

## FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Goose Island Oysters, LLC applied to the Department of Marine Resources (DMR) to change the species and gear authorization on experimental lease MID GIx2, located west of Upper Goose Island in the Town of Harpswell, Cumberland County, Maine. The leaseholder is seeking authorization to cultivate sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), surf clams (*Spisula solidissima*), and sea scallops (*Placopecten magellanicus*) on MID GIx2, and to deploy lines for the cultivation of marine algae.

### 1. THE PROCEEDINGS

The amendment application was submitted to DMR on November 11, 2020 and was deemed complete by DMR on January 07, 2021. Notice of the application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of Harpswell and its Harbormaster, and others on DMR's mailing list. The evidentiary record before DMR regarding this lease amendment application includes five exhibits (see exhibit list below).

#### A. List of Exhibits<sup>2,3</sup>

1. Application for a change of gear authorization
2. Case file
3. Executed lease document for MID GIx2 signed September 3, 2019
4. Original lease decision signed August 19, 2019
5. Original lease application, deemed complete February 01, 2019

### 2. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of experimental aquaculture lease amendments is governed by 12 M.R.S.A. § 6072-A (8) and Chapter 2.44 of DMR regulations. The statute and regulations provide that the Commissioner may grant amendments for the use of specific gear, species, and/or operational modifications on an existing lease site provided the proposed changes are consistent with the findings on the underlying lease

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<sup>1</sup> Although referred to in the application as a *Saccharina latissima* morphotype, skinny kelp is now considered a separate species (*Saccharina angustissima*).

<sup>2</sup> Exhibits 1-5 are cited below as: Amendment Application – “App”, Case File – “CF”, Executed lease for MID GIx2 – “Exhibit 3”, DMR Decision on Lease MID GIx2 - “Exhibit 4”, and Original Experimental Lease Application for MID GIx2 – “Exhibit 5”.

<sup>3</sup> Page numbers are cited using the PDF page number, which may not always match the page number written on documents.

application, do not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

### **A. Original Lease Decision**

On August 19, 2019 DMR granted lease MID G1x2 to Goose Island Oysters, LLC (Exhibit 4, page 6). DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Goose Island Oysters, LLC met the requirements for granting an experimental aquaculture lease as set forth in 12 M.R.S.A. § 6072-A (Exhibit 4, page 5).

The decision provided authorization to cultivate American oysters (*Crassostrea virginica*), using suspended culture techniques (Exhibit 4, pages 5-6). Oyster cages, arranged in eight rafts of five cages each, comprise the gear authorized for the suspended culture of shellfish on MID G1x2 (Exhibit 4, page 2). These rafts are arranged in a square, with two rafts per side, and are sunk during the winter months (Exhibit 5, page 21-22). An enclosed equipment float located in the center of the lease, which remains at the surface throughout the year, is also authorized (Exhibit 5, page 22). The rafts and the equipment float are secured to the bottom of the lease site with chain and concrete mooring blocks.

Conditions imposed on lease MID G1x2, pursuant to 12 M.R.S.A § 6072-A (15) and located on page 6 of the decision, are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
3. Unless permission is granted by the leaseholder, scallop or oyster dredging is prohibited within the boundaries of the lease site.
4. Running Tide Hatchery cannot be used as a source of seed until they receive approval status from DMR.

### **B. Proposed Gear Changes and Findings**

Goose Island Oysters, LLC is requesting the authorization to add gear for the cultivation of marine algae on experimental lease MID G1x2. Specifically, the leaseholder is proposing to deploy up to (60) 45-foot lines deployed vertically in the water column on their existing lease (App, page 4). According to the amendment application, lines would be deployed on the northeast and southwest portions of the lease, on either side of the currently permitted shellfish rafts (App, page 10). Lines would be secured with a 25-pound anchor, and a lobster trap-style buoy at the surface of the water (App, page 13). Marine algae gear is proposed to be deployed on the lease from December through June, annually (App, page 4).

As MID G1x2 is already permitted to deploy rafts and an equipment float secured by a concrete mooring block and chain, the anchored lines proposed to culture marine algae in this amendment application are not dramatically different than the gear already authorized on the lease site. In the decision, the finding of fact and discussion of the original application's impact on riparian access, navigation, fishing,

and other uses of the area considered the lease area as a whole and did not discuss gear location or seasonality. For example, when discussing how the proposal might impact riparian access, page 3 of the decision states:

*At mean low water, the proposed lease site is over 1,100 feet from the shorelines [of] Upper and Lower Goose Islands, and water depths of more than 24 feet span most of the distance between the proposal and Goose Island shores (SR 6). Given the distance, and water depths the proposed lease is unlikely to interfere with or prevent navigation between the proposal and the Goose Islands (SR 7). A series of islands is found to the west of the proposed site. At mean low water, Williams Island, the closest of these, is over 3,000 feet from the proposal (SR 7). Given the distance, vessels navigating to the west of the proposal would not be impacted.*

This excerpt from the original lease decision is representative of the rest of the document in that it shows that the finding of fact in the original decision focused on how other users of the area would be impacted by the occupation of the lease area as a whole, as opposed to discussing how gear deployment could accommodate other uses within the lease area.

When considering the impact of proposed gear change on other users of the area, the main difference between the two proposals is that less space would be available within the lease site for other uses from December to June. DMR received one public comment regarding this application stating that lobster fishing occurs in the lease area (CF). Specifically, the commenter stated that he lobster fishes in the area from June to December (CF). As the leaseholder is proposing to deploy additional gear on existing experimental lease MID GIx2 from December to June, it appears that the proposed gear amendment would be compatible with this existing use. If this amendment is granted, a condition will be added to experimental lease MID GIx2 to ensure that the deployment of marine algae gear is restricted to the timing proposed in the amendment application.

The original lease proceedings focused on the entirety of the lease area proposed for use, as opposed to the location and timing of gear proposed. Furthermore, it appears that the proposed gear change is unlikely to alter the behavior of other users of the area, beyond the impact already imposed by MID GIx2. Given this, and because the anchored lines proposed in this amendment application are similar in type to the gear already authorized on the lease site, the proposed change in gear layout is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision. Furthermore, the requested gear change would not result in a change to the original lease conditions.

### **C. Proposed Species Changes and Findings**

The leaseholder is seeking authorization to cultivate sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), surf clams (*Spisula solidissima*), and sea scallops (*Placopecten magellanicus*) on MID GIx2. Marine algae species are proposed to be cultured on gear discussed in Section 2.B of this decision, and shellfish species would be cultured using the cages originally permitted on experimental lease MID GIx2 (App, pages 6 & 7). The leaseholder has demonstrated that there is an available source of sugar kelp (*S. latissima*), skinny kelp (*S. angustissima*), and winged kelp (*A. esculenta*) for cultivation, as they propose to obtain seed stock from Springtide

Seaweed, located in Gouldsboro, Maine (App, page 2). Surf clams (*S. solidissima*) would be sourced from Downeast Institute, located in Beals, Maine, which is an approved source of stock by MDMR. Sea scallop (*P. magellanicus*) spat would be collected from the wild using a spat collector license.

As the proposed sources of stock are all approved by MDMR, and because Section 2.B of this decision found that the proposed gear change required for the culture of marine algae on MID GIx2 is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision, the presence of these species on MID GIx2 are also consistent with these findings. Furthermore, the proposed species change would not result in a change to the original lease conditions. However, biotoxin testing under a Memorandum of Understanding (MOU), and at the leaseholder's expense, will be required for the harvest of surf clams (*S. solidissima*) and sea scallops (*P. magellanicus*). If sea scallop (*P. magellanicus*) harvest will consist only of the adductor muscle (and therefore will not result in whole or roe-on scallop products), no MOU would be required.<sup>4</sup>

### 3. CONDITIONS


Based on the above, the gear amendment is approved with the inclusion of the following conditions:

- A. Marine algae gear may only be deployed on the lease site from December 1<sup>st</sup> through June 1<sup>st</sup> each year.

### 4. DECISION

Based on the foregoing, the Commissioner grants the requests from Goose Island Oysters, LLC for the authorization to cultivate sugar kelp (*Saccharina latissima*), skinny kelp (*Saccharina angustissima*), winged kelp (*Alaria esculenta*), surf clams (*Spisula solidissima*), and sea scallops (*Placopecten magellanicus*) on experimental lease MID GIx2 and for the authorization to deploy marine algae cultivation gear on the lease from December 1<sup>st</sup> through June 1<sup>st</sup>, annually.

Dated: May 24<sup>th</sup> 2021

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

<sup>4</sup> The leaseholder should contact DMR's Bureau of Public Health for more information on establishing this MOU. A list of certified biotoxin labs can be found on the DMR website.

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Experimental Aquaculture Lease Application  
Suspended culture of shellfish  
Upper Goose Island, Middle Bay, Harpswell

**Goose Island Oysters, LLC**

MID GIx2  
August 19, 2019

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION**

Goose Island Oysters, LLC applied to the Department of Marine Resources (“DMR”) for a three-year experimental aquaculture lease located west of Upper Goose Island, Middle Bay, Harpswell, Cumberland County. The proposed lease is 3.28 acres in size and is for the suspended cultivation of American/eastern oysters (*Crassostrea virginica*). DMR accepted the application as complete on February 1, 2019. During the 30-day public comment period, more than five requests for a public hearing were received, and a hearing was held on July 22, 2019. No one intervened in this case.

**1. THE PROCEEDINGS**

Notice of the application and the 30-day public comment period were provided to state and federal agencies, riparian landowners, the Town of Harpswell and its Harbormaster, and others on the Department’s mailing list. Notice of the application and hearing notice was published in the *Times Record* on June 19, 2019 and July 10, 2019.

Sworn testimony was given at the public hearing by the applicant, represented by Matthew Odlin and Finnian Donovan, who described the proposed project, gear type, and location of the lease. Jon Lewis, DMR Aquaculture Scientist, described the site visit. The Harbormaster for the Town of Harpswell did not provide any comment. No members of the public provided testimony. The hearing was recorded by DMR. Assistant Attorney General Mark Randlett was the hearing officer.

The evidentiary record before the Department regarding this lease application includes the three exhibits introduced at the hearing (see exhibit list below), and the record of testimony at the hearing itself. The evidence from these sources is summarized below.<sup>1</sup>

**LIST OF EXHIBITS**

1. Case File (CF)
2. Application (App)<sup>2</sup>
3. DMR Site Report (SR)

**2. DESCRIPTION OF THE PROJECT**

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

<sup>2</sup> Application begins with page 3, so page numbers cited here reflect that.

### **A. Proposed Operations**

The purpose of the proposed experimental lease is to assess the viability of the applicant's equipment to grow American/eastern oysters (*C. virginica*) (App 6). The applicant's gear will consist of oyster cages arranged in eight rafts of five cages each (App 13). The cages will be secured to a single mooring and sunk during winter months. An enclosed equipment float is also proposed to remain on the site (SR 2). Applicants hope to compare growth data across a couple of different sites to determine optimum growing conditions (App 6).

### **B. Site Characteristics**

On April 25, 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 occupies subtidal waters to the west of Upper and Lower Goose Islands in Casco Bay. The shoreline of Upper and Lower Goose Islands are rocky and lead to mixed forest upland. A house and dock are on both the southern end of Upper Goose Island, and the northern end of Lower Goose Island (SR 2). One mooring was observed near the dock on Lower Goose Island (SR 2).

The proposed lease site is approximately 1,180 feet from Upper Goose Island, and 1,160 feet from Lower Goose Island (SR5). During DMR's assessment water depth within the proposed lease ranged between 32 to 35 feet. When corrected for tidal variation water depths at the site are approximately 2.3 feet lower (SR5).

## **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**

Houses were observed on the western shores of Upper and Lower Goose Islands, on both the southern tip of Upper Goose Island, and the northern tip of Lower Goose Island. From the proposed lease, one dock was observed on each island (SR 6) Other docks may exist that can't be seen from the lease site. At mean low water, the proposed lease site is over 1,100 feet from the shorelines of Upper and Lower Goose Islands and is unlikely to intervene with riparian access as water depths of more than 24 feet span most of the distance between the proposal and Goose Island shores (SR 6). During the review period, the

Department did not receive any public comments regarding riparian access. 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 riparian ingress and egress. It appears from the 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**

The proposed lease is located to the west of Upper and Lower Goose Islands in Casco Bay. Boat traffic is likely frequent during summer months, although no vessels were observed during DMR's visit to the site on April 25, 2019 (SR 7). At mean low water, the proposed lease site is over 1,100 feet from the shorelines Upper and Lower Goose Islands, and water depths of more than 24 feet span most of the distance between the proposal and Goose Island shores (SR 6). Given the distance, and water depths the proposed lease is unlikely to interfere with or prevent navigation between the proposal and the Goose Islands (SR 7). A series of islands is found to the west of the proposed site. At mean low water, Williams Island, the closest of these, is over 3,000 feet from the proposal (SR 7). Given the distance, vessels navigating to the west of the proposal would not be impacted.

During the review period, DMR 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 the evidence that navigation in the area will not be unduly affected by the proposed lease application.

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

### **C. Fishing & Other Uses**

**Fishing.** During the site visit on April 25, 2019, no fishing activities were observed within the lease site (SR 7). In the site report, DMR acknowledged that commercial and recreational uses of this area are likely "more prevalent in the summer months" (SR 7). The applicant noted that the area to the southwest of the proposed side is used for lobster fishing during summer months from June to August, but that no fishing was observed in the exact location of the proposed site (App 8).

Given the absence of public comments expressing concerns regarding interference with fishing, it is reasonable to conclude that there are no concerns about the effects the proposed site may have on commercial or recreational fishing. It appears from the evidence that the proposed lease is unlikely to unreasonably affect commercial and recreational fishing activities in the area.

**Exclusivity.** The applicant requests that any scallop or oyster dredging be prohibited from the lease site (App 9). Such a restriction is reasonable to enable the project to be carried out while also

encouraging the greatest number of compatible uses of area, as provided in 12 MRSA §6072-A(15). Conditions reflecting these restrictions will be included in the lease

**Other aquaculture uses.** Two Limited Purpose Aquaculture (LPA) licenses and one experimental lease are located within one mile of the proposed lease (SR 7). The closest aquaculture site to the proposed lease is RKEY118, located approximately 2,600 feet to the northeast, and is permitted for the suspended culture of sea scallops (*Placopecten magellanicus*). MID GIX, an experimental lease for the suspended culture of American/eastern oysters (*Crassostrea virginica*) is approximately 2,700 feet to the east of the proposed site (SR 7). Due to these distances and given the lack of public comments concerning the impact of the proposal on existing aquaculture operations, it is unlikely that the activities proposed by the applicant will negatively impact existing aquaculture leases and licenses in the area. Based on this evidence, it appears that the proposed lease will not unreasonably interfere with other aquaculture uses in the area.

**Other water-related uses.** During the site visit on April 25, 2019, 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**

During the site visit on April 25, 2019, DMR observed herring gulls (*Larus argentatus*) and scoters (*Melanitta spp*) near the proposed lease site (SR 8). The proposed lease site is located approximately 2,700 feet to the southeast of the ¼ mile buffer associated with a bald eagle (*Haliaeetus leucocephalus*) nest located on Williams Island, and approximately 3,900 feet to the east of the ¼-mile bugger associated with a bald eagle nest on Sow and Pigs Island.

The east side of Lower Goose Island hosts Tidal Wading Bird and Waterfowl Habitat. This habitat is defined under Maine's Natural Resources Protection Act (NRPA) as Significant Wildlife Habitat (SR 8). A request for agency review and comment was sent to John Perry (Environmental Review Coordinator) at the Maine Department of Inland Fisheries and Wildlife on March 7, 2019. Their response (via email) stated "minimal impacts to wildlife are anticipated" (SR 9).

Data maintained by the Maine Department of Environmental Protection and Casco Bay Estuary Partnership indicates that, in 2018, the closest eelgrass bed to the proposed lease site is over 2,500 feet to the southeast (SR 9). The proposed lease, if granted, will not result in physical disturbance or shading of the closest eelgrass bed.

Based on the evidence that the proposed lease does not intersect with historical eelgrass beds or mapped wildlife habitat, because DMR's site report does not contain concerns regarding the impact of the proposed lease on the surrounding ecosystem, and because the Maine Department of Inland Fisheries and



Wildlife expects minimal impacts on wildlife, it appears that the culture of shellfish, 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 10). The closest conserved land to the proposed site is Upper Goose Island, which is held in conservation by the Nature Conservancy (SR 10).

**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**

American/eastern oyster seed would be obtained from Mook Sea Farms in Walpole, Maine. Mook Sea Farms is an approved hatchery. The applicant also lists Running Tide Hatchery in Harpswell, Maine as a proposed source of American oysters. Per the site report, Running Tide Hatchery is in the process of obtaining approval status but is not yet an approved source (SR 10). Until Running Ride Hatchery receives approval, they cannot be used as a seed source.

**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 3.21 acres to Goose Island Oysters, 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 lessee<sup>3</sup>; 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 American/eastern oysters (*Crassostrea virginica*) 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 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)<sup>4</sup>. 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. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.
3. Unless permission is granted by the leaseholder, scallop or oyster dredging is prohibited within the boundaries of the lease site.
4. Running Ride Hatchery cannot be used as a source of seed until they receive approval status from DMR.

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<sup>3</sup> 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.”

<sup>4</sup> 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.”

**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: 8/19/19



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Patrick C. Keliher, Commissioner  
Department of Marine Resources