

STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES

Renewal of suspended lease
Bagaduce River, Brooksville & Sedgwick

Jesse Leach
Lease BAG SB
Docket #2009-15R
January 5, 2011

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On November 11, 2009, Jesse Leach applied to renew, for a period of ten years, an aquaculture lease for 4.03 acres for suspended and “bottom containment” culture of American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), soft clams (*Mya arenaria*), and green sea urchins (*Strongylocentrotus droebachiensis*) located in the Bagaduce River, west of Bear Head, in the Towns of Brooksville and Sedgwick in Hancock in County, Maine. This lease was initially granted on February 15, 2000 for a period of ten years to February 14, 2010. A species amendment adding sea urchins as an authorized species was granted in 2009.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* January, 2010 issue and in the *Ellsworth American* on Dec. 24, 2009 and Jan. 14, 2010. 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. 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

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

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 considers, 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 only this aquaculture lease. The acreage of the lease is described in the original decision and lease as being 4.03 acres, but a review of the decision dated February 15, 2000 reveals an error in the calculation of the acreage. The entire site is described in that decision as an area measuring 300 ft. by 600 ft. The decision says:

“This area is divided into two adjacent tracts, a suspended with bottom (containment) culture tract that would be 200’ by 600’, and a bottom (containment) tract that would be 100’ by 600’. The acreage of the surface portion of the site, based on the dimensions, would be 2.75 acres. The bottom only tract would be 1.38 acres, for a total acreage of 4.03 acres.”

In fact, adding 2.75 and 1.38 gives a total acreage of 4.13 acres. The renewed lease will reflect this figure. Mr. Leach currently holds only 4.13 acres of aquaculture leases.

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.

3. OTHER ISSUES

A. Lease Conditions

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

1. Recreational boating and recreational fishing, otherwise permitted by law, are allowed in the open areas of the lease.

2. The lease area shall be marked in accordance with U.S. Coast Guard and Department of Marine Resources requirements, except that only corner buoys shall be deployed on the bottom tract, in order not to impede navigation.

3. There shall be no unauthorized access to riparian land except in extreme emergencies or to clean up any debris that may have blown on shore from the lease site.

B. “Bottom containment” culture

As described under part C above, the lease site is apportioned into two parts, one for gear deployed on the surface and bottom, and a smaller area for gear deployed on the bottom only. In the original decision and lease, this form of bottom culture is referred to as “bottom containment”.

The original decision describes the culture techniques proposed by Mr. Leach and notes that “The applicant stated that he was not seeking permission to bottom plant or broadcast shellfish” (Decision dated February 15, 2000, p. 3). “Bottom containment” was used to refer to his plan to deploy cages on the bottom to grow out oysters and other shellfish.

In the years since this decision was originally issued, the term “bottom culture” has come to be used only for the practice of planting shellfish directly on the bottom, without the use of gear other than the required marker buoys. The use of any kind of gear, whether at the surface or on the bottom, is now referred to as “suspended culture”. Therefore, this lease will be modified upon renewal to read “suspended culture” only, which is consistent with the culture techniques described and approved in the original decision.

4. DECISION

The Commissioner of Marine Resources grants the application of Jesse Leach for renewal of aquaculture lease BAG SB for 4.13 acres for suspended culture of American/eastern oysters (*Crassostrea virginica*), European flat oysters (*Ostrea edulis*), surf/hen clams (*Spisula solidissima*), soft clams (*Mya arenaria*), and green sea urchins (*Strongylocentrotus droebachiensis*) located in the Bagaduce River, west of Bear Head, in the Towns of Brooksville and Sedgwick in Hancock County, Maine, for a period of ten years to February 14, 2020, subject to the same terms, conditions, and obligations as set forth in the original lease, with the modifications described above.

Dated: 1/5/11

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