

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Muscongus Bay Aquaculture
DAM HI3

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

AQUACULTURE LEASE RENEWAL

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Muscongus Bay Aquaculture (Muscongus) applied to the Department of Marine Resources (DMR) to renew the aquaculture lease DAM HI3 for a period of twenty years. The seven-acre lease is located adjacent to Hog Island, in the Damariscotta River, in the Town of Damariscotta, Lincoln County, for the purpose of cultivating American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahogs (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), surf clams (*Spisula solidissima*), and bay scallops (*Argopecten irradians*) using bottom and suspended culture techniques.

This lease was initially issued to Muscongus on April 29, 2004, for a period of ten years. On October 26, 2014, DMR approved a renewal application for this lease for another ten-year period, carrying over the same conditions that were applied to the original lease. DMR accepted this current renewal application as complete on February 16, 2024.

1. PROCEDURE

Notice of the completed renewal application and the 30-day public comment period and opportunity to request a public hearing was published in the *Lincoln County News* on March 7, 2024. On March 7, 2024, notice was also provided to the Town of Damariscotta, the Harbormaster, riparian landowners within 1,000 feet of the site, and other state agencies, and sent to subscribers of DMR's aquaculture email list-serve. There were two comments received, one from the Maine Department of Inland Fisheries & Wildlife (MDIF&W) and the other from the Harbormaster of Damariscotta. In accordance with 12 M.R.S.A. §6072(12), a public hearing on a lease renewal application is at the discretion of DMR unless five or more requests for a

hearing are received during the comment period. DMR did not receive any requests for a public hearing during the comment period and determined that a public hearing was not necessary.

2. STATUTORY CRITERIA

Aquaculture lease renewals are governed by 12 M.R.S.A. §6072(12) and by DMR's Chapter 2.45 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 agreement

When issuing a decision on a lease renewal the Commissioner must consider whether the lessee has complied with the lease agreement during the term of the lease. 12 M.R.S.A. § 6072(12)(B). The review of the case file associated with this lease indicates that Muscongus has complied with the lease agreement. notwithstanding one bond expiration warning notice issued by DMR, as Muscongus promptly rectified the issue. There are no outstanding complaints regarding this lease.

Therefore, DMR finds that Muscongus has complied with the lease agreement during its term.

B. Best interest of the State of Maine

When issuing a decision on a lease renewal the Commissioner must determine whether renewal of the lease is in the best interest of the State. 12 M.R.S.A. § 6072(12)(C). In determining whether it is in the best interest of the State to renew the lease, DMR 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. Chapter 2.45(2)(B). On March 15, 2024, the Damariscotta Harbormaster submitted feedback, which stated that the proposal will have "little if any" effect on navigation and identified no other concerns related to renewal application. On March 29, 2024, DMR received one comment from MDIF&W stating that minimal impacts to wildlife are anticipated for this project. DMR did not receive any other comments concerning new or existing uses of the

area. Based on the record, renewal of the lease will not cause conflicts with new or existing uses of the area.

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

C. Aggregate lease holdings

The Commissioner may not issue a lease renewal if the renewal will cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres. 12 M.R.S.A. § 6072(12)(D), (13-A)(B); Chapter 2.45(3) According to DMR records, Muscongus holds the following leases:

Lease Acronym	Acreage
DAM DL3x	3.93
DAM DP	6.53
DAM GS2	5.32
DAM HI3	6.99

In total, Muscongus leases 22.78 acres from the State of Maine.

Therefore, DMR finds that the renewal of this lease will not cause Muscongus to lease more than 1,000 acres.

D. Speculative purposes

When issuing a decision on a lease renewal the Commissioner must determine whether the lease is being held for speculative purposes. 12 M.R.S.A. § 6072(12)(E). Chapter 2.45(2)(A) of DMR’s rules provide that in determining whether a renewal is being conducted for speculative purposes, the Commissioner must consider “whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term.” The renewal application states that during the previous lease term, aquaculture has been conducted daily on the lease site between March and December, in addition to the annual seeding and dragging of the site (App 2).

Therefore, DMR finds that the lease is not being held for speculative purposes.

3. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The Commissioner received a renewal application for this lease at least 30 days prior to the expiration of the lease.
- b. The lessee has complied with the lease agreement during the term of the lease.
- c. The renewal of the lease is in the best interest of the State.
- d. The renewal of the lease will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1,000 acres.
- e. The lease is not being held for speculative purposes.

4. **LEASE CONDITIONS**

The Commissioner may establish conditions that govern the use of the lease area and impose limitations on aquaculture activities, pursuant to 12 M.R.S.A §6072(7-B).

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 lease. The following conditions appear in the existing 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; and
2. Navigational and recreational boating and fishing shall be allowed in the open areas of the lease.

Condition 1 is specific to marking, which is required in Chapter 2.80 of DMR's rules. It is also required as part of the lease agreement. Therefore, condition 1 will be removed from the lease. Condition 2 will remain part of the lease.

5. **DECISION**

Based on the Foregoing, the Commissioner grants the application of Muscongus Bay Aquaculture to renew its aquaculture lease DAM HI3 for a period of twenty 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.

6. **REVOCATION OF LEASE**

The Commissioner may commence revocation procedures upon determining, pursuant to 12 M.R.S.A. §6072(11) that no substantial aquaculture has been conducted over the course of the lease, that aquaculture has been conducted in a manner substantially injurious to marine organisms, or public health or that any of the conditions of the lease or any applicable laws or regulations have been violated.

7. **DATE AND SIGNATURE**

Dated: _____

6/27/24



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

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

**Muscongus Bay Aquaculture, Inc.
DAM H13**

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

Docket Number 2013-16-R
October 26, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Muscongus Bay Aquaculture applied to the Department on October 25, 2013 to renew the aquaculture lease, DAM H13 for a period of ten years to April 28, 2024. The 7 acre lease is issued for suspended and bottom culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahogs (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), surf/hen clams (*Spisula solidissima*), and bay scallops (*Argopecten irradians*) located in the Damariscotta River, Damariscotta, Lincoln County, Maine. The lease was granted on April 29, 2004 for 7 acres.

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 November 14, 2013 and again on December 5, 2013. Notice was also published in the December 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

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, including DAM H13, consisting of 7 acres, 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 2.45 provides that in considering whether a lease is being held 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 for speculative purposes.

3. LEASE CONDITIONS

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

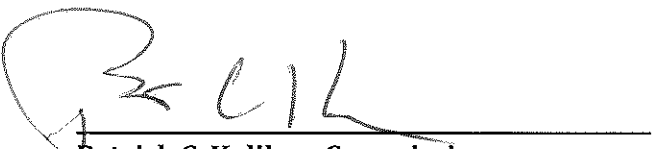
- The lease area must be marked in accordance with the U.S. Coast Guard requirements and Department of Marine Resources Chapter 2.80; and
- Navigational and recreational boating and fishing shall be allowed in the open areas of the lease.

4. DECISION

The Commissioner of Marine Resources grants the application of Muscongus Bay Aquaculture, Inc. to renew its aquaculture lease, DAM H13, for a period of ten years to April 28, 2024. 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. REVOCACTION 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: 10/26/14 
Patrick C. Keliher, Commissioner
Department of Marine Resources