

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Muscongus Bay Aquaculture, Inc.

DAM GS2

Application for Change in Gear Authorization
North of Route 1 Bridge, Damariscotta River,
Newcastle

March 3, 2022

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Muscongus Bay Aquaculture, Inc. applied to the Department of Marine Resources (DMR) to change the gear authorization on standard lease DAM GS2, located north of the Route 1 Bridge in the Damariscotta River, in the Town of Newcastle, Lincoln County, Maine. The leaseholder is seeking authorization to deploy lines of Hexcyl® flip farm baskets, ZAPCO tubes, and flip bags for the cultivation of shellfish.

1. THE PROCEEDINGS

The amendment application was deemed complete by DMR on December 2, 2021. Notice of the complete application and the 14-day public comment period were provided to other state and federal agencies, riparian landowners, the Town of Newcastle and its Harbormaster, and others on DMR's mailing list. The evidentiary record before DMR regarding this lease amendment application includes the five exhibits listed below.

A. List of Exhibits^{1,2}

1. Application for a change of gear authorization
2. Case file for the amendment application
3. Executed lease document for DAM GS2, signed July 17, 2015
4. Lease renewal decision, signed October 20, 2014
5. Original lease decision, signed April 23, 1993

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/or operational modifications on an existing lease site provided the proposed changes are consistent with the findings for 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.

¹ Exhibits 1-7 are cited below as: Amendment Application – “App”, Case File – “CF”, Lease for DAM GS2 Executed in 2015 – “Exhibit 3”, DMR 2014 Renewal Decision on Lease DAM GS2 - “Exhibit 4”, and Original Lease Decision for DAM GS2 Executed in 1993– “Exhibit 5”.

² Page numbers are cited using the PDF page number, which may not always match the page number written on documents.

A. Original Lease Decision

The current lease agreement for DAM GS2, which conveys to Muscongus Bay Aquaculture, Inc. the right to culture American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), northern quahogs (*Mercenaria mercenaria*) using suspended and bottom culture techniques, was executed in 2015.³ This lease has been renewed twice since its original issuance. The original decision⁴, which was signed in 1993, described the gear to be deployed on the lease site as up to 2,000 modules made of wire mesh and netting designed to sit on the seafloor, and up to 2,000 floating cages deployed along lines (Exhibit 5, page 3). According to the original lease decision, floating bags would be removed in the winter months (Exhibit 5, page 8). Conditions imposed on lease DAM GS2, pursuant to 12 M.R.S.A § 6072 (7-B) are as follows:

1. The lease area must be marked in accordance with U.S. Coast Guard and Department of Marine Resources regulations Chapter 2.80.
2. Eel trapping is allowed on the lease site.

B. Proposed Gear Changes and Findings

Muscongus Bay Aquaculture, Inc. is requesting the authorization to deploy lines of Hexcyl® “Flip Farm Baskets”, ZAPCO® tubes, and flip bags for the culture of shellfish on standard lease DAM GS2 (App, page 2). Hexcyl® flip farm baskets would be located on the eastern side of the lease, in a ~490 ft by ~150 ft area⁵ (App, page 11). Specifically, the leaseholder is proposing to deploy up to 6,750 Hexcyl® flip farm baskets (31.5” x 11” x 7”) on (15) ~450-foot rows, which would be spaced 10 feet apart on center⁶ (resulting in approximately 7.5 feet between the deployed baskets), and moored with helix anchors or concrete blocks (App, pages 11, 18, & 19). The longest axis of the proposed Hexcyl® flip farm baskets would be deployed perpendicularly along the longlines.

ZAPCO® tubes (35” x 13”) and flip bags (21” x 28” x 5”) would be located on the western side of the lease, in a ~500 ft by ~100 ft area. ZAPCO® tubes and flip bags would be hung from lines secured to posts or from “U” shaped rebar driven in the mud (App, pages 11-17). ZAPCO® tubes and flip bags would be deployed on ~500-foot rows, which would be arranged in 8 groups of 4 rows at maximum capacity.⁷ Groups of rows would be spaced 8 feet apart ((App, pages 11-17). If posts were utilized, each row would have approximately 50 posts, with three ZAPCO tubes (with no space between them) or four flip bags, deployed between posts.⁸ If “U” shaped rebar were used, each row would have up to 44 “U” shaped rebar deployed,

³ All previous documents associated with this lease, including the renewal decision signed in 2014 indicate the lessee is also permitted to culture soft clams (*Mya arenaria*) and surf/hen clams (*Spisula solidissima*) on the site.

⁴ DAM GS2 was originally issued to John W. Sheldon DBA Marine Bioservices Company, and was transferred to Muscongus Bay Aquaculture in 2012.

⁵ The application also indicates that this ~490 ft by ~150 ft area would be the area within the lease that might host floating bags, a gear type already permitted on DAM GS2.

⁶ Clarification provided by Muscongus Bay Aquaculture staff Jeff Auger in a phone call with DMR staff F. Drury on 2/24/22.

⁷ The applicant originally proposed 10 groups of 4 rows, but the 100’ x 500’ area within the lease proposed for this gear type is not large enough to host this number of rows. Clarification and a reduction of proposed gear was provided by Muscongus Bay Aquaculture staff Jeff Auger in a phone call with DMR staff F. Drury on 2/24/22.

⁸ Clarification provided by Muscongus Bay Aquaculture staff Jeff Auger in a phone call with DMR staff F. Drury on 2/24/22.

and three ZAPCO tubes (with no space between them) or four flip bags, would be hung from each.⁹ The line or rebar from which the tubes and/or bags would hang are proposed to be 3-4 feet above the bottom (App, pages 15 & 17).¹⁰ A maximum of 132 ZAPCO® tubes would be deployed in each row, and therefore the leaseholder is requesting to deploy up to 4,224 ZAPCO® tubes on the lease site. A maximum of 176 flip bags would be deployed in each row, and therefore the leaseholder is requesting to deploy up to 5,632 flip bags on the lease site. Helix anchors for additional stability are also proposed. According to the amendment application, some gear would be sunk to the bottom during the winter months and some would be removed. It should be noted that ZAPCO® tubes and flip bags are proposed for the same ~500 ft by 100 ft section of the lease site, and therefore if one gear type was deployed at maximum capacity, the other would not be deployed on the lease at all.

As the original decision permitted floating and sunken gear for culture of shellfish throughout the entirety of the lease, the gear amendment proposed is similar to the original application and lease decision. The main difference between the original lease proposal and the proposed amendment is that instead of all floating or sunken gear, the amendment proposes to use some gear types that would hang from posts or rebar driven in the mud. Additionally, this amendment would result in more gear deployed on the lease than originally permitted. In the original decision's findings of fact, the application's impact on riparian access, navigation, fishing, and other uses of the area primarily considered the lease area as a whole and did not discuss how specific types of gear or gear orientation within the lease would impact applicable criteria. The decision did, however, consider eel trapping within the lease, which resulted in a condition allowing this fishing activity within the lease site. The overhead views for the proposed gear amendment on pages 11 – 13¹¹ of the application, which indicate that all gear, including that already permitted, would be deployed in two polygons within the lease, indicate that adequate room would remain within the lease for eel trapping, outside of the areas proposed to host gear (Figure 1). Furthermore, as lines of Hexcyl® flip farm baskets would be spaced 10 feet on center, and 8 feet would remain between group of ZAPCO tubes/flip bags, it appears that eel trapping could occur within the areas proposed for amended gear as well. DMR did not receive any comments on the gear amendment request. Therefore, the proposed gear changes are consistent with the findings on the underlying lease application and would not materially alter the findings of the original decision. Furthermore, the requested gear change would not result in a change to the original lease conditions.

⁹ Clarification provided by Muscongus Bay Aquaculture staff Jeff Auger in a phone call with DMR staff F. Drury on 2/24/22.

¹⁰ Application, page 4

¹¹ Jeff Auger of Muscongus Bay Aquaculture clarified that page 10 of the application did not represent the proposed gear deployment, in a phone call with F. Drury on 2/24/22.

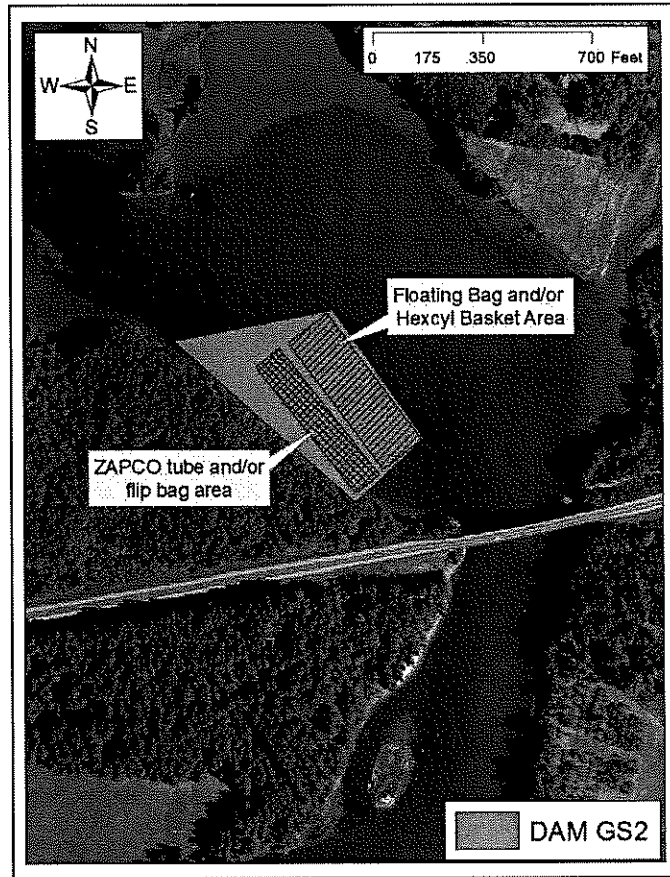



Figure 1: Proposed gear deployment on DAM GS2.

3. **DECISION**

Based on the foregoing, the Commissioner grants the requests from Muscongus Bay Aquaculture, Inc. for the authorization to deploy lines of Hexcyl® flip farm baskets, ZAPCO® tubes, and flip bags for the culture of shellfish on standard lease DAM GS2.

Dated: 3/3/2022


Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Muscongus Bay Aquaculture Inc.
DAM GS2

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

Docket Number 2013-10-R
October 20, 2014

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Muscongus Bay Aquaculture Inc. applied to the Department on January 9, 2013 to renew the aquaculture lease, DAM GS2 for a period of ten years to April 20, 2023. The 5 acre lease is issued for suspended and bottom culture of American/ eastern oysters (*Crassostrea virginica*), oyster European (*Ostrea edulis*), northern quahogs (*Mercenaria mercenaria*), soft clams (*Mya arenaria*), and surf/hen clams (*Spisula solidissima*) located in the Damariscotta River, Lincoln County, Maine. The lease was granted on April 21, 2003 to John Sheldon, d/b/a Marine Bioservices Company and was transferred to Muscongus Bay Aquaculture on April 24, 2012 for the remainder of the current lease term.

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 March 21, 2013 and again on April 18, 2013. Notice was also published in the April 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

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. 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 this lease, DAM GS2, consisting of 5 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
- Eel trapping is allowed on the lease site.

4. DECISION

The Commissioner of Marine Resources grants the application of Muscongus Bay Aquaculture, Inc. to renew its aquaculture lease, DAM GS2, for a period of ten years to April 20, 2023. 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 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: 10/20/14



Patrick C. Keliher, Commissioner
Department of Marine Resources