

Application for Change in Gear Authorization
SE of Cedar Point, Taunton Bay

July 6, 2022

AQUACULTURE LEASE AMENDMENT
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Taunton Bay Oyster Company Inc. applied to the Department of Marine Resources (DMR) to change the gear authorization for standard existing lease TAUN SB2, located southeast of Cedar Point in Taunton Bay, Hancock, Hancock County, Maine. Taunton Bay Oyster Company Inc. is seeking authorization to add a water pressure/conveyer harvesting vessel to its current gear plan.

1. PROCEDURE

The application for amendment was originally submitted to DMR on Dec. 7, 2021, and after making necessary revisions was submitted again on Feb. 7, 2022. The application was deemed complete by DMR on Feb. 10, 2022. Notice of the application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of Hancock and its Harbormaster, and others on DMR’s mailing list. DMR received comments from the Town of Hancock Harbormaster, IF&W, and twelve members of the public. The applicant also submitted responses to some members of the public. The evidentiary record before DMR regarding this lease amendment application includes three exhibits (see exhibit list below).

LIST OF EXHIBITS¹

1. Application for a change of gear authorization

¹ Exhibits 1-3 are cited below as: Application – “Exhibit 1”, Case File – “Exhibit 2”, Original Lease Decision signed March 11, 2020 – “Exhibit 3”.

2. Case file for the amendment application
3. Original lease decision signed March 11, 2020

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 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 March 11, 2020, DMR granted lease TAUN SB2 to Taunton Bay Oyster Company Inc. (Exhibit 3, page 9). DMR's findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the original decision," found that the evidence in the record supported the conclusion that the aquaculture activities proposed by the applicant met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 3, page 8). The decision combined an existing lease (TAUN SB) held by the applicant with a new lease to create TAUN SB2 (Exhibit 3, page 9)

The lease authorizes the cultivation of American oysters (*Crassostrea virginica*) using bottom culture techniques, and harvesting by divers, or in the case that divers are not available, by hand tools and a 3-foot-wide dredge (Exhibit 3, page 5). There was concern expressed in the original decision that the use of hand tools or a dredge could harm existing eelgrass beds (Exhibit 3, page 5). Due to such concern, a condition was incorporated that allowed the use of hand tools or a dredge, but only in a way that avoids eelgrass (Exhibit 3, page 5).

The original decision noted that no comment was received from MDIF&W regarding the new lease, but that MDIF&W had commented on the existing lease held by the applicant, TAUN SB, and suggested that the applicant avoid areas associated with abundant to common flora and fauna, and to focus activities where flora and fauna were less abundant, because the site is located in high-value Significant Wildlife Habitat mapped as a reef-mudflat complex (Exhibit 3, pages 5-6).

Conditions imposed on lease TAUN SB2, pursuant to 12 M.R.S.A. § 6072(7-B) and located on page 10 of the original decision, are as follows:

- a. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80;
- b. Mussel dragging and shellfish harvesting, except by the leaseholder or its authorized agents, are prohibited on the lease site;
- c. Mussel washing is prohibited on the lease site;
- d. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries; and
- e. Harvesting by drag or hand tools is permitted only when water levels are low enough that eelgrass can be seen and avoided and is only allowed in areas of the lease where eelgrass is not present. Harvesters are required to avoid eelgrass when using hand tools or a dredge for harvesting, and any dredge used may not exceed three feet in width.

B. Proposed Gear Changes and Findings

The leaseholder is seeking authorization to add the use of a water pressure/conveyor harvesting vessel (Exhibit 1, page 2). The leaseholder would use this vessel in conjunction with

harvesting by diver, hand tools, and a 3-foot-dredge (Exhibit 1, page 4). As DMR Rule Chapter 2.44(1) states, “the Commissioner shall not amend a lease in such a way that it materially alters the findings of the original decision, or would result in a change to the original lease conditions.”

The proposed vessel, otherwise known as a hydraulic dredge, uses water pressure to lift oysters onto a conveyer that brings oysters into the vessel (Exhibit 1, page 4). According to the applicant, this vessel is “easier on the bottom [and] on oysters and any by-catch, reduc[es] the distribution of mud and silt, and is more efficient” (Exhibit 1, page 4). Despite these assertions by the applicant, DMR is hesitant to accept them at face value without any further information. At present, mechanical harvesters such as that proposed by the applicant are not allowed to be used for wild softshell clam harvesting and require a special license for such use on an aquaculture lease (12 M.R.S.A. §6623). Additionally, this would be the first mechanical harvester to be used in an aquaculture operation. As such, DMR does not have the necessary information to assess the potential impacts of this harvest technique on ecologically significant flora and fauna.

DMR does not find now that the findings of the original decision would not be altered. As stated, the original decision expressed concern about the presence of eelgrass beds, noting that hand tools or a dredge could harm the existing beds within the lease (Exhibit 3, page 5). Thus, a condition was imposed on the original lease that requires the applicant to avoid eelgrass beds when using hand tools or a 3-foot dredge. Such a condition resulted in a finding that the activities would not unreasonably interfere with the ability of the lease site to support existing ecologically significant flora and fauna. Hydraulic conveyors also have the potential to harm eelgrass through physical disturbance such as uprooting plants and siltation and adding this mode of mechanical harvesting would materially alter the findings of the original decision.

Additionally, because DMR would need to assess the potential impacts of this harvesting method, the original lease conditions would need to be changed. Namely, the conditions would need to be changed to allow for hydraulic dredging on a test run basis only, after which DMR could rescind its temporary approval of the dredge if adverse effects were documented.

Pursuant to DMR Rule Chapter 2.44(1), DMR finds now that an amendment to this lease for the use of a hydraulic dredge would materially alter the findings of the original decision and the original lease conditions would need to be changed.

3. **DECISION**

Based on the foregoing, the Commissioner denies the request from Taunton Bay Oyster Company, Inc. for a change in gear authorization to include the use of a water pressure/conveyer harvesting vessel on TAUN SB2.

4. **DATE AND SIGNATURE**

Dated: _____

7/6/2022



Patrick C. Keliher, Commissioner,
Department of Marine Resources