

Application for Change in Gear and
Species Authorization
Weskeag River, South Thomaston

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Weskeag River Shellfish Farm, LLC (Weskeag) applied to the Department of Marine Resources (DMR) to change the gear and species authorization on tract 2 of the standard lease WES UR, located in the Weskeag River in the Town of South Thomaston, Knox County, Maine.

1. THE PROCEEDINGS

The application was deemed complete by DMR on December 15, 2023. Notice of the application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of South Thomaston and its Harbormaster, and others on DMR's mailing list. No public comments were received. The evidentiary record before DMR regarding this lease amendment application includes six exhibits (see exhibit list below).

LIST OF EXHIBITS^{1,2}

1. Amendment application for a change of species and gear authorization, deemed complete December 15, 2023.
2. Executed lease agreement for WES UR signed July 31, 2020
3. Original lease decision signed October 5, 2000
4. Original lease application deemed complete by DMR November 24, 1999
5. Supplemental lease application received by DMR May 11, 2000³
6. Case file

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 for operational modifications on an existing lease site as a result of a change in authorized species or gear, provided the proposed changes are consistent

¹ Exhibits 1-5 are cited below as: Amendment Application – “App”, Executed lease document for WES UR – “Exhibit 2”, Original lease decision – “Exhibit 3”, Supplemental Lease Application – “Exhibit 4”, Case File – “CF”.

² Page numbers are cited using the PDF page number, and not the page number written on the application.

³ The supplemental application was submitted to DMR included changes from the original application, such as the removal of a proposed third tract and the alteration of gear proposed on tract II.

with the findings on 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.

A. Original Lease Decision

On October 5, 2000, DMR granted lease WES UR to Weskeag (Exhibit 3). DMR's Findings of Fact, Conclusions of Law, and Decision, hereinafter referred to as "the original decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Weskeag met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 3, page 14). The lease was renewed on January 5, 2011, and on July 31, 2020. The current lease expires on October 4, 2040.

The original decision provided authorization to cultivate American oysters (*Crassostrea virginica*), soft-shelled clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*) using suspended and bottom culture techniques (Exhibit 2, page 1). The original decision authorized the lease of 7.14 acres, comprising two tracts. The northern 1.08-acre site, known as tract 1, authorized the use of floating wire coated cages with ADPI mesh bags of varying sizes suspended along (13) pairs of 60' parallel long-lines. The southern 6.06-acre site, known as tract 2, authorized submerged stacked "Aquatrays" suspended along submerged longlines and bottom culture ADPI bags (Exhibit 6, page 5). The original decision authorized the placement of bottom ADPI bags on the northern 1,140' of tract 2, while authorizing the remaining southern 1,500' of tract 2 to contain (40) 100' long-lines, submerged 3' or lower below the surface and divided into parallel sections of (4) longlines for a maximum of 10 sections. (Exhibit 3, page 2-3). To accommodate for navigation in the area, the original decision required that in the lower 1,500' of tract 2, the 100' longlines sections be placed at least 50' feet apart and moored 3' or lower beneath the surface. (Exhibit 3, page 3).

In the original decision, the Commissioner established four conditions governing the use of WES UR, as is allowed pursuant to 12 M.R.S.A § 6072(7-B). The conditions are:

1. Jet skis are prohibited within the lease boundaries;
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease;
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is prohibited within the lease boundaries; and
4. The lease area shall be marked in accordance with both U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

The conditions were incorporated when the site was renewed in 2011 and 2020.

B. Proposed Changes to Gear Layout and Findings

The leaseholder is requesting to modify tract 2 only. The leaseholder is requesting to deploy suspended long lines in the southern end of tract 2 from November 1 to May 15 each year for the purpose of growing marine algae (App 4). The marine algae will be cultured within two sections of tract 2 containing four rows of 200' lines each, anchored to the bottom on existing 100-lb mushroom anchors (App 7). The marine algae long-lines will be removed no later than May 15 and then the site will be reverted to oyster growing operations as previously permitted in the original lease decision (App 5).

Chapter 2.44 (1) states that the Commissioner may grant amendments for the use of specific gear, species, and resultant operational modifications on an existing lease site provided the proposed changes are consistent with the findings on 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.

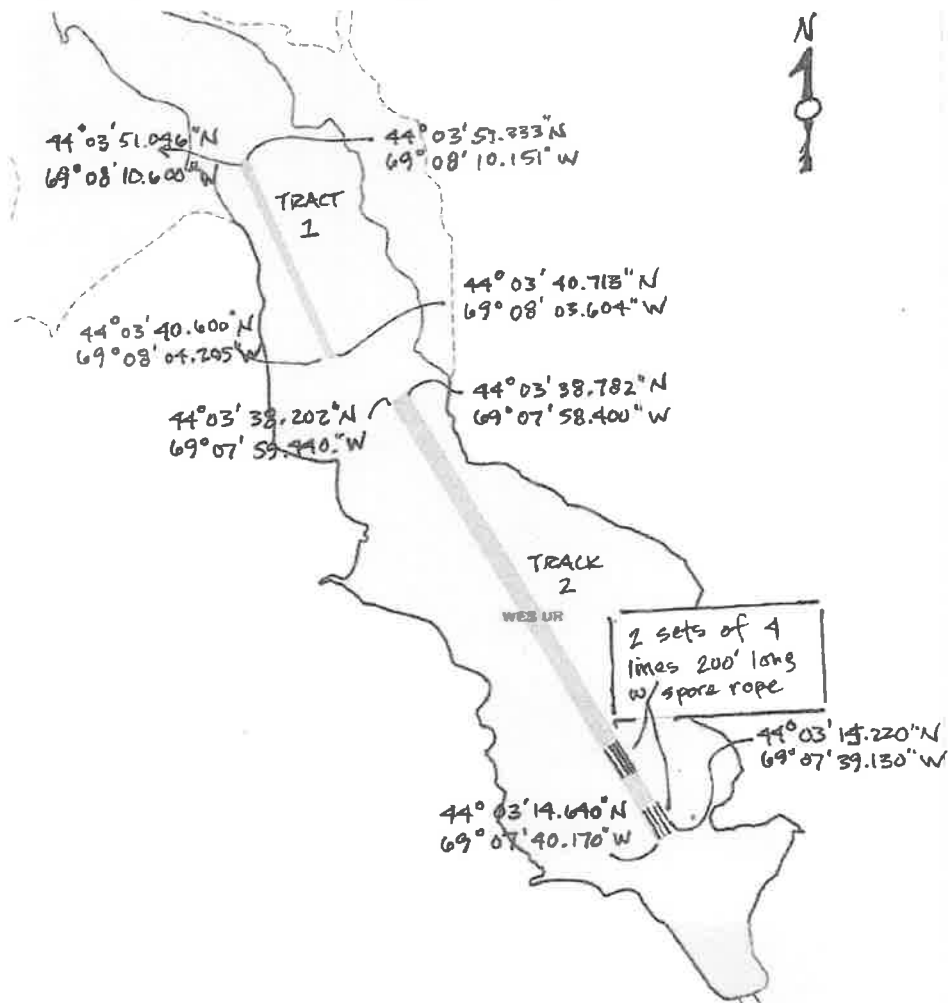


Figure 1. Location of gear in Amendment Application. App 7.

Gear – Suspended Aquaculture.

As depicted in Figure 1, the placement of the two long line sections is within the southern portion of tract 2, which is authorized for the deployment of suspended gear. The original decision permitted (40) 100' long-lines, broken up into parallel sections of (4) longlines for a maximum of 10 sections, separated by 50' to provide for navigation in the area, especially for deeper hulled vessels. The proposed layout will utilize four of the previously permitted 100' sections to create (2) 200' long sections and will maintain at least 50' between the two sections to assist with navigation throughout the lease site, which is consistent with the spacing referenced in the original decision. Although the original decision authorized the placement of 10 sections of longlines, spaced 50' apart to assist with navigation, combining the sections as described above will not adversely affect navigation as the gear modification will occur during the off season and will be returned to what was approved within the original decision prior to the increased presence of vessel traffic. Additionally, despite the fact that the requested change will result in 200' longlines sections, rather than the authorized 100' sections, the leaseholder proposes to utilize four of the previously authorized sections to create these new sections, resulting in no net increase in utilized space. The original decision required that gear be suspended at least 3' below the surface. The proposed gear will remain submerged at least 3' below the surface, consistent with the original lease decision. While the species cultured in the southern portion of the lease site would change seasonally, the proposed gear and its configuration are in accordance with what was authorized in the original decision. No marine algae gear would be deployed in the northern 1,140' portion of tract 2, which is only authorized the deployment of gear on the bottom.

Therefore, the proposed change is consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision and its conditions:

1. Jet skis are prohibited within the lease boundaries;
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease;
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is prohibited within the lease boundaries; and
4. The lease area shall be marked in accordance with both U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

C. Proposed Species Changes and Findings

The leaseholder is also seeking authorization to cultivate sugar kelp (*Saccharina latissimi*), skinny kelp (*Saccharina angustissima*), and winged kelp (*Alaria esculenta*). These species would be cultured using the gear discussed in section 2.B of this decision (App 5). All three species would be sourced from either Atlantic Sea Farms or Ocean's Balance, both are in Biddeford, Maine, and are an approved source of stock by DMR. If stock is not available from this source another DMR approved source must be used. As the proposed sources of stock are all approved by DMR, and because the gear proposed to culture this species has been found to be permissible via section 2.B of this decision, the

request to culture marine algae is consistent with the findings of the underlying lease application, would not materially alter the findings of the original decision, and would not result in a change to the original lease conditions.

3. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The proposed lease amendments do not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A);
- b. The proposed lease amendments are consistent with the Commissioner's findings on the underlying lease application;
- c. The proposed lease amendments do not violate any of the conditions set forth in the original lease.

Accordingly, the evidence in the record supports the conclusion that the proposed lease amendments meet the requirements for the granting of a lease amendment set forth in 12 M.R.S.A. §6072 and in DMR Rule Chapter 2.44.

4. DECISION

Based on the foregoing, the Commissioner grants the request to amend WES UR for the cultivation of sugar kelp (*Saccharina latissimi*), skinny kelp (*Saccharina angustissima*), and winged kelp (*Alaria esculenta*) using the gear and layout described in this decision.

Dated: _____

6/20/21



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

**STATE OF MAINE
DEPARTMENT OF MARINE
RESOURCES**

Suspended and bottom culture of shellfish,
Weskeag River, South Thomaston

**Weskeag River Shellfish Farms, LLC
WES UR**

July 31, 2020

**AQUACULTURE LEASE RENEWAL, LEASE WES UR
FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Weskeag River Shellfish Farms, LLC, applied to the Department to renew the aquaculture lease WES UR for a period of 20 years to October 4, 2040. The 7.14-acre lease is issued for the suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*), located in the upper Weskeag River, South Thomaston, Knox County, Maine. This lease was initially issued on October 5, 2000.

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 *Courier Gazette* on March 5, 2020. Personal notice was given to the municipality, riparian landowners within 1,000 feet of the lease site and state agencies. A copy of the application was also provided to Marine Patrol because South Thomaston is not served by a harbormaster. Two comments were received on this application from members of the public 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, and the site has passed inspection conducted by the Department. The rent is paid to date, and the bond is current. 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. Two public comments were received during the comment period, and these were shared with the leaseholder. Both comments raised concern about aquaculture gear breaking lose from the site and not being property cleaned up by the lease holder.¹ One of these commenters was also concerned about navigation within the river, as they felt there is very little room to access the upper part of the river and marsh because of the lease. In their review of the application for renewal, Marine Patrol indicated that the lease does not conflict with navigation or other uses of the area.² In addition, navigation by watercraft other than jet skis is allowed in the open areas of the lease. Based upon review of the file, there have not been other complaints about washed up gear or navigation issues surrounding the lease, and there are no outstanding complaints regarding navigation or other issues. As such, there is not substantial 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 only lease WES UR (7.14 acres).

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

¹ Emails from R. Sleeper received on February 27, 2020 and from N. Levy on March 12, 2020.

² Harbormaster Questionnaire complete by Lt. Troy Dow, Marine Patrol, signed March 26, 2020

D. Speculative purposes

Chapter 2.45(2)(A) of the Department’s rules provide that in determining whether a renewal is being conducted for speculative purposes, the Commissioner 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:

1. Jet skis are prohibited within the lease boundaries.
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease.
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is permitted within the lease boundaries.
4. The lease area shall be marked in accordance with both U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

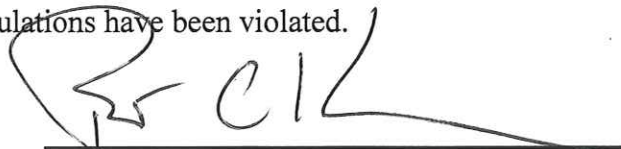
4. DECISION

The Commissioner of Marine Resources grants the application of Weskeag River Shellfish Farms, LLC to renew aquaculture lease WES UR for a period of twenty years, to October 4, 2040. 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) 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: 7/31/2020



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

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES
Renewal Application
Suspended & bottom culture of shellfish
Weskeag River, South Thomaston

Weskeag River Shellfish
Farms, LLC
Lease WES UR
Docket #2010-12R
January 5, 2011

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On June 23, 2010, the Department received an application from Weskeag River Shellfish Farms, LLC, to renew, for a period of ten years to October 4, 2020, its aquaculture lease for 7.14 acres for suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*) located in the upper Weskeag River, South Thomaston, Knox County, Maine. This lease was initially issued on October 5, 2000.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* August, 2010 edition and in the *Village Soup* newspaper on July 27 and August 12, 2010. The public, riparian landowners within 1,000 feet of the lease site, and other interested persons were given 30 days to submit comments or to request a hearing on the application for lease renewal. 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

My review of the records of this lease discloses that all annual reports have been filed, rent has been paid in a timely manner, the bond has been kept current, and the site has passed inspections 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

DMR records show that this applicant holds only the 7.14 acres covered by this aquaculture leases.

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

D. Speculative purposes

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, as shown by the annual reports it has filed with the Department.

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

3. OTHER ISSUES

A. Lease Conditions

The following conditions are carried over from the original lease and will apply to the renewed lease:

1. Jet skis are prohibited within the lease boundaries;
2. Navigation by watercraft other than jet skis is allowed in the open areas of the lease;
3. Clam harvesting or diving for harvesting purposes without the authorization of the leaseholder is prohibited within the lease boundaries; and
4. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.

B. Clarification of culture techniques

The original decision describes the culture techniques proposed by the leaseholder as including gear deployed at and beneath the surface and the possible free planting of shellfish on the bottom. The decision grants the lease for "suspended and bottom culture techniques as described in the record" (decision dated October 5, 2000, p. 12).

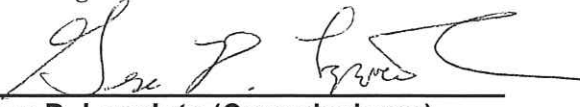
The original lease, however, refers instead to “suspended and bottom containment cultivation techniques”, which appears to be an error, as “bottom containment” is not reflected in the original decision. The term “bottom containment” is no longer used; it was intended to refer to the use of gear placed on the bottom, as opposed to at the surface or higher in the water column.

“Bottom culture”, as recognized by this Department, means planting shellfish directly on the bottom, without the use of gear other than marker buoys. “Suspended culture” means the use of gear, whether at or below the surface or on the bottom. Therefore, this lease will be modified upon renewal to read “suspended and bottom culture”, which is consistent with the culture techniques described and approved in the original decision.

4. DECISION

The Commissioner of Marine Resources grants the application of Weskeag River Shellfish Farms, LLC, to renew its aquaculture lease for 7.14 acres for suspended and bottom culture of American oysters (*Crassostrea virginica*), soft-shell clams (*Mya arenaria*), and hard-shell clams (*Mercenaria mercenaria*) located in the upper Weskeag River, South Thomaston, Knox County, Maine for a period of ten years, to October 4, 2020. With the exception of the changes described above, the renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease.

Dated: 5 January 2011



George D. Lapointe (Commissioner)
Department of Marine Resources