

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Aquaculture Lease Renewal Application
Bottom culture of oysters,
Damariscotta River, Newcastle

Lessee: Muscongus Bay Aquaculture, Inc.

Lease: DAM DP
Docket # 2016-04-R
June 16, 2016

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Muscongus Bay Aquaculture, Inc. applied to the Department to renew the aquaculture lease DAM DP for a period of ten years to July 18, 2026. The 6.53-acre lease is issued for bottom culture of American/Eastern oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) located off Dodge Point, Damariscotta River, Newcastle, Lincoln County, Maine. This lease was initially issued on July 19, 2006.

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 *Lincoln County News* in the April 7 and 28, 2016 editions and in the May, 2016 edition of *Commercial Fisheries News*. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. Comments were received from the Maine Department of Inland Fisheries and Wildlife, which had no concerns associated with the renewal of this lease. 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 discloses 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, Muscongus Bay Aquaculture, Inc. holds the following leases: this lease, DAM DP (6.53 acres), plus DAM GS2 (5.00 acres), and DAM HI3 (7.00 acres), for a total of 18.53 acres. The company also owns 50% of Dodge Cove Marine Farm, LLC, which holds leases DAM HI (2.0 acres), DAM HI2 (6.95 acres), DAM HI5x (3.56 acres), and NMR NML (0.365 acres), a total of 12.875 acres. DMR Rule Chapter 2.12 (3) provides that half the Dodge Cove Marine Farm total acreage (6.4375 acres) is attributable to Muscongus Bay Aquaculture, Inc. Therefore, Muscongus Bay Aquaculture, Inc. is considered to hold a total of 24.9675 acres of aquaculture leases.

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 2.60 provides that in considering whether a transfer 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 Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities. 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 aquaculture law.

Lease conditions are normally carried over to the renewed lease. Because the Department is no longer placing permissive conditions on leases, condition (a) “Navigation and recreational boating and fishing shall be allowed on the open areas of the lease”, in the current lease executed August 22, 2006, will be replaced with language providing that other public uses that are not inconsistent with the lease purposes are permitted, as provided in DMR Rules Chapter 2.37 (1) (B). In making this revision, the Department intends to make no substantive change in the public uses of the waters that are permitted to continue within the lease boundaries

The conditions that apply to the renewed lease are:

- a. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80;
- b. When people are present on the beach or in the water at Dodge Point Public Reserved Land, the leaseholder shall not drag the lease site unless it is on an outgoing tide;
- c. The Limited Purpose Aquaculture GRI-07 license shall continue to be permitted within the lease boundaries, as long as the LPA continues to meet DMR requirements for LPAs. The location of the LPA is identified by the geodetic coordinate Latitude 43°59.0525’N, Longitude 69°33.7900’W; and
- d. The work barge and wet storage rafts shall be located along the western boundary of the lease site.
- e. Other public uses that are not inconsistent with the purposes of the lease are permitted within the lease boundaries.

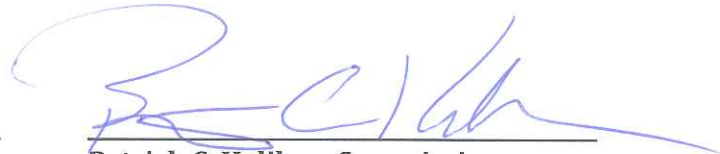
4. DECISION

The Commissioner of Marine Resources grants the application of Muscongus Bay Aquaculture, Inc. to renew aquaculture lease DAM DP for a period of ten years, to July 18, 2026. 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. REVOCATION 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.

Dated: 6/17/14



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