

**STATE OF MAINE
DEPARTMENT OF MARINE RESOURCES**

Johns River Shellfish, LLC

Application for Change in Gear Authorization
Damariscotta River, Damariscotta

DAM BN

May 14, 2019

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

Johns River Shellfish, LLC applied to the Department of Marine Resources (DMR) for a change in gear authorization on their existing standard lease DAM BN, located south of Blackstone Narrows in the Damariscotta River in the town of Damariscotta, Lincoln County, Maine. The leaseholder is seeking authorization to install shellfish rafts, with a combined footprint of 24' x 20' on the existing standard lease site DAM BN. The leaseholder is also seeking authorization to relocate a tumbler/table and an engine box and to install a second onsite structure.

1. THE PROCEEDINGS

Notice of the application and the 14-day public comment period were provided to federal agencies, riparian landowners, and the Town of Damariscotta. The evidentiary record before the Department regarding this lease amendment application includes two exhibits (see exhibit list below).

LIST OF EXHIBITS¹

1. Application for a change of gear authorization
2. Original lease decision signed February 19, 2015

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 on an existing lease site provided the proposed changes are consistent with the findings of the original decision and lease conditions.

A. Original Lease Decision

On February 19, 2015, DMR granted lease DAM BN to Johns River Shellfish, LLC (Exhibit 2, page 20). DMR's Findings of Fact, Conclusions of Law, and Decision, henceforth referred to as "the decision", found that the evidence in the record supported the conclusion that the aquaculture activities proposed by Johns River Shellfish, LLC met the requirements for granting a standard aquaculture lease as set forth in 12 M.R.S.A. § 6072 (Exhibit 2, page 19).

The decision provided authorization to culture shellfish and marine algae using both bottom culture and suspended culture (Exhibit 2, page 2). Plastic mesh bags, wooden trays, and wire cages comprise the

¹ Exhibits 1 and 2 are cited below as: Application – "App", DMR Decision on Lease DAM BN - "Exhibit 2".

gear authorized for the suspended culture of shellfish on DAM BN (Exhibit 2, 2). The decision also authorized the installation of a shellfish raft measuring approximately 24' x 14', with a height of 4', and a framed structure measuring 10' x 10' x 10', that would be erected on the raft to provide shelter for work on the lease site (Exhibit 2, page 3). Authorization for outboard motors, a pot hauler, a hydraulic tumbler/sorter powered by a 13-horsepower engine, a hose, and a pressure washer to be used on the lease site was also provided (Exhibit 2, pages 14-17). A processor boat used to service the site, and moored on the lease site when not in use, was authorized to hold the hydraulic tumbler/sorter and 13-horsepower engine (Exhibit 2, page 3).

Conditions imposed on lease DAM BN, pursuant to 12 M.R.S.A § 6072 (7-B) and located on page 20 of the decision, are as follows:

1. The lease site must be marked in accordance with both U.S. Coast Guard requirements and DMR Rule 2.80.
2. A 75-foot gear-free access corridor will be maintained on the lease site by the leaseholder as described in the lease decision and shown in the revised gear plan dated November 24, 2014. Any mooring placed in the access corridor must be installed by or with the prior knowledge and consent of the leaseholder.
3. Navigation by kayaks and canoes and recreational hook-and-line fishing are allowed within the lease site. Navigation by motorized vessels is allowed within the open areas of the lease site. Mooring, anchoring, and shellfish harvesting are prohibited within the lease site except with the authorization of the leaseholder. Dragging is prohibited on the lease site.
4. The Department may, in its sole discretion, review the lease to determine whether additional "reasonable measures" need to be taken "to mitigate noise impacts from the lease activities" during the term of the lease. Should the addition of noise reduction measures be determined reasonable and appropriate by the Department, in its sole discretion, the lease will be amended to include further conditions requiring the implementation of those measures.

B. Proposed Gear Changes and Findings

Johns River Shellfish, LLC is requesting the authorization to install shellfish rafts, with a combined footprint of 24' x 20' and a height of 4', on their existing standard lease site DAM BN. Johns River Shellfish, LLC is also requesting to install an additional structure, a tumbler, a table, and an engine box on the aforementioned rafts (App 6).

Shellfish Rafts. DAM BN is authorized to hold shellfish rafts with a combined footprint of 24' x 14' x 4' (Exhibit 2, page 3) The leaseholder currently has a shellfish raft of 12' x 20' x 4' installed on DAM BN, and is proposing to add attached a second shellfish raft of 12' x 20' x 4' to the existing raft. This installation would result in a combined shellfish raft footprint to 24' x 20' x 4' (App 2).

Given that the proposed gear change would add only 6' to the original length of the shellfish raft footprint, as authorized in the decision, it appears that this gear change is reasonable in consideration of what is permitted by DMR. Additionally, the proposed location of the 24' x 20' x 4' shellfish raft would not

be located within the 75-foot gear-free access corridor as required by the lease conditions and therefore the conditions would not be altered by the proposed gear change (Exhibit 2, page 20).

Onsite structure. DAM BN is currently authorized to hold a 10-foot square shelter atop a shellfish raft (Exhibit 2, page 18). The leaseholder is applying to obtain authorization to host a second structure on the lease, and to amend the dimensions of both structures to be 12' in length x 12' in width x 10' in height ^{2,3} (App 2 & App 6).

In the original decision, DMR stated "The height of the shelter (ten feet) is well within the 20-foot limit in the DMR rule" (Exhibit 2, page 18). The proposed change would not alter the height of the existing structures on the lease, so the proposed height change remains consistent with the visual impact criteria contained in DMR Regulation 2.37(1)(A)(10). The lease holder is not proposing to modify the color of any existing or proposed gear on the site. Therefore, the proposed changes are consistent with the color requirements of the visual impact rule (Exhibit 2, page 18).

Tumbler, sorting table, and engine box. DAM BN is currently authorized to hold a hydraulic tumbler/sorter and a 13-horsepower engine on a processor boat that services the lease site and is moored on the lease when not in use (Exhibit 2, page 3). The leaseholder is applying to move this tumbler, sorting table, and engine to the proposed shellfish raft (App 6). According to the application "activities will remain the same" and this change will result in "the same noise levels" as currently produced by on-site activity (App 7). Given this evidence, it appears that the proposed changes are consistent with what is currently permitted by DMR. Additionally, the proposed changes would be subject to the existing lease conditions concerning noise reduction measures.

Therefore, the proposed change to the dimensions of the shellfish raft, the onsite support structure, and the location of the tumbler, sorting table, and engine do not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A), is consistent with the findings of the original decision, and would not result in a change to the original lease conditions.

3. DECISION

Based on the foregoing, the Commissioner grants the request from Johns River Shellfish, LLC to increase, on standard lease DAM BN, the shellfish raft footprint to 24' x 20', to install a second onsite support structure, and to amend the onsite structure dimensions to 12' x 12', with a height of 10'. Additionally, the Commissioner grants the request to relocate the existing tumbler, sorting table, and engine from a processor boat moored within the lease site to a shellfish raft moored within the lease site.

Dated: 5/14/19



Patrick C. Keliher, Commissioner
Department of Marine Resources

² Page 2 of the application indicates that these tents would be 10' x 10' in dimension.

³ The applicant clarified that the height of the proposed structures would be 10' in a phone call with Flora Drury on April 10, 2019.