

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Mook Sea Farms, Inc.

DAM EL3

Application for Change in Gear Authorization
East of Little Point, Damariscotta River,
Newcastle

April 28, 2020

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Mook Sea Farms, Inc. applied to the Department of Marine Resources (DMR) for a change in gear authorization on their existing standard lease DAM EL3, located east of Little Point in the Damariscotta River, in the Town of Newcastle in Lincoln County, Maine. The leaseholder is seeking authorization to add 200 bottom cages to their site.

1. THE PROCEEDINGS

Notice of the application and the 14-day public comment period were provided to federal agencies, riparian landowners, the Town of Newcastle and its Harbormaster, and others on DMR's mailing list. The evidentiary record before the Department regarding this lease amendment application includes three exhibits (see exhibit list below).

LIST OF EXHIBITS¹

1. Application for a change of gear authorization
2. Lease renewal decision signed October 12, 2016
3. Decision combining lease DAM EL and DAM EL2, to create DAM EL3 signed May 14, 2012

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 on an existing lease site provided the proposed changes are consistent with the findings of the original decision and lease conditions.

A. Original Lease Decision

On October 12, 2016, DMR renewed lease DAM EL3, held by Mook Sea Farms, Inc. DAM EL3 was originally issued on May 14, 2012 and represented a consolidation of two existing lease sites of the lessee, DAM EL and DAM EL2 (Exhibit 1, page 1). DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by the applicants met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 3, page 14).

¹ Exhibits 1 and 2 are cited below as: Application – "App", DMR Decision on Lease DAM EL3? - "Exhibit 2".

Lease DAM EL3 is authorized for cultivation of American oysters, European oysters, surf/hen clams, northern quahogs/hard clams, soft clams, and bay scallops using bottom and suspended culture techniques. (Exhibit 1, page 1). The lease is divided into four tracts (Exhibit 3, page 30):

Northwest tract	3.32 acres	Formerly DAM EL2	Bottom and suspended culture
Northeast tract	2.17 acres	Formerly DAM EL2	Bottom culture
Southeast tract	2.49 acres	Formerly DAM EL2	Bottom culture
Southwest tract	7.17 acres	Formerly DAM EL	Suspended culture

Conditions imposed on lease DAM EL3, pursuant to 12 M.R.S.A § 6072 (7-B) and located on page 3 of the renewal decision (Exhibit 2), are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. Navigation corridors must be maintained free of gear as depicted on Exhibit 16² and at the northeast corner of the former lease DAM EL lease site, which is the southwest tract of the new, combined lease.
3. Moorings may be set within the navigation corridors on the lease site as authorized by the Newcastle harbormaster.
4. The "Hale mooring" must be accommodated in its present location (44°01'16.68" N, 69°32'38.34" W) on the southwest tract of the lease, formerly lease DAM EL.
5. The lessee may temporarily displace and relocate moorings on the lease site after reasonable notice to and authorization from the Newcastle harbormaster.
6. The lessee must promptly alter or remove gear on the lease site at the harbormaster's request if it is outside the lease boundaries or if it interferes with navigation in the open areas of the lease site which are to be left gear free as shown in Exhibit 16.
7. Oyster cages may be sunk to the bottom of the lease site only in areas where a minimum of four feet of water will remain above them at mean low water and must be marked when ice is not present.
8. Navigation and recreational fishing are permitted in the open areas of the lease site.
9. Dragging is limited to the hard-bottom substrate in the channels within the lease boundaries.
10. Other public uses that are not inconsistent with the purpose of the lease are permitted within the lease boundaries.

B. Proposed Gear Changes and Findings

Mook Sea Farms, Inc. is authorized to deploy 600 cages on the northwest tract (formerly part of lease EL2), and 800 cages on the southwest tract (formerly part of lease EL). The northeast and southeast tracts are currently authorized for bottom planning only. The applicant is requesting authorization to add

² Exhibit 16 is page 10 of the original decision dated May 14, 2012 and is incorporated here by reference.

200 bottom cages to their site, each measuring 47 1/4" x 36" x 6", for the cultivation of shellfish (App 6). The applicant is requesting to place gear in unused portions of their site, across all tracts, either in a longline or as a single cage with buoys marking their location (App 6). Figure 1 depicts the locations proposed for bottom cage deployment (which is indicated in the figure as 'new gear').



Figure 1: Proposed gear orientation as shown on page 7 of amendment application

As shown above in Figure 1, the lease holder is also requesting to modify the gear configuration on DAM EL3 by deploying the proposed bottom cages below existing surface cages in the northwest and southwest tracts of the lease, and to add bottom cages on the northeast and southeast tracts of the lease (App 7), which are currently authorized for bottom culture only. According to the application, the leaseholder intends to eventually have bottom cages underneath the floating cages they currently use in the northwest and southwest tracts of the lease (App 6). The application for gear amendment indicated that adding the bottom cages to their lease will allow the lessee to more effectively use the bottom of the lease site for harvesting oysters, as bottom planting is currently inefficient, and they experience high mortality (App 6).

In the decision that combined DAM EL and DAM EL2 into a single lease titled DAM EL3 (exhibit 3), the presence and location of gear was described at length in the sections concerning riparian ingress and egress and navigation (Exhibit 3, pages 10-18). In fact, the layout of gear was a focus of concern during the hearings to such an extent that the hearing on September 19, 2011 was recessed and reconvened in November to allow Mr. Mook to make revisions and to consult with Mr. Bryant, the Newcastle Harbormaster, and with the Damariscotta-Newcastle Joint Harbor Committee (Exhibit 3, page 4).

Revisions to the original gear layout provided during the November 2011 hearing for DAM EL2 and subsequent discussion of combining DAM EL and DAM EL2 indicated that 1.85 acres of the northwest tract of DAM EL2 (now the northwest tract of DAM EL3) would remain open for moorings and navigation (Exhibit 3, page 13). Space would also be available on the northeast and southeast tracts of DAM EL2 (now the northeast and southeast tracts of DAM EL3) which were authorized for bottom culture only and would be free of gear (Exhibit 3, page 13). Much of the discussion focused on the proposed gear for the northwest and southwest tracts of DAM EL3. Had gear been proposed for the northeast and southeast portions of the lease, given the concerns regarding navigation and riparian ingress and egress, and the focus on gear layout in the original proceedings, it is reasonable to conclude that gear layout for the northeast and southeast areas would also have been discussed.

Therefore, the deployment of additional gear not discussed during the original proceedings, and in an area contemplated only for bottom culture and therefore not discussed and agreed upon during the hearing in November 2011, is inconsistent with the Commissioner's findings on the underlying lease application.

In addition, at the November 11, 2011 hearing, there was concern that if the cages on the northwest and southwest tracts of the lease sunk for overwintering in water that is too shallow, passing boats could damage propellers or centerboards (Exhibit 3, page 18). As such, the lease was conditioned that oyster cages could only be sunk to the bottom in portions of the lease where a minimum of four feet of water would remain above them at mean low water, and that cages must be marked when ice is not present. With this amendment application, the leaseholder is requesting to add bottom cages to all tracts of the lease that. The additional gear would remain on site year-round and increase the amount of bottom occupied by gear throughout the winter. According to the NOAA nautical chart for this area, some areas of the lease site have water depths of approximately 1 foot at mean low water. Should this gear be placed where there is less than a minimum of four feet of water, amending the lease to allow for the addition of bottom cages as requested could pose a navigational hazard.

Therefore, it is reasonable to conclude that the addition of gear and alteration of the gear plan could materially alter the findings of the original lease decision for DAM EL3.

3. DECISION

Based on the foregoing, the Commissioner denies the leaseholder's gear amendment request to add 200 bottom cages to DAM EL3.

Dated: 04/28/2020



Patrick C. Keliher, Commissioner
Department of Marine Resources