

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Aquaculture Lease Renewal Application
Net Pen Culture of finfish and mussels
Cobscook Bay, Eastport

**Lessee: Cooke Aquaculture
USA, Inc.**

Lease: COB TE
Docket #2016-16-R
September 13, 2017

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Cooke Aquaculture USA, Inc. applied to the Department to renew the aquaculture lease COB TE for a period of ten years to December 29, 2026. The 15-acre lease is issued for net pen culture of Atlantic salmon (*Salmo salar*), rainbow/steelhead trout (*Oncorhynchus mykiss*), and blue mussels (*Mytilus edulis*), and is located southeast of Treat Island, Johnson Bay, Cobscook Bay, Eastport, Washington County, Maine. This lease was initially issued on December 17, 1987. Since that time the lease was transferred from L.R. Enterprises to Phoenix Salmon US, Inc., which was renamed Cooke Aquaculture USA, Inc. on May 3, 2011.

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 *Quoddy Tides* on September 23, 2016 and October 14, 2016 and in the October, 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. 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.

In 2009, Maine Coast Heritage Trust (MCHT), a non-profit organization, acquired Treat Island. The island is comprised of gravel beaches, spruce forests, and open meadows.¹ In addition, there is a walking path that extends from a beach on the southeastern side of the island to a monument in the island's interior.² MCHT, the public, and local businesses utilize the island for a variety of purposes including sightseeing, educational programming, and wildlife viewing.³ In order to access the island, many visitors land kayaks and small boats along the southeastern beach.⁴ MCHT also maintains a mooring within the vicinity of the southeastern beach. A portion of the COB TE lease site extends into intertidal area, which is adjacent to the southeast beach.

After the comment period closed, MCHT contacted the Department to express their concern about access to the southeastern side of the island.⁵ MCHT was not opposed to the renewal, but wanted to ensure that when COB TE is in operation there is adequate space for anchorage and a reasonable navigable area for visitors to access the southeastern beach. In consultation with the Department, MCHT collaborated with representatives from Cooke Aquaculture to reach an agreement regarding riparian access to the island's southeastern beach.⁶ Conditions reflecting the agreement between MCHT and Cooke Aquaculture will be included in the renewed lease, as described below.

Given that MCHT and Cooke Aquaculture addressed concerns related to accessing the island, 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 an aggregate of 637.69 acres of aquaculture leases comprised of the following: COB BC (45), COB BP (33), COB CC (15), COB DC (25), COB HP (10), COB JK (22), COB LU2 (32.14), COB MI2 (30), COB PC (26.5), COB RN2 (32.14), COB SB (31.88), COB TE (15), COB TW (15), EAST CALF (28), EASTW SCN (10), EASTW SI (10), MACH CI2 (44.7), MACH CIN (35), MACH CW2 (35), MACH II (40), MACH LI (20), MACH ST (10), SWAN BI (15), SWAN BIS (38.5), and SWAN HS (18.83).

¹ Treat Island Preserve: <http://www.mcht.org/preserves/treat-island> accessed 08/29/17

² Ibid.

³ Ibid., and email from J. Arbuckle to C. Burke dated October 26, 2016.

⁴ Email from J. Arbuckle to C. Burke dated October 26, 2016.

⁵ Email from J. Arbuckle to C. Burke dated October 26, 2016. The comment period ended October 25, 2016.

⁶ Email from J. Arbuckle to A. Ellis dated August 23, 2017.

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(3)(B) provides that in determining 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.” 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, but have been modified during this renewal to address the concerns related to accessing Treat Island:

1. The lease area must be marked in accordance with U.S. Coast Guard requirements and the Department of Marine Resources regulations Chapter 2.80;
2. The riparian owner has the right to place moorings in the lease site to access Treat Island and to moor boats alongside the net pens in bad weather; and
3. Users of Treat Island have the right to anchor their boats within the lease boundaries; and
4. 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 Cooke Aquaculture USA, Inc. to renew aquaculture lease COB TE for a period of ten years, to December 29, 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 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: _____

9/13/17



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