

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Acadia Aqua Farms, LLC

FLAN WN

Application for Change in Species Authorization
Waukeag Neck, Flanders Bay, Sorrento

October 28, 2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Acadia Aqua Farms, LLC applied to the Department of Marine Resources (DMR) to change the species authorization on standard lease FLAN WN (the “site”), located near Waukeag Neck, in Flanders Bay, Sorrento, Hancock County, Maine. Acadia Aqua Farms, LLC is seeking authorization to cultivate American/eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) on the site.

1. THE PROCEEDINGS

The amendment application was submitted to DMR on August 03, 2021 and was deemed complete by DMR on August 25, 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 Sorrento 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^{1,2}

1. Application for a change of species authorization
2. Case file for the amendment application
3. Executed lease document for FLAN WN, signed March 29, 2019
4. Lease renewal decision, signed December 18, 2018
5. Original lease decision, signed September 16, 1997

2. STATUTORY CRITERIA & FINDINGS OF FACT

Approval of standard aquaculture lease amendments is governed by 12 M.R.S.A. § 6072 (13)(G) 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 for the underlying lease application, do not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

¹ Exhibits 1-7 are cited below as: Amendment Application – “App”, Case File – “CF”, Lease for FLAN WN executed in 2019 – “Exhibit 3”, DMR Renewal Decision on Lease FLAN WN executed in 2018- “Exhibit 4”, Original Lease Decision Signed September 16, 1997 “Exhibit 5”.

² Page numbers are cited using the PDF page number, which may not always match the page number written on documents.

A. Original Lease Decision

A lease encompassing 14.3 acres, now known as FLAN WN, for the bottom culture of blue mussels (*Mytilus edulis*) near Waukeag Neck in Flanders Bay was originally granted by DMR on September 16, 1997 (Exhibit 5, pages 12 & 13). Harvest techniques described in the original lease proceedings including drag harvest and a stern washer (Exhibit 5, page 3). On December 18, 2018 DMR granted the second renewal of standard lease FLAN WN to Acadia Aqua Farms, LLC for a 10-year term, ending in September 15, 2027 via a Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the decision" (Exhibit 4, page 3). The decision provided authorization for the leaseholder to cultivate blue mussels (*Mytilus edulis*) using bottom culture techniques.

Conditions imposed on lease FLAN WN, pursuant to 12 M.R.S.A § 6072 (7-B) and located on page 3 of the decision, are as follows:

- (1) Fishing for lobster, crab, pogies, and herring, as well recreational fishing, are allowed on the lease;
- (2) The riparian landowners are to be allowed boat moorings as designated by the local Harbormaster;
- (3) Seeding and dragging activities are restricted to between the hours of 6:00 a.m. and 6:00 p.m. throughout the year;
- (4) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80; and
- (5) Dragging on the lease site without prior authorization from the leaseholder is prohibited.

B. Proposed Species Changes and Findings

The leaseholder is seeking authorization to cultivate American/eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) on FLAN WN using bottom culture techniques (App, pages 2 & 3). Both oyster species would be harvested from the site via drag or diver (App, page 3). American/eastern oyster (*Crassostrea virginica*) seed stock are proposed to be sourced from Muscongus Bay Aquaculture, and European oysters (*O. edulis*) are proposed to be sourced from Downeast Institute (App, page 2).

The proposed sources of stock are approved by DMR, and the species would be cultured via bottom culture, a culture technique already approved on FLAN WN. Therefore the proposal is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision. Furthermore, the proposed species change would not result in a change to the original lease conditions.

3. DECISION

Based on the foregoing, the Commissioner grants the requests from Acadia Aqua Farm, LLC for the authorization to cultivate American/eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) on standard lease FLAN WN.

Dated: 10/27/2021


Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Acadia Aqua Farms, LLC.

Aquaculture Lease Renewal Application
Bottom culture of blue sea mussels
Flanders Bay, Sorrento

FLAN WN

December 18, 2018

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Acadia Aqua Farms, LLC. applied to the Department to renew the aquaculture lease FLAN WN for a period of ten years to September 15, 2027. The 14.3-acre lease is issued for bottom culture of blue sea mussels (*Mytilus edulis*) located in the Waukeag Neck, Flanders Bay, Sorrento, Hancock County, Maine. This lease was initially issued on September 16, 1997. The lease was transferred from Great Eastern Mussel Farms to Acadia Aqua Farms, LLC on August 14, 2009.

1. PROCEDURE

Notice of the application for lease renewal and the 30-day public comment period and opportunity to request a public hearing was published in the *Ellsworth American* on August 9, 2018 and August 30, 2018 and in the September edition of *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. No comments and no requests for a hearing on this application were received by the Department during the comment period.

2. STATUTORY CRITERIA

Applications for aquaculture lease renewals are governed by 12 M.R.S. §6072(12) and by Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if: the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

A. Compliance with lease

The review of the records of this lease indicates that all annual reports have been filed, the rent is paid to date, the bond is current, and the site has passed inspection by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

Therefore, I find that the applicant has complied with the lease agreement during its term.

B. Best interest of the State of Maine

In determining whether it is in the best interest of state to renew the lease, the Department takes into consideration, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There is no evidence of conflicts with other new or existing uses of the area.

Therefore, I find that it is in the best interests of the State of Maine to renew this lease.

C. Aggregate lease holdings

According to DMR records, the lessee holds the following leases: EAST HP (40.45 acres), EAST OP2 (31.62 acres), FREN BI (32.33 acres), and PEN SN3 (38 acres). The total acreage of these leases is 142.4.

Therefore, I find that the renewal of this lease will not cause the lessee to lease more than 1,000 acres.

D. Speculative purposes

Rule 2.45(3)(B) provides that in determining whether a renewal is being conducted for speculative purposes, the Department must consider “whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” It is clear from annual reports filed with DMR by the lessee and by the statement of the lessee on the renewal application that aquaculture has been conducted on this lease site.

Therefore, I find that the lease is not being held for speculative purposes.

3. LEASE CONDITIONS

The following conditions were applied to the lease by the original decision: Conditions imposed on this lease by the decision dated August 14, 2009 and incorporated in the renewal decision dated September 16, 1997, include the following:”]

- (1) Fishing for lobster, crab, pogies, and herring, as well recreational fishing, are allowed on the lease;
- (2) The riparian landowners are to be allowed boat moorings as designated by the local Harbormaster;

- (3) Seeding and dragging activities are restricted to between the hours of 6:00 a.m. and 6:00 p.m. throughout the year;
- (4) The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources Regulations Chapter 2.80; and
- (5) Dragging on the lease site without prior authorization from the leaseholder is prohibited.
- (6) Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

4. DECISION

The Commissioner of Marine Resources grants the application of Acadia Aqua Farms, LLC. to renew aquaculture lease FLAN WN for a period of ten years, to September 15, 2027. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by this decision.

5. REVOCAION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) and DMR Rule Chapter 2.42 that no substantial aquaculture has been conducted within the preceding year, that the lease activities are substantially injurious to marine organisms, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

6. DATE AND SIGNATURE

Dated: _____

12/18/18



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

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

IN THE MATTER OF THE APPLICATION OF)	
GREAT EASTERN MUSSEL FARMS, INC. FOR)	FINDINGS OF FACT,
RENEWAL OF AN AQUACULTURE LEASE)	CONCLUSIONS OF LAW
LOCATED NEAR WAUKEAG NECK,)	AND DECISION
FLANDERS BAY, IN SORRENTO, HANCOCK)	
COUNTY, MAINE)	

On February 2, 2007, Great Eastern Mussel, Inc. applied for the renewal of an aquaculture lease initially issued on September 16, 1997. The applicant requested a ten-year renewal, to September 15, 2017, of a 14.3-acre bottom culture lease located near Waukeag neck, Flanders Bay, Sorrento, Hancock County, Maine.

Notice of the application for lease renewal was published in the June 2007 issue of Commercial Fisheries News and the May 24, 2007 and June 7, 2007 issues of The Ellsworth American. Members of the public, riparians and interested persons were given to June 25, 2007 to submit comments or to request a hearing on the application for lease renewal. One comment and no requests for a hearing on this application were received by the Department during the comment period.

The one commenter, a riparian landowner, objected to the renewal by stating that the operation is noisy and the draggers are out early, a belief that the dragging activity has increased red tide in the area, and that the operation has "curbed" the activity of seals, eagles and ospreys, and has reduced the natural beauty of the area. The commenter identified an increase in activity at the site over the last two years. The commenter did not identify any specific conflicts with public uses, nor were the alleged impacts on marine and upland wildlife specifically described, except for the general allegations about seals, eagles, and ospreys. No comments were received from any resource agencies regarding this or any other issue, and the

area is not designated as an essential habitat, according to online maps of the Department of Inland Fisheries and Wildlife

According to the Biotoxin Monitoring staff of the Department of Marine Resources, there can be a risk of transporting *Alexandrium*, the "red tide" organism, from heavily infected areas to uninfected areas through the movement of mussel seed. These risks can be addressed through timing of the movement of the seed and pre-movement testing.¹ However, this is a statewide issue that will be addressed through rulemaking as necessary, instead of placing conditions on individual leases. Thus, it does not appear that the lease activities are unreasonably interfering with the surrounding marine and upland habitat or with the local flora and fauna.

Applications for aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and Chapter 2.45 of the Department's rules, which provide that an aquaculture lease shall be renewed if the lessee has complied with the lease agreement during its term; the Commissioner determines that renewal of the lease is in the best interest of the state; the renewal will not cause the lessee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres; and the lease is not being held for speculative purposes.

The applicant has complied with the lease agreement during its term. In determining whether it is in the best interest of the state to renew the lease, the Department considers, among other things, the potential for conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest. There are no known conflicts with other new or existing uses of the area. Renewal of this lease will not cause the applicant's leased acreage to exceed 1,000 acres.

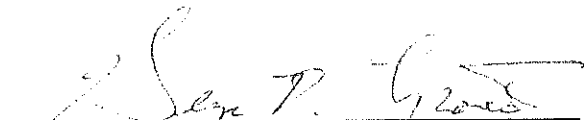
¹ Pers. Comm. Darcie Couture to Samantha Horn Olsen, both Maine Department of Marine Resources staff
10/24/2007

In determining whether the lease is being held for speculative purposes, the Department considers whether substantially no aquaculture or research has been conducted on the lease site. The applicant has conducted aquaculture on the lease site during its term. Therefore, I find that the lease is not being held for speculative purposes.

Decision

The Commissioner of Marine Resources grants the application of Great Eastern Mussel Farms, Inc. for renewal of the 14.3-acre aquaculture lease located near Waukeag Neck, Flanders Bay, Sorrento, Hancock County, Maine, for a period of ten years, to September 15, 2017. In the renewal of this lease, Great Eastern Mussel Farms, Inc. is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: 30 November 2007


George D. Lapointe (Commissioner)
Department of Marine Resources