, the site report states that the presence of longlines could cause lobstermen to avoid the area between the proposed lease and Elwell Island, due to the possibility of entanglement (SR 8). However, the remainder of Rackliff Bay would remain available for lobster activity during the time when longlines would be installed on the proposed lease (SR 8).

Given the seasonal nature of the proposed lease, the remaining space available in Rackliff Bay for lobster activities and other commercial fisheries, the harbormaster’s statement that limited fishing and lobster/urchin harvesting occurs in the area of the proposed lease, and the absence of public comments expressing concerns regarding interference with fishing, it is reasonable to conclude that the proposed lease is unlikely to unreasonably affect commercial and recreational fishing activities in the area.

Exclusivity. The applicant requests that lobster fishing and dragging be prohibited within the boundaries of the proposed site from October through June to avoid gear entanglement (App 6). Restricting lobster fishing and dragging from October 1 to June 30 is reasonable to enable the aquaculture project to be carried out while encouraging the greatest number of compatible uses of the area, as provided in 12 MRS §6072-A (15). Conditions reflecting these restrictions will be included in the lease.

Other aquaculture uses. Ben Stendel and Keith Miller, the lease applicants, each currently hold four Limited Purpose Aquaculture (LPA) licenses near the proposed lease site.⁸ These LPA licenses were originally granted in 2017 for the cultivation of marine algae using suspended culture techniques (SR 8). The Department has received no complaints regarding the operation of these licenses. The four LPA licenses held by Ben Stendel, which are located immediately east of the proposed lease site, will be relinquished if the proposed lease is issued (App 6).

Other than the eight LPA licenses held by the applicants, no existing aquaculture sites are located within one mile of the proposed lease site (SR 8-9). A single pending aquaculture lease application, which was deemed compete prior to the Miller and Stendel application, is located approximately 4,220 feet to

⁷ CF: Harbormaster Questionnaire dated October 29, 2018.

⁸ The LPAs are designated BSTE117, BSTE217, BSTE317, BSTE417, KMIL117, KMIL217, KMIL317, and KMIL417. See page 9 of the site report for a map of the LPA locations.

the northwest of the proposed lease, straight-line distance.⁹ The distance between these proposed lease sites makes it unlikely that the activities proposed by Miller and Stendel will negatively impact the other proposed lease. Based on this evidence, it appears that the lease proposed by Miller and Stendel will not unreasonably interfere with other aquaculture uses in the area.

Other water-related uses. During the site visit on December 6, 2018, DMR staff did not observe other water-related uses of the proposed lease area not described elsewhere in this decision. During the review period, the Department did not receive any public comments detailing other uses of the area. Based on the absence of public comments, it is reasonable to conclude that there are no concerns regarding the effects the proposed lease may have on 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

Data collected by DMR show that between 2003 and 2005, the closest documented eelgrass beds were located approximately 890 feet from the proposed lease (SR 10). Additionally, the applicant did not observe eelgrass within the boundaries of the proposed lease site in October of 2017 (App 7).

Based on data maintained by the Maine Department of Inland Fisheries and Wildlife (MDIF&W), Tidal Wading Bird and Waterfowl Habitat is located over 1,000 feet from the proposed lease (SR 9). DMR sent a copy of the lease application to MDIF&W for their review and comment. MDIF&W indicated: “minimal impacts to wildlife are anticipated.”¹⁰ Based on this evidence, it appears that the culture of marine algae, as proposed for this 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

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 the public use or enjoyment within 1,000 feet of beaches, parks, or docking facilities owned by municipal, state, or federal governments.

F. Source of Organisms

⁹ Experimental lease application submitted to DMR by Maude Robin McCoy and James W. Balano III, and deemed complete on August 7, 2018. Distance determined using AcrMap version 10.6.

¹⁰ CR: Email from J. Perry, MDIF&W Environmental Review Coordinator, dated November 30, 2018.

Marine algae seed will be obtained from Ocean Approved located in Saco, Maine¹¹ (App 2). This is an approved source of seed stock.

Therefore, the applicant has demonstrated that there is an 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. 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.
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 3.9 acres to Keith Miller and Ben Stendel 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 lessee¹²; 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*), 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) (D) in the amount of \$5,000.00, conditioned upon performance

¹¹ The application lists the address of the source of stock as PO Box 8129, in Portland, Maine. According to DMR records, the Ocean Approved facility is located in Saco, Maine.

¹² 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.”

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 MRSA §6072-A (15)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.

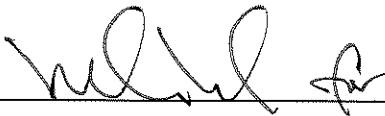
The following conditions shall be incorporated into the lease:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Except for moorings, mooring buoys, and required marker buoys, no gear shall be deployed on the lease site from July 1 through September 30.
3. Dragging and lobster fishing are prohibited within the lease boundaries from October 1 to June 30, except by authorization of the leaseholder.
3. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

7. REVOCAION 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: 1.23.19



Patrick C. Keliher, Commissioner
Department of Marine Resources

¹³ 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 commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits.”