

Aquaculture Lease Renewal Application
Bottom and suspended culture of shellfish
Damariscotta River, Newcastle, Lincoln County

FINDING OF FACT, CONCLUSIONS OF LAW, & DECISION

Pemaquid Oyster Company applied to the Department of Marine Resources (DMR) to renew the aquaculture lease DAM GL2 for a period of 20 years. The current 1.84 acre lease is issued for suspended and bottom culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*); and Sea scallops (*Placopecten magellanicus*) located west of Goose Ledges, Damariscotta River, Newcastle, Lincoln County, Maine. The lease was issued on February 18, 2003, and renewed on October 7, 2014, for 1.84 acres in two tracts to Pemaquid Oyster Company Inc. An amendment was requested and approved on May 17, 2021 to include sea scallops (*Placopecten magellanicus*) and the addition of gear. The renewal does not seek further changes to the lease.

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* on February 23, 2023. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. A completed questionnaire was received from the Damariscotta and Newcastle Harbormaster indicating no issues with the lease or operation of the site. Confirmation that there would be minimal impacts to wildlife in the area from a wildlife biologist at the Maine Department of Inland Fisheries and Wildlife was also received and considered. No other 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.A. § 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

Based on a review of the record, the holder of the lease has complied with the lease agreement and decision. There are no outstanding complaints regarding the operation of this site.

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 the 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 total lease acreage held by the lessee, with this lease, DAM GL2, 1.84 acres included, will not exceed 1,000 acres.

Therefore, I find that this renewal will not cause the holder to exceed 1,000 acres.

D. Speculative purposes

Rule 2.45 provides that in considering 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.” The renewal application notes that during the previous lease term, the site has primarily been used for the seeding and cultivation of American oysters (*Crassostrea virginica*). Oysters are typically placed in growing bags in June until November or December when product is removed from this

site and planted on other lease sites for further grow out. The renewal application indicates that approximately two million juvenile oysters are grown on this site each year. It is clear from 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 condition was placed on the original lease:

1. The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80

This provision will be removed because it is already specified in the lease agreement and respective rule.

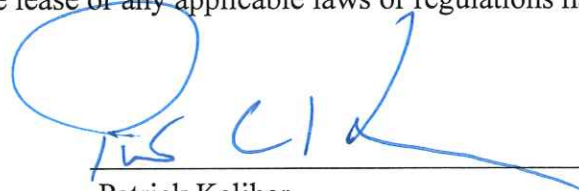
4. DECISION

The Commissioner of Marine Resources grants the application of Pemaquid Oyster Company, Inc to renew its aquaculture lease, DAM GL2, for a period of 20 years. 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 MRSA § 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: 6/28/23



Patrick Keliher
Commissioner

Department of Marine Resources

Application for Change in Species and Gear Authorization
West of Goose Ledges, Damariscotta River, Newcastle

DAM GL2

9/3/2021

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Pemaquid Oyster Company applied to the Department of Marine Resources (DMR) to change the species and gear authorization on standard lease DAM GL2, located west of Goose Ledges in the Town of Newcastle, Lincoln County, Maine. The leaseholder is seeking authorization to cultivate sea scallops (*Placopecten magellanicus*) on DAM GL2 using lantern nets. The leaseholder is also seeking authorization to deploy Hexcyl® baskets for the cultivation of American oysters (*Crassostrea virginica*).

1. THE PROCEEDINGS

The amendment application was submitted to DMR on April 2, 2021 and was deemed complete by DMR on May 21, 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 Newcastle and its Harbormaster, and others on DMR's mailing list. The evidentiary record before DMR regarding this lease amendment application includes seven exhibits (see exhibit list below).

A. List of Exhibits^{1,2}

1. Application for a change of species and gear authorization
2. Case file for the amendment application
3. Executed lease document for DAM GL2, signed November 17, 2017
4. Lease renewal decision, signed October 7, 2014
5. Executed lease document for DAM GL2, signed March 20, 2003
6. Lease renewal decision, signed March 6, 2003
7. Original 1993 lease document for DAM GL2

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

¹ Exhibits 1-7 are cited below as: Amendment Application – “App”, Case File – “CF”, Lease for DAM GL2 Executed in 2017 – “Exhibit 3”, DMR 2014 Renewal Decision on Lease DAM GL2 – “Exhibit 4”, Lease for DAM GL2 Executed in 2003 – “Exhibit 5”, DMR 2003 Renewal Decision on Lease DAM GL2 – “Exhibit 6”, and Original Lease Document for DAM GL2 – “Exhibit 7”.

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

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

A. Original Lease Decision

The original lease document for standard lease DAM GL2, which conveyed to Pemaquid Oyster Company the right to culture American oysters, European oysters, and surf clams using suspended culture techniques, was executed in 1993.³ This lease has been renewed twice since its original issuance. During the first renewal, which resulted in a lease document executed in March of 2003, the Commissioner authorized Pemaquid Oyster Company to consolidate a bottom culture lease⁴ located within the same footprint as one of the tracts of DAM GL2,⁵ with DAM GL2; prior to that consolidation, DAM GL2 was only authorized for suspended culture (Exhibit 5, page 1 & Exhibit 6, page 1). DMR granted the second renewal of standard lease DAM GL2 to Pemaquid Oyster Company for a 10-year term, ending in February of 2023 via a Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as “the decision”, on October 7, 2014 (Exhibit 4, page 3).

The decision provided authorization to cultivate American oysters (*Crassostrea virginica*) and European oysters (*Ostrea edulis*) using suspended and bottom culture techniques (Exhibit 4, page 1). It should be noted that the lease document for DAM GL2, executed on November 17, 2017, only provides for the suspended culture of these two species (Exhibit 3, page 2).⁶

Conditions imposed on lease DAM GL2, pursuant to 12 M.R.S.A § 6072 (7-B) and located on page 3 of the decision, are as follows:

1. The lease area must be marked in accordance with both U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.

B. Proposed Gear Changes and Findings

Pemaquid Oyster Company is requesting the authorization to add lantern nets for the cultivation of sea scallops (*Placopecten magellanicus*) and Hexcyl® bags for the cultivation of American oysters (*Crassostrea virginica*) on standard lease DAM GL2. Specifically, the leaseholder is proposing to deploy up to (4) 10-tiered lantern nets, measuring 6 feet in length and 50 centimeters in diameter, and (100) Hexcyl® baskets on their existing lease (App, pages 4 & 13). According to Chris Davis, who is an owner of Pemaquid Oyster Company and is the contact listed on the amendment application, these baskets would be approximately 30 inches long, approximately 8-10 inches wide, and approximately 8 inches deep (CF).

According to the amendment application, Hexcyl® baskets would be deployed on the DAM GL2's western-most longline from May through November, annually (App, page 12). These baskets would hold

³ At this time, the lease was given the acronym POCO GL2.

⁴ This bottom lease had the acronym POCO GL4.

⁵ Referred to as POCO GL2 at that time.

⁶ A lease document for DAM GL2 was originally executed on December 11, 2014 which provided authorization for the suspended culture American oysters, European oysters, and surf clams. Exhibit 3, executed on November 17, 2017, which does not include authorization for surf clams, is the revised lease for DAM GL2. It is unclear why bottom culture was not included in either the original (2014) or revised (2017) lease document.

American oysters (*Crassostrea virginica*) and replace the floating mesh bags currently deployed on that line. The proposed Hexcyl® baskets are made of hard mesh, have a float attached to one side, and are designed to facilitate flipping (App, pages 5 & 12). The four lantern nets would be deployed on the northern end of DAM GL2's easterly-most longline (App, page 13). Lantern nets would be tied to the longline and would hang vertically in the water column (App, page 13). According to the applicant, the location where lantern nets are proposed to be deployed is deep enough to prevent the gear from touching bottom at a negative 2-foot tide (CF). As DAM GL2 is already permitted to cultivate shellfish using floating mesh bags secured to longlines, the Hexcyl® baskets and lantern nets proposed in this amendment application are similar in type to the gear already authorized on the lease site.

As the leaseholder is proposing that the Hexcyl® baskets would replace some of the existing gear, and because only four lantern nets are proposed, the proposed changes would occupy only slightly more space within the existing lease than the currently deployed gear. Additionally, in the application the leaseholder stated that the proposed changes would not alter the noise level at the lease site nor the amount of on-site activity (App, page 5). Therefore, if granted, the proposed operations would not unreasonably alter the impact of the existing lease and associated operations on other uses of the area. In consideration of this and given that the proposed gear is similar in type to the gear already authorized, the proposed gear changes are 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 sea scallops (*Placopecten magellanicus*) on DAM GL2. Sea scallops (*P. magellanicus*) are proposed to be cultured for scientific purposes in gear discussed in Section 2.B of this decision. Sea scallop (*P. magellanicus*) harvest is not proposed, instead the applicant plans to conduct routine destructive sampling of tissue for growth analysis (App, page 3).⁷ The leaseholder has demonstrated that there is an available source of sea scallops (*P. magellanicus*) for cultivation, as they propose to obtain seed stock from scientific experimental lease DAM LW2, which is located in Walpole, Maine and held by The University of Maine (App, page 2).

As the proposed sources of stock are all approved by DMR, and because Section 2.B of this decision found that the proposed gear change required for the culture of sea scallops on DAM GL2 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 DAM GL2 are also consistent with these findings. Furthermore, the proposed species change would not result in a change to the original lease conditions. However, it should be noted that if the leaseholder decides to harvest sea scallops (*P. magellanicus*), biotoxin testing under a Memorandum of Understanding (MOU), and at the leaseholder's

⁷ It should be noted that scallop harvest would not be prohibited by this decision, as long as applicable laws and regulations are followed.

expense, would be required. If sea scallop (*P. magellanicus*) harvest was to consist only of the adductor muscle (and therefore will not result in whole or roe-on scallop products), no MOU would be required.⁸

3. DECISION

Based on the foregoing, the Commissioner grants the requests from Pemaquid Oyster Company for the authorization to cultivate sea scallops (*Placopecten magellanicus*) on standard lease DAM GL2 and for the authorization to deploy lantern nets and Hexcyl® baskets on the lease for the cultivation of sea scallops (*P. magellanicus*) and American oysters (*C. virginica*), respectively.

Dated: 9-3-2021



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

⁸ 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

Pemaquid Oyster Company Inc
DAM GL2

Aquaculture Lease Renewal Application
Suspended and bottom culture of shellfish,
Damariscotta River, Newcastle, Lincoln County

Docket Number 2012-19-R
October 7, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW & DECISION

Pemaquid Oyster Company Inc. applied to the Department on December 3, 2012, to renew the aquaculture lease, DAM GL2, for a period of ten years to February 17, 2023. The 1.84 acre lease is issued for suspended and bottom culture of eastern/American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), located in the west of Goose Ledges, Damariscotta River, Newcastle, Lincoln County, Maine. In its application for renewal in 2002, the company requested the consolidation of DAM GL2 with an existing bottom lease (formerly known as POCO GL4), which shares the same footprint as Tract 1, the northern tract, of DAM GL2. This request was granted and the current lease was issued on February 18, 2003 for 1.84 acres in two tracts to Pemaquid Oyster Company Inc.

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* on December 27, 2012 and on January 24, 2013. Notice was also published in the February 2013 *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.A. §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, the total lease acreage held by lessee, with this lease, DAM GL2, 1.84 acres included, will not exceed 1,000 acres.

Therefore, I find that the renewal of this lease will not cause the applicant 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 following conditions are carried over from the original lease and will apply to the renewed lease

- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80.

4. DECISION

The Commissioner of Marine Resources grants the application of Pemaquid Oyster Company Inc., to renew its aquaculture lease, DAM GL2, for a period of ten years to February 17, 2023. 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 MRS §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: 10-7-2014



Meredith Mendelson
Deputy Commissioner
Department of Marine Resources