

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
Renewal Application  
Bottom culture of mussels  
Eastern Bay

Ralph L. Smith, Sr. &  
Moosabec Mussels Inc.  
Lease EAST OP  
Docket # 2010 35R

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

On November 17, 2010, the Department received an application from Ralph L. Smith, Sr. to renew, for a period of ten years to July 9, 2021, his aquaculture lease for 89.78 acres for bottom culture of blue sea mussels (*Mytilus edulis*) located in Eastern Bay, in the Town of Lamoine, Hancock County, Maine. This lease was initially issued on July 10, 2001.

### 1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* March 2011 edition and in the *Ellsworth American* on February 24 and March 10, 2011. The public, riparian landowners within 1,000 feet of the lease site, and other interested persons were given 30 days to submit comments or to request a hearing on the application for lease renewal. Two comments and one request 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

My review of the records of this lease discloses that all annual reports have been filed, rent has been paid in a timely manner, the bond has been kept current, and the site has passed inspections by DMR Marine Patrol. There are no outstanding complaints regarding this lease.

**Comments received.** Both comments were submitted by riparian landowners within 1,000 ft. of the lease site. Vicki Salsbury said she had lived at her present location since 2007 and was "concerned for the ecosystem of nearly 90 acres of the ocean floor where the boat is dragging." She wrote, "We feel a hearing would be beneficial."

Gerard Carriere complained that dragging occurs outside the lease boundaries in the intertidal area at high tide; that the “noisy, diesel-smelling dragger” operates very close to his home and yard, and “hours of dragging” with noise and diesel smell spoil his time outdoors; that the boat is often left moored on or near the lease site; that the noise of the engine and of mussel-washing are a problem; that the water off his shore is getting murkier every year and now contains silt from dragging, as well as suds and other debris. Mr. Carriere also inquired whether septic facilities are provided on the dragger for crew who work long hours.

The Department responded to both letters and sent copies to Mr. Smith for his review. Although the complaints about dragging in proximity to the riparians’ land are understandable, dragging is a legal activity in Maine, the lease was issued for bottom mussel culture with drag harvesting, and there is no indication that dragging is being conducted on or around the lease site in a manner that violates any marine resources laws or rules. Mooring a boat at a location for less than six months does not require a mooring permit from the U.S. Army Corps of Engineers; whether it requires a permit from the Town of Lamoine depends on the mooring ordinance, if any. None of these allegations indicates a failure by the applicant to comply with the lease agreement.

**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**

DMR records show that this applicant holds 89.78 acres under his sole aquaculture lease.

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

#### **D. 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 applicant has conducted aquaculture on the lease site during the lease term, as shown by the annual reports he has filed with the Department.

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

### **3. OTHER ISSUES**

#### **A. Adding Moosabec Mussels Inc. as Co-Lessee**

Mr. Smith has requested that his corporation, Moosabec Mussels Inc., be added to the lease as co-lessee. Moosabec was incorporated in Maine in 1984 and is owned equally by Mr. Smith and his wife, Joyce. Mr. Smith provided all the information about Moosabec's financial and technical capacity that is required of a new applicant for a standard lease, and this information shows Moosabec to be qualified on its own to hold an aquaculture lease.

According to Mr. Smith, Moosabec has always funded the mussel lease operation and buys all the mussels the lease produces. Mr. Smith wishes to secure ownership of the lease as part of his business operations by including his business corporation as a co-lessee.

Adding a new lessee to an existing lease generally constitutes a transfer of the lease, which would require the lessee to apply to the Department for a lease transfer. Under the specific circumstances of this case, however, the Department has determined that a lease transfer is not occurring for the following reasons: the corporation was formed by Mr. Smith and has been in existence for most of the life of this lease; the corporation is wholly owned by Mr. Smith and his wife, Joyce Smith; the purpose of adding the corporation to the lease is to avoid expiration of the lease in the event of Mr. Smith's death in order to allow for the continued viability of the mussel business; the lease has been continuously operated by Mr. Smith in conjunction with the corporation as part of his mussel business; and Mr. Smith has represented that there is no intent to transfer ownership or control of the corporation to any person other than by inheritance by family members. Should ownership or control of the corporation change in future, the Department reserves the right to review the situation and require a transfer application, if the facts appear to warrant it. A condition to this effect will be added to the renewed lease.

Therefore, Moosabec Mussels Inc. will be added as a co-lessee of lease EAST OP, along with Mr. Smith.

#### **B. Lease Conditions**

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

1. Lobster and crab trapping, recreational fishing, and navigation are allowed on the open areas of the lease.
2. Dragging is prohibited by persons other than the leaseholders or their authorized agents.
3. The lease area shall be marked in accordance with U.S. Coast Guard requirements and Department of Marine Resources rules Chapter 2.80.

The following condition will be added to the renewed lease:

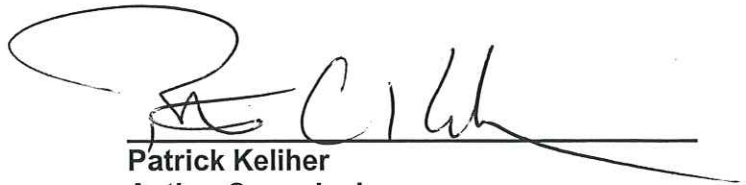
4. Should ownership of Moosabec Mussels, Inc., currently held jointly by Ralph and Joyce Smith, change during the term of this lease, the leaseholders shall notify the Department, which may require them to apply for a transfer of the lease.

#### **4. DECISION**

The Commissioner of Marine Resources grants the application of Ralph L. Smith, Sr. to renew his aquaculture lease EAST OP for a period of ten years, to July 9, 2021. Moosabec Mussels Inc. is authorized to be added as a co-lessee. The renewed lease is subject to the lease conditions as described above and otherwise to the same terms, conditions, and obligations as set forth in the original lease.

Dated: \_\_\_\_\_

8/30/2011



Patrick Keliher  
Acting Commissioner  
Department of Marine Resources