

STATE OF MAINE

Tightrope Seafarms LLC

DEPARTMENT OF MARINE RESOURCES

BHB SP

Aquaculture Lease Renewal Application

November 4, 2019

Suspended culture of shellfish

Blue Hill Salt Pond, Blue Hill, Maine

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On November 19, 2018 Tightrope Seafarms, LLC applied to renew lease BHB SP, for a period of twenty years to February 17, 2039. BHB SP is a 17.45 acres lease located in Blue Hill Salt Pond, off Blue Hill Bay in the Town of Blue Hill, Hancock County, Maine. The lease is issued for the suspended culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue sea mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus*), and surf/hen clams (*Spisula solidissima*). BHB SP was initially issued to Paul Brayton d/b/a Tightrope Seafarms on February 18, 1999. Tightrope Seafarms and this lease were acquired from Mr. Brayton on May 16, 2001 by Blue Hill Bay Mussels, LLC and Aqua Farms LLC; Tightrope Seafarms was incorporated as a limited liability company on that date. The lease was renewed previously on April 30, 2009.

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 *Ellsworth American* on August 2, 2019. Personal notice was given to the municipality and to riparian landowners within 1,000 feet of the lease site. One comment 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. §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 indicates 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 the 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 BHB SP, a 17.45-acre lease, is the only lease held by Tightrope Seafarms LLC. The owners of Tightrope Seafarms, LLC are Blue Hill Bay Mussels, LLC, and Aqua Farms, LLC. Blue Hill Bay Mussels, LLC is wholly owned by Evan Young. Mr. Young holds in his own name aquaculture lease BHB HI (2.32 acres). Blue Hill Bay Mussels, LLC and Aqua Farms, LLC hold no other aquaculture leases.

Therefore, I find that the renewal of this lease will not cause the lessee 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

1. Renewed leases are normally subject to the same terms and conditions that applied to the original lease, unless the Department finds that a change is warranted. The following conditions were applied to the renewal decision dated March 9, 2009: Recreational boating and recreational fishing, otherwise permitted by law, are to be allowed in the open areas of the lease;
2. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80;
3. Conditions specific by IF&W for the lease area within BE 022A shall be met.

Of these, the first and second will be included in the new lease. The third condition refers to an agreement between the Maine Department of Island Fisheries and Wildlife (MDIFW) and Paul Brayton, the original leaseholder, regarding restrictions on lease activities inside the ¼ mile Essential Habitat¹ buffer around eagle's nest BE 022A. This agreement was referred to in the decision granting the original lease in 1999 but the terms of the agreement were not recited in either the decision or the lease. A copy of the agreement is on file with DMR, and the conditions listed in it were included in the original and 2009 renewed lease. This agreement applied only to the activities on the southernmost of the three tracks of the lease, which is called site A in the original 1999 decision and is the only tract that fell inside the one-quarter mile Essential Habitat buffer zone for BE 022A. The Maine Legislature removed bald eagles from the state endangered and threatened list in 2009, so the area around the eagle's nest is no longer designated as Essential Habitat. In a 2012 letter to Evan Young, the United States Department of the Interior Fish and Wildlife Service (USFWS), indicated that the day to day activities occurring on lease BHB SP are not likely to disturb the eagle's nest because the aquaculture activities are more than 890 feet from the nest. However, nest BE 022A is within view of the aquaculture gear on site A, and there is still uncertainty about how the eagles respond to aquaculture activities. In their 2012 letter, USFWS developed several recommendations for lease BHB SP that will be incorporated into the renewed lease. MDIFW defers to whatever recommendations have been made by (USFWS).² As such, the third condition listed above is modified as follows:

3. Lessee shall follow recommendations made by (USFWS) in April 2012 for the portion of the lease designated as Site A within BE 022A.

¹ The Maine Legislature removed bald eagles from the state endangered and threatened list in 2009. As such, the area around eagle's nest BE 002A is no longer designated as essential habitat.

² Email from J. Perry to E Wilkinson on October 28, 2019.

These recommendations are:

- a) To minimize disturbance to nesting eagles, installation of the aquaculture facilities including all related equipment such as mooring struts, would occur only during the non-nesting season (September 1 to March 1). Subsequent development of additional pens would also occur outside the nesting season. Exceptions can be made if monitoring efforts conclusively demonstrate that the eagles have failed in their nesting attempt. Exceptions must be approved in writing.
- b) Limit development to five acres or less until response of eagles can be assessed through two to three years of monitoring. Cage design should be as unobtrusive in size and configurations as possible.
- c) Visits to pens should be minimized in number and duration as much as possible (preferably only one trip per day). Human presence, noise, and activity should be minimized during each of these daily visits.
- d) Repairs to and use of the pens should be avoided during the critical nest initiation phase (March) and incubation (March through mid-May).
- e) The only predator deterrents allowed at the site should be underwater acoustic devices and predator netting.
- f) Predator netting should be made a fluorescent color (i.e. orange) and have a mesh size less than three inch. Every effort to maintain at least three feet between the predator netting and the water surface.
- g) Employees or equipment should not be allowed within 660 feet of the nest. Do not store or moor equipment within 660 feet of the eagle nest.
- h) Owners should assume responsibility for monitoring eagles and other wildlife to evaluate the effects of the project on the nesting birds. Monitoring should be conducted to observe the response of wildlife, including eagles, to activities associated with the aquaculture facility. If eagles flush from the nest or nearby shoreline when you are conducting your activities, you are too close and possibly causing a disturbance.
- i) All bird entanglements should be reported to state and federal fish and wildlife agencies within 48 hours.

Finally, the following condition shall also be included:

4. If the US Department of Interior Fish and Wildlife Service, consents to a change in the recommendations placed on activity on Site A, Tightrope Seafarms can apply to DMR for an amendment to reflect this change in the lease.

4. DECISION

The Commissioner of Marine Resources grants the application of Tightrope Seafarms, LLC, to renew the experimental aquaculture lease BHB SP for a period of twenty years, to February 17, 2039. 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 M.R.S. §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.

6. DATE AND SIGNATURE

Dated:

11/4/19



Patrick C. Keliher, Commissioner,

Department of Marine Resources

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Renewal of Standard Aquaculture Lease
March 5, 2009

Tightrope Seafarms LLC
BHB SP

Docket # 2008–10R

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On November 17, 2008, Tightrope Seafarms, LLC applied to renew, for a period of ten years to February 17, 2019, its aquaculture lease for 19 acres for suspended culture of American/eastern oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue sea mussels (*Mytilus edulis*), sea scallops (*Placopecten magellanicus*), and surf/hen clams (*Spisula solidissima*), located in Blue Hill Salt Pond, off Blue Hill Bay in the Town of Blue Hill, Hancock County, Maine.

This lease was initially issued to Paul Brayton d/b/a Tightrope Seafarms on February 18, 1999. Tightrope Seafarms and this lease were acquired from Mr. Brayton on May 16, 2001 by Blue Hill Bay Mussels, LLC and Aqua Farms, LLC; the business was incorporated as a limited-liability company on that date.

1. PROCEDURE

Notice of the application for lease renewal was published in the *Commercial Fisheries News* January, 2009 issue and in the *Penobscot Bay Press* on December 18, 2008 and January 8, 2009. The public, riparian landowners within 1,000 feet of the lease site, and other interested persons were given until February 9, 2009 to submit comments or to request a hearing on the application for lease renewal. One comment and two requests for a hearing on this application were received by the Department during the comment period. Because fewer than five requests for hearing were received and because the Department did not determine that a hearing was necessary, no hearing was held.

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 been inspected by DMR Marine Patrol and found to be in order.

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 Tightrope Seafarms, LLC holds 19 acres of aquaculture leases, consisting of this lease. The owners of Tightrope Seafarms, LLC are Blue Hill Bay Mussels, LLC, and Aqua Farms, LLC. Blue Hill Bay Mussels, LLC is wholly-owned by Evan Young. Mr. Young holds in his own name aquaculture lease BHB HI (2.3 acres). Aqua Farms, LLC also holds aquaculture leases CAS BA2 (2.0 acres) and CAS CF2 (1.66 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

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 its term, as shown by the annual reports it has filed with the Department.

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

E. Lease conditions

Renewed leases are normally subject to the same terms and conditions that applied to the original lease, unless the Department finds that a change is warranted.

The following conditions are contained in the 1999 lease for this site:

1. Recreational boating and recreational fishing, otherwise permitted by law, are to be allowed in the open areas of the lease;
2. The lease site must be marked in accordance with U. S. Coast Guard and Department of Marine Resources requirements;
3. Abandoned gear described in the record shall be removed within two years of the granting of the lease; and
4. Conditions specified by IF&W for the lease area within BE 022A shall be met.

Of these, the first and second will be included in the renewed lease. The third, which was a requirement to be met by 2001, need not be carried forward into the new lease. All leaseholders are subject to the requirements of DMR Rule 2.75, Minimum Lease Maintenance Standards.

The fourth condition refers to an agreement between the Maine Department of Inland Fisheries and Wildlife and Paul Brayton, the original leaseholder, regarding restrictions on lease activities inside the Essential Habitat buffer around eagle's nest BE 022A. This agreement was referred to in the decision granting the original lease in 1999, but the terms of the agreement were not recited in either the decision or the lease.

A copy of the agreement is on file with DMR, and the conditions listed in it will be included in the renewed lease. This agreement applies only to activities on the southernmost of the three tracts of the lease, which is called Site A in the original 1999 decision and is the only tract that falls inside the one-quarter mile Essential Habitat buffer zone for BE 022A.

These conditions are:

1. All Tightrope Seafarm activities in BE022A will be conducted from the water in 20' work skiffs.
2. There will be no penetration of BE022A by Tightrope Seafarms until June 15th of any given year.
3. The spat-line-laying activity will be completed in a timely manner (2-3 days of work) by no later than 15 July.
4. From mid-July to mid-September, the spat lines will be visited for inspection and maintenance by Tightrope Seafarms personnel not more than once each week. Those personnel will observe the spat lines from the eastern side of the array and thereby may not even enter BE022A during this process.
5. Spat harvesting will start in mid-September and conclude in late November with the removal of all spat collecting equipment from the water.
6. All Tightrope Seafarms personnel must be instructed to obey these guidelines and to minimize entry into BE022A. Under no circumstances may Tightrope personnel enter BE022A from January until the 15th of June.

Because the Maine Legislature is currently considering a change in the legally-protected status of eagles, DMR will add the following condition to the lease to supplement those listed above:

If the Legislature changes the protected status of bald eagles, and if the Department of Inland Fisheries & Wildlife consents to a change in the restrictions on activity on Site A within the Essential Habitat, Tigh trope Seafarms can apply to DMR for a variance to reflect this change in the lease.

Decision

The Commissioner of Marine Resources grants the application of Tigh trope Seafarms, LLC for renewal of the 19-acre aquaculture lease located in Blue Hill Salt Pond, off Blue Hill Bay in the Town of Blue Hill, Hancock County, Maine, for a period of ten years, to February 17, 2019. The renewed lease is subject to the terms, conditions, and obligations set forth above.

Dated: 3/9/09 _____

/s/ George Lapointe
George D. Lapointe (Commissioner)
Department of Marine Resources