

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Standard Aquaculture Lease Application
Suspended Culture of Seaweed
Chebeague Island, Maine

Sea Stuff, LLC

August 6, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Sea Stuff, LLC applied to the Department of Marine Resources (DMR) for a 3-year experimental lease on 3.9 acres for the cultivation of sugar kelp (*Saccharina latissima*), horsetail kelp (*Laminaria digitata*) and winged kelp (*Alaria esculenta*) using suspended culture techniques. The proposed site is located north of Little Chebeague Island, and west of Great Chebeague Island, in Casco Bay, Cumberland County, Maine. For the reasons described below the application is denied and a lease will not be issued.

1. THE PROCEEDINGS

Sea Stuff, LLC's application was deemed complete by DMR on April 18, 2019. Notice of the completed application and 30-day public comment period was provided to state and federal agencies, the Town of Chebeague Island, and others on DMR's mailing list. Notice of the application and comment period was published in the May 2, 2019 edition of the *Northern Forecaster*. During the comment period, DMR received four requests for a public hearing. While a public hearing is not required on an experimental lease application unless five or more requests for a hearing are received, due to the interest in this case, DMR opted to hold a hearing on the application. The site report was issued on September 2, 2019, and a hearing was scheduled for this application on November 6, 2019.

Notice of the hearing and copies of the application and DMR's site report were provided to state and federal agencies for their review, the Town of Chebeague Island, and others on DMR's mailing list. Notice of the hearing was advertised in the October 3, 2019 and October 24, 2019 editions of the *Northern Forecaster*.

On October 21, 2019, the Town of Chebeague Island applied for intervenor status in the proceeding. The Town's application for intervenor status included a copy of their 'Sunset Landing Concept Harbor Plan' for a piece of property known as Sunset Landing owned by the town and located approximately 1,240 feet to the east of the proposed lease area. The town's

application for intervenor status indicated that the proposed lease would interfere with their ability to develop the Sunset Landing property as a municipal facility for barge and passenger ferry traffic. On October 25, 2019, DMR issued a final decision granting intervenor status to the Town of Chebeague Island and notified all parties. Also on October 25, 2019, DMR issued a procedural order to Sea Stuff, LLC and the Town of Chebeague Island detailing the conduct of the hearing and specifying the submission of pre-filed testimony and exhibits. The procedural order required the parties to pre-file proposed exhibits no later than 4 p.m. on November 4, 2019. Subsequently, on November 4, 2019, DMR received an email from the Town of Chebeague Island indicating they wished to revoke their intervenor status, and that individuals from the Town would participate at the hearing in their capacity as representatives of the municipality or as members of the public. Sea Stuff, LLC did not pre-file any testimony or exhibits.

The public hearing on Sea Stuff, LLC’s application was held as scheduled on November 6, 2019. Sworn testimony was given at the hearing by the following witnesses:

Name	Affiliation
Christopher Papkee	Applicant, Sea Stuff LLC
Flora Drury	DMR Aquaculture Scientist
Herb Maine	Chair, Town of Chebeague Island Board of Selectmen
Aaron Rugh	Coastal Waters Commission
John Rent	Chebeague Transportation Company
Donna Miller Damon, Ernie Burgess, David Hill, Paul Belesca	Members of the public

Christopher Papkee, representing Sea Stuff, LLC, described aspects of the lease application and answered questions regarding the proposal. Ms. Drury testified about DMR’s site visit and answered questions related to DMR’s aquaculture program and application processing. Mr. Maine and Mr. Rugh provided testimony on behalf of the Town’s Board of Selectmen and Coastal Waters Commission about the Town’s opposition to the proposed lease and potential conflict with navigation and municipal facilities. Mr. Rent testified on behalf of the Chebeague Transportation Company, while Ms. Damon, Mr. Burgess, Mr. Hill and Mr. Belesca testified about issues related to DMR’s lease decision criteria and how the proposal may affect their uses

and ability to navigate in the area.

There were no representatives from other state or federal agencies present at the hearing. Other representatives from the Town of Chebeague Island were present including, Marjorie Stratton the Town Administrator, Genaro Balzano III the Chebeague Island Harbormaster, and Bob Earnest with the Town's Shellfish Conservation Commission. These additional town representatives did not offer testimony.

The hearing was recorded by DMR. The Hearing Officer was Erin Wilkinson. The evidentiary record before DMR includes the following:

1. Case File (CF)
2. Application (APP)
3. Site Report (SR)
4. Sunset Landing Concept Harbor Plan (Exhibit 4)

At the hearing, representatives of the town indicated that the Board of Selectmen intended to bring a proposal before the Town of Chebeague Island's town meeting in June 2020 to determine if voters intend to develop the Sunset Landing property. Because the outcome of this vote could alter the use of this property during the potential aquaculture lease term, DMR decided to keep the record on this proceeding open to gather additional evidence surrounding the Town's plans for the Sunset Landing property, in light of the anticipated June 2020 vote. On June 18, 2020, DMR contacted Marjorie Stratton, the Chebeague Island Town Administrator, inquiring whether the planned June 2020 vote had occurred. In her response to DMR, Ms. Stratton included Herb Maine, who subsequently responded indicating that due to the difficulty of holding public meetings during the COVID-19 pandemic, the Board of Selectmen did not bring the Sunset Landing proposal to a town vote and, as a result, there has been no definitive vote or decision regarding development of the Sunset Landing property or upgrading the existing municipal site known as Stone Wharf.¹ Because a decision on this application has already been delayed by more than 6 months while awaiting the result of the town vote, and because the Town of Chebeague Island has no vote planned for the foreseeable future, DMR has decided to proceed with issuing a decision on this case using the evidence already on record. DMR notified the applicant on June 25, 2020 and June 30, 2020 that no new information was taken into the record

¹ CF: Email exchange between E. Wilkinson and M. Stratton and H. Maine on June 18, 2020.

after the close of the hearing, and a decision would be issued on their application.²

2. DESCRIPTION OF THE PROJECT

A. Site Description

On July 9, 2019, 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 is in Casco Bay, north of Little Chebeague Island and west of Great Chebeague Island (SR 2). A tidally exposed sandbar is located to the southeast of the proposed lease, between Great Chebeague and Little Chebeague Islands (SR 2). Shorelines of both islands are comprised of rock and sand. The shoreline on Little Chebeague Island is undeveloped, while residential (and possibly commercial) buildings are found in the uplands of Great Chebeague Island (SR 2). Correcting for mean low water, depths at the proposed site range from 29.4-30.2 feet (SR 5).

From the northeast and southeast corners of the proposed site, the nearest points of land on Great Chebeague Island are approximately 1,030 feet and 1,430 feet away, respectively, at mean low water (SR 5).

B. Proposed Operations

Sea Stuff LLC is proposing to culture marine algae on 3.9 acres using suspend culture techniques (App 1). The applicant proposes to culture marine algae on 15, one-thousand-foot longlines suspended seven feet below the surface of the water (App 18). Longlines would be spaced 10 feet apart and be secured in place by a 10” screw anchor on each end (App 17). Seeding of lines would take place October-November, over the course of 1-3 days (App 5). Once seeded, the site would be monitored periodically during the growing process. Harvesting would occur in the spring over the course of 2-15 days (App 5). After harvesting is complete, longlines and depth control buoys and weights would be removed from the site (App 5). The applicant indicates the proposed activities would occur between October 15th and June 10th annually, however, 30 moorings and the lines and buoys associated with those moorings would remain on site year-round (App 5).

² Personal communication between E. Wilkinson and C. Papkee (Sea Stuff, LLC). Voicemail left for C. Papkee on June 25, 2020. Follow up email sent to C. Papkee on June 30, 2020.

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 the number and density of aquaculture leases in an 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, 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. Navigation

i. General navigation and riparian ingress and egress

During their visit to the site, on July 9, 2019, DMR Scientists observed both commercial and recreational vessels in the general area of the proposed lease, and additional boats were observed moored and anchored near the sandbar that connects Great Chebeague and Little Chebeague Islands at lower tidal stages (SR 7). DMR's site report notes that there is heavy vessel traffic in the area, especially during summer months, but that because the proposed lease is over 1,000 feet from the adjacent shoreline it is unlikely the proposal would prevent boats from travelling between it and the shoreline, if granted (SR 7). Because the proposed lease is located more than 1,000 feet from all nearby shorelines there are no riparian landowners within 1,000 feet of the proposed aquaculture activity, and DMR's site report notes that due to this distance, access would likely not be prevented if the proposed lease were granted (SR 6). However, the site report states that it is likely some landowners would need to alter their traditional routes when navigating to and from the Great Chebeague Island shoreline, which, at the closest point, is located 1,030 feet away from the proposal at mean low water (SR 5 & 6). DMR's site report also noted that it is possible vessels would avoid the area due to the thirty mooring balls that are proposed to remain onsite all year (SR 7). While there are no riparians within 1,000 feet of the proposed site, landowners with property adjacent to the proposed lease expressed concerns at the hearing about their ability to navigate to and from their properties if the lease is approved.

In their review of the application, the Harbormaster for the Town of Chebeague Island

commented that the proposed lease would impede the ability of riparian owners to safely navigate to their moorings and docks, and that the area is heavily transited with both recreational and commercial traffic.³ According to the site report, no moorings were observed within the immediate vicinity of the proposed lease site (SR 6), however, the Chebeague Island Harbormaster indicated that there are permitted moorings within the proposed lease boundary.⁴ A number of other individuals, who were either representing the Town of Chebeague Island in some capacity, or as members of the public, commented that the proposed lease would interfere with navigation. Aaron Rugh, who represented the Chebeague Island Coastal Waters Commission, testified that the proposed application is in line with transit routes used by many boats coming from an area on Chebeague Island known as the ‘Hook’ and heading toward the mainland on Cousins Island (Rugh, testimony). In his testimony, Mr. Rugh also stated that the number of mooring balls proposed (poly buoys) could be dangerous, especially for small boats because they can be hard to see in the dark or in adverse weather conditions, and because they will be in an area that boaters do not expect them because lease areas are not marked on navigation charts (Rugh, testimony). Upon questioning, Mr. Rugh indicated that if the number of mooring balls were reduced, or if they were absent during the summer, the chances of hitting one would be reduced during those months, but that would not fully alleviate the issue outside of those times (Rugh, testimony). Both Mr. Rugh’s testimony, and the submitted Harbormaster Questionnaire, indicated that there could be interference with navigation and that the proposed aquaculture activities did not meet any of the criteria the Coastal Waters Commission uses to evaluate lease proposals surrounding Chebeague Island.⁵

Mr. Belesca testified at the hearing that he owns property adjacent to the Town’s Sunset Landing property, and that if the lease is approved, he would need to alter course in order to navigate to and from the mainland. Because he, and other residents of Chebeague Island navigate to the mainland for school, work, and other commercial and personal activities, they navigate the area during all times of day and year and in all types of weather conditions, and they need the safest and most direct route. Having to navigate around the existing aquaculture activity in Casco Bay has proved challenging and adding another lease to maneuver around to access his property would pose difficulty, especially during adverse weather conditions (Belesca,

³ CF: Harbormaster questionnaire signed by Genaro Balzano III on May 26, 2019.

⁴ CF: Harbormaster questionnaire signed by Genaro Balzano III on May 26, 2019.

⁵ CF: Harbormaster questionnaire signed by Genaro Balzano III on May 26, 2019.

testimony). Ms. Damon, who is currently serving on the Town's Board of Selectmen but was at the hearing as a member of the public, testified that if Sea Stuff's application is approved, riparian owners, or those wishing to access the Town's property located at Sunset Landing, would lose their ability to alter their course depending on wind, wave, and current conditions. Because Seal Ledges (located to the northeast of the proposed lease) already create a barrier at low tide, options for adjusting course would be further limited should the lease be approved. Ms. Damon also testified that the lease would be a hazard to navigation because it will be difficult to see at night and in the fog, and recreational vessels such as sailboats and those that draw between 6-8 feet would become entangled in the lines the applicant is proposing to have approximately 7 feet below the surface. Because the applicant's proposed growing season also coincides with hazardous winter weather, this could pose a significant navigation risk for those transiting to and from the island during those times (Damon, testimony).

ii. Navigation and interference with municipal facilities

The Town of Chebeague Island originally applied for and was granted intervenor status in the proceedings. Their application as an intervenor was based on their ownership of a piece of property, known as Sunset Landing, which is located east of the proposed lease site.⁶ According to the site report, this parcel is approximately 1,240 feet away from the proposal (SR 10). In his testimony, Mr. Maine indicated that the Town of Chebeague Island has made a concentrated effort since 2014 to evaluate the Sunset Landing property for the purpose of an island-mainland transportation facility (Maine, testimony). The Town's efforts have included survey work, wind and wave analysis, and other efforts, and in 2018 a detailed concept plan for a municipal facility at the site was prepared.

The completed Harbormaster Questionnaire indicated that the proposed facility would potentially serve as the primary ferry berth for Chebeague Island.⁷ The site report noted that more information on the location and scope of the proposed municipal docking facility would be required in order to determine any potential impact the proposed lease may have on any municipal project at the Sunset Landing location (SR 10). The Town submitted the 'Sunset Landing Concept Harbor Plan' as part of their intervenor application, and it was entered as an exhibit into the record during the hearing (Exhibit 4). This concept plan lays out two options for

⁶ While the Town was granted intervenor status, they withdrew their status as an intervenor prior to the start of the hearing.

⁷ CF: Harbormaster questionnaire signed by Genaro Balzano III on May 26, 2019.

the Town to consider if they decide to move forward with developing the Sunset Landing property. Option 1 would include a full-service facility similar to the current municipal transportation landing, known as Stone Wharf, that would meet the needs of fishermen, commercial and recreational users, and boat/freight movement. Option 2 is a reduced service facility for limited commercial use and boat/freight movement (Exhibit 4, page 4). Mr. Maine indicated that Chebeague Island has limited options to consider that address their needs for an updated municipal transportation facility and approving the proposed lease could result in navigational or other challenges for such a facility should one be developed on the Sunset Landing property (Maine, testimony).

Ms. Damon testified that the Sunset Landing property is the only alternative location available for the Town to consider if the municipal ferry transportation terminal is to be moved from the inadequate facility at Stone Wharf and is the Town's only other deep-water access option (Damon, testimony). Both Mr. Maine and Ms. Damon testified that approval of the Sea Stuff, LLC application would create a barrier to development of a future municipal facility and could impact the public's perception that Sunset Landing is a viable option for such a facility. These individuals stressed that the Town needs to be able to make decisions about the property without having to consider the lease and the additional difficulties that would pose for the Town, if approved. Concern was expressed by those testifying that if the municipal landing is relocated to the Sunset Landing property, and the lease is approved, there would be limited space for ferries and barges to safely access the terminal and turn around for return trips to the mainland. John Rent, President of the Chebeague Island Transportation Company, which is the company that currently services the island, testified that while they could navigate around the lease, having to navigate around that large of an obstruction that close to a municipal terminal is not preferable (Rent, testimony). Mr. Maine testified that there would be two things, a barge ramp and a wharf, that extend into the water at any new facility. He could not recall the specific numbers but estimated that a barge ramp would be ~240 feet in length, and a wharf would extend ~180 feet out (Maine, testimony). According to the information in the Sunset Landing Concept Plan, pier length at a new facility could be anywhere between ~185 to 310 feet, depending on which option might ultimately be selected for development (Exhibit 4, page 13, 17). While the proposed lease is approximately 1,240 feet away from the Sunset Landing property, should any municipal facility be constructed that includes a pier, the available space for navigation would be further

reduced. In addition, if any new facility includes barging services and movement of cargo, larger boats that require more space may also be accessing the area.

Mr. Hill, who is on the Board of Selectmen for the town, but testified as a member of the public, said that purchasing the Sunset Landing property was a concentrated effort by the Town to secure the property for development of a municipal transportation area or town landing, and is the only piece of property left on the island that could fit these specific needs that is not privately owned (Hill, testimony). Mr. Hill mentioned that while the property is not currently developed, because of the amount of investment the Town has made into this property there is a clear indication that eventually this land will be developed because the current ferry landing (the Stone Wharf) is inadequate. Currently, the Sunset Landing property is used for recreational purposes (Rugh, testimony). During questioning, Ms. Drury asked Mr. Hill if the decision to purchase this parcel was to preserve access to Chebeague Island as a town landing, to which Mr. Hill responded, “the purchase was completely due to access to Chebeague as a town landing” (Hill, testimony). Ms. Damon indicated in her testimony that the Town is currently deciding what to do with the Sunset Landing property and continuing to evaluate how the parcel fits into the Town’s transportation plan, that it was not purchased for affordable housing or recreational purposes, and that the parcel was specifically acquired to help address transportation to and from the mainland (Damon, testimony).

Testimony from Mr. Maine, Ms. Damon, Mr. Hill and others indicate that if the aquaculture lease is approved, it could prohibit the Town from developing their Sunset Landing property as intended, or that the approval of the aquaculture lease could result in other challenges for any municipal facility that may be developed in that location. As discussed in Section 1 of this document, at the time of the November 6, 2019 hearing the Chebeague Island Board of Selectmen was planning to bring a proposal before the town meeting in June 2020 to determine if voters intend to develop the Sunset Landing property. However, that vote has not yet occurred, and there is no current plan to address their transportation needs at either their existing facility (Stone Wharf) or Sunset Landing. However, it should be recognized that the Sunset Landing property was specifically acquired for transportation purposes, a concentrated effort has been made by the Town to explore the development of this property for a municipal transportation facility, and the Town has limited options to address their transportation needs.

iii. Final determination

While longlines would be removed from the site during the summer months, when vessel traffic is likely the heaviest, testimony indicates that there is heavy vessel traffic year-round and at all times of day. As is evident from DMR's site report, traditional routes to and from the Chebeague Island shore would likely be impacted by this lease. Testimony from multiple individuals shows that the addition of the proposed lease to the area could add difficulties for landowners and boaters to safely navigate to and from the Chebeague Island shore, in an area that is already limited by existing aquaculture activity.

Approval of this lease adjacent to the Sunset Landing property could also impede the Town's ability to construct a municipal transportation facility in the future or could significantly impact their ability to plan for their transportation needs. The navigation interferences identified in section 2(A)(i) of this document could be exacerbated if the Town moves forward with development of the Sunset Landing property, because boaters would have to navigate around the lease in order to access any facility developed on Sunset Landing.

Based on the evidence in the record, the addition of this lease to the area surrounding Chebeague Island could result in unreasonable interference with the ability of landowners and other boaters to safely navigate to and from the area.

Therefore, the proposed site will unreasonably interfere with navigation.

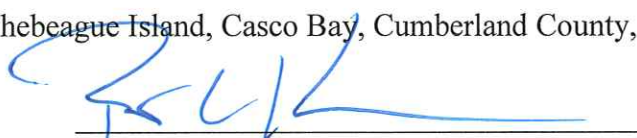
4. CONCLUSIONS OF LAW

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

5. DECISION

Based on the foregoing, the Commissioner denies the application of Sea Stuff, LLC for a lease to cultivate marine algae using suspended culture techniques on 3.9 acres north of Little Chebeague Island, and west of Great Chebeague Island, Casco Bay, Cumberland County, Maine

Dated: 8/06/2020



**Patrick C. Keliher, Commissioner
Department of Marine Resources**