

**STATE OF MAINE**  
**DEPARTMENT OF MARINE RESOURCES**  
Renewal Application

**Lessee: Cooke Aquaculture USA, Inc.**  
**Lease: COB HP**  
Docket # 2015-07-R  
June 19, 2018

## **FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION**

Cooke Aquaculture USA, Inc. applied to renew its aquaculture lease COB HP for 10.00 acres for net pen culture of Atlantic salmon, rainbow/steelhead trout, Atlantic cod, Atlantic halibut, and haddock at a site located in Harris Cove, Cobscook Bay, Eastport, Washington County, Maine, for a period of ten years to July 19, 2025. This lease was initially issued to Friendship Fisheries, Inc. on July 21, 1995. The lease has changed hands several times in the intervening years.<sup>1</sup>

### **1. PROCEDURE**

Notice of the application for lease renewal and the public comment period was sent to riparian landowners of shorefront property within 1,000 feet of the lease site, the Town, and the Harbormaster by U.S. Mail and to those on the DMR aquaculture mailing lists by electronic mail. The public was notified by publication in the June, 2015 edition of Commercial Fisheries News and the Mt. Desert Islander May 14 and June 4, 2015 editions. The public comment period allowed 30 days to submit comments or to request a hearing on the application for lease renewal.

The Department received comments from riparians Robert Campbell, Jennifer Campbell, Kenneth L. Moholland, and Francine R. McDonald-Moholland, all opposing the renewal of the lease. None of the commenters requested a public hearing, although an attorney for the Campbells did. According to DMR Rules Chapter 2.45 (2), no hearing is required on an application for renewal unless “unless it is requested, in writing, by five or more interested persons.” Therefore, no hearing was held on this application.

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- <sup>1</sup> April 21, 1999: Lease transferred from Friendship Fisheries, Inc. to Maine Aqua Foods, Inc., a subsidiary of International Aqua Foods, Inc.
  - May 10, 2000: Maine Aqua Foods, Inc. transferred the lease to International Aqua Foods USA, Inc., a subsidiary of Stolt Sea Farms Maine, Inc., which was in turn a subsidiary of Stolt-Nielsen, S.A.
  - 2005: The lease was renewed for a 10-year term to July 19, 2015 to Stolt Sea Farm Maine, Inc. as the lessee.
  - 2007: A letter to DMR from the law firm of Eaton, Peabody states that Stolt Sea Farm Maine, Inc. “is now Cobscook Bay Salmon, Inc., a subsidiary of Cooke Aquaculture.
  - May 3, 2011: Cobscook Bay Salmon, Inc. transferred the lease to Phoenix Salmon, Inc., to be re-named Cooke Aquaculture USA, Inc.

## **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: (A) the lessee has complied with the lease agreement during its term; (B) the lease is not being held for speculative purposes; (C) the Commissioner determines that renewal of the lease is in the best interest of the state; and (D) 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.

### **A. Compliance with lease**

At the present time, there are no outstanding complaints regarding this lease. A riparian landowner submitted a comment in connection with the proposed transfer of the lease in 2010-11, complaining about the aquaculture debris and trash that washed up on his shore, although he noted the difficulty of attributing such material to any particular lease site. He noted, however, that the debris was substantially reduced once the COB HP lease site ceased to be actively operated. The complaint was referred to Cooke's site manager; no further information was received from either the complainant or the lessee.

The records of this lease disclose that all annual reports have been filed, the rent is paid to date, and the bond is current. The site has been inspected by DMR Marine Patrol when in operation, which has not been the case since 2006.

**Therefore, I find** that the applicant has complied with the lease agreement during its term.

### **B. 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 application for renewal states "This lease was last stocked in 2003 and final harvest was in early 2006, since then this site has not be [sic] utilized due to sea lice concerns in Passamaquoddy and Cobscook Bays."

The Department is aware that a number of Cooke Aquaculture's lease sites in the Cobscook-Passamaquoddy Bay area have not been stocked in recent years owing to the presence of sea lice, which are destructive to salmon. The company has explained that it is attempting to devise an integrated pest management system for lice and that once this is in place, the affected lease sites will once again be stocked. Its annual reports have also reflected this situation.

Absent other evidence to the contrary, the Department considers this situation to be different from one where no aquaculture has been conducted and no plausible operational justification provided.

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



### **C. Best Interests of the State**

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 (DMR Rules, Chapter 2.45 (3) (B)).

The objection to the renewal of the lease was submitted by Robert Campbell, a riparian owner of shorefront land within 1,000 feet of the lease site. The other comments echoed his objection. Mr. Campbell noted that he had purchased his property in 2008 and used it for boatbuilding for a time. He stated that he was currently considering restoring what he said was a grandfathered lobster pound which he owned in the waters adjacent to his upland. He asserted that two people with whom he discussed this scheme had expressed the opinion that the salmon waste and feed from the lease operation would contaminate the waters that would be circulated through the pound and therefore the water would not be clean enough for the lobsters. On this basis, Mr. Campbell stated that the lease diminishes the value of his property and asked that renewal be denied.

Mrs. Campbell, Mr. and Mrs. Moholland, and Attorney Louis LaFontisee, Jr., representing the Campbells, repeated the statements that the existence of the salmon lease site prevented the operation of a lobster pound.

The southwest corner of the lease boundary (which would be some distance from the salmon pens themselves, when the site is in operation) is at least 600 feet northeast of the cove south of Harris Point where it appears Mr. Campbell wished to re-create a lobster pound. To the Department's knowledge, no pound was there at the time the renewal application was submitted, and no pound has been there for many years, although the 1995 DMR site report noted that "the inner cove has a lobster pound area."

No issues concerning any lobster pound were raised or noted at the hearing in 1995 that led to the initial granting of the lease. The site report and the baseline environmental assessment accompanying the original application noted that ocean currents in and around the proposed lease site were so strong that a diver could not swim against them, and a subsurface drogue was lost when attempting to measure deeper currents. The decision granting the lease noted a maximum surface current of 27 cm/second and referred to a surface eddy where the surface and subsurface waters flowed in opposite directions. Moreover, the decision notes that "the Old Sow Tidal Whirlpool is located offshore of this area" between the City of Eastport on Moose Island and Deer Island, New Brunswick, across the channel.

One effect of such strong currents is to disperse uneaten fish feed or feces and prevent or reduce any buildup on the bottom. Such a buildup, should it occur, could have short-term negative effects upon the bottom directly beneath the fish pens but would not affect the water quality. Moreover, when a salmon lease site is in operation, monthly monitoring is required by the Maine Department of Environmental Protection to ensure that such buildup does not occur or is promptly remedied if it does.

The 1995 decision included findings that the proposed aquaculture operation would not unreasonably interfere with fishing or with the ability of the site to support existing ecologically significant flora and fauna on and around the lease site. A condition was placed on the lease that "Lobstering and crabbing are to be allowed on the open areas of the lease," something that would be unlikely if harm to lobsters within the lease site had been anticipated.

While Mr. Campbell may have taken at face value comments made to him about the effect of the lease on the water quality in the area, to the Department's knowledge, these statements are not credible.

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.

#### **D. Aggregate Lease Holdings**

DMR records show that this applicant holds an aggregate of 637.71 acres of aquaculture leases comprised of the following leases: COB BC (45), COB BP (33), COB CC (15), COB DC (25), COB HP (10), COB JK (22), COB LU<sub>2</sub> (32.14), COB MI<sub>2</sub> (30), COB PC (26.5), COB RN<sub>2</sub> (32.14), COB SB (31.88), COB TE (15), COB TW (15), EASTW CALF (28), EASTW SCN (10), EASTW SI (10), MACH CI<sub>2</sub> (44.7), MACH CIN (35), MACH CW<sub>2</sub> (35), MACH II (40), MACH LI (20), MACH ST (10), SWAN BI (15), SWAN BIS (38.5), SWAN HS (18.85).

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

### **3. LEASE CONDITIONS**

The conditions requiring marking and allowing lobstering and crabbing in the open areas of the site will be carried over from the original lease. As provided in DMR Rules Chapter 2.37 (1) (B), the Department includes a general condition on renewed leases providing that other public uses that are not inconsistent with the lease purposes are permitted. In adding this condition to the renewed lease, the Department intends to make no substantive change in the public uses of the waters that are permitted to continue within the lease boundaries.


Therefore, the conditions that apply to the new lease are:

1. The lease area shall be marked in accordance with U.S. Coast Guard requirements and the Department of Marine Resources regulations, Chapter 2.80.
2. Lobstering and crabbing are to be allowed on the open areas of the lease.
3. 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 its aquaculture lease COB HP for a period of ten years, to July 19, 2025. The renewed lease is subject to the same terms, conditions, and obligations as set forth in the original lease, with the addition of the third condition as described above.

Dated: 6-19-19

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