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 High Island and southwest of Spectacle Island. The proposed lease is 3.76 acres and is for the suspended cultivation of sugar kelp (Saccharina latissima), skinny kelp* (Saccharina angustissima), winged kelp (Alaria esculenta), horsetail kelp (Laminaria digitata), dulse (Palmaria palmata), Irish moss (Chondrus crispus), and laver (Porphyra sp.).

1. THE PROCEEDINGS

A. Background

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 Rockland; 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 30, 2019, and a public hearing was held on 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.

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* Applicant requested 4 acres. DMR calculations indicate the area is 3.79 acres.
* 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.
* The public hearing for this application was originally scheduled for October 1, 2019 but was rescheduled to November 13, 2019.
Sworn testimony was given at the hearing by the following witnesses:

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<th>Name</th>
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<tr>
<td>Jason and Molly Hooper</td>
<td>Applicants</td>
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<td>Jon Lewis</td>
<td>Director, DMR Aquaculture Division</td>
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<td>Richard Carver, Travis Fogg, David Mahonen, Bill Oliver, Charles Oliver, Maxwell Oliver, Joshua Spearing, PJ Spearing, Steve Sutela</td>
<td>Lobstermen</td>
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<td>James Crimp</td>
<td>Atlantic Sea Farms</td>
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The applicants, Jason and Molly Hooper, described the proposed project and location of the lease and gear. Jon Lewis, DMR Aquaculture Program Director, described the site visit. James Crimp, with Atlantic Sea Farms, testified about Atlantic Sea Farms, their involvement with James and Molly Hooper, and where the source of seed comes from. Lobstermen in attendance testified about how the proposal may affect other uses of the area. In general, lobstermen questioned the applicants as to why they chose the proposed location and testified that they were concerned the proposed lease would interfere 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)

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 longlines 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 moved to update 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 High Island (SR 2). Gooseberry Knob and unnamed ledges are located west/northwest and Spectacle Island is located to the northeast (SR 2). The High Island shoreline that faces the proposed lease area is undeveloped (SR 2), and a rocky intertidal zone leads to sloping uplands and mature forest (SR 2). During DMR’s site visit, depths within the proposed site ranged from 44-48.5 feet. When correcting for tidal variation, depths are approximately 1 foot higher at the nearest high water, and 8.7 feet lower at mean low water (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 on the lease site.

A. Riparian Access

High Island is located more than 400 feet away from the proposed lease site. The shoreline closest to the proposal is undeveloped and there are no docks or moorings with which the proposal may interfere (SR 8). During their visit to the site, DMR scientists observed several boats anchored or moored between Dix, Birch, and High Islands. The proposed lease area would not prevent access to this anchorage or mooring area, if granted (SR 8). No docks or moorings associated with Gooseberry Knob and Spectacle Island, located northwest and northeast of the proposed lease, were observed, and these islands appeared uninhabited on June 17, 2019 (SR 8).

No public comments were received regarding riparian ingress and egress and no public testimony was offered on this topic. Based on the lack of public comments, and information
provided in the Department’s site report, 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 located more than 4,000 feet east of the marked navigation corridors within the Muscle Ridge Channel (SR 8). The Muscle Ridge Channel is heavily trafficked and most boats traversing the area, especially those without local knowledge of the area, are expected to adhere to the designated channels, due to unmarked navigational hazards (SR 9). Given the distance from the marked navigational channel, the proposed aquaculture activities are unlikely to interfere with use of the channel.

The proposed lease is surrounded by Gooseberry Knob and unnamed ledges to the west/northwest, High Island to the south, and Spectacle Island and unmarked navigational hazards to the east/northeast (SR 9). At low water, there would be approximately 400 feet of navigable water between the proposed lease and High Island (SR 9). Approximately 280 feet of navigable water would separate the proposal and navigational hazards to the west, and there remains approximately 200 feet between the SE corner of the proposal and an unmarked submerged ledge (SR 9). Given the available distances to travel between the lease boundaries and High Island, Gooseberry Knob, Spectacle Island, and unnamed ledges and hazards, the lease is unlikely to be an issue to navigation.

The applicants had originally applied to leave 6 moorings in place year-round, with all other gear in place October 1st to June 30th. At the hearing, the applicants moved to update 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. Several lobstermen testified that the proposed lease encompasses a heavily used transit area for not only fishermen but other boaters as well. While the heaviest use of the area would be during the summer months, testimony from fishermen indicated they do use the area all year. Lobstermen also testified that having to go around the proposed lease would add additional time to the routes they would have to take, but that having no gear in place during the summer would help some. The lease will be conditioned to only allow gear in the water between November 1st and June 15th annually, which will help reduce any potential impacts to navigation. The lease site will be free of gear during the times of year vessel traffic is heaviest.
Based on the evidence, and the condition described above, it is reasonable to conclude there are minimal concerns regarding the effects the proposed lease may have on navigation.

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

B. Fishing & Other Uses

Fishing. During DMR’s visit to the site, approximately 10 lobster buoys, most belonging to the same fisherman, were observed between High Island and the proposed lease area (SR 9). Additional buoys were observed between the western boundary of the proposal and Gooseberry Knob while others were noted more than 50 yards east of the proposal (SR 9). In their site report, DMR notes that many commercial and recreational fisheries, especially those targeting lobster and crabs, would be more prevalent during summer months while some fisheries, such as those for scallop and urchin, are winter fisheries and would not have been observed during DMR’s visit to the site on June 17, 2019.

Local lobstersmen questioned the applicant as to why they chose this location for their proposed site and testified at the hearing that the proposed aquaculture lease would interfere with their fishing. Many expressed concerns that if the proposed lease is granted it would take fishable bottom away from them, and that the lobstering community in the area is not supportive of the proposal. The applicants indicated they chose the location due to them having an affiliation with High Island, and for the water temperature and depths at the proposed site.

Multiple fishermen testified that when they set traps in the spring and pull traps at the end of the season varies year to year, but most indicated the heaviest lobstering occurs after June and before November. Bill Oliver, a lobstersman, testified that he had pulled traps the week before the hearing.4 When further questioned about the timing of his fishing, Mr. Oliver confirmed he had pulled his traps in early November, and that he did not have traps in the water by June 1st this year. Richard Carver, another local lobstersman, testified that he tries to set traps in the area in April, but he does not always get out that early, and he no longer fishes full time. And Stephen Sutela testified that the lease would interfere with lobstering and that he used to fish the area as early as April, but that due to his age, he sets later in the year and pulls traps earlier than he used to. Mr. Sutela testified that at least half of the 12 fishermen who fish the area fish into October or later. Only a couple of lobstersmen in attendance at the hearing indicated they still actively lobster in the area full time. PJ Spearing, who testified that he still lobsters full time in the area, indicated he has set traps in the area as early as April 1st and usually pulls traps by the middle of September,

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4 The hearing was held on November 13, 2019.
but can go as late as November or December depending on the season. Almost all lobstersmen who testified indicated that the timing of their operations varies year to year and how early they set traps in the spring is very weather dependent.

Travis Fogg, a lobsterman and scallop fisherman in attendance, testified that the presence of the lease would prohibit him from dragging for scallops in that area. Mr. Fogg indicated that when the Muscle Ridge Channel is open for scalloping he does fish in that area, and that weather will usually dictate where he fishes. However, the last time he fished the proposed lease site for scallops was roughly five years ago. Others in attendance mentioned they had witnessed scalloping in the area but had not recently fished the area themselves. Scalloping is allowed in the Muscle Ridge area under limited access; the area is currently open to the harvest of scallops one day per week for drag harvest and one day per week for dive harvest. The proposed lease is requesting use of 3.79 acres, and the area outside the proposed lease would still be accessible to scallop fishing.

As discussed under the navigation section of this document, the applicant originally proposed to culture marine algae between October 1st to June 30th. At the hearing, applicants moved to update 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. Not setting gear until November allows lobstering to continue later into the fall. Given the variability of when lobster traps are set each year, removing all gear by June 15th means there will be no aquaculture gear in the water by the time lobstering typically picks up for the summer. Those who set traps prior to June 15th will still be able to do so in the available space outside the boundaries of the aquaculture lease.

**Exclusivity.** Due to possible interactions with gear, lobstering and dragging are restricted from the site from November 1 to May 15th annually.5

**Other aquaculture uses.** There are no other active aquaculture licenses or leases within 1 mile of the proposed lease (SR 10). However, the applicant had a second aquaculture lease application under review by DMR approximately 900 feet to the west of this proposal. That application has since been denied6.

**Other water-related uses.** The applicant noted that minimal kayaking occurs in the vicinity during the summer months, and that they have not observed swimming in the proposed

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5 The applicant originally requested exclusive use from October 1 through June 15th, annually. At the hearing the applicant updated their proposed operations from November 1 to June 15th. However, the lease will be conditioned to only allow gear to be in the water from November 1 to June 15th, so that change has been reflected in the exclusive use section.

6 Application from Jason and Molly Hooper for a lease site northeast of Little Green Island and southwest of Gooseberry Knob.
lease site (App 9). At the public hearing, Stephen Sutela testified that there is a beach on Birch Island that is used during all times of year. However, the presence of this lease should not impede access to Birch Island, as the lease is located on the north side of High Island, while Birch Island is located south of High Island, and is more than 1,000 feet away from the proposed lease site. 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 evidence, 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, 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

On June 17, 2019 DMR staff used a GoPro video camera to observe the benthic ecology within the boundaries of the proposed lease (SR 13). DMR scientists observed firm mud and sand with little topographical variation (SR 13). Patches of kelp, smooth cord weed, and other macroalgae were observed, as were burrowing anemones and crabs. Burrows belonging to crabs, eel, and/or lobsters were occasionally noted (SR 13).

According to data collected by DMR in 2003, the nearest eelgrass to the proposed lease is likely located in the shallows around the islands to the south of the proposal (SR 12). The data indicates the closest eelgrass bed to the proposed lease sits approximately 980 feet away, to the south of High Island (SR 12). No eelgrass was observed in the underwater video taken by DMR on June 17, 2019 (SR 12).

During the visit to the site, DMR scientists observed gulls, common terns, eider ducks, and harbor seals in the area around the proposed lease. An osprey nest was observed on Little Green Island and three juvenile bald eagles were identified on High Island (SR 11). At the hearing, Maxwell Oliver, a local lobsterman, testified that he has seen an osprey nest and bald eagles nesting in the area and expressed concern about the location of the lease. DMR sent a copy of the application to MDIFW for their review and comment, and they indicated that “minimal impacts are anticipated for this project.”

Based on the evidence that the proposed lease does not intersect with historical eelgrass beds, MDIFW did not identify any concerns with the proposal and because DMR’s site report does not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem,

7 CF: Email from R. Settele to C. Burke on May 5, 2019
it appears that the proposed aquaculture activities 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

Spectacle Island, owned by the Maine Department of Agriculture, Conservation and Forestry (App 19) is located approximately 680 feet northeast of the proposed lease site. Per the site report, “there are no other beaches, parks, or docking facilities owned by federal, state, or municipal government within 1,000 feet of the proposed lease site” (SR 15).

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 sugar kelp, skinny kelp, winged kelp, horsetail kelp, dulse, Irish moss, and laver from Atlantic Sea Farms. 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 timing of gear deployment, the aquaculture activities proposed for this site will not unreasonably interfere with navigation.

3. Given the condition related to 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.

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8 When the applicant applied, Atlantic Sea Farms was known as Ocean Approved. Ocean Approved has since changed their name to Atlantic Sea Farms.
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 at 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 3.79 acres to Jason and Molly Hooper, 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 lessee; 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), skinny kelp (Saccharina angustissima), winged kelp (Alaria esculenta), horsetail kelp (Laminaria digitata), dulse (Palmaria palmata), Irish moss (Chondrus crispus), and laver (Porphyra sp.) 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) (8) 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).\(^9\) Conditions

\(^9\) 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:
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 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. All gear, including moorings, lines, and buoys, must be removed from the water between June 15th and November 1st of each year.
3. Due to possible interactions with gear, lobstering and dragging are restricted from the site from November 1 to June 15th annually.

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: 12/19/2019

Patrick C. Keliher, Commissioner
Department of Marine Resources