

STATE OF MAINE

DEPARTMENT OF MARINE RESOURCES

Aquaculture Lease Transfer Application

Suspended culture of shellfish & marine algae

Damariscotta River, South Bristol, Maine

Damariscove Seafood, LLC

Pemaquid Mussel Farms, LLC

DAM CC2

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Damariscove Seafood, LLC applied to the Department of Marine Resources (DMR) to transfer the lease DAM CC2 to Pemaquid Mussel Farms, LLC. The lease site is 8.03 acres and is located in Clark's Cove, Damariscotta River, South Bristol, Lincoln County. The standard lease decision for DAM CC2 was originally issued on February 5, 1976, to Abandoned Farm, Inc and subsequently renewed in 1981, 1991, and 2001. DAM CC2 was transferred to Damariscove Seafood, LLC on January 22, 2004, and, at the leaseholder's request, was reduced from 15 acres to 12 acres. The lease was subsequently renewed under Damariscove Seafood, LLC in 2011 and 2022.

During the 2022 renewal the acreage was reduced, at the lease holder's request, from 12 acres to 8.02 acres. The lease is currently authorized for suspended culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), quahogs (*Mercenaria mercenaria*), blue mussels (*Mytilus edulis*), soft-shell clams (*Mya arenaria*), sugar kelp (*Saccharina latissima*), winged kelp (*Alaria esculenta*), horsetail kelp (*Laminaria digitata*), sea colander (*Agarum cribosum*), dulse (*Palmaria palmata*), nori (*Porphyra spp.*), Irish moss (*Chondrus crispus*), and sea lettuce (*Ulva lactuca*). The current lease expires on May 20, 2031.

1. PROCEDURAL HISTORY

DMR received the transfer application on February 9, 2024, and accepted it as complete on April 22, 2024. Notice of the completed application and 30-day comment period was published in *The Lincoln County News* on May 9, 2024. DMR also provided notice of the completed application and the 30-day comment period to the Town of South Bristol and its Harbormaster, riparian landowners within 1,000 feet of the aquaculture lease site, other state agencies, and to subscribers of DMR's aquaculture list-serve. Two comments were received.¹ The lease transfer process does not provide for a public hearing, so DMR did not hold a hearing.

¹ Thomas Myers and Harriet Burgoon submitted one comment each. Any comments that are relevant to the decision criteria will be discussed in this document.

2. STATUTORY CRITERIA

Aquaculture lease transfers are governed by 12 M.R.S. §6072(12-A) and by Chapter 2.60 of DMR's rules, which provide that the Commissioner may grant a transfer of an aquaculture lease if: the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A); the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8); 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. Aggregate lease holdings

Chapter 2.60(3)(D) of DMR's regulations provides that a lease may be approved if "the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres." According to DMR records, DAM CC2 is 8.02 acres in size. Pemaquid Mussel Farms, LLC currently holds only one other aquaculture lease, EAST GL, which is 15.99 acres.

Therefore, if the lease transfer is granted, it would not cause Pemaquid Mussel Farms, LLC to hold leases covering an aggregate of more than 1,000 acres.

B. Speculative purposes

Pursuant to 12 M.R.S.A. § 6072(12-A)(B)(3), in order to grant a lease transfer, the Commissioner must determine that the transfer is not for speculative purposes. Chapter 2.60(3)(C) of DMR's regulations provides that in determining whether a transfer is for speculative purposes, DMR must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." DMR received a comment from Thomas Myers stating: "we are concerned that this transfer will lead to speculative holding of the leasehold, pending a sale to one of the large companies now taking over leases." The comment seems to suggest that if the transfer were granted, the transferee, Pemaquid Mussel Farms, LLC, would hold the site for possible future sale.

In this case, the transfer application states that the transferor, Damariscove Seafood LLC, cultivated shellfish and marine algae during the previous lease term.² DMR site inspections also indicate that gear was deployed and that aquaculture activities occur. The record demonstrates

² See page 4 of the application.

that the current lessee has conducted research and aquaculture in the lease area during the previous lease term.

The transfer application does not require the transferee to state their proposed plans for the site. This is because a lease transfer is only a change in holder, not in operations, so the transferee would be required to operate the site in the manner currently authorized. If the transfer was granted and the new lease holder wished to make modifications to site operations, they would need to file an application reflective of the type of change they intend to make. For example, if they wanted to change the type of gear used or species cultivated, they would need to apply for a lease amendment.

In addition, if the transfer were granted and the new lease holder subsequently applied to transfer the site to another holder, the application would be subject to an analysis of speculative uses. That analysis would include an assessment of the aquaculture activities the current leaseholder conducted as required by law. Therefore, the scenario raised by Mr. Myers would be addressed through the lease transfer process. A lease transfer would not be required if Pemaquid Mussel Farms, LLC was purchased by another company and that company elected to operate the site under Pemaquid Mussel Farms, LLC.

Therefore, the lease is not being transferred for speculative purposes.

C. Change of Holder and Issuance Criteria

Title 12 M.R.S.A. § 6072(12-A)(B)(1) and Chapter 2.60(3)(A) of DMR's regulations provide that in order to approve a transfer application, DMR must determine the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A).

The issuance criteria provide that a lease may be granted by the Commissioner upon determining that the project will not unreasonably interfere with: the ingress and egress of riparian owners; navigation; fishing or other uses of the area, taking into consideration other aquaculture uses of the area; the ability of the lease site and surrounding areas to support existing ecologically significant flora and fauna; or the public use or enjoyment within 1,000 feet of beaches, parks, docking facilities, or conserved lands owned by municipal, state, or federal governments. The Commissioner must also determine that the applicant has demonstrated that there is an available source of organisms to be cultured for the lease site; that the lease will not result in an unreasonable impact from noise or lights at the boundaries of the lease site; and that the lease will comply with visual impact criteria adopted by the Commissioner.

DMR received a comment from Thomas Myers raising concerns about the identity of the current lease holder, Damariscove Seafood, LLC, Inc and the proposed transferee, Pemaquid Mussel Farms, LLC.³ Mr. Myers stated that it was not clear who owned the respective companies, but he also stated that both companies use a pier he owns near DAM CC2.

As part of the application, the transferee provided the names of all corporate officers and shareholders who own or control at least 5% of the outstanding stock of Pemaquid Mussel Farms, LLC. DMR is aware that, prior to his passing, Peter Fischer owned Damariscove Seafood, LLC and that Carol Jackson is acting as the personal representative of his estate. The application identifies Ms. Jackson as Mr. Fischer's estate's personal representative and as the point of contact for Damariscove Seafood, LLC.

Mr. Myers did not specify if or how the change in the lessee's identity would violate any of the lease decision criteria, or how his concerns related to ownership of the companies related to any statutory criteria. There is no evidence in the record to indicate that the change in the lessee's identity will violate any of the lease issuance criteria.

Therefore, the transfer of ownership to a new lessee does not violate any of the lease issuance criteria.

D. Preference Guidelines

Title 12 M.R.S.A. § 6072(12-A)(B)(2) and Chapter 2.60(3)(B) of DMR's regulations state the Department must consider if a transfer is intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8).

The Department has not received any competing applications for this lease location. **Therefore**, the transfer is not intended to circumvent the preference guidelines.

3. LEASE CONDITIONS

There are no conditions imposed on this lease.

4. CONCLUSIONS OF LAW

Based on the above findings, I conclude that:

- a. The proposed lease transfer does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. § 6072(7-A);

³ Mr. Myers' comment regarding the identity of the companies may be invoking this specific criterion, although it is not clear. However, DMR is including it in the analysis of this criterion.

- b. The transfer is not intended to circumvent the intent of 12 M.R.S.A. § 6072(8);
- c. The transfer is not for speculative purposes, and;
- d. The transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1000 acres.

Accordingly, the evidence in the record supports the conclusion that the proposed lease transfer meets the requirements for the granting of a lease transfer set forth in 12 M.R.S.A. §6072(12-A) and in DMR Rule Chapter 2.60.

5. DECISION


The Commissioner grants the application of Damariscove Seafood, LLC to transfer the aquaculture lease DAM CC2 to Pemaquid Mussel Farms, LLC. The transferred lease is subject to the same terms, conditions, and obligations as set forth in the original lease, except as modified by subsequent Department decisions.

6. REVOCATION OF LEASE

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) that no substantial aquaculture has been conducted over the course of the lease, that the lease activities are substantially injurious to marine organisms or public health, or that any of the conditions of the lease or any applicable laws or regulations have been violated.

6. DATE AND SIGNATURE

Dated: 10/8/24



Patrick C. Keliher, Commissioner
Department of Marine Resources

STATE OF MAINE

Damariscove Seafood, LLC

DEPARTMENT OF MARINE RESOURCES

Aquaculture Lease Renewal Application

DAM CC2

Suspended culture of shellfish and marine
algae

June 28, 2022

Clarks Cove, South Bristol

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

Damariscove Seafood LLC applied to the Department of Marine Resources (DMR) to renew the aquaculture lease DAM CC2 for a period of 20 years. The 12-acre lease is authorized for the suspended culture of the following species:

Shellfish	Marine Algae
American oysters (<i>Crassostrea virginica</i>)	Sugar kelp (<i>Saccharina latissima</i>)
European oysters (<i>Ostrea edulis</i>)	Winged kelp (<i>Alaria esculenta</i>)
Quahogs (<i>Mercenaria mercenaria</i>)	Horsetail kelp (<i>Laminaria digitata</i>)
Blue mussels (<i>Mytilus edulis</i>)	Sea Colander (<i>Agarum cribosum</i>)
Soft-shell clams (<i>Mya arenaria</i>)	Dulse (<i>Palmaria palmata</i>)
	Nori (<i>Porphyra spp.</i>) ¹
	Irish moss (<i>Chondrus Crispus</i>)
	Sea lettuce (<i>Ulva lactuca</i>)

The lease is in Clarks Cove, Damariscotta River, Town of South Bristol.

1. PROCEDURE

The renewal application was deemed complete by DMR on December 23, 2021. The application requested that if the lease is renewed, it be reduced in size. The application describes the area proposed for reduction and includes revised coordinates.² Based on the information provided, the lease holder is proposing to reduce the site by 3.98 acres. Therefore, if the renewal is granted it would be for 8.02 acres instead of 12 acres.

Notice of the 30-day public comment period and opportunity to request a public hearing was published in the *Lincoln County News* on January 20, 2022. Notice was also provided to riparian landowners within 1,000 feet of the site, the Town of South Bristol, federal and other state agencies and sent to subscribers of DMR's aquaculture email list-serve. The notice included information about the proposed reduction in acreage. A public hearing on a lease renewal is required if DMR receives

¹ Only applies to native species of porphyra.

² CF: Complete lease application pg. 8 and 9.

five or more requests for a public hearing during the comment period. DMR did not receive any requests for a public hearing. Therefore, no public hearing was held on the renewal request.

2. STATUTORY CRITERIA

Aquaculture lease renewals are governed by 12 M.R.S. §6072(12) and by Chapter 2.45 of DMR'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

Lease sites are inspected on an annual basis. A review of inspection reports for DAM CC2, from 2014-2021, indicate a history of marking issues. In 2015, 2016, 2019 and 2021, the site was not properly marked. In addition, during annual inspections staff have reported not being able to discern corner buoys, the site not being properly located, and in 2016 the site did not appear to be properly maintained.³ Based on inspection records, staff have tried following up with the lease holder about these issues, but the lack of proper marking has been a persistent problem during the term of the previous lease. Inspection records suggest that the holder has not been consistent in their efforts to ensure the site is properly marked or concerns addressed.

Chapter 2.75 of DMR's regulations specify the minimum lease maintenance standards all holders must follow. Those standards include properly marking the site and taking lawful efforts to ensure animal excrement does not accumulate on the lease, among other considerations. Compliance with minimum lease maintenance standards is part of every lease agreement.

In this case, inspection information indicates that the holder has history of marking issues, which they have been unable to reliably resolve despite Department follow-up. However, the issues have not resulted in the Department taking enforcement action against the holder. Furthermore, the holder has requested a reduction in lease acreage, so it is possible that a smaller site would be easier for the holder to maintain in compliance with the applicable provisions of Chapter 2.75.

The holder has requested that the lease be renewed for a 20-year term. In consideration of the compliance issues related to marking and general site maintenance if the lease is renewed it will only be for a 10-year period. This is consistent with the length of the previous lease term and would provide the holder with an opportunity to operate a smaller site and demonstrate consistent compliance with site marking and maintenance requirements.

³ For example, in 2016, staff reported a significant amount of bird feces and foul odors from the site. The accumulation of bird feces on sites authorized to culture shellfish can create a variety of risks to public health. It appears that this specific issue was addressed as it was not highlighted in subsequent inspection reports.

Except for the referenced failure to mark the site consistently and properly, the review of the case file associated with this lease indicates compliance with the lease agreement. There are no outstanding issues regarding this lease.

Therefore, I find that, although the applicant has not fully complied with the lease agreement during its term, the lease renewal may be granted for a reduced term of 10-years, provided the applicant meets the remaining requirements for a lease renewal under 12 M.R.S.A. and Chapter 2.45.

B. Best interest of the State of Maine

In determining whether it is in the best interest of the state to renew the lease, DMR 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.

DMR provided the Maine Department of Inland Fisheries and Wildlife (MEIF&W) with an opportunity to review and comment on the renewal application. On January 19, 2022, MEIF&W submitted a comment, which indicated that “minimal impacts to wildlife are anticipated for this aquaculture project.”⁴ Based on this comment, MEIF&W did not have concerns about the proposed lease renewal.

As noted in section 1 of this decision, DMR also provided notice of the renewal application and comment period to the Town of South Bristol. That notice included a Harbormaster Questionnaire for the municipal Harbormaster or another municipal designee to complete. The Harbormaster Questionnaire asks a series of questions about how the lease area is utilized and is an opportunity for the Harbormaster to provide feedback about the site. Cecil Burnham, Harbormaster for the Town of South Bristol, returned a completed questionnaire to DMR.

The questionnaire asks if there are permitted moorings within the boundaries of the site and the extent of commercial and recreational fishing in the area. Mr. Burnham indicated that there may be a permitted mooring within the boundaries of the site, and he noted that there is some lobstering activity near the lease.⁵

DMR does not permit moorings, so it is likely that the mooring was permitted by the Town of South Bristol or other applicable authority. The site was initially granted in 1976 and has been renewed multiple times.⁶ If there is a mooring within the boundaries of the site it seems reasonable to assume that it is affiliated with the lease holder or that the lease operations and use of the possible mooring do not conflict, because DMR did not received any comments to indicate otherwise.

Based on the questionnaire, the lobstering activity appears to occur near, not within, the boundaries of the site. DMR did not receive any comments from commercial or recreational fishermen about the proposed renewal. If the renewal is granted, the size of the site would be reduced at the request of the lease holder. The reduction would have the indirect effect of allowing for more uses of the general

⁴ CF: Email from B. Settele (MEIF&W) to DMR Aquaculture.

⁵ CF: Completed Harbormaster Questionnaire signed February 14, 2022.

⁶ CF: 2011 renewal decision signed August 25, 2011. Since 1976, the site has also been transferred, reduced in size, and amended.

area as the footprint of leased area is minimized. However, DMR did not receive any feedback to suggest that the site is conflicting with 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, DAM CC2, which is currently 12 acres, is the only lease site held by Damariscove Seafood, LLC. If the lease is renewed, it will be for 8.02 acres.

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

D. Speculative purposes

Chapter 2.45(2)(A) of DMR's regulations provides that in determining whether a renewal is being conducted for speculative purposes, DMR must consider "whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term." The renewal application indicates that mussels and marine algae were cultivated during the previous lease term.⁷ This is consistent with a review of the record, which indicates aquaculture activities occurred on the site during the previous lease term.

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

3. LEASE CONDITIONS

The following conditions were applied to the lease by the 2011 renewal decision:

1. The lessee must mark the site in accordance with the requirements of the U.S. Coast Guard and Department of Marine Resources Rule Chapter 2.80.

DMR's regulations specify marking requirements for lease sites and such marking requirements are further specified in lease agreements. Therefore, if the renewal is granted this condition will be removed from the lease agreement as it is already contemplated in applicable regulation.

4. DECISION


The Commissioner grants the application of Damariscove Seafood, LLC to renew the aquaculture lease DAM CC2 for a period of 10 years. The acreage of the site will be reduced from 12 acres to 8.02 acres. A description of the 8.02-acre area is included at the end of this decision (see section #7). 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. REVOCATION OF LEASE

⁷ See page 1 of the renewal application, which notes mussels and marine algae have been cultivated. Pg. 2 of the application specifies that sugar kelp and alaria have been cultivated.

The Commissioner may commence revocation procedures upon determining pursuant to 12 M.R.S. §6072 (11) 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: 6/28/22 
Patrick C. Keliher, Commissioner,
Department of Marine Resources

7. Description of DAM CC2:

Coordinates (all datum is NAD 83/WGS84):

<u>Corner</u>	<u>Latitude</u>	<u>Longitude</u>
A	43.92881° N	-69.57219° N then 197.80 feet at 214.40° True to
B	43.92836° N	-69.57261° N then 217.90 feet at 123.89° True to
C	43.92803° N	-69.57192° N then 302.70 feet at 214.23° True to
D	43.92734° N	-69.57256° N then 871.45 feet at 304.19° True to
E	43.92867° N	-69.57531° N then 303.27 feet at 34.23° True to
F	43.92936° N	-69.57467° N then 217.45 feet at 125.08° True to
G	43.92902° N	-69.57399° N then 202.92 feet at 34.44° True to
H	43.92948° N	-69.57356° N then 435.81 feet at 124.48° True to A.

FINDINGS OF FACT, CONCLUSIONS OF LAW, & DECISION

On February 18, 2011, the Department received an application from Damariscove Seafood, LLC, to renew its aquaculture lease for 12 acres for suspended culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue mussels (*Mytilus edulis*), hard-shell clams / quahogs (*Mercenaria mercenaria*), and soft-shell clams (*Mya arenaria*), located in Clarks Cove in the Damariscotta River, South Bristol, Lincoln County, Maine, for a period of ten years to May 20, 2021.

This lease was initially issued on February 5, 1976 to Abandoned Farm, Inc. for a term of 5 years; it was the second aquaculture lease issued by the Department. The lease was renewed for 10 years successively in 1981, 1991, and 2001. It was transferred to Damariscove Seafood, LLC in 2004 and reduced in size from 15 to 12 acres at the leaseholder's request in 2008. In conjunction with this renewal, the lessee has also requested a species amendment to add eight species of marine algae to the lease and to remove the condition prohibiting storage.

1. PROCEDURE

Notice of the application for lease renewal and the public comment period was published in the *Commercial Fisheries News* April 2011 edition and in the *Lincoln County News* on March 24 and April 14, 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. 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 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

DMR records show that this lessee holds only this 12-acre aquaculture lease. The principal of Damariscove Seafood, LLC, Peter Fischer, is also a principal in Pemaquid Mussel Farms, LLC, which holds lease PEN STH2 on 1.86 acres in Merchant Row, Stonington. Clearly, the lease acreage held by Damariscove Seafood and/or attributable to Peter Fischer individually is not more than 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

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 lessee has conducted aquaculture on the lease site during its term, as shown by the annual reports it has filed with the Department and by the statement of Peter Fischer on the renewal application.

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

3. OTHER ISSUES

A. Lease Conditions

The lessee has requested that the Department remove one of the conditions that is listed in the most recent lease document for this site. Because 35 years have passed since conditions were first placed on this lease, the Department has reviewed the information in its files in order to determine why the condition was imposed and whether it is reasonable to remove it. This lease originated at the beginning of the Department's aquaculture program, and the administrative processes for the program have evolved over the succeeding decades. In this case, it appears that the conditions that apply to this lease have not been clearly or consistently repeated in either the leases themselves or in the decisions and other

administrative proceedings renewing the leases throughout the years. The detailed results of this review are contained in an appendix to this decision, in order to clarify the administrative record of this lease.

In summary, the lease conditions originally placed on this site have become obsolete over the years as the use and configuration of the site have changed. The “no storage” condition was originally intended to prohibit the extended storage of gear in the intertidal zone, part of which was included in a companion lease also held by the original lessee. That lease has since been terminated, and none of the intertidal zone in Clark’s Cove is leased by anyone at present. The sole lease in the vicinity at this time is DAM CC2, for 12 acres of subtidal waters. The present lessee uses the lease primarily to raise mussels using mussel rafts and has no intention of storing gear in the intertidal zone.

A second condition, requiring the removal of all gear from the site before the lease is terminated, is no longer necessary, given the present requirements for each lessee to provide a bond or escrow account to protect the state from incurring clean-up costs for lease sites. In addition, the Department requires that lease sites be free of gear and debris before a lease is terminated. The only condition that appears to be necessary to place on this renewed lease is the standard requirement to mark the lease site in accordance with the requirements of the U.S. Coast Guard and this Department.

Therefore, the original lease conditions will be discontinued, and only the following condition will apply to the renewed lease:

1. The lessee must mark the site in accordance with the requirements of the U.S. Coast Guard and Department of Marine Resources Rule Chapter 2.80.

B. Species Amendment

The lessee requested a species amendment from the Department on April 13, 2011 to add eight species of marine algae: *Saccharina latissima* (previously *Laminaria saccharina*, or sugar kelp), *Alaria esculenta* (winged or edible kelp), *Laminaria digitata* (horsetail or fingered kelp), *Agarum clathratum* (sea colander or shotgun kelp), *Palmaria palmata* (dulse), *Porphyra* spp. (nori, species native to the Gulf of Maine), *Chondrus crispus* (Irish moss), and *Ulva lactuca* (sea lettuce).

The lessee plans to grow these species in the same manner as the mussels, i.e., on ropes suspended from the mussel rafts, and perhaps eventually on long lines. According to lessee, the source of stock for the marine algae will be “nursery stock produced by Ocean Approved LLC of Portland Maine or any other dependable nursery facility that starts commercial production during the term of the lease. Seedstock may also be derived directly from indigenous sources.” All of these species are native to Maine coastal waters and do not appear to present any threat to the waters and the marine life on and around the lease site. The culture techniques are consistent with those authorized for this lease (see section C, below). Adding these species to the lease will not violate any of the lease criteria in 12 MRSA § 6072 (7-A).

Therefore, the request to amend the lease to include the eight requested species of marine algae is granted.

C. Clarification of culture techniques

The lessee proposes to experiment with culturing the algae on ropes suspended from the existing mussel rafts. Should this be successful, Mr. Fischer would consider expanding production of kelp on the lease site using long lines suspended in the water from floating "back" lines, instead of from additional mussel rafts. He would deploy the long lines in the portion of the lease that is shoreward of the mussel rafts, in the truncated "T" portion of the site. This use of gear would be consistent with gear and culture techniques authorized for this lease site in the past, as evidenced by the previous leases (see the appendix to this decision).

It is possible, however, that the use of longlines in addition to the existing mussel rafts will require amending the permit for gear issued by the U.S. Army Corps of Engineers.

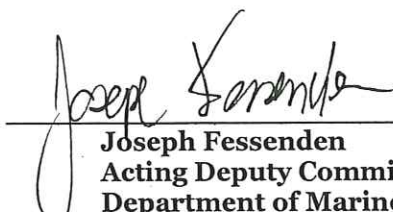
Therefore, while longline culture of mussels is permissible on this lease site as far as the Department is concerned, the lessee should consult with the Army Corps before adding longlines to the lease site.

4. DECISION

The Commissioner of Marine Resources grants the application of Damariscove Seafood, LLC to renew its aquaculture lease for 12 acres for suspended and bottom culture of American oysters (*Crassostrea virginica*), European oysters (*Ostrea edulis*), blue mussels (*Mytilus edulis*), hard-shell clams or quahogs (*Mercenaria mercenaria*), soft-shell clams (*Mya arenaria*), *Saccharina latissima* (previously *Laminaria saccharina*, or sugar kelp), *Alaria esculenta* (winged or edible kelp), *Laminaria digitata* (horsetail or fingered kelp), *Agarum clathratum* (sea colander or shotgun kelp), *Palmaria palmata* (dulse), *Porphyra* spp. (nori, species native to the Gulf of Maine), *Chondrus crispus* (Irish moss), and *Ulva lactuca* (sea lettuce), located in Clarks Cove in the Damariscotta River, South Bristol, Lincoln County, Maine, for a period of ten years, to May 20, 2021.

The lease to be executed in accordance with this decision will constitute the entire lease agreement for this site between this lessee and the State of Maine, prior leases notwithstanding.

Dated: 8/25/11



Joseph Fessenden
Acting Deputy Commissioner
Department of Marine Resources

APPENDIX: History of DAM CC2 lease, formerly lease ADFI CD2

- 1976: Lease for three 5-acre tracts issued to Abandoned Farm, Inc. for 5 years by vote of DMR Advisory Committee; minutes and lease on file.
- 1981: Lease renewed for 10 years by vote of DMR Advisory Committee; minutes and lease on file.
- 1987: Species amendment for *Salmo salar* issued by Commissioner after public hearing; decision on file.
- 1991: Lease renewed for 10 years by Commissioner. Lease on file, but no written decision.
- 1999: Species amendment for *Porphyra yezoensis* issued.
- 2001: Lease renewed for 10 years by Commissioner; decision and lease on file. *Porphyra yezoensis* and *Salmo salar* removed from lease.
- 2004: Lease transferred from Abandoned Farm, Inc. to Damariscove Seafood, LLC. Lease DAM CC (formerly ABFI CD1) also transferred between same parties. DAM CC reduced from 5 acres to 1 acre at lessee's request. Decision and lease on file.
- 2008: Lease reduced from 15 acres to 12 acres at lessee's request. Lease DAM CC terminated at lessee's request. Lease and supporting paperwork on file.
- 2011: Lease renewed for 10 years to May 20, 2021 and amended to add 8 species of marine algae. Decision and lease on file.

Origin of the “no storage” lease condition. The original lease for this site was issued to Abandoned Farm in 1976. It was only the second aquaculture lease that DMR had issued (the first lease was also issued to the same lessee for the nearby 5-acre DAM CC site in 1974). Unlike DMR's procedure today, no lease decision was prepared; the lease itself contains the following language regarding conditions:

The lessee agrees to the following conditions:

1. The lease tracts will be used for the exclusive cultivation or management of the following species: Mytilus edulis, mussels; Mercenaria mercenaria, quahogs; Crassostrea virginica, eastern oysters; Ostrea edulis, European oysters; and Mya arenaria, soft shell clams.
2. The gear used for operations of the aquaculture activity, including, but not limited to, polyurethane tires, will be removed from the lease tracts on or before the date the lease is terminated.
3. There will be no long-term storage of gear on the shore between the high and low water marks.

The initial 1976 lease is the only document on file where conditions #2 and #3 appear. All subsequent leases for this site contain the species list that in 1976 was shown as condition # 1, but after 1976 it is no longer presented as a condition on the lease.

Since its initial issuance in 1976, this lease has undergone three renewals (1981, 1991, and 2001) and two species amendments (Atlantic salmon (*Salmo salar*) and *Porphyra yezoensis*, both of which were

removed from the lease in the 2001 renewal). Subsequent versions of the lease after 1976 did not include these original conditions.

There is no formal written renewal decision on file for the 1981 lease renewal; the minutes of the DMR Advisory Council meeting approving that renewal do not mention the conditions. The 1987 decision granting a species amendment for salmon discusses conditions and includes only a single condition requiring signs to mark the presence of submerged mooring cables and nets (presumably for the salmon pens), with no reference to the original conditions on the lease. The public notice for the 1991 renewal states that the lessee "would be bound by the terms and conditions of the existing lease," but no renewal decision appears in the file, only the executed lease, which does not include any conditions. The 2001 renewal decision and the 2004 transfer decision do not mention any specific conditions but provide that the new lease will be "subject to the same terms, conditions and obligations set forth in the original lease".

When DMR eventually created an inventory of aquaculture leases for its data base, the conditions for this lease were summarized as "Storage prohibited; the lease area shall be marked in accordance with the requirements of the U.S. Coast Guard and the Department of Marine Resources." There is no documentation on why condition #2 was not included in the list.

By 2008, when the most recent lease for this site was drafted to reflect a reduction of the site from 15 acres to 12 acres, the Department had begun listing all conditions pertaining to a lease in both the lease itself and in the decision document granting or renewing the lease. In 2008, the conditions as summarized in the inventory were simply incorporated into the revised lease for the smaller site. Now the leaseholder has requested that the prohibition on storage be removed.

Rationale for "no storage" condition. The "no storage" condition in the original 1976 DAM CC2 lease prohibits "long-term storage of gear on the shore between the high and low water marks." The nearby 5-acre lease DAM CC included portions of both the intertidal and adjacent subtidal zones.¹ The original lease DAM CC2 was for three 5-acre tracts seaward of the DAM CC site. All four tracts were operated together, primarily for cultivating blue mussels. The owners of Abandoned Farm, Inc. at the time also owned the shorefront land abutting the DAM CC lease, as well as the pier and other buildings used to support the aquaculture activities on both lease sites. It is likely that the "no storage" condition was applied to the second lease to prevent Abandoned Farm from storing gear from DAM CC2 on the intertidal portion of DAM CC.

The lease boundaries as initially drawn have been revised several times over the succeeding decades, as GPS technology made more precise mapping possible and as the tracts were realigned and later reduced in size. The four tracts were eventually made contiguous, although they continued to be covered by two different leases, held first by Abandoned Farm and later by Damariscove Seafood through a transfer in 2004. The DAM CC site was reduced from 5 acres to 1 acre in 2004 and terminated entirely in 2008 at the request of Damariscove Seafood. In 2008, also at Damariscove's request, the DAM CC2

¹ DAM CC was the first lease issued to Abandoned Farm, Inc. and the first aquaculture lease ever issued by DMR; it was for a 5-acre tract referred to first as ABFI CD1 and later as DAM CC. The second lease, for 15 acres, was originally called ABFI CD2 and later, DAM CC2.

site was reduced from 15 acres to 12 acres, by moving the most landward boundary farther from shore. Damariscove Seafood is neither an owner of riparian property nor a lessee of any portion of the intertidal zone.

Gear authorized by previous decisions and leases. According to documents in the files, the lease site DAM CC2 originally included mussel rafts with foam-filled tires providing flotation (referred to in 1976 lease condition #2 as "polyurethane tires"); rafts were to be submerged and re-floated as part of the growing process. Subsequent leases and/or decisions contained a variety of language regarding the gear to be used, as follows.

1981 lease: "8 (b). Equipment occupying the tract will be: parallel horizontal lines, 300 feet more or less in length spaced laterally 30 feet more or less, each with dependent shellfish culture devices, lines, or nets, buoyed with surface floatation spaced four feet more or less, also surface maintenance vessels or rafts."

1987 decision granting species amendment for salmon: This decision approved the request to use up to twenty 50' x 50' double-netted pen cages and included the aforementioned condition requiring marking of submerged mooring cables and nets.

1991 lease: "...[A]uthorized to use the lease premises for the purposes of cultivation, harvesting and taking of blue mussels, quahogs, Eastern oysters, flat oysters, soft-shell clams and Atlantic salmon using suspended and pen culture."

2001 decision: Grants renewal of the "suspended and pen culture lease" "subject to the same terms, conditions and obligations set forth in the original lease with the exception of Atlantic salmon (*Salmo salar*) and the nori (*Porphyra yezoensis*)."

2004 transfer decision: "Damariscove Seafood intends to conduct suspended culture of shellfish on the lease site, as Abandoned Farm, Inc. has been permitted to do on the site pursuant to its lease for over 20 years....The change in lessee will not result in a change in the type of activity that has been permitted on the site, pursuant to the lease issued in accordance with the statutory criteria set forth in 12 MRSA §6072 (7-A) for the past 20 years. The change in lessee to Damariscove Seafood, LLC will not violate any of those criteria... In the transfer of this lease, Damariscove Seafood, LLC, is subject to the same terms, conditions and obligations as set forth in the original lease." The 2004 lease after the transfer authorizes "suspended culture".